8th June 2008

Alain LAMASSOURE
Member of the European Parliament

THE CITIZEN AND THE APPLICATION OF COMMUNITY LAW

Report to the President of the Republic

How could we say "Long live Europe"?

"I am a teacher in Montélimar (Drôme). My husband is German, a police inspector and trainer. He works near Stuttgart.

"For almost five years now, we have been in contact with the Ministry of the Interior, asking for a few-year long posting for my husband. I have been living alone with the children in France for the past five years!

"As for my husband, he lives in a room at the police barracks, with his whole world encompassed by a bed, a table, a chair and a prison window. (…) I am now on sick leave for depression but I have to keep on going to provide the daily routine for our children, who are still young. These little Europeans with dual nationality do not even benefit from the fundamental right to enjoy their parents' company on a daily basis! So how do we dare talk about Europe and a European conscience? It's shameful – especially considering that Germany and France were the driving forces behind this project!"

(Extract from the letters to the editor in the *Nouvel Observateur* of 27th March 2008)

PRESIDENT OF THE REPUBLIC

Paris, 18th January 2008

Mr Alain LAMASSOURE
Member of the European Parliament
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B-1047 BRUSSELS

Dear Minister,

Europeans expect first and foremost from Europe that it should have a positive effect on their day-to-day lives, enabling them to travel, live and work within the European Union without coming up against undue obstacles.

The issue at hand is the effective application of Community law for the citizens beyond the formal transposition of directives into national law which, of course, is an essential precondition.

Indeed, the application of Community law remains too disparate.

While the laws that apply to business or the rules of the agricultural policy are generally applied properly, the same cannot always be said for the ordinary citizen: in practice, basic wording on the mutual recognition of qualifications, the "portability" of social entitlements, freedom of establishment, and the reimbursement of medical expenses are all too often poorly applied.

The millions of Europeans living, working and starting families in EU partner countries come up against practical difficulties too often. This affects contract law in particular.

I would be grateful if you would make some practical proposals for improving the effective application of Community law for ordinary people. You may call on the services of the Ministry of Foreign and European Affairs to help you carry out your assignment successfully. We would like to be able to have your conclusions before the end of the first quarter of 2008 so that they can be used to provide valuable fuel for the action of the French Presidency in the second half of 2008.

Yours sincerely,

Nicolas SARKOZY

OPENING

THE MISSION

France is as passionate by making laws as it is indifferent in applying them. To remedy this national failing, the Council of Ministers meeting of 13th February 2008 adopted a series of measures aimed at tackling the poor application, even lack of application, of an abnormally high number of legislative texts: under the previous French legislature, more than 20% of laws were unable to be effective because of a lack of application decrees!

Coincidence? Contagion? The situation is no better with regard to European laws. In fact, these laws suffer from two additional handicaps.

On the one hand, most European texts take the legal form of directives, even framework directives, which are applicable only after having been transposed into the internal law of each Member State: consistent with the principle of subsidiarity, the drawback to this practice is that it lengthens the time required to apply the laws and opens the door to administrative 'enhancements' – and sometimes political malice – giving a biased interpretation of European law and ending up with a steeply undulating legal landscape on the continental scale. While sedentary people may be little aware of this, the nomads in our society – i.e. those businesses and people whose living space goes beyond their national borders – are the first to suffer from it.

On the other hand, there is no single European territorial administration – and no-one wishes that there should be. The management of community policies and the application of European law mainly fall to each Member State. However, it appears that very few States have looked at the problem overall: what is the best way of publicising and applying the decisions that we make together in Brussels? The answer is usually given on a case-by-case basis, gradually, as the various regulations and directives are issued – and there are several dozens of them a year!

But for the citizen, this creates a major information problem, what lawyers call "access to law". It is no exaggeration to say that **no-one is expected to know the European law**.

Because without even talking about its content, how are we meant to find out that it even exists? As much as the national audiovisual media provide copious reports about the political and parliamentary debates prior to passing national legislation, they are still unaware of the decisions taken in Brussels or Strasbourg. Despite the efforts (that could still be improved) made by the French channels of the public service, the latest surveys show that on average across the EU, when it comes to covering news about Europe, the national audiovisual media devote less than 10% of the time they spend on national politics. Also, even when there is not a presidential election going on across the Atlantic, American politics is still more widely covered than European politics[1]. In the case of France, when European law happens to be mentioned outside of specialist programmes, it is usually to highlight those who have had the "courage" of not applying it – whether it is about the demonstrations against the "Natura 2000" programmes or the destruction of GMOs – with these demonstrations emanating from rival organisations. What the audience gains from this coverage, the civic spirit loses: on the rare occasion when the European law is known, no-one is expected to abide by it.

It would be incorrect to say that the European institutions are not aware of the problem. Back in 1997, it was the subject of an in-depth analysis by the High-Level Group on

[1] Report issued by the Commission on 24th April 2008, *Communicating about Europe in the audiovisual media*, presented by Margot Wallström, vice president.

the free movement of people, chaired by Simone Veil. The Group stressed the need to stop focusing on the rights of mobile workers only and to apply equality in terms of law and dignity of all EU nationals to all the areas covered by the various treaties instead. The Group invited the Member States to systematically develop mutual information between the relevant government departments and to "flush out resistance and minimalistic conduct".

Since then, the application of Community law has been the topic of regular reports from the European Commission (we are now up to number 23 in the series…), as well as from the Parliament, which has just adopted a new resolution on the report by Monica Frassoni. For its part, based on the report tabled by Joost Van Iersel two years ago, the European Economic and Social Committee (EESC) put forward a very interesting opinion: *"How to improve the application of Community legislation?"*. We should be grateful to President Barroso for having made this an ongoing concern of the panel he chairs: it is precisely the aim of the *"Better Regulation"* exercise that injected a new mindset into community work. The recent communication on *"The Annual Political Strategy of the Commission for 2009"* includes a very important paragraph headed "Putting the Citizen First", just as the announcement made on 20th November 2007, *"A single market for 21st century Europe"*, suggests that the single market policy should "enable all citizens and businesses to take advantage of new opportunities". However, these exercises are likely to become dulled by routine and they have only had limited effects compared to a reality that is very different from what most European leaders imagine.

1 – Scope of the mission:

The spirit of the mission is the same as the one that, eleven years ago, saw the creation of the High-Level Group. However, the main target is slightly different here. **Today it is a question of making sure that Community law benefits European citizens as our legislators intend it**. As a result, our study does not deal with:

- businesses and other legal entities except, possibly, very small enterprises. Everything that relates to technical standards, the draft Small Business Act, intellectual property law, etc. falls outside. It is the great newness of the subject, with most work on the proper application of Community law being focused more on the problems of businesses, or on the EU's major sector-based policies, such as environmental policy.
- nationals of non-EU countries living in the EU, whose difficulties come under a different heading.
- the provisions contained in the European "laws". By contrast, we will not fail to bring up shortcomings within the topics dealt with, failings that bother ordinary people, or the adaptation of laws to enable an easy and homogeneous application across the EU.

The main target is the ordinary European citizen living in the European Union.

2 – Aim:

The aim is to allow the French presidency to raise the subject at a high level in Brussels and, from there, to put forward practical suggestions within the relevant configurations of the Council.

To this end, our main analysis deals with the French vision (issues of European nationals in France and, the other way round, of French nationals living in Europe), but we have also gathered testimonials from the European institutions (European Commission, Commission of Petitions of the Parliament, Ombudsman, etc.).

3 – Spirit:

The simplest and most logical approach for such a survey consists in following the procedure used to elaborate and apply European laws: initial idea, transposition, information, implementation, mediation, disputes.

Among the various proposals, a distinction has to be made between:

- What comes under Community action.
- The initiatives to be taken in France itself, aiming at showing the example and encouraging emulation among our partners. As administrative organisation differs greatly between the 27 Member States, efficient solutions to inform the citizens about their rights better and to deal with their issues will differ from country to country.

4 – Method:

The numerous works already completed by the European institutions, the Delegations for the European Union from the National Assembly and the Senate, as well as the Economic and Social Council have provided a solid starting point.

Work meetings have been held with certain departments of the European Commission, the European Parliament and French Ministries, as well as with the European Ombudsman and the National Ombudsman.

For the sake of efficiency, but also to involve civil society, the opportunity has been taken to mobilise the widest possible range of information networks and activists.

Convened by the Slovenian Ambassador in Paris, the consular representatives of our European partners have spoken about the experiences of their own nationals[2], while the Europe Committee of the Assembly of French Nationals Living Abroad has done the same for its members.

Students from the Paris Institute of Political Studies and the Bayonne multidisciplinary faculty, a European club in Brussels, the HR departments of large corporations gathered in the Magellan Network, young members from the *Atelier Europe de l'UMP*, the network of the European Movement in France have all provided valuable contributions or testimonials.

At the invitation of the Prefect of the Aquitaine region, all of the administrative departments, consular bodies, information bodies, specialist associations and representatives of foreign communities established in Bordeaux who play a role in the dissemination and application of European law all took part in a fascinating work meeting “on the field”[3].

Elected as President of the French Federation of the *Houses of Europe* (Maisons de l’Europe) on 29th March last, Catherine Lalumière generously shared some of her vast practical knowledge on all the aspects of the European construction. Noëlle Lenoir did the same, with her dual experience of being both a politician and a lawyer.

My colleagues from the European Parliament have already done a great deal of work on some aspects of the topic. I refer in particular to Jacques Toubon, Françoise Grossetête, Monica Frassoni, Claire Gibault, Diana Wallis, Evelyne Gebhardt, Edward McMillan Scott – and many others. During the course of the survey, numerous parties, journalists, public servants and private individuals were willing to provide their own testimony.

[2] See Annex
[3] See Annex

Finally, Marie-Cécile Milliat, who was made available for the mission by the Strategic Analysis Centre, made the most valuable of contributions in organising the survey and gathering information.

I would like to thank each and every one of them.

WHEN THE CURTAIN RISES

Set by the Treaty of Rome, ornamented by the Treaty of Maastricht and coloured even more last 13th December in Lisbon, the ceremonial curtain of a Europe of citizens has everything it needs to catch the eye.

"Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.[4]*"*

"Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.[5]*"*

"Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States[6]*."*

"The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured. [7]*"*

"Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen[8]*."*

But when the curtain rises, it reveals a very different stage set.

Whichever the criteria, the territory of the European Union is far from being a sufficiently welcoming and homogeneous living space for all its citizens. Removing border controls at the EU's internal borders seems to have created as many problems as it has solved.

1. The low level of workers' mobility.

We have recently celebrated the fiftieth anniversary of the first directives on the social rights of mobile workers. To mark the occasion, 2006 was declared the "European year of workers' mobility". However, the report presented by the Commission at the conference devoted to this topic in Warsaw on 24th September 2007 remains rather low-key.

Quantitatively, **professional mobility remains abnormally low: around 2%** of Europeans live in a different EU country than the one they originally come from. According to Eurostat, on 1st January 2006, there were just 8.2 million such people (in a Union of 25 members). Apart from the special case of the small Luxembourg, where a third of the population is made up of European foreigners (mainly Portuguese), Cyprus (7%), Belgium (nearly 6%), Ireland (5.1%), Germany (3.2%), Austria (2.8%), Sweden (2.4%) and the United Kingdom (2.1%) are the countries that are the most welcoming for their partners.

Another striking feature: out of the 25 countries covered by this survey, **third-country nationals were more numerous than European foreigners in 21 of the Member States!** In this area, "European preference" only exists in Ireland and in the smallest countries, each of which is a special case (Luxembourg, Cyprus, Malta). This is the case for both salaried workers and independent professions: fears of being invaded by Polish plumbers appear

[4] Art. 18 of the Treaty of Lisbon on the Functioning of the European Union (TFEU)
[5] Art. 20 of the European Union Treaty (EU)
[6] Art. 21 EU
[7] Art. 3-2 EU
[8] Art. 10-3 EU

ridiculous when realizing that, after thirty years of free movement for doctors, European nationals barely represent 1.6% of the health professionals in our country.

The profile of the workers involved is changing. They are now younger and better-qualified, they leave their country for shorter periods that correspond to a particular time in their career. They are often looking for a solution to unemployment: 59% of them have found a job within 12 months after changing country versus 33% of those unemployed who stayed in their own country.

The "European non-preference" phenomenon also exists when it comes to students and researchers. The Erasmus programme, which is now twenty years old, only involves 2.3% of European students each year. In the area of research, the lure of universities and laboratories across the Atlantic is often too much to resist for the young brains in the Old World: out of a total of 1.3 million researchers registered in the EU, only 3% work in a country that is different from the one they originally come from, whereas the United States hosts 100 000 researchers from Europe – i.e. over 7.5%[9]. Which prompted the European Council on 14th May 2008 to introduce the target of a "fifth freedom", the free movement of scientists within Europe.

Certainly the brakes placed on mobility are not all due to difficulties in implementing Community law – far from it! Language, housing, a job for the mobile person's partner, schooling the children and the short-sightedness of many human resources managers who penalise "nomads" instead of promoting them when they return, are all powerful obstacles. But, the EU needs to do its homework in this area first.

2. Mixed marriages

According to the available data, there are 2.2 million marriages every year throughout the European Union, 350 000 of which involve mixed couples.

These are just rough estimates. This topic is of such little interest to the EU and its Member States that the only figures available in the Spring 2008 date from 2003![10] The figures show that in most Member States, **marriages between a national and a non-European are much more frequent than with a European**: 37 500 versus 18 700 in Germany, 4 200 versus 3 000 in Belgium, 1 500 versus 300 in Hungary, 8 300 versus 2 600 in the Netherlands – and so on.

Of course, the situation differs significantly from country to country. Male Cypriots are irresistibly attracted to female Ukrainians, Belgians to Moroccans, Swedes to Finns, Czechs to Slovaks – perhaps an emotional revenge for the political divorce? The Portuguese are divorcing Brazilians to marry women from the Cape Verde islands, while German wives seem to be leaving their Italian husbands and to succumb to the charm of Russians.

It should be noted that it was not possible to gather any comparative data for marriages between "Europeans" and "non-Europeans" in 9 Member States, including France and the United Kingdom.

Mixed marriages are of little interest to historians and sociologists. They do not wonder if the example of Alexander the Great did convince the Greeks and Persians beyond the tight-knit circle of his generals. Why are people so well-mixed in western Europe and the United Kingdom, while in central Europe, endogamy has remained more frequent? Yet a relatively high proportion of mixed marriages would without doubt be the best guarantee for the irreversible character of the eradication of nationalism. But for the time being, **there are**

[9] Report issued by the Commission on 23rd May 2008 *Promoting careers and mobility: a European partnership for researchers,* COM(2008)317

[10] These figures were gathered by the *European Policy Evaluation Consortium* at the request of the Commission for an impact study on the draft "Brussels IIb" regulations.

too few of us to guarantee the success of the European dream, yet too many of us to be able to deal with the problems that this very dream engenders with the centuries-old methods of private international law.

3. The absence of a real European area for consumption

For the citizens, the Euro is without doubt the strongest and most tangible sign to date that we all belong to the same living area. At the same time, using the Euro makes it easier to compare prices, which in turn demonstrates just how heterogeneous the "common market" is.

Established by Commissioner Meglena Kuneva, the first *"Consumption Dashboard"* shows that after fifty years of the Common Market, consumers are still not enjoying identical positions – not even comparable ones, in fact. The price of digital cameras can vary by 30% between bordering countries. Within the Benelux itself, land-line telephones are 20% more expensive than they are in the Netherlands. In the same way, electricity is twice as expensive in Italy than it is in Finland or Greece. From one Member State to another, the charges for managing bank accounts range between 0 and 80 EUR. As for consumption credit, cross-border loans count for less than 1% of the outstanding credit, with interest rates as much as double in some States: at the beginning of 2008, they were of 6% in Finland and of 12% in Portugal.

These sorts of differences are troubling when they exist between neighbouring countries that have comparable standards of living and share the same currency. Let us consider the same products from the shopping basket on each side of the Rhine. A pack of six Gervais yoghurts costs 1.76 EUR on the Western bank of the river and 1.16 EUR on the Eastern side. Half a dozen eggs costs the French housewife 1.46 EUR, compared with 1.21 EUR for her German counterpart. A 440 g can of extra fine strained green beans is priced at 1.21 EUR in German supermarkets, yet costs the French shopper 1.63 EUR. A German cat can tuck into Felix fish croquettes for 2.68 EUR, whereas his French cousin has to fork out 2.94 EUR. On the other hand, French cats can do their business in their "Hygiene plus" litter for 4.64 EUR, knowing that Teutonic moggies across the water have to pay 4.96 EUR[11] for the same necessity. Which Lorelei siren would dare use her charms to disrupt these good-natured exchanges above the Rhine?

To try and find out, the Ministry of Agriculture and Consumption of the German *Land* of Bade-Wurtemberg in May 2007 asked the *Euro-Consumer-Info Centre* in Kehl to conduct a survey covering 5 000 products and services in over 300 shops in 14 border towns[12]. Alas, when it did so the plot only thickened. It appeared that despite the 3-point increase in VAT in Germany, and despite the extent of the major retailers in France, German prices were still lower than the French prices overall. The Centre in Kehl estimates that a well-informed virtual shopper can save 12% every week on the price of the items in her shopping trolley by filling it mainly on the right bank of the Rhine[13]. Unfortunately, this informed shopper appears not to exist in reality.

Even more surprising is the practical impossibility of ordering some products by mail order, with the on-line catalogues from some mail order sales organisations even stating that deliveries to other countries are not possible: as a result, **the European consumer is unable to fully benefit from the progress of competition in Europe, whereas "global" shoppers can buy "de-territorialised" products every day on the Web**.

[11] Source: *Euro-Consumer-Info* centre in Kehl

[12] Freiburg, Karlsruhe, Kelh and Offenburg on the German side; Colmar, Haguenau, Horbourg Wihr, Houssen, Illzach, Kingersheim, Mulhouse, Schweighouse sur Moder, Strasbourg and Wittenheim on the French side. 5 210 prices were recorded.

[13] One year later, in May 2008, the Secretary of State for Consumption, Luc Chatel, discovered the same thing as part of a survey conducted on the spot, which also pointed out the effects of the difference in the competition rules that exist in the two countries.

4. Citizens are not aware of their rights

The European citizenship has been created in 1992 by the Maastricht Treaty. The European Commission takes regular stock of its progress. According to its 5th report in 2007, **85% of Europeans are still not aware of the existence of a European citizenship**, while 70% believe they are poorly informed about the rights they have acquired thanks to the EU. The level of information is higher in the new Member States, such as Estonia, Romania and Hungary, while the lowest levels are found in the founding countries such as Belgium, the Netherlands and Germany! This lack of knowledge has been confirmed by a *Gallup* poll carried out for the Commission (DG Justice, Freedom and Security) in January 2008.

The least that can be said is that the *community action programme for promoting active European citizenship*, implemented between 2004 and 2006, has only achieved part of its objectives.

5. Exercising electoral and European citizenship rights

After each European election, the Commission takes stock of the way in which the citizens of Europe exercise the civil rights granted by the various treaties. It leans on the data provided by the Member States and on some especially commissioned *Eurobarometers*.

Here again the results are mixed.

- The overall turnout for the European elections fell, on average, from 56% in 1994, to 50% in 1999 and 45% in 2004. For the latter, the turnout rate has been above 50% in only seven Member States. Another three States have compulsory voting, while Luxembourg systematically holds its national elections on the same day as the European elections.

- However, the proportion of foreign residents registered to vote in their country of residence has increased, albeit from a very modest base: 6% in 1994, 9% in 1999 and 12% in 2004. But the number of candidates remains very low: it even fell from 62 in 1999 to 57 in 2004, when only 3 were elected.

It is true that the citizens' lack of awareness when it comes to the existence of this right does not help in terms of mobilisation. A November 2007 *Eurobarometer* showed that while three European elections have been held since the Maastricht Treaty created this right, over half of European citizens continue to be unaware that they can take part in European elections as voters and even as candidates in the country where they have chosen to live. Worse still: 26% believed that they also had the right to vote for national elections! A majority of people state that they have never seen or read anything in the media about the European Parliament. More than half of them also believe that in Strasbourg, the MEPs seat according to their country and not by political groups. And even worse than that: two-thirds of respondents stated that they have no opinion – either positive or negative – about the European Parliament. Is this indifference or merely benevolent neutrality?

In France in 2007, approximately 200 000 Community nationals were registered on the electoral rolls. This is a very disappointing figure compared to the 1.2 million residents estimated by the Interior Ministry. Those foreign nationals registering the most were the Portuguese (63 400), followed by the Italians (37 700), Belgians (22 700), British (21 300), Spanish (20 200) and Germans (17 600). Since then, the coordinating body for Portuguese communities in France estimates that its "I register in my town" campaign has convinced 10 000 of its nationals to do just that. In fact, there has been a significant increase in registrations in Paris: +58% compared with 2001, reaching a total of 14 000. By contrast and despite their growing numbers in the South-West, foreign nationals coming from the North do not register to vote in large numbers: in the canton of Eymet, which is home to the largest

British community in the Dordogne, Europeans represent fewer than 4% of the voters registered. The Portuguese consulate in Bordeaux believes that barely 10% of the members of the large local Lusitanian community, estimated at 5 000, have registered on the electoral rolls.

It is of poor consolation when the European Movement finds that when they do register, their turnout is higher than the locals': in the three districts in Charente, the rate was approximately 75%, with several villages reaching a 100% mark.

Varying as it does between regions, the commitment of Europeans also depends on habits back in the countries they come from. Foreigners voting - European or not – is normal in the Netherlands, Sweden, Finland, Denmark and, more recently, Belgium. In London, where Commonwealth nationals are entitled to vote in all elections, 180 000 new European residents have registered since 2004 to vote during the Council elections held on 1st May 2008. For its part, France has not done everything it can to give an incentive to its European guests. It took six years to bring its electoral legislation into line with article 8B of the Maastricht Treaty and it continues to ban all foreigners from accessing to the position of mayor or even deputy-mayor.

At least France has put an end to an age-old tradition by accepting dual nationality more widely, to the benefit of its partners. **In 2008, 9 States in the EU still do not accept the principle of dual nationality**. And since 2000, most "old" Member States (including Germany, the United Kingdom, France, the Netherlands, Finland, Denmark and Luxembourg) have made the conditions for naturalisation more stringent. The cultural or financial criteria required are certainly easier to meet for Europeans than they are for nationals of other countries. Nevertheless, these legislations do not imply any "European preference" to the benefit of EU citizens, whereas they do not refrain from discriminating: Denmark is more accommodating to children from Nordic countries, just as the Netherlands is to Belgians… Dutch-speaking Belgians, that is!

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In total, the landscape is that of a free area that is still very uneven when it comes to individuals. **Creating a single area for the citizens is still at the same stage than goods before the Single European Act of 1985: the borders may have been abolished but countless regulatory obstacles still make it difficult to achieve a harmonious life inside this common area**. The EU has created more dreams than projects, more projects than laws and more laws than actual achievements. It is now time to start out from realities and come up with more suitable laws – even if this means changing our projects and dreams.

CHAPTER I

IN THE BEGINNING WAS THE LAW

Are the European laws designed to be understood properly and applied easily? Does experience show that they are really suited to the problems raised?

The main initiatives towards simplification have concerned businesses first. This is the heart of the *"Better Regulation"* and *"Strategy for the simplification of the regulatory environment"* process: all Commission proposals are now the subject of some impact assessments on their economical, social and environmental repercussions. Where appropriate, the ease of implementation for national administrations, courts and the people themselves is taken into account. An independent *Impact Analysis Committee* was set up at the end of 2006 to provide advice and opinions on the methods used.

A 2nd interim report on the application of this strategy has been published on 30th January 2008. Adopting a resolutely optimistic approach, the Commission estimates at 500 million EUR the cut in administrative charges achieved in 2007, to which has to be added the "single payments area", which could save up to 28 billion a year (sic) and the new Electronic Customs Code (potential annual savings estimated at 2.5 billion). The programmes for 2008 will relate to transport, agriculture and the merchant navy.

It is all about ensuring that this fine-sounding philosophy fully inspires the texts relating to the citizens' rights. So, where are we now?

I – THE MOBILITY OF PEOPLE AND SOCIAL RIGHTS

Citizens' mobility is a major issue for the European construction. Yet, more than twenty years after the Single European Act, which asserted **the principle of the free movement of people, the problem remains poorly put, poorly understood and poorly dealt with. It is an area where European law lags behind a rapidly-changing reality**.

1. The delay in Community law

1.1. An antediluvian positive law

Originally, on this topic, the treaties only mentioned employment and social security law, and the only people taken into consideration were the workers. Making it easier for them to move around was a step towards the proper allocation of labour in the common marketplace. With each State retaining its competence over its employment law, as well as on its social protection system and on business' regulation, the EU had to keep an eye on national governments to make sure that they dit not discriminate against European citizens, to monitor the "portability" of the social rights of workers beyond their borders, and the neutrality of internal migration on the social budgets of the States in question. Then, with the Erasmus programmes, the interest moved to students.

But migrations did not happen according to what we initially thought. Workers leaving their countries on long-term – even permanent – moves made way for temporary postings in a succession of different countries. An unforeseen phenomenon developed among workers "with no domicile nearby" who were able to use the high-speed train network and low-cost airlines to continue working in their country of origin while still living in a neighbouring country where they had set up their home with their family.

However, these job-related movements were less significant than the tsunamis of tourists, people with second homes and retirees. The price of property, the Southern sunshine and pleasant lifestyle attracted growing numbers of retirees from Northern Europe towards the South of the continent. But while Community legislation is designed essentially for workers, the Maastricht Treaty gave everyone the right to "European citizenship". But do these citizens who have freely chosen to go and live in another European country have the same social rights as the nationals of their country of adoption, where they have not paid their contributions? Can they benefit from the family allowance arrangements from their country of origin, or the country they have moved to – or even the country in which the child was born? What about the other social allowances, such as low-income health and welfare allowances? Highly organised, some British retirees setting up home in South-West France have obtained the benefit of the universal illness cover, usually reserved for the poor: is this really European social progress? Looking at it the other way, are we sure that we would dare sending back to their country of origin European workers losing their job in France and/or who might constitute an "unreasonable burden for the social assistance system"? Yet to do so would only mean applying the letter of Community law…

The budget issue is not negligible here: in 2005, the most recent year for which figures are available, healthcare paid out by France for its partners' citizens was 445 million, versus 208 million received by French nationals in other EU countries. But beyond figures, it is the concept of citizenship and solidarity that is at stake here.

Unfortunately, the **current European legislation governing the coordination of our social security systems is over thirty-five years old** (1971)! It has been ten years since the Commission put forward an update of the major directives on migrant workers' social rights, leading in particular to regulation 883/2004. But this framework regulation has not come into effect yet as its implementation regulation is still being negotiated at the Council.

1.2. A particularly audacious case law

Social security law and especially the legislation on health is one of the areas where the European Court of Justice has been most daring by interpreting the spirit of the treaties to make up for the slowness of the adaptation of the EU secondary laws.

Crowning a recent case law structure[14], the Court seized on the medical tribulations of a British citizen to invite Member States to apply all of the consequences of the principle of national non-discrimination within the EU[15]. The circumstances of the case are worth recalling: thousands of patients are affected by it today – and there will probably be millions tomorrow.

Act One. It is 1st October 2002. A patient at the *Bedford Primary Care Trust*, part of the British National Health Service (NHS), Mrs Yvonne Watts, consults the specialist at her medical centre about some unbearable pains linked to acute arthritis of the hip. She has to wait a month before receiving confirmation of the diagnosis, on 28th October, in the form of a written certificate attesting to her "state of reduced mobility and constant pain", and the uncharitable conclusion of the doctor as a "routine case" (sic). It is a very legal and dry verdict that justifies Mrs Watts being placed on a waiting list that is already a year-long for work to be done at Bedford hospital.

Act Two. With her pain worsening, Mrs Watts, a disciplined citizen, lodges an application to Bedford hospital for permission to go and be treated abroad. On 21st November, the appropriate form, E112, is flatly refused to her. The written reply from the NHS is a gem of bureaucratic prose: *"The treatment required for Mrs Watts can be provided*

[14] See particularly the rulings for *Smits & Peerbooms* C-157/99 of 12th July 2001, *Müller-Fauré* C-385/99 of 13th May 2003 and *Inizan* C-56/01 of 23rd October 2003.
[15] *Watts* C-372/04 ruling of 16th May 2006.

in a local hospital within a period that complies with the targets of the government's social security plan, and hence without any unjustified delay."

Act Three. Indignation causes Mrs Watts to lose her patience, but not her mischief: while disputing this decision before the local court, she ostensibly goes to consult a French specialist in January 2003.

Act Four. The British Ministry for Health begins to become roused. He asks Bedford hospital to examine Mrs Watts' case again. In a great tradition that is more diplomatic than medical, the hospital concludes that as the patient's condition has now deteriorated, so it has become possible to classify her in an intermediate category between urgent cases and routine cases. This allows her to hope for an operation within a period of three to four months. The NHS saves face. But not Mrs Watts' hip.

Act Five. After being refused a E112 form once again, Mrs Watts leaves in high dudgeon and boards the ferry, having an artificial hip fitted in Abbeville on 7th March 2003. The operation costs her £3 900, for which she immediately requests a refund from the NHS.

Epilogue. In interpreting article 49 CE of the Treaty and article 22 of the 1971 regulations, the European Court of Justice not only relieved the financial pain of the nice Mrs Watts, but also took action against the local department of the NHS for non-compliance with its Hippocratic Oath. The Court expressed its views strongly on two principles upon which a real health-related Europe should be based:

- every European citizen is entitled to seek medical treatment in any Member State;

- if a national health organisation is not able to treat a patient within the period set and in accordance with the care required for his or her condition, that patient is not only authorised to seek treatment elsewhere in the Union, but the health organisation is required to reimburse any charges that it may be responsible for in the country where the patient has gone for treatment.

In doing so, **the Court implicitly urged Member States to coordinate their illness insurance systems in much greater detail and rigour** than has been the case until now.

2. The current state of affairs.

So much about the law. What is happening on the field? We have two main analyses coming from different origins at our disposal.

1.1. The diagnosis of the trESS network

An annual report is drawn up by a network of national experts on social security problems. It is funded by the Commission and called the trESS, *Training and Reporting on European Social Security Project*. The most recent report, commissioned by the Employment DG to the University of Ghent, has been published in December 2007. It notes that for the past 50 years:

- not only has the number of Member States – and the number of national legislations to be made "euro-compatible" – been multiplied by 4, but the very concept of "social security" has been greatly expanded : is everything "transportable"? Are unemployment benefits linked to conducting a business of general interest? What about housing benefits? What about refunds for dental care, or for cosmetic surgery? In the same way, family law has become much more complicated and diversified: divorces, civil unions, gay rights. While awaiting a legislative solution, we muddle our way through with precedents and ad hoc solutions. In the area of health insurance, the *Kohll* and *Decker*, then *Watts*, rulings have played a key role. For its part, for example, Solvit has won its case on behalf of a beyond sixty-year old English

woman living between the United Kingdom and Spain, whose "golden card" has been refused by the RENFE[16].

- Subsidiarity in the application of a directive aimed not at *harmonising* but at *coordinating* is generating unsatisfactory results. National rules on the applicable law are often contradictory. Are the systems that are specific to cross-border workers justified inside what puts itself forward as a single market? And what about administrative coordination between Member States?

- It also happens that European directives themselves can be difficult to combine, which is the case with directive 2004/38 on residential rights.

1.2. The experience of the Magellan Network

The Magellan Network is an association that brings together the HR Directors of a hundred or so multinational companies represented in Paris. Under the impetus of the Network, the management of "international human resources" has become a profession that has been taught in France since 1995 as part of a specialist master's degree at ENSAM/ENS in Cachan. Working in close conjunction with the Ministry of Foreign Affairs, the Quai d'Orsay, the Network has contributed to the mobility of workers by preparing a *Blue Book on international mobility*.

This document states that major companies now have an "overall" worldwide strategy to attract and employ staff. The nationality of origin of the managers involved is less and less important, with the recruitment location and place of work depending more on the attractiveness of the training system and the legal, tax and social environment. Once recruited, mobility is required from the managers (office-based managers and specialised technicians), less as an HR policy than as part of the group's business development in other countries.

The Network confirms that the average length of international transfers is becoming shorter; now reaching three to five years. For that length of time, it is difficult to choose between an actual migration or only a posting. Unable to make one or the other option sufficiently attractive, the company is often forced to accept some more expensive formulas: short-term ones, *"commuting"* (multiple places of work for the same manager) and *"rotating"* (period of work followed by a period of rest in another country)[17].

Posting remains the most attractive formula, both for the company and for the mobile manager, but this system is neither sufficiently recognised or flexible. The many different national legislations involve a major change in the employment conditions for the salaried worker each time he or she moves: working hours, terms for breaking the contract, non-competition clauses, etc. Yet the employee, who is already preoccupied with the family problems associated with leaving the country (housing, finding a job for the spouse, schooling the children) needs the company to provide an identical "overall package" that will be relevant for successive postings. This forces the companies involved to have an in-depth knowledge of the individual national laws, as well as to accept any "unpleasant surprises", especially in terms of taxation of all types. To ensure greater security, some groups have even undertaken the setting up of a standard contract that will be compatible with the main provisions of employment and social security law in Europe.

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[16] *Solvit* 862/2006/BM case

[17] This analysis is corroborated by survey conducted by some French embassies among French nationals expatriated in Europe. See, for example, in the *Watching memo* from 1st October 2007 of the *Strategic Analysis Centre*, the conclusions of the survey conducted by our embassy in Dublin among French nationals registered with the consular department. The number of French nationals living in Ireland has been multiplied by four over a period of ten years. Their average age is barely thirty-one. A third of them at least work in the new information and bioscience technologies. 90% are happy with their employment integration! So much so that over half of them envisage setting up home permanently on the emerald isle.

In total, the Network estimates that the cost of a mobile international employee, *within the same group*, is **2 to 6 times higher than in his or her country of origin**!

A single employment market? Really?

2. Proposals

2.1. In any event, the fundamental regulation 883/2004 cannot be brought into effect without an exhaustive and highly complex **implementation regulation**, which is laboriously making its way to the Council: **a strong burst on the throttle will need to be made during the French presidency**.

This text raises a significant problem because of its extremely technical nature: only a small number of experts are actually capable of understanding its subtleties. Given its importance, it is essential for the French authorities to be organised so that they can guide negotiations towards the general interest.

2.2. On 10th December 2007, the Commission adopted an *action plan for the mobility of workers 2007-2010*. The measures proposed in the plan relate more to administrative matters (consolidation of the trESS observation network, administrative practices, increase in the gathering of strategic information, etc.) than solving the practical problems of employees. We need to go further than this if, as Xavier Bertrand wants, workers' mobility on a national level as well as throughout the EU is to become a item on the agenda of the French presidency. **A presidency conference on this topic is scheduled on 11th and 12th September 2008 at the International Conference Centre in Avenue Kléber**.

2.3. Among the most innovative ideas, the Magellan Network has proposed a **specific European status** to make intra-company mobility easier, as well as an "**European social insurance card**". With a wider scope than the current European illness insurance card, this new card would cover the three areas of illness/maternity, retirement and unemployment.

These formulas deserve serious study at the very least. A revealing indicator of the existence of a genuine social insurance "market" for expatriates is this: more responsive than the public social security bodies, some English insurance companies are starting to approach this potential clientele.[18]

2.4. Failing that, or while we are waiting, the following points could be improved.

2.4.1. The portability of pension rights.

The Council is in the process of examining the draft **directive on the portability of supplementary pension rights**; Germany is reluctant because it is afraid that if the wording of the directive is too demanding, it will discourage employers from introducing systems such as this which, across the Rhine, are not mandatory; by contrast, the Netherlands is very much behind it.

This text could make it possible to settle the problem created by the lack of coordination between the bilateral conventions on social security and Community regulations. Hence a French citizen who has been working for 18 years in France, 12 years in Spain and

[18] An advertisement from one of these companies offers *"a unique health-insurance policy that adapts itself to the region in which you live, your social security, and your status. And this, throughout your entire working life. In a nutshell: a single, all-in, whole-life policy, expressly tailored to the needs of you and your family."*

10 years in the United States will need to choose between European law, which offers him a pension based on a thirty years' employment (France + Spain), without having the opportunity to have all of his forty years of employment taken into account: by doing this, he will not have worked for enough years to obtain a full pension in France and will find himself penalised as the result of his international career. A solution could be to amend the European regulations to enable the periods worked inside and outside Europe to be added together to calculate his theoretical pension.

Moreover, the differences between the pension systems (basic and supplementary) between the Member States create inequalities for mobile workers, even if they make their entire career in Europe. In fact, each country in which an European citizen works will calculate that person's pension based on its own national criteria and will pay the pension in proportion to the period worked in that country. The only remedy is to offer the nomad the choice of country to contribute into, or the option of a "28th regime", to be designed (see below).

Finally, there is the problem of career interruptions for spouses – usually women – who resign from their job to follow their migrating male partner. At the very least they should be able to contribute voluntarily to basic and supplementary pension schemes in their country of origin or the country they have gone to, while waiting to find a job.

2.4.2. Unemployment insurance. The difficulties raised include:

- here again, people who leave their job voluntarily to follow their partner who has been transferred to another country;

- and expatriates themselves: regulation 883/2004 limits to 6 months the period for transferring rights, even though the salaried workers in question often want to look for a new job in their country of origin, where moving back can take time.

2.4.3. Health insurance: salaried workers are just one case in a wider problem. But we should point out in particular:

- the situation of posted workers whose benefits in cash are in principle paid by the country of origin and benefits in kind by the destination country, whose system of application is complex;

- the system of scheduled care. Oddly, a French worker detached to Slovakia who has scheduled a surgical procedure in that country has to wait for a permission from the French authorities, even if the cost in Slovakia is significantly less than the one that the illness insurance would have had to reimburse in France.

In terms of health problems in the European area, the first choice that the French presidency will have to make will relate to the legal basis. Should we handle most problems through the implementation regulation of the 2004 basic regulation governing social security or, on the contrary, should we gather everything in a specific directive on health services? Following the adoption of the general directive on services, which specifically excluded the area of health, the Commission launched a consultation process on this latter topic on 26th September 2006. The European Parliament expressed its opinion in a resolution on 23rd May 2007. During her first hearing before the European Parliament on 1st April last, the new Health Commissioner, Androula Vassiliou, stated her intention to make the Commission adopt a draft directive in June.

2.4.4. Additional problem: taxation.

Is it possible to consider the harmonisation – or an agreement to open the option of a "28th regime" for expatriates – of the fiscal and social treatment of that part of the expatriate's pay that corresponds to an additional salary aimed at making up for the costs related to changing country: cost of living differential, tax differential, schooling costs, plus any costs involved with maintaining pension rights in the person's country of origin, etc.?

2.5. Individual case: professional sportsmen and the Bosman case.

On 15th December 1995, a clap of thunder shook the otherwise cloudless sky of professional football in Europe: on that day, after five years of litigation against the Royal Belgian Union of football clubs, professional footballer Jean-Marc Bosman won his case in the European Court of Justice against the system of transfers between Member States' clubs, as well as against the nationality clauses introduced into the FIFA and UEFA rules, ruled as contrary to the principle of free movement of workers enshrined in article 48 of the EEC Treaty.

Up until then, the European football authorities (UEFA) and their international counterparts (FIFA) had laid down rules designed to reconcile the maintaining of the clubs' local identity, the support to local training schools for young players and the enhancement of the level of the game through the ability to recruit talented players from elsewhere. In 1991, in the wake of a gentleman's agreement with the vice president of the Commission, Martin Bangemann, the UEFA has adopted the so-called "3 + 2" rule: under this rule, a national federation was allowed to limit to 3 the number of foreign players that a professional club could field in a first division match, plus 2 players who had played for an uninterrupted period of five years in the country in question, including three years as a junior. This restriction also applied to matches between clubs that are organised by the UEFA (such as the European Championship).

The Bosman ruling shattered this compromise which was designed to be balanced. The Court ruled that professional sports was an economic activity coming under common law: as a result, the principle of non-discrimination against European Union nationals had to be applied without restriction. Moreover, the legal and practical scope of the Bosman ruling was considerably extended by subsequent case law: France's administrative jurisdictions, then the Luxembourg Court of Justice, were both of the opinion that professional sportsmen from countries that have signed cooperation agreements with the EU also have to benefit from the same principle of non-discrimination. At a stroke, the right to free movement was granted to sportsmen from the former Soviet Union, from Maghreb, from Turkey and from the ACP countries which signed the Cotonou agreements – i.e. 94 additional countries![19]

During the following years, the football business has undergone great changes. What were the respective parts played by the amazing media success enjoyed by this sport, the resulting gold mine created by television rights, the personal and advertising popularity acquired by star players as a result, the effective expansion of football to all continents and the effects of the Bosman ruling alone? It is a question that divides economists, but all of the parties involved agree that they should try to have Community law take into account the undeniably specific nature of sports. Indeed, it was with the Bosman case in mind that the Convention for the future of Europe had proposed to grant the EU with an "supporting competence" on sports' issues – a suggestion which has been included in the Lisbon treaty. Furthermore, the French authorities have not hidden their intention to re-open the matter during their presidency in the second half of 2008.

A number of initiatives has been taken recently to take account of these new political and legal developments. The UEFA has adopted a new rule on "players trained and nurtured

[19] The *Malaja* rulings handed down successively by the Administrative Court in Nancy (3rd February 2002) and the French Council of State (30th December 2002), the *Kolpak* ruling by the European Court of Justice (C-438/00 of 8th May 2003 *Deutscher Handballbund eV c/ Maros Kolpak*).

locally"[20]. Then, the Commission published a *White Paper on sport* in July 2007[21]. In this document, the Commission suggests acknowledging that *"the rules imposing a quota of locally trained and nurtured players might be deemed compatible with the provisions of the treaty (…) if they do not result in any direct discrimination based on nationality and if any possible indirect discriminatory effects resulting from it can be deemed as proportionate to the legitimate aim intended."* This approach received the specific support of the European Parliament[22]. Finally, on 28th May 2008, the Commission published the conclusions of an independent study, which assesses the new UEFA rule favourably, unlike the so-called "6 + 5" proposals put forward by the FIFA.

Acknowledging the specific nature of the most popular sport on the planet can only contribute towards improving the image of the European Union among its citizens. **This matter appears to be sufficiently advanced for a political agreement to be reached during the French presidency and for it to come into force before the next World Cup**.

II – THE RECOGNITION OF DIPLOMAS AND PROFESSIONAL QUALIFICATIONS:

"The knowledge economy" is at the heart of the Lisbon strategy. On 18th February 2008, the Thessalonica Agency for the development of vocational training (Cedefop) presented its first forecasts for skills requirements by 2015. The agency predicts that until then, Europe will see the creation of 12.5 million jobs at the highest level of qualification and 9.5 million at an intermediate level, whereas jobs for poorly qualified workers would fall by 8.5 million! This underlines the importance of training capabilities, as well as of workers' mobility to make optimum use of these capabilities. Which, of course, assumes that the qualifications acquired in one country are recognised in all the others.

Here once again, we believe that the problem is solved, at least on paper. Well – it isn't.

The problem is threefold:

- within University itself: does a diploma grant the right to continue studying subsequently? This is the issue of the *academic* recognition of diplomas.

- regarding the regulated professions: is a diploma equivalent to the right to exercise the profession? This is the issue of the *professional* recognition of qualifications.

- regarding the other professions, where private employers are the *de facto* sole judges, on a case-by-case basis: does this mean that they are not interested in training certificates?

Let us consider these various cases.

1. The mutual recognition of *diplomas*: a jumble of misunderstandings.

1.1. Figures sufficient to feed self-satisfaction.

A happy symbol? In 2007, the political relaunch of Europe coincided with the twentieth anniversary of the Erasmus programme. Here at least is one area where European integration was working, and for the benefit of young people and to prepare for the future! And everyone can quote the lovely film by Cédric Klapisch, *L'auberge espagnole (The*

[20] This rule is applied by stages: each club had to field 4 players trained locally out of 25 for the 2006/07 season and 8 out of 25 from 2008/09.
[21] White Paper dated 11th July 2007, COM (2007) 391.
[22] Resolution of 8th May 2008 on the White Paper on sport.

Spanish Apartment), which gives a light-hearted view of the human dimension of this university adventure.

"Erasmus" has become the generic name for a group of programmes that contribute to "lifelong education and training" in a European context. In France, these programmes are run by the Europe Education Training Agency in Bordeaux. They include:

- *Erasmus* per se, for higher education. In France, 679 higher education establishments take part to the programme, 22 000 students benefit from the Erasmus mobility programme each year, as well as over 2 200 teachers.

- *Comenius*[23] for primary and secondary schools. The figures here are much more modest: 1 258 school partnerships signed by French establishments in 2006, with the granting of less than a thousand scholarships.

- *Leonardo da Vinci* for professional training and teaching. Over 8 500 mobility shcolarships were granted in 2006. These enable young people in their initial training, apprentices and job-seekers to get work experience abroad working for a European company. 700 trainers have been able to travel as a result to put their own teaching practices up against their European counterparts'.

- *Grundtvig*[24] for the training of adults. This programme is designed for the trainers of the various permanent training services, regardless of their status: associations, unions, popular universities, parents' organisations, museums, hospitals, prisons, etc. Periods of work experience abroad range from 1 day to 6 weeks. However, take-up for this programme is very slow: a hundred or so individual mobility grants were awarded in France in 2006.

Over a period of twenty years, 1 500 000 students have benefited from Erasmus. 60% were girls. 80% of them were the first in their family to study outside their country of origin and for the same proportion – 80% - it was their first long stay abroad. In at least 60% of cases, learning a foreign language subsequently made finding employment easier. The success of the programme has been such that in 2008, 90% of European universities were involved in the programme. It is hard to imagine a more flattering balance sheet.

Apparently, the only blame that can be made to the programme is its lack of radiance. Absolute figures tell the tale: barely 2.3% of European students benefit from the Erasmus programme each year. Hence inevitable inequalities: if only a minority of students is involved, it is not surprising that the socially more privileged ones are those who benefit from it the most. Two-thirds of these students have at least one of their parents who is a manager or a technician. Added to this general observation are the consequences of the unequal energy shown by the establishments. The proportion of Parisian students receiving an Erasmus grant varies between 0.75% for the highly selective Paris I Panthéon-Sorbonne university, 1.4% for Paris V and up to 100% at Sciences Po Paris, which systematically sends its third-year students abroad, within Europe or throughout the rest of the world.[25].

And that's where the misunderstanding begins.

1.2. **Students may move from country to country, but their diplomas do not**.

For the lay-person, for the student himself and even for the non-specialist MEP, Erasmus means free movement of students, hence the automatic recognition of diplomas acquired as part of the programme. This interpretation is all the more understandable as the very first directives about it, dating back to the 1970s, set the target of harmonising diplomas

[23] The Latin name of Jan Amos Komensky (1592-1670), a Moravian humanist and bishop, forerunner of modern education.
[24] 19th century writer and Danish national hero.
[25] Source: group of I.E.P. students from Paris.

throughout the EU. They were based on article 12 CE, stating the principle of non-discrimination between the Member States' nationals, and article 149-2 making education a complementary competence of the EU.

Alas! **This is an area where the initial ambitions have been significantly revised downwards**. They crashed up against the fundamental principle of the Member States' competence in terms of education[26], as well as the even older principle of the autonomy of the universities: universities were born in Europe, they were born free and they intend to stay that way. Secondly, the objective of *harmonisation* was abandoned to the benefit of achieving comparability between diplomas: the idea was to draw up a large table that would make the automatic *mutual recognition* easier. New failure. New downward revision. So, if mutual recognition is not possible, let us at least try to ensure *transparency*, which will make direct agreements between universities easier while still allowing them to have full autonomy. Adopting this low profile, a 1989 directive contented itself with giving a common definition of a diploma: the equivalent of having successfully completed a post-secondary course lasting at least 3 years or, for regulated professions, a part-time equivalent[27]. Three years later, another directive did the same for professional training[28] (successfully completing a post-secondary course lasting at least 1 year or, for non-regulated professions, a part-time equivalent).

The result in practice: in 2008, a French university granting an Erasmus scholarship only commits itself to ratifying the education received abroad to obtain a French diploma, but it will recognise a diploma awarded to the student in his university abroad only after an ad hoc bilateral agreement has been reached[29].

1.3. What can we expect from other incentives?

Fresh initiatives have been undertaken on two levels.

1.3.1. Within the European Union, the Commission has contributed to the implementation of a European system for transferring credits, the ECTS, which meets the equivalence requirements of Erasmus scholars. However, it remains entirely optional.

Elsewhere, the Erasmus programme has been supplemented by *Erasmus Mundus*. This brings in two major innovations. The first of these consists in extending the system of awarding grants and ratifying credits to universities from third countries. The second is more unusual, inviting universities to make agreements between three, four or more establishments to issue joint diplomas, which is the most effective way of guaranteeing mutual recognition. More than a hundred "international" diplomas linking European universities now exist as part of education programmes taking place in several different countries.

1.3.2. More ambitious was the launch in 1999 of the *Bologna process*. The declaration signed at Europe's oldest university at that time has no legal value, but, at least, it constitutes a formal political commitment: to provide a common framework for the national education systems of the 45 countries involved in the process. Further studies would be organised in three phases: an initial cycle of three years ('licence' = bachelor's degree), corresponding to an appropriate level of qualification to be integrated into the European job market; a second short cycle leading to a master's at the end of five years of further study; a second long cycle culminating in a doctorate after a total of eight years. A system for ratifying

[26] Article 149 §1 CE
[27] Directive 89/48 issued on 21st December 1989 governing higher education.
[28] Directive 92/51 issued on 18th June 1992 governing professional training.
[29] In fact the Erasmus grant student can consider himself fortunate if he receives full ratification in France of his course credits gained abroad. The Young Europeans movement gave us some harrowing accounts of cases to the contrary.

credits, comparable to the ECTS within the Community, is designed to facilitate movements between universities based on an academic year of 60 credits.

Like its partners, France has adjusted its university system to fit round this LMD ('Licence' – Master's – Doctorate) shared benchmarking-system. But this similar architecture does not automatically lead to a mutual recognition of diplomas, which remains at the discretion of the universities. As a result, an Erasmus scholar is guaranteed that his original university will agree to ratify in credits his stay at an university abroad , although he will not necessarily be granted with the diploma awarded by that university. As for a student who goes off abroad without an Erasmus grant – which is the most frequent case – he will first of all have to have his French level ratified in his country of arrival then, once he has been awarded a foreign diploma, he will have to have it ratified in France. All of which requires copies of study scores, diplomas and course programme details to be provided each time. In some cases, a sworn translation may even be necessary. Add to that the fact that seeking information from another country can be difficult because the way the university websites are laid out is not harmonised and many of them have shortcomings anyway.

In addition, the application of the LMD system shuts out some of our highly effective national characteristics, such as the BTS vocational training certificate and DUT technical diploma, both of which run over 2 years and hence only produce 120 credits, whereas 180 would be needed to achieve the first type of degree recognised in Europe. The same applies to courses that do not award diplomas, such as preparatory courses for the higher colleges, the merit of which in terms of credits remains at the discretion of the head of the establishment.[30]

Failing the mutual recognition of diplomas, the *International Centre for Teaching Studies* (CIEP) in Sèvres issues study level certificates to holders of foreign diplomas. Although it has no legal value, this document is a recommendation aimed at employers and universities to ease the professional and academic integration of foreigners in France. In 2006, the CIEP issued 17 000 certificates, 22% of which were for foreign nationals from the European Union.

In practical terms, misunderstandings and disputes are extremely common. Mail received both in Paris and by all European institutions (Commission, Parliament, Ombudsman), not forgetting the many blogs run by specialised journalists[31], refer to a deep level of misunderstanding among public opinion and to the disappointment felt by the people directly concerned.

2. For *professional* qualifications, the situation is even less advanced.

2.1. Here, the main text is the directive 2005/36 on the recognition of professional qualifications required to work in *regulated professions*.

Here again, the starting point is national competence. It is up to each Member State to regulate certain professions of its choice, provided that they respect non-discrimination and the principle of proportionality: in all, there are 800 regulated professions in at least one Member State. The directive puts forward three ways of recognising qualifications:

- the "royal way", which is the simplest. This applies to 7 professions: the 5 major health professions, plus veterinaries and architects. As courses have been harmonised, recognition is automatic. Unfortunately it is unlikely that this list will get any longer because for that matter an unanimous vote from the Council is required.

[30] Information and testimonials from I.E.P. students in Paris and the interdisciplinary faculty in Bayonne.
[31] See among many other examples the comments sent to the blog of François Beaudonnet on 14th April 2008 after a short interview raising the problem.

- a second way, a relatively favourable one, deals with the jobs of the craft industry. Recognition is based on a six-year professional experience. This means that the main issue is the definition of the authorities with the power to ratify this experience. The list is still being drawn up.

- the other regulated professions, which make up the bulk, come under the "general system", which is much less favourable and is based on mutual recognition, country by country and profession by profession, based on a joint system using a comparison grid. The qualification requirements are divided into 5 levels, from primary to doctorate. Member States arbitrarily categorise the applicant's file on one of these levels, case by case, and they have 4 months to respond. If the level is deemed to be insufficient, the Member State give them a choice between taking an aptitude test and undergoing an adjustment through work experience.

Over the two years 2005 and 2006, 19 798 applications for recognition were received under the "general system", 84% of which were approved. There was an increase of 5% compared to the two previous years. But these relatively satisfactory overall figures should not be used to mask a number of major practical difficulties, particularly – and paradoxically – in highly decentralised States, where the local authorities only have a very small number of cases to deal with each year and lack the expertise to do so. Appointing a specialised bureau would no doubt be required in such situations.

As is the case for higher education, another way of encouraging mobility and giving a boost to mutual recognition of qualifications is to give training grants. This is the aim of the *Leonardo* programme, which is part of Erasmus for vocational education. The link between the grant and the recognition of the diploma has been made easier through the creation of the *Europass* booklet. This ambitious name, which makes one think of a "European passport", does not fit its more modest objective very well, which consists of standardising training certificates abroad, whether they be university courses along the lines of Erasmus, or "sandwich" courses as part of the Leonardo programme. Unfortunately, once again this is only a voluntary option. France is one of the few countries to have decided to guarantee the systematic issuing of the *Europass*.

2.2. An interesting example: lawyers

The Court of Justice has acknowledged the direct effect of articles 49 and 50 TEC on free provision of services[32], as well as article 43's on freedom of establishment[33] very early. But lawyers have never lacked the eloquence to delay the application of this principle on their profession, not without in-depth arguments. So, to be called to the Bar, France requires a Master's 1 diploma in law, then successful entry through an examination into a law school, while in Spain, all you need is a degree to enrol into a school, without having to go through a competitive process. Also, depending on the country, the profession includes counselling and/or arguing for the defence.

An initial 1977 directive only dealt with the *free provision of services* on which lawyers work only an ad hoc basis in a foreign country. It is only eleven years later that the Council adopted a second directive setting out the *freedom of establishment*, in other words setting up as a professional in another country. But in practical terms, the French lawyers at the Bayonne Bar do little South of the Bidassoa: ad hoc work is only possible with the assistance of a Spanish lawyer who, apart from the problem of language, is essential to provide information about local law. As for the free provision of services, this principle comes up against minor discriminations: lawyers have to continue subscribing to their original Bar, while also contributing to their adopted Bar; and they may have to sit an aptitude exam.

[32] *Van Binsbergen* ruling dated 3rd December 1974
[33] *Reyners* ruling dated 21st June 1974

Which is where the difficulties begin. In 1994, a female Spanish lawyer, Mrs W., decided to go and practise in France and so she registered with the CRFPA[34] in Strasbourg. Whereas registration is free of charge for French nationals, Mrs W. was asked to pay 10 000 FRF. After that, she had to apply to the National Bar Council to obtain the forms for a file in which she had to give details on the subjects she had studied when doing her law course in Spain. She also had to pay for the costs of a sworn translator[35].

A few years later, the author of this report had to submit to the French Minister of Justice a case involving a straightforward refusal of a provincial Bar to register a pair of French lawyers who held a Belgian diploma, even though the Court of Justice had just ruled on an identical case.

2.3. A sad example: performing artists

Gone is the time of the traditional "journey to Rome" taken by painters, architects and poets. Gone is the time of the gallant troubadours of the Middle Ages, the divine Mozart at the Court of Vienna, the austere Van Dyck in London, the great Leonardo da Vinci at Amboise, the mystical Greco in Toledo. Regulated or not, being an artist does not lend itself so easily to travelling through a continent of Muses, now partitioned off by too many different rules.

The lack of an obligation for a written contract for very short-term services (in Germany, Austria, Sweden, Finland, Denmark and the Netherlands) or the lack of any sanction for this obligation (Spain, Greece) weighs heavily on people who by the nature of what they do can be replaced very quickly.

In the same way, the legal restriction of using fixed-term contracts does not exist in Germany, Austria, Denmark, Spain, Finland or Sweden, where permanent orchestras can operate by linking fixed-term contracts. Furthermore, the profession of performer is considered as salaried employment in many countries and a self-employed activity in others. This means that when a performer goes to work in another country, insurance problems to cover occupational accidents (frequent in some professions), paid holidays, retirement contributions, etc. take on frightening proportions.

In performing arts circles, the recognition of diplomas is by no means automatic. A candidate must take a new exam to enter a music school in Greece. The Portuguese may not teach at the conservatory of music in the Netherlands, while British dancers are forbidden to display their *pliés* in Germany, Italy and France.

The European Parliament has been stirred into action on this matter. Elected as an MEP in 2004, the great musician Claire Gibault drew the issue to the attention of the Culture committee. A general resolution on the social status of performing artists was adopted on 7th June 2007. A pilot project on the *Mobility of Performing Artists* is scheduled in the budget for 2008. So some work has been accomplished to put the problem forward and prepare a programme for action. At a symposium held on 2nd April 2008, Commissioner Jan Figel stated that he was willing to propose a legal basis inspired by the Parliament's proposals.

France presented an initial Memorandum on this matter in January 2004. **It is a cause that is ripe for reconsideration in 2008**.

3. Professional qualifications in *non-regulated professions*.

[34] Regional Professional Training Centre for Lawyers.
[35] Survey done by the Bayonne students, attached.

The stakes here are less serious, because having a qualification is not a condition for accessing the profession. But it is of interest to a much wider audience and in particular the vast majority of salaried workers who want their qualification to be recognised and taken into account by their employer.

The EU has not been able to do anything in this area other than proposing a joint reference designed at least to promote comparisons and equivalences. But even this modest objective has come up against a wall of reluctance. A decision by the Council on 16th July 1985 made it compulsory for Member States to classify their professional training courses based on a common standard grid: twenty years later and it was still impossible to achieve this aim, with qualifications changing more rapidly than government administration. The objective was revised downwards. A *European Certification Framework* has just been adopted, on 23rd April 2008. But it is only a Recommendation from the Council and the Parliament that takes into account the findings from the pilot projects implemented since the Commission's proposal was made. It includes an eight-level table, each of which is defined by a group of "descriptors" (sic) indicating "the learning outcomes relevant to qualifications at that level in any system of qualifications [36]."

Parallel to this, on 10th April 2008, the Education and Training Commissioner, Jan Figel, presented a project that amounts to transposing the ECTS credits system, which has shown its worthiness for higher education, to the area of professional training. This is ECVET or the European Credit system for Vocational Education and Training. This is an ambitious initiative aimed at the 30 000 vocational training establishments that exist in the 27 Member States.

France has excelled itself here by going faster than the beat of the Community drum. Since 2002, a National Commission for Vocational Certification has been working on a *national directory of vocational qualifications* – no fewer than 18 000 of them, which are entered into the Community "grid". All we have to do now is wait for all of our partners to do the same! **Shouldn't that come under the heading of a strengthened cooperation with our close neighbours, simply to do it more quickly?**

Unfortunately, it has to be admitted that in practice, **in terms of the recognition of qualifications, we are not even halfway there yet**.

4. Suggestions for the French presidency.

4.1. For the mobility of students

If we want to achieve a change of scale for university exchanges, we need to start thinking beyond the Erasmus programme alone.

All Member States award grants to their students with limited resources: so why should it cost them more – apart from the journey – to go and study in a neighbouring country, than in their country of origin? It is amusing to note that case law in the Court revolves around this idea. In the *Grzelczyck* ruling of 2001 and the *Bidar* ruling of 2005, The Court was of the opinion that students who are sufficiently well-integrated into their country of arrival should have the same access to maintenance grants and other funding assistance as national students. The *Morgan* ruling, still hot from the oven, dating from 23rd October 2007, accepted the possibility for a student moving to another country spontaneously to obtain funding assistance from his country of origin[37]. Nor is case law limited to higher education: the same year, the German authorities were ordered to grant a tax allowance for the education costs of German residents who send their children to private schools in another

[36] To achieve the immediate mobilisation of the Member States, the Commission held an information conference on 3rd and 4th June 2008 to which it invited 230 representatives from national governments, social partners and employers' organisations.

[37] Joint cases *Morgan and Bucher* C-11/06 and C-12/06 dated 23rd October 2007.

Member State[38]. **To sum up, why not envisage exchanges of students and even teachers, based , at least on bilateral agreements, at a relatively low cost (or even none at all), between neighbouring or comparable countries?**

4.2. As for the mobility of researchers, the French presidency should lend itself to a strong relaunch of an essential aim: creating a European area for research.

Since the first diagnosis established without complacency as part of the Lisbon strategy[39], the situation has hardly improved. While there are more graduates in science and engineering and holders of doctorates in the EU than in the United States and Japan, the proportion of researchers in the working population in Europe is three times lower than in the former and twice as few in the latter. The share of EU countries in 10% of the most frequently quoted scientific publications is barely one-third, compared with a half for the United States. Out of the 76 most renowned universities in the world, 67 of them are located on the other side of the Atlantic and only 8 in the EU. The partitioning off of institutions, especially in public research, is one of the major causes of this very worrying backwardness.

However, many initiatives have been launched recently. The brand-new European Research Council will allocate 335 million EUR in aid this year to leading laboratories. The European Institute of Technology is putting its network in place. Funds to the framework research programme have been increased by 75% for the period 2007-2013. The Commission's Green Paper resulted in the orientations adopted by the European Council in March 2008, followed by a new Communication from the Commission on 23rd May.[40] Following on from the United Kingdom, Germany and the Netherlands, France has undertaken a major reform of its university organisation and research system, which elicited rare praise from the quality press across the Channel in favour of Valérie Pécresse[41]. Other countries such as Spain are also embarking on the same modernisation effort[42].

In these conditions, the impetus can and must be maintained and increased during the second half of the year. However, is the "Competitivity" Council best placed, as the Commission believes, to take the revolution to the heart of our archaic research systems?

4.3. Xavier Darcos has made mobility of the young people undergoing vocational training one of the objectives of the French presidency. Three themes might be broached:

- the promotion of the ECVET project (see above), the European Credit system for Vocational Education and Training, comparable to the existing ECTS for students;

- the increase in budget allocations for the Leonardo and Comenius programmes, which are notoriously under-funded compared to Erasmus;

- and the idea dear to the minister's heart of an "Erasmus for teachers", for both primary and secondary school. For this category of teachers, where exchanges are currently only being made at a homeopathic dose, even though they are made in a perfect spirit of reciprocity, there is no reason why they should generate significant additional costs.

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[38] *Schwartz and Gootjes-Schwartz* ruling, 2007

[39] Communication from the Commission *Strategy in favour of mobility within the European research area,* COM(2001)331 dated 20th June 2001.

[40] Green paper *The European Research Space: new prospects*, COM(2007)161, dated 4th April 2007. Communication *Encouraging careers and mobility: a European partnership for researchers,* COM(2008)317, dated 23rd May 2008.

[41] See *The Economist* of 7th June 2008, p. 35 *"Slowly, but surely, universities in France – and all across Europe – are reforming."*

[42] See, for Spain, the interview with the new Minister for Science and Research, Cristina Garmendia in *El Pais* dated 7th June 2008.

4.4. The period of the French presidency should be an opportunity to put an end to the delicate situation in which our country finds itself regarding the recruitment of its public servants since the *Burbaud* ruling[43].

In France, public service is a specific issue. Certainly the recruitment entrance examination for the three public functions are open to EU nationals and a ruling issued on 2nd May 2002 allows for the accommodation of public servants on detachment from an EU Member State. But the Court of Luxembourg believes that the mandatory submission to a competition, which is a system unknown in half of the Member States, constitutes an abusive obstacle for workers who are fully qualified in their country of origin to get into the French public service. **A draft law may be submitted in the second half of 2008, if only to facilitate the recruitment of language teachers**: it is entirely scandalous from a Community point of view and absurd in terms of the efficiency of our teaching system that France should continue to pride itself on forbidding foreigners from neighbouring countries to come and teach their mother tongue in our country[44]!

4.5. We should also mention an ad hoc problem; the Assembly of French Nationals Living Abroad points out an incongruous situation in the Czech Republic: three Franco-Czech bilingual schools, totally funded by Prague, provide teaching in French up to the local equivalent of the *baccalauréat*. But as this qualification is not recognised in France, the pupils are unable to register, for example, for the preparatory classes prior to enrolling in the HEC business school in Vienna.

4.6. Going in the other direction, a **private initiative** supervised by the Employment DG deserves to be highlighted during the period. This is ***HProcard***, a project for a **European card for health professionals**, based on directive 2005/36 on the recognition of professional qualifications. The aim is to harmonise the cards of professionals who enjoy an automatic recognition of diplomas. This will both reassure patients about the qualification of the professional in question, as well as make it easier for what the person is doing to be monitored by the authorities in both his country of origin and of adoption. **This card is due to come into effect in France in the spring of 2008 and in the EU in 2009**.

III – TRANSPORT

1. The free movement… of cars.

One of the topics mentioned most frequently by consuls working in Paris relates to the practical problems regarding both car registrations and exports. The Paris correspondent of *Eurojus* came across the case of 25 American cars which came in through Germany and which were not allowed to be used on on the French roads. The Polish consulate pointed out that when Polish nationals want to export a French vehicle to their country of origin, some police authorities grant the required “WW” without any difficulty, while others only grant a “no driving” registration (sic!) – an oxymoron that demonstrates the creativity of the French authorities, as well as – alas – their inability to understand people’s problems.

As for car registration, it appears that there is an abnormally large number of legal bases to work from, with specific directives for different parts of the vehicle (brakes, rear-vision, etc.) to which has to be added the interpretation that case law has given to the articles

[43] Ruling C-285/01.
[44] This does not mean that all of our partners are without fault. It has been pointed out to us that in the autonomous community of Navarre, foreigners are eligible to be recruited to work in the regional education system, but by an unfortunate set of circumstances, the letter of summons sent to applicants for the required Spanish test did not arrive until after the test had taken place…

38 and 39 of the treaty. The SGAE[45] notes that vehicles originating from outside the Community (American and Japanese) have to face numerous obstacles on account of the lack of recognition of or trust in the documents issued by the Member States. But the problem also extends to European vehicles, including French ones, whose owners apply for registration in France when they are entering or re-entering our country. A senator representing French nationals abroad who wanted to see for himself, took six months to change the registration plates on his Citroën car. A high-ranking diplomat from the Quai d'Orsay, despite his long consular experience, acknowledged that he had preferred to keep his foreign plate for four years as a result of being discouraged by the complexity, length and cost of the formalities required by the French vehicle inspection centre.

There are other naughty boys in the class, too. In Greece and Romania, bringing in new cars from abroad implies paying a "first registration tax" set at a prohibitively high level. A written declaration on the situation in Romania was submitted to the European Parliament on 18th February 2008. On 3rd April last, a similar problem prompted the Commission to embark on proceedings against Malta.

As a result, there is plenty to legislate on. So why could we not take advantage of the opportunity to come up with a registration system that would be common to all Member States? If we consider how many Spaniards miss their old system which made it easy to identify the provinces and how the French are responding to the prospect of seeing their good old *département* numbers disappear from their number plates, we get a good idea of just how important this symbol is. **Having a single system that would make it possible to identify the Member States or the various regions would help to popularise the image of a "single and diverse" Europe**.

2. Driving licences.

Few subjects are as sensitive for the public opinion and few have such a forceful symbolic power in our contemporary societies that have placed the car at the centre of family, business and collective life.

As for individual vehicles, the situation is characterised by a joyous free-for-all whose benefits are appreciated by drivers (ease of escaping polices checks when abroad) more than the drawbacks are moaned about (miscellaneous administrative red tape to renew a licence or re-sit a driving test abroad). As a result, French driving licences are recognised throughout the 27 countries of the EU, but 110 different formats of licences exist within the EU, which corresponds to a high level of bureaucratic extravagance, even when compared to the usual European standards.

This situation should change with the **European driving licence** decided on in 2006[46] to be applied in 2012. This plastic document will be the size of a credit card and will be renewable every ten years. In those Member States that want to, it will be possible to insert and electronic chip containing standardised information. The relevant authorities will even be able to conduct "electronic tracing", as the RATP transport system in Paris is able to do with the *"Navigo Pass"*. **The idea to be looked at here would be to see whether it is possible to combine the introduction of this licence with a European registration system**.

3. The monitoring of driving offences.

[45] General Secretariat for European Affairs, the successor to the SGCI. Placed under the direct authority of the Prime Minister, this department prepares and organises arbitration between ministries regarding European matters.

[46] Directive 2006/126 issued on 20th December 2006.

This is a topic that is linked directly to the one above, but which requires more urgent reforms.

Even though the aspect of cracking down on crime is not spontaneously popular, road safety is a major issue for the whole of Europe. Unfortunately, with 43 000 people killed in 2007, we are a long way from the target of halving the 54 000 killed in 2001 by 2010. Yet the experience of the United Kingdom, Sweden, the Netherlands Finland and, more recently, the spectacular results achieved in France, prove the effectiveness of imposing sanctions.

In its 2006 annual report, the European Ombudsman evoked the case of a Spanish national who had rented a car in the Netherlands for the day. When he returned home, he received an infringement notice from the Dutch police for an offence he was said to have committed in Rotterdam, a city he had never been to. Not living in the Netherlands and having no knowledge either of the language or the law of the country, he was not able to dispute the fine. The matter was settled by *Solvit* (see below).

Cases like this one remain the exception; in practice, drivers from Luxembourg who exceed the speeds allowed on Belgian roads are never fined. Only a few countries have signed bilateral agreements that enable fines to cross borders, as the Netherlands has done with its neighbours. Yet foreign drivers, who represent only 5% of traffic on the road, commit an average of 15% of offences. Not only is their impunity a source of injustice, but it harms the acceptance by national citizens of fines for which some offenders are exempt.

Hence the interest of ensuring the “free movement of fines”. Excellent work has been done by the *Eurosparks* network, assisted by the Commission and created on the initiative of the British. Based on this, Commissioner Jacques Barrot presented a **draft directive on the cross-border enforcement of sanctions** on 19th March 2008. In an effort to achieve simplicity and effectiveness, the draft directive focuses on the four main offences that are responsible for 75% of victims: speeding, drink-driving, not wearing a seat belt and going through red lights. The wording of the directive does not propose either harmonising the national highway codes nor the national penalties for traffic offences. Nor does it involve any new bureaucratic structure. It is merely about enabling the circulation of information between the national authorities, with a system of exchanging information. Member States will have two years to implement the system and to make it operational.

The 2nd “European Road Safety Day” will be held on 13th October next in Paris. It might be an opportunity to announce a political consensus for having this draft directive adopted in as short a time as possible.

IV – CONSUMERS

We tend to forget it, yet we never cease saying the opposite in public speeches: even before it became a market for producers, the “common market” was a market for consumers. That is its first and main social dimension. The free movement of products, which stimulates competition, benefits consumers first and foremost, beginning those with a low income.

However, to maximise the social and economic benefit, the countless obstacles in the way of competition first need to be removed. The law also needs to protect consumers against incorrect information, deceitful advertising, various forms of discrimination and abusive commercial practices. That is the aim of the European consumption law, which has developed greatly under the pressure of the consumer associations represented in the B.E.U.C. and, more recently, as a result of the healthy emulation between the Commissioner responsible for the internal market and the Consumer Protection Commissioner.

1. The main points on the agenda for 2008 are the following:

1.1. On 31st January 2008, Commissioner Meglena Kuneva launched the *Consumer Market Watch*, aimed at studying the way markets operate in sensitive sectors. Three areas of action were selected for 2008: retail financial services, the cross-border trade of consumer goods, and paths of recourse for consumers.

1.2. The Commission is preparing some reforms to **the legal protection of consumers**. Scheduled to be on the legislative programme for 2008, this is a framework directive that will encompass a number of directives relating to distance contracts, unfair terms and door-to-door selling.

In fact, the current system is not sufficient. Designed on the one hand to be a minimum safety net, the common European rule does not provide enough protection, prompting the Member States to systematically set their own national regulations at a higher level, but ending up with very disparate protection across the Union. For example, regarding the right to a cooling-off period, the current rule is 7 days in France and 15 days in Germany – whereas France believes that its level of legal consumer protection is the best in Europe in all areas. There are also many conflicts of rights on the general terms and conditions for contracts. The Rome I regulation (see below) states the principle of applying the law of the product's *country of destination*. This raises an insoluble problem for SMEs that do not have the resources to obtain information about the law of the 26 other countries of the EU. Failing to obtain the mutual recognition of national standards, which no Member State wants, the Commission should propose a maximal harmonisation at an optimum level of protection – i.e. also as close as possible to the maximum.

1.3. The Single European Payment Area (SEPA) came into effect in February 2008. For this occasion, Commissioner McCreevy announced his intention to supplement regulation 2560/2001 on cross-border payments, as well as the directive on payment services. The aim is to improve the system:

- by extending the regulation to standing orders and direct debits. It already covers transactions using payment cards, transfers and cash withdrawals made at ATMs.

- by inviting Member States to set up some proper authorities and adequate procedures for settling disputes out of court.

1.4. The Parliament is currently examining a draft directive on the **use of timeshare, long-term holiday products, resale and exchange**. A previous directive dating from 1994 on time-share properties has been superseded by the appearance of new products, especially "long-term holidays".

2. Other initiatives to be envisaged

2.1. During its period of presidency, France may find it of interest to review its transposition of the **2005 directive on unfair commercial practices**, which has been generally glossed over, which may well end up with an unpleasant dispute.

2.2. Why not have a single price on stamps?

As is the case for the currency, driving licences and citizen cards, resorting to a single price for postage stamps on ordinary letters would have a very strong symbolic value of being part of a shared living area. An information report from the Senate already began to delve deeper into the concept some years ago.

The principle may appear contradictory to the philosophy in place at the present time regarding the opening up of the postal services to competition. The operators are also sceptical. But at a time where they are launching major initiatives to prepare for the opening up, or even to obtain the modification of certain ways of operating, examining the consequences of a single postage rate and the practical terms of the inevitable adjustment that would go with it will be worth carrying out. Thirty years ago, all of the public transport carriers in the Ile-de-France area also found that the "orange card" was a "bad good idea". The government at the time preferred to listen to the users rather than the carriers and this quiet revolution made the daily lives of workers in the area around Paris much easier. So why would the same process be impossible today if there is the same political will?

V – MISCELLANEOUS AREAS

1. The Commission has issued a Recommendation[47] on the actual practise of the right to diplomatic and consular protection so that the wording of article 20 can be included in national passports.

2. The French Ombudsman believes that France's tax legislation is not compatible with the principle of free movement of people within the EU. No regulatory provision has foreseen the hypothesis of Community nationals coming to live in France, nor of nationals who have left France to work in another EU Member State coming back to live in France. The Ombudsman has suggested that the French **tax notice** be replaced by producing an equivalent document: the notion of "reference tax revenue" is specifically French.

3. The European Foundation Centre (EFC) – of which the Foundation of France is a founder member – is lobbying for the development of a **European status for foundations** along the lines of what has been put in place for public limited liability companies. The Commission has commissioned a feasibility study, conclusions of which are scheduled to be available in the autumn. In fact, public consultation on the action plan for the modernisation of company law, carried out in 2006 by the Internal Market DG, indicated the existence of an expectation with varied origins.

Like associations, foundations can turn out to be an effective link between public action, especially on a European level, and the citizen. The foundation formula is developing spectacularly: more than one-third of the foundations that currently exist in EU countries did not exist fifteen years ago and the total budget for that one-third represents half of the overall European budget for foundations as a whole.

VI – CONCLUDING NOTES ON EUROPEAN LEGISLATION

1. Too many laws – or not enough?

To mark the introduction of the Lisbon treaty, it would be good for Community institutions to take another look at the number, topic, content and legal form of European legislation.

In 2009, the EU will no longer be a "common market plus"; it will become a fully-fledged political community. The single market will remain its first historic achievement, but it will no longer be the most important or, even more so, the only one that merits "hard" European legislation, with the remainder coming under the heading of subsidiarity, as a supplement or even under various methods of coordination.

In practical terms, citizens need security and legal simplicity just as businesses do. In fact there are more "nomads" among our citizens than there are among our public limited

[47] Recommendation C 2007/5841.

liability companies. The priority given to adapting European law for national purposes based on the principle of subsidiarity is fine for those who stay within their national borders, but this principle significantly complicates the lives of those who believe us when we say that these same borders have disappeared. Put another way, it is time we took stock of the issues arising from the method of *regulation*, a uniform standard for direct application, and the *directive*, a common European framework for differentiated national application. Laws are not made for their authors, nor for the philosophers – but for their subjects, in the sense of the people who have to abide by the law. There are cases where abuses of subsidiarity are more to be feared than abuses of uniformity.

It is worth reminding ourselves that the general movement of war on bureaucracy, which is very healthy in itself (and we will return to it in the final chapter), sometimes pushes European legislators to self-censorship as they try to contribute towards the prevention of judicial inflation. We are forgetting, as the Economic and Social Council points out, there are some cases where the shortcomings and delays in Brussels can be especially prejudicial[48].

And we also forget that **if a European law is well-designed, its aim is to replace twenty-seven national laws**. Unfortunately, this is rarely the case. Just like companies, the citizens realise that in practical terms, European law comes in addition to the national law more often than it replaces it. So here again we come back to the philosophy of the directive, which urges national governments to *gold-plate* the laws, embroider them, strive for perfection.

Is a *gentlemen's agreement* possible between institutions? This is a topic that deserves **a major inter-parliamentary debate before the Lisbon treaty comes into effect**.

2. Bringing the social partners and civil society together on a national level.

The Economic and Social Council made a wise proposal in this regard in the communication already mentioned.

The European Commission has adopted the habit of associating various players to the preparatory phase of developing law; for its part, the national Parliament is consulted before the government adopts a position[49]: why not expand this consultation as far upstream as possible to the social partners and other representatives of civil society who are involved?

The E.S.C. is already contributing towards this aim: it has presented two opinions, argued in full, on the financial prospects. Each year it produces a cross-disciplinary report on the various sections of the Lisbon strategy. It regularly takes part to the Commission's political consultations (Green Paper on demographics and the European youth pact in 2005, White Paper on a European communication policy in 2006). And the government has given it an ongoing right of contribution on the follow-up of the *national reform programme* (NRP in Community jargon) for 2006-2008. **Why not go as far as an "88-4 of the Economic and Social Council"?**

[48] Carcinogenic asbestos was only banned on an EU basis from 1st January 2005, whereas all of the information had been available and the specialist knowledge had been in place since 1976… (Communication from the E.S.C. dated 10th July 2007)

[49] Article 88-4 of the French Constitution.

CHAPTER II

LIFE, DEATH AND LOVE

or

THE SURPRISING RESERVES OF EU LAW

I – LIFE IS QUICKER THAN LAW

1. The problem.

Here, we find ourselves faced with a fundamental issue which importance is significantly underestimated by European leaders.

The EU is a victim of its own success and, more generally, of the human consequences of peace: travels, migrations and encounters all favour links, shared projects, exchanges, living together, contracts, including family ones. Yet civil law in general and family law in particular are considered inextricably linked to the history and culture of each country. As a result, it is an area where it has always been considered that subsidiarity should always come first, in a jealous and exclusive way.

However, out of this healthy principle comes a surprising legal paradox. Is Europe thought to be too close, or on the contrary too far away? Because it is thought to be too sensitive to be handled between Europeans, family law still mainly comes under national jurisdiction. And where it involves elements outside national boundaries – such as in cases where the scope of a contract goes beyond a single country, what lawyers call “foreign” or a “no-go area” – we have international conventions that relate to private international law. **We are faced with a perfect illustration of European anti-preference here**.

More disturbing is the fact that the law dealing with theses matters is progressing at a very measured pace.

1.1. The veterans of private international law.

The venerable *The Hague Conference on Private International Law* first saw the light of day in 1883. It courageously started tackling a general regulation on successions and wills from its 4th session in 1904 and again during its 6th session in 1928. Unfortunately, on both occasions, military operations overtook the lawyers. But the Conference survived until becoming in 1951, at the ripe old age of sixty-eight, a permanent organisation, bringing together some thirty States. It took on more work: from the 1950’s onwards, its Confucian perseverance ended up being rewarded with the signing of half a dozen so-called “The Hague Conventions” on conflicts of laws and private law judges. However, out of regard for its authors, we will refrain here from giving the list of countries in which these Conventions have come into effect since then. Let us only mention the most important one: the Convention of 1st August 1989 on the law on successions – the fruit of eighty-five years of effort – has only been signed by Switzerland, Argentina, the Netherlands and France…

Yet, once underway, this tortoise-like progress has managed to produce increasing amounts of fruit: at the beginning of this century, France was a signatory to 6 270 international conventions! Unfortunately, not only are the timetable and geographic distribution of the various ratifications entirely random, which makes their practical application very difficult, if the application of these conventions is spread thinly enough, it often happens

that they contradict each another, with no official body in place to make sure they are compatible[50].

Another initiative – the international cooperation on civil status matters – has been initiated half a century before the treaty of Rome (1906), between the six future founder countries, plus Switzerland. Its first achievement was to create, in 1948, an *International Commission on Civil Status* (ICCS), which gathers 13 of the EU's 27 members today. This Commission carries out much basic and assessment work that is greatly appreciated, although it rarely results in any positive legal results.

1.2. The cultural shock of Community law

European treaties have given a completely new lease on life to the private international law's approach – between Member States only, of course. The Maastricht Treaty laid down the principle of legal cooperation with regards to civil matters, which the treaty of Amsterdam subsequently introduced into Community competence. This has generated three substantial benefits: the effectiveness of decision-taking – unanimity is still required, but ratification is no longer needed, a single date of application, and the force of uniform interpretation, which only comes under the Court of Justice.

With the arrival of the Community institutions into the game, the pace has slightly changed, but one can hardly talk about a "burst of the throttle". Hence the basic regulation on legal competence, the recognition and execution of rulings on civil and commercial matters, adopted in December 2000, represents the culmination of work undertaken by a group of experts from the six founder countries in… July 1960! Named "Brussels I", this regulation has been overtaken along the way by additional regulations, "Brussels II", on 29th May 2000, which applied the same principles to matrimonial law and parental responsibility. Despite maturing for a number of years, this second set of regulations must have been deemed botched because the ink hardly had time to dry before a "Brussels IIb" was started, which purely and simply repealed the previous regulations two years later! (see below).

Yet while this breathless race was taking place between tortoises, snails and hermit crabs, the European Economic Community was being created, deepened, extended gradually to the whole continent, breaking down all of the invisible walls enclosing the people well beyond the Wall. All of them? Not at all, unfortunately! There are still differences in national laws – and particularly in civil, matrimonial and inheritance law: in a word, life, love and death.

2. Early progress made

2.1. **The daring of case law: the right to a name!**

The Court of Justice dared salute the institution of a European citizenship in the Maastricht treaty by giving every citizen the entitlement to integrity and the right to use his or her patronymic (original or ancestral) name.

Having moved to Germany to conduct his profession as a masseur, Mr Christos Konstantidis watched in dismay as the local authorities transcribed his name in Latin letters corresponding not to the Greek pronunciation, but its German equivalent: Hréstos Konstantinidès. The wise men in Luxembourg ruled that article 52 CE did not allow a national from a Member State to be forced through the application of the national law of another

[50] For example: to find out how a German court ruling on the payment of a maintenance allowance by a Frenchman for the benefit of a non-French minor can be recognised in France, three international conventions apply conjointly: The Hague conventions of 1958 and 1973 on the recognition of rulings on maintenance allowances, and the Brussels convention of 1968! See B. Audit *Private International Law*, Editions Economica.

Member State, to use the spelling of his name in such a way that the pronunciation of that name would be distorded[51].

Going further, ten years later, the Court forbade the Belgian authorities from imposing on dual-nationality children born in Belgium from a Spanish-Belgian couple, married in Belgium, the principles for determining the children's surname according to Belgian law, whereas the parents wanted to apply the Spanish custom in this case [52].

The scope of this case law is considerable: on the one hand it has asserted the primacy of citizens' Community law over national law in an area that is essential to sovereignty, i.e. the law governing individuals. On the other hand it has recognised that the right to a name was not just a mere attribute of individual law, but a fundamental freedom for each person, the compliance with which and protection is incumbent upon the Member States.

2.2. The political impetus from the North: from Amsterdam to Tampere.

We have had to wait the 1990's to become aware of the fact that the **diversity of the European legal systems, including on civil and commercial law, was a source of insecurity for the mobile citizens**.

Outlined in the Maastricht Treaty behind the timid sketch of a "third pillar", looking more like a fake window, judicial cooperation on civil matters got its feet firmly under the table in the Community household with the treaty of Amsterdam in 1997.

The implementation of article 65 of the treaty gave rise to the *action plan* called the "Vienna Plan", which was adopted by the JHA Council on 3rd December 1998, and especially to the *Tampere Programme*, the roadmap established by the European Council on 16th October 1999 based on proposals made by the Santer Commission. It is crucial to understand its philosophy properly:

- the harmonisation of civil law, be it basic law or proceedings, is flatly excluded. This area comes under national sovereignty.

- more surprisingly, **the very principle of mutual recognition of national laws by Member States is not fully accepted**. We will focus, in particular, on the use that is made of the maintenance of public order provision when it comes to marriage.

- there is a political will to organise the free movement of civil documents, court rulings or evidence, but even this limited objective immediately comes up against the choice of the applicable national law and of the national judge that will be competent : that is the puzzle that the obstinate and hoary pioneers of the Conference of The Hague have to deal with.

- once the competent authority has been chosen, some new legal vehicles could be invented to enable the decisions made by this authority to circulate.

Put another way: 'no' to harmonisation, 'yes' to a fairly broad mutual recognition, but for that to happen, we shall focus mainly on the solution of conflicts of law.

2.3. The law on the law: from Brussels to Rome.

[51] *Konstantinidis* ruling 168/91, dated 30th March 1993.
[52] *Garcia Avello vs Belgian state* ruling C-148/02, dated 2nd October 2003.

There then followed half a dozen regulations from the Council aimed at settling conflicts of jurisdiction: laws to decide which law will be applied.

- Brussels I, relative to judicial competence, mutual recognition and the execution of rulings *on civil and commercial matters, excluding family law*, based on the 1968 Brussels Convention. Brussels I stipulates that rulings made in one Member State are automatically recognised in the others. The competent jurisdiction is that of the Member State where the *defendant* is a resident, regardless of his nationality.

- Brussels II, amended as Brussels IIb, deals with the competence, recognition and execution of rulings *on matrimonial matters and matters of parental responsibility*. The principle is to give jurisdiction to the court were the child usually resides.

- Rome I, regulations on the law that applies to *contractual obligations* are due to be published in the *Official Journal* between now and June 2008. Rome I is based on the free choice of law by the parties to the contract.

- Rome II, regulations that pre-date Rome I, despite its name (11th July 2007), setting the applicable law for *non-contractual, civil and commercial obligations*. Rome II is designed to unify the rules on conflicts of laws, with the exception of everything that comes under family law, which will be the subject of a "Rome III".

II – UNSUFFICIENT RESULTS

Will a Catholic marriage entered into in Spain, which is common law on the other side of the Pyrenees, be recognised by Lutheran Denmark, Orthodox Greece or our very secular French Republic? Can there be a donation between spouses of two different nationalities? Which court is competent to rule on an adoption by a dual-nationality couple, and on whose national law should the ruling be based? Do donations of property located in different States involve risks of a civil or fiscal nature? Can a will drawn up by a notary in France be executed on assets located in other EU countries? What prospects for passing on inheritances can the French legal system offer to a British couple that has purchased a secondary residence in France while English law does not include the principle of prenuptial property agreements or hereditary reserve?

While the European treaties and the case law of the ECJ help to "cleanse" national legislations of all forms of discrimination against European nationals, they are unable to answer this type of questions. Yet, France estimates that 25 000 property transactions have been carried out on its soil by European nationals, while the number of Germans who own real estate in another EU state is close to a million – 150 000 of which are in France – and the number of dual-nationality households, married or not, is beyond ten million: so these are no longer marginal matters that we are talking about!

Let us consider the various phases in the life of a contract and of the parties to the contract.[53]

1. The surprises of European marriages: beyond Marivaux.

1.1. A great connoisseur in this area, Marivaux revealed what he called "the second surprise of love". European life in the 21st century adds a few more.

Surprise number 1: **the opening up of the European area alone may cause new legal problems, even to marriages consented to between two nationals from the same**

[53] Many of the analyses that follow on family law have been drawn from the work of the 101st Congress of French Notaries, held in Nantes from 1st to 5th May 2005 and published in full in a remarkable collection, *Les familles sans frontières en Europe: mythe ou réalité? (Families without borders in Europe: myth or reality?)*.

country: all they have to do is to go and live in a neighbouring country, to take up residence there or to have children there, to buy property there or if one of the spouses dies there. Even if there is no dispute at all between the spouses, the unfortunate pair may well find themselves embroiled in cases where there are conflicts of laws, authorities or jurisdictions that relate to matrimonial systems. And there they are, having fallen unbeknownst to them into the complex and uncertain limbo of private international law, governed, depending on the case, by international conventions, bilateral agreements and sometimes even by the embryo of European law.

Surprise number 2: while the Civil Code governs the institution of marriage, it does not actually define it anywhere[54]. Neither does Community law, leaving it to the internal laws to govern the matter, which does not fall into its field of competence. Yet the conditions for the basis and form of marriage, its legal consequences and the conditions governing its dissolution vary greatly, depending on the Member State.

Surprise number 3: because of these special issues, **not all States recognise all of the effects of all types of foreign marriages**. It is certainly easy to understand that France does not want to recognise polygamy or the husband's right to repudiate his wife. But it could be expected that between countries united around common values of civilisation, that are enshrined in the Charter of fundamental rights, and each scrupulously respectful of the others' sovereignty that life's most fundamental civil contact should be the subject of automatic mutual recognition. But this is not so. Some provisions that are legal here might be considered as breaches to public order elsewhere, where they would be considered as null and void. Or not null and void, except for some effects. Or as valid, but without effect.

Just how this exception of public order is handled is up to the national courts. If they believe that foreign law, albeit *designated by the French rule of conflict*, contains some elements that go against the values deemed fundamental by our society, the court must set the rule aside on the ground that it is contrary to international public order. French law is then purely and simply substituted to foreign law.

As can be imagined, this protecting rule is a delicate one. Being essentially a moral issue, the notion of "public order" changes as time passes: for example before the reform of filiation law in 1972, the Court of Cassation considered that it was contrary to public order to recognise any child born of adultery. Until the cobblestones went flying in May 1968 and tipped the balance of children born of adultery on to the right side of public order.

These possible variations in interpreting the rule are a source of unpredictability and hence legal insecurity for the persons concerned. Also, to avoid political complications with foreign countries, the exception of public order is applied more systematically when the international private relationship was originated in France (we then speak of *"full public order"*) than when it was originated abroad, the question then being to assess its validity or its effects in our country: public order is then said to be *"attenuated"*, which ends up with the application in France of some inheritance-related provisions that result from polygamous marriages or from marriages entered into between homosexuals.

Surprise number 4: despite this very national character, marriage can have "contaminating" effects outside the borders of the country were it was contracted: all it takes is for local law to apply to couples in which one of the spouses is a national of the country where the wedding took place. Other countries, however, still have the option of protecting themselves against this legal import (some would call it "dumping"!) by refusing to admit the

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[54] The definition given by Portalis during the preparatory works was not included in the Code that he inspired: *"A formal legal act by which a man and a woman, by mutual consent, decide to join forces and abide by a pre-established legal status, that of married people."*
More astonishing yet is that fact that while the Civil Code does not give a definition of marriage, since 1999 article 515-8 defines cohabitation as *"a de facto marriage, characterised by a shared life displaying stability and continuity, between two persons of different gender or the same gender, living together as a couple.:* But no details are given as to the legal effects attached to it.

effects of it for their nationals who may have succumbed to the smouldering seductions of these exotic sirens.

The extreme case is that of the Dutch law enacted on 21st December 2000, article 30 in Volume 1 of which made marriage possible between two persons of the same sex. In their aim to achieve the widest possible application, the legislators worked on the assumption of the validity of the marriage as soon as one of the two spouses was a Dutch national or even, very simply, had his or her residence in the Netherlands. And this is the case even if the national law of the other spouse does not recognise the marriage. Also, in the event of a conflict between the national law of a foreign spouse and Dutch law, it is the latter that prevails for governing the conditions of validity for the marriage. This law was supplement by the one enacted on 1st April 2001, which opens up to Dutch homosexual couples the possibility of adopting a child jointly or adopting the child of one of the partners.

The French legislators appear to have been filled with the same proselytising ardour when they adopted PACS on 15th November 1999. This contract can be entered into in France by two partners, French or foreign nationals, and also abroad by two partners of whom at least one is French. However, French law does not contain any provision designating the legal order that applies in the event of a conflict of laws in a dual-national PACS.

1.2. “Long live the newlyweds!”

The result of this divergence, which sometimes turns into competition, between national laws is an inextricable situation for civil unions and other legislations opened to homosexual couples. Ordinary marriage is possible for gay couples in Belgium, Spain and the Netherlands, while various forms of civil unions have been instituted elsewhere: PACS in France, registered partnerships in Denmark and Sweden, English civil partnerships, deed for the partnership of life in Germany, civil union in Italy, etc. These contracts do not benefit from systematic mutual recognition.

This mutual ignoring of rights recognised in a neighbouring country satisfies our legal chauvinism as long as it does not lead to ignoring the realities. The general secretary of the International Commission on Civil Status, Professor Lagarde, notices that a country that does not recognise marriages between homosexuals entered into legally elsewhere will be legally obliged to allow, in its country, one of these spouses to marry a person of the opposite sex without bigamy being invoked. The “vice squad” can doubtless be relied on to exploit and even stir up the first case of such a tasty situation. Opinion will then be divided on the moral consequences of such a legal breakthrough, but it will be united to pillory this shilly-shallying Europe that favours polygamous and multi-sexual marriages.

Up until now, the Commission and the Member States have kept to case law on the definition of marriage, according to which the word “spouse” has the meaning given to it by most European States. But what will happen the day when a majority of States has allowed forms of homosexual unions, knowing that a dozen or so already offer the option of a civil pact? If the countries that reject such unions fall into the minority, will they agree to give way to case law? Better to talk about it first than find our backs to the wall, as it were.

2. Unions outside marriage.

Already recognised in the Hammourabi code and regulated in Rome for couples for whom marriage was forbidden, cohabitation has literally exploded in Europe since the 1970s. It is an area where morals and customs have evolved more quickly than the law. It is believed that today, on average, 30% of young Europeans under the age of 30 living as a couple have opted for an unformalised union, with considerable variations according to Member States: it ranges from less than 10% in Portugal, Belgium and Greece, to as high as

70% in Denmark. The natural consequence of this is that there are similar proportions of children born out of wedlock, since having no wedding ring seems to have no effect whatsoever on a couple's fertility.

Despite the extent of this trend, national laws have been very hesitant – indeed have fiddled with the law – to give a status to what lawyers inelegantly call cohabitation or *de facto* marriage. And the solutions provided vary even more than for marriage. Hungary was one of the first countries to give a precise definition to the status of cohabitation, the legal effects of which vary according to whether it is within a legal context or not. Greece recognises the freedom to cohabit outside marriage as a human right, but this does not provide any particular legal protection. Case law at the Supreme Court in Austria has come to the same conclusion, but only for heterosexual couples. By contrast, Ireland considers organised cohabitation as contrary to the Constitution itself. Portugal has passed legislation on the fiscal, social and administrative aspects of it, as well as on the protection of the home for people living together in an open union for more than two years. Swedish law focuses more on the ownership of the shared residence and the household assets of the cohabitants.

In the absence of mutual recognition, these statuses are hard to compare and raise enough problems in terms of application to frighten off the most blasé of lawyers: a "partnership" registered in Denmark has the same legal effect as a marriage as long as the parties involved live there, then there are PACS unions if they move to France – and if they choose to live on the banks of the Tiber, there is no effect at all. That is why case law has to lead the way in constructing the beginnings of private international law on cohabitation. Unfortunately, after embarking on work along these lines in 1987, The Hague Conference suspended what it was doing in 2000 with a statement that is difficult not to interpret as a confession of impotence[55].

3. The problem of little "Europeans of mixed race": name and nationality.

We have paid tribute to the jurisprudential daring of the Court of Justice in defending the "right to a name" above. Has this problem been settled then?

Let us listen to what Anna has to say.

A young Polish woman who we will call Anna Kowalewska, having succeeded in leaving her country at a time when it was still under the Communist dictatorship, meets a dashing Spanish accountant. The marriage takes place in Madrid according to local law. Soon afterwards, little Alexandre is born in Luxembourg, where his parents are living.

The father, Francisco Gonzalez – Paco to his parents, Franju to his wife – hurries down to the local town hall to register the happy event. The conversation he has with the council employee is a difficult one, as the clerk insists that the child, born in the Grand Duchy, should have that nationality. However, in the end Francisco manages to have Alexandre registered with dual Spanish and Polish nationality. In accordance with Spanish custom, he intends giving his son the name of his two parents. So the clerk writes: "Alexandre Gonzalez-Kowalewska".

But there is a small problem: in Poland, ending a name in "a" shows that the bearer of that name is female, so that the son of a lady ending in "a" has to have his name ending in "i". But that is too much for the council clerk: neither Luxembourg law nor Spanish law allows the mother's name to be changed if it is to be incorporated into the name of the son. So little Alexandre is condemned to not using the Polish part of his name when he returns to his mother's homeland – except if he is prepared to put up with humiliating sneers and gibes.

[55] *"We have decided to keep the topic on our agenda, but without priority, in such a way that it will be possible to return to it in the future while at the same time encouraging those countries interested to continue their research in an independent manner."* The "lack of priority" statement from an institution that took 60 years to draft its first text is hardly a matter for optimism in terms of the likely timetable for this work to be completed.

But this family saga does not end with the eldest son. Fast-forward a few years and little Natalia is born. This time in Madrid. In between time, the political situation in Poland has become tense. To prove Natalia's Polish nationality, Anna would be obliged to show her own passport to the consular authorities of her country, and she fears that if she does so, it will not be returned to her. However, to maintain the family balance in each of its generations, Anna does not want Natalia to be reduced to just her Spanish nationality. It so happens that Anna has a Tyrolean grandmother, which entitles the young mother to take advantage of her Austrian nationality and pass it on to her children. Which simply means that the Austrian name has to be included in the child's identity. So it is added to the father's name. Which means that since they are in Spain, the double name created by the addition of the names of Francisco's, or Paco, father and mother name.

Entering these complex details into the mental software of the clerk at the births, marriages and deaths register in Madrid ends up with the registration of the birth of "Natalia Gonzalez-Suarez Weber". The mischievous fairies looking into her cot gave her the gift of a family name combining three patronymic names, none of which corresponds to her mother's and that is also a different set of names to that of her elder brother.

We will spare the reader the picaresque story of the problems encountered by the family when it intends to travel in Europe or elsewhere when they present identity documents indicating names that are so different that they seem made up. Poland's entry into the EU has not changed a thing, because the matter does not come under Community competence.

Let us just say that for the children of mixed couples, there is a problem with their names. But, so far, no-one has even suggested beginning to search for a solution to this problem.

4. Matrimonial systems

Once formed, a couple can begin to purchase stocks and shares as well as real estate properties, to handle its assets and, sooner or later, to pass it on by way of inheritance. The system that governs these rights is usually based on law in the countries of continental Europe, whereas in the Anglo-Saxon countries, it is custom and case law that creates the legal standard – and even where there is legislation in place on the issue, it is rarely codified.

As a result, The Hague Convention of 1992 relating to the law that applies to matrimonial systems has come into effect in France, the Netherlands and Luxembourg; this convention can be used to determine the matrimonial system of an Italian or Moroccan couple in France, even though neither Italy nor Morocco have signed the convention. By contrast, a Portuguese couple married in Lisbon and living in France for twenty years that wishes to adopt the French system of shared goods and assets is perfectly at liberty to do so under another The Hague Convention, this one from 1978, ratified in France, even though it is not recognised in Portugal, which considers the original matrimonial system as immutable.[56]

A source of additional complexities in federal or highly decentralised States, competence on the matter can be transferred to the regions, or just to some of them: in Spain, this power has been devolved only to the autonomous communities of Catalonia, Aragon, Navarre, Galicia and the Balearic Islands, as well as to the Basque province of Biscay.

4. Divorce

[56] Article 7 of The Hague Convention on 14th March 1978.

The European Commission estimates that the number of mixed-nationality marriages is of 350 000 per year, with a divorce rate of about 50%. This equals approximately to 170 000 divorces a year, or 16% of all divorces registered in the EU. This figure appears to have been rising rapidly for the past four years, which has resulted in an increase in cross-border family conflicts, which – because there is no clear legal solution – are sources of painful problems. For instance, Germany does not recognise alternating custody and case law is systematically in favour of the mother; or take the case of England, where the wife usually takes half of her husband's income when the marriage is dissolved.

The "Brussels" regulations do not resolve all the competence-related problems either. For instance, if a Portuguese man married to an Italian woman returns to live in Portugal while his wife stays in Italy and subsequently files for divorce, the Italian court will apply the law of the country where the marriage took place, while the Portuguese courts will use the country where the couple usually resides: it is impossible to know in advance which law will be used to settle the divorce. Another example: if two Italians have lived together in Germany for twenty years and want to divorce, even if they agree to divorce under German law[57], they will remain subject to Italian law because for both Germany and Italy, the law of the shared nationality applies.

Finally, it is very upsetting to see that cases of parents kidnapping children is on the rise within the EU, without the compromise solutions put in place pragmatically allowing any progress to be made: both the Ombudsman of the European Parliament as well as the mixed Franco-German parliamentary committee soon encountered limits to the action they could take.

5. Illness: legal disability problems.

Disability problems are unfortunately bound to increase as the population ages. Yet these problems are among the least well-regulated: two-thirds of French notaries state they are poorly armed to guarantee the legal capacity of a foreigner.

In Belgium, the various disability systems give rise to distinct reporting, while in Spain, any disability is noted in the margin of the birth certificate and in the Netherlands, guardianship has to be mentioned in the public registers kept by the clerk of the District Court in The Hague. Does a Frenchman living in London have the legal capacity to buy the accomodation he is living in? According to the French attachment rule, his ability to do so is governed by his national law, whereas the rules in England say it is property law that prevails: which gives us a "positive conflict" regarding the applicable laws.

6. Inheritance.

The European Commission estimates there are between 50 000 and 100 000 annual cases of inheritance involving nationals from several European countries.

As The Hague Convention of 1st August 1989 is not put into practice, European countries are split between the so-called "unionist" system, according to which the criterion for competence applies to the whole of the inheritance, and the "dualist" system, which makes a distinction between different categories of property.

For instance, France submits the inheritance of movable assets (bank accounts, stocks and shares) to *the law of last place of abode* of the deceased person, and real estate inheritance to the law of the location of the property, and contracts to the law chosen by the

[57] Which is more favourable if the two parties agree, since divorce is possible after a separation of one year, whereas Italian law requires three years' separation.

parties. But laws in Germany, Greece, Italy and Portugal link all of the assets *to the national law* of the person who has died. Where trading companies are involved, French law brings them under the law of the country where the *head office is located*, whereas in English law, it is the law of the *country in which the company was incorporated*. The issue of categorising the assets (are any vehicles or jewellery part of the "personal property inheritance"?) also differs depending on the Member State.

However, when it comes to the personal property inheritance of a French person living in Germany, the German court will apply the *national law* of the deceased person, which in this case would be the French law, and, for the French court, German law (*law of the most recent place of residence*): this is a case of "negative conflict". The solution lies in accepting the referral by one of the States.

A referral which may even refer elsewhere when it refers to to the law... of a third country. So, if a problem arises about the legal capacity of an English person living in Denmark to purchase a secondary residence in France, the French court will apply the personal law of the purchaser, i.e. English law, but it will refer in this case to the law of the place of residence. Which means that the French court will have to apply Danish law!

As is the case with matrimonial regimes, the fact that in some Member States the competence is transferred to the regional level does not simplify the legal landscape. In Spain, for instance, the autonomy of the wishes of the person making the will is the principle that governs inheritance law, but its interpretation by the *autodelacion* in Catalonia is not that of the *poderes de proteccion* in the remainder of the kingdom.

7. "Legal pathways" between national laws: progress is being made.

Where there is no dispute about the law which applies, we still need to make judicial action or decision "move" from one country to another? The development of "pathways" or "vehicles" for enabling this free movement encounters varying degrees of success.

7.1. Recognition of court rulings: the sophistication of avionics working to the benefit of the law.

According to the treaty of Amsterdam, the Brussels I and II regulations lay down the principle of the recognition in a Member State of the legal situation brought about by a ruling given in another Member State. This is the free movement of court rulings, now released from the ancient and cumbersome procedure of *exequatur*. Recognition is fully granted.

Does that mean that it is automatic? Yes, says article 21.2 of the regulation: the civil status documents of a Member State are updated based on a decision made in another Member State on matters of divorce, separation or the annulment of a marriage without any prior *exequatur* procedure. Yes and no, moderates article 21.3, which states that like the Airbus pilot who can resume manual control of a plane that was on automatic pilot, any interested party may request that a ruling be exempt from the automatic right to be the subject of a decision on recognition or non-recognition. One can imagine the state of extasy experienced by the authors of these articles at the time of drafting them: but will the legal subjects to whom they apply really be drunk with recognition?

7.2. A remarkable law vehicle: European enforcement orders

Victory has many fathers. Those involved with European enforcement orders (EEO) include the members of the National Chamber of Court Bailiffs when they met in Bordeaux in 1992 for their 20th congress. During the course of their meeting, the various aspects of such a vehicle were discussed at length. Then add the European Parliament to the list, which for

the first time played its role as a co-legislator on civil law matters by supporting the joint position of the Council on what became the 21st April 2004 regulation.

This enforcement order only deals with undisputed cross-border debts. A decision that has been ratified as a European enforcement order by the original jurisdiction must be treated as if it had been handed down in the Member State in which the enforcement is requested.

An interesting observation: doctrine is divided between the federalists, for whom the EEO puts an end to the dogma of the legal sovereignty of the Member States, and the sovereignists who believe that the EEO is a vehicle that carries national sovereignty across borders to prevail in other States – at the price, it has to be said, of reciprocity. Hence the opposing theorists are both satisfied and debts are recovered: quite a coup for what was just a trial!

III – PROPOSALS

This is a topic for which the French presidency has every reason to aim high. In the entire history of *Eurobarometers*, there has never been such a crushing majority among the citizens questioned: more than 9 out of 10 people want judicial cooperation in civil matters, particularly in family matters.

1. Successfully complete the work underway on several regulations

1.1. The **draft of the Rome III regulation** on the **law that applies to divorce** is needed to make up for the shortcomings and remedy the imperfections of "Brussels IIb". This text sets out the rules relating to the choice of court by the parties, the choice of the applicable law, the rules that apply if no choice of law is made and to cases of multiple nationality. It was preceded by a high-quality impact study, which included the in-depth analysis of six different options. The Parliament will take up the report by Evelyne Gebhardt. Unfortunately, the draft has been blocked in the Council by the opposition of Sweden, which has objections of principle and which wants its own national law, which is highly in favour of speedy divorces, to be applied systematically. **If the Council fails to reach a consensus, the French presidency would then find it of interest to propose that there be an enhanced cooperation**.

1.2. The same goes for the draft **regulation on maintenance obligations,** associated with the above.

At the current time, the principal law applying to maintenance debts is The Hague Convention of 2nd October 1973. Unfortunately, France deemed it a good thing also to sign some bilateral conventions that contradict it. The Brussels IIb regulations have made it easier for the relevant courts to make their rulings and have removed the *exequatur* for the application of rulings. The Commission wanted to go further based on a Green Paper published on 15th April 2004, which paved the way for the draft regulation currently under examination.

Other texts are being prepared in the form of international conventions in the framework of the Council of Europe or the ICCS. France's representatives should be particularly active in doing so, especially with regards to the recognition of the original names of individuals (an elementary right!) and the recognition of registered partnerships (such as PACS).

2. Relaunch the ratification of the main international conventions on private law, in France itself and by our partners.

This would already facilitate the solution of a many great practical problems, such as:

- **The Hague convention of 13th January 2000 on the international protection of vulnerable adults**, which so far has only been ratified by Germany… and by Scotland! A political boost is required to extend ratifications of a text that is very much awaited by the associations concerned and which has not raised any objections.

- Another **The Hague convention of 1996 on the protection of children**, failing which the Brussels IIb regulation raises more problems than it solves in cases of cross-border inheritances benefiting expatriate children.

- The European Convention on Nationality of 6th November 1997, reached within the Council of Europe, which enshrines the right to nationality as a fundamental human right and which makes provision for the issue of a certificate of nationality. This convention is supplemented by the ICCS's Convention nº 28 relating to the **certificate of nationality**. This is a straightforward document that requires neither certification nor translation and should make it easier for many "nomadic" Europeans to conduct many procedures within the Union. Unfortunately, only a minority of Member States have signed it.

- The **convention on the international family recordbook**, which dates from 1974 and that France has still not ratified yet.

- The **convention on plurilingual copies of civil status documents**, which is essential to facilitate the movement of documents likely to be recognised from one State to another, including electronically.

3. Invite the Commission to move forward on the **execution of wills and the settlement of succession matters** of a foreign nature within the European Union.

In fact, inheritance-related matters were voluntarily excluded from the scope of the Brussels I regulation. On this topic, a study was commissioned in 2004 by the Commission from the German Institute of Notaries (Dnotl), which was based on fifteen national reports. This study made two main recommendations:

- In favour of the party making the will (testator): the broadening of the choice of inheritance law by the testator, by opening up the widest possible range of choices: national law, law governing the person's usual place of residence or his/her domicile at the time the will was drawn up or at the time of death. This is the principle of *professio juris*.

- In favour of the beneficiaries: the creation of a **European inheritance certificate**, designed to overcome non-recognition outside their country of origin of statutory declarations (affidavits) stating the hereditary capacity of the parties claiming for the estate.

4. Consider the simplification of procedures wherever possible.

The International Commission on Civil Status has made some interesting proposals:

- The issuing of a ***European*** **family recordbook**, in case the *international* recordbook mentioned above would take too much time to be put in place. This document could be examined in conjunction with the European citizenship card proposed below. It would give an instant and recognised snapshot of the family situation of all European citizens, regardless of their State of residence within the Community area. It would also limit delays in verifying the

status of persons by practitioners, such as by the authorities responsible for establishing proof of hereditary qualities and issuing the future European certificate of heredity.

- The introduction of a **single information counter (or network) and the issue of certified documents** on the law that applies to cross-border prenuptial agreements.

5. Consider the possibility of relaunching The Hague process on a worldwide scale.

Even if it has been particularly spectacular between European countries, the explosion of business-related movements, setting up in other countries and, finally, migrations of every kind, is far from being of interest to the European countries alone. *Latinos* or Asians in North America, Filipinos, Indians, Indonesians or Pakistanis in the Arabian Gulf countries, sub-Saharan Africans in the Maghreb, economic migrants – even from Europe – attracted by Australia or Canada, students and researchers from all over the world, drawn to American universities, etc. are all subject to or cause comparable civil and matrimonial problems in legal, cultural and political contexts that are far more delicate than inside our cosy EU.

One of the first areas to make progress in is to obtain the modification of article 2 of the statute of The Hague Conference, which restricts admission to sovereign States only. The strict application of this article means that when it is a matter to be dealt with by the EU, Member States no longer have a vote on matters around the Conference table without anyone else replacing them. Certainly when the Community (and tomorrow the Union) is not a member of an international organisation under the aegis of which an agreement has to be negotiated, the Council of Ministers may ask for a so-called "R.E.I.O"[58] clause to be inserted, which enables it to sign and ratify the agreement. As this procedure is of limited use, in 2002 the organisation that was still called the European Community then lodged an official application to join The Hague Conference. The Union born with the treaty of Lisbon will no doubt be better-placed to negotiate the modernisation of this institution which, despite the limits that we emphasised above, has the merit of existing and having accumulated very valuable experience.

6. **Embark on an in-depth reflection on a "European international private law".**

It is striking to observe that even though "nomads" are still very much a minority among Europeans, a large of majority of the latter feels the need for some European rules on private law. According to a *Eurobarometer* published on 23rd April 2008, three-quarters of the people interviewed thought that new measures need to be taken to make it easier to access the civil courts in the other Member States, and that it would be preferable for these new measures to be adopted at a Union level through common rules. For most of them, being involved in a civil court case in another country today is a worrying prospect that is both complex and full of unknowns.

6.1. We need to specify which areas of private law need to come under:

- harmonisation: the treaty of Lisbon hardly makes it possible to extend the matter;

- the mutual recognition of positive law, as well as jurisprudence: this is how the United States were built;

- a **"28th regime": offer the contractors the choice between national law or an optional European system**.

[58] Regional Economic Integration Organisations.

This is the process to which the parties resorted on a number of occasions in commercial law when creating the status of the *European public limited liability company*[59], then the status of the *European cooperative company*[60] that we now want to extend to SMEs with the draft status of a *European private company*. For the latter, the European Parliament has stressed with the Commission that account be taken of what has been learnt from the experience of the limited company. The outcome of hard labour spread over three decades, *"is not a unified European legal form, but refers to a large extent to national law. As a result, legal insecurity is greater and any benefits in the area of costs are nil."*[61] according to the rapporteur Klaus-Heiner Lehne. This is a lesson opportunely recalled by Rachida Dati before the MEPs and which should be remembered in all of the other areas that may come under an optional European regime.

The same philosophy prevailed over the creation of the standard contract between public authorities and the *European group for territorial cooperation* (EGTC).

In the area of marriages, isn't the Franco-German prenuptial agreement based on the same principle? It is precisely a "3rd regime" available to the nationals of both countries. So why restrict this type of agreement to two States and not consider a "28th regime"?

It is this type of process that the Magellan Network is suggesting with a **European employment contract** for mobile workers.

Finally, it is a hypothesis explicitly considered by the European Commission in terms of a civil or commercial contracts in its Communication of 11th October 2004. During the same year, the 100th Congress of French Notaries also recommended *"a mid-way, consisting of the definition on a European level of the general principles for governing matters relating to contracts which, at least initially, should only be applicable if they have been chosen by the parties."*

This approach may lead to a **proposal for enhanced cooperations in some areas of the law**.

6.2. With the prospect of the harmonisation of family inheritance law, thought could also be given to some new rights that the EU could guarantee, such as a **right to temporary housing for the surviving spouse**. This right is already recognised in a number of Member States and it would take part to the implementation of a Community public order.

6.3. The creation of a **European authenticated deed drawn up by a notary** would make the movement of rights as well as their mutual recognition easier. Promoted by the Conference of the European Union Notaries, this project is on the agenda for the French presidency.

6.4. Finally, **could we consider an agreement on the definition of a "European public order"**, which would replace the different criteria for national public orders and be designed to bring together all of the countries that are signatories of the Charter of fundamental rights? We will come back to this idea in the final chapter.

Ideas such as this could be raised at the **European Day of Civil Justice, on 25th October 2008**, as well as in the context of a Workshop on legal cooperation that the European Parliament's Legal Affairs Committee is planning to organise at the end of the French presidency.

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[59] Directive 77/91 EC, amended by directive 2006/68/EC issued on 6th September 2006.
[60] Regulation 1435/2003, dated 23rd July 2003.
[61] Report dated 29th November 2006 by Kalus-Heiner Lehne on behalf of the Legal Affairs Committee.

CHAPTER III

THE INTRODUCTION OF COMMUNITY LAW INTO NATIONAL LAW

or

THE FREE MOVEMENT OF EUROPEAN LAW IN EUROPE

European "laws" take the form of *regulations* that apply directly to internal law, or *directives*. Complying with the principle of subsidiarity, directives only come into effect once they have been transposed into national law by the relevant authority – usually the Parliament of the Member State, which passes a transposition law. At the cost of a slight additional delay required by the transposition process, directives make it possible to adapt European rules to the realities, customs and traditions of the various Member States. But the effectiveness of the process assumes that the timetable set by the European lawmakers is observed and that the transposition is done in an honest manner. These two conditions are not always met.

I – THE RATE OF TRANSPOSITION

1. The overall problem.

1.1. A case law that goes beyond the treaties…

One of the first major rulings made by the Luxembourg Court extended the principle of the direct effect of Community law beyond the regulation per se.[62] *"In cases where the Community authorities may have obliged the Member States, by way of a directive, to adopt a particular form of action, the actual effect of such an action would be weakened if the persons on trial were prevented from taking it into consideration as an element of Community law."* In practical terms this means that even if the directive is no transposed, the standard in question may be invoked by an individual against the Member State from which he comes – something that lawyers describe in making a supporting comparison as a "direct vertical ascendant effect" (sic)[63].

This audacious case law has been supplemented by a number of rulings that oblige a State that fails to transpose a directive to remedy any damage that may be caused to individuals as a result of the non-transposition of the directive.[64] The French Council of State ruled along the same lines by stating very recently that the French State would be bound by its liability arising from a law contrary to European law[65].

1.2. …does not prevent practice from remaining below it.

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[62] *Van Gend and Loos* ruling, dated 5th February 1963.
[63] There is even a common sense proviso: the directive has to be sufficiently clear and precise, and its application must not require any additional measure about which the Member State would have a discretionary power of assessment.
[64] *Francovich* and *Mme Bonifaci* rulings, dated 19th November 1991. *Brasserie du Pêcheur* and *Factortame* rulings dated 5th March 1996. It is interesting to read the analysis of Professor Jean-Luc Sauron in *L'application du droit de l'Union européenne en France (The application of European Union law in France).*
[65] *Gardelieu* ruling dated 8th February 2007.

The Commission publishes its "scoreboard" of transpositions every six months. It considered the scoreboard for December 2007 as satisfactory: 22 Member States exceeded the target of reducing delays in transpositions to 1.5%, with 15 countries even below the 1% mark, with an average of 1.2% for all 27 countries. Top of the class were the Slovaks, ahead of Denmark, Latvia and Lithuania. The naughty boys of the class were, in ascending order, Greece, Poland, Portugal, Luxembourg and the Czech Republic. It was Italy that made the most spectacular progress in 2007.

Nevertheless, Italy continues to score poorly when it comes to the quality of its transpositions: Italy leads the way among those countries subject to appeals for shortcomings, followed by Spain, France, Germany and Greece. Infringements relate mainly to environmental issues, tax matters, the customs union, energy and transport. No progress was made on the amount of time it takes to deal with these infringements, which is still 25 months for old members and rising from 9 to 12 months for the new ones.

However, an average of 1.2% non-transposition does not mean that 98.8% of the directives are in effect across the whole of Europe: those texts that are lagging behind are not the same in all countries. We need to take into account what the Commission calls "the fragmentation index", i.e. the percentage of directives that do not apply in all 27 States. This index has improved in spectacular fashion over the past ten years or so, falling from 27% in 1997 to 8% in 2007. But that still means that there are 124 directives whose application is delayed in at least one Member State.

To improve this situation, the European Council has set itself the target of eliminating delays in transposition that exceed two years. However in 2007, seven Member States failed to comply with this target, with France ranking 24th out of the 27 countries.

2. France: "could do better".

2.1. Still too much inertia…

France has for a long time been one of the worst pupils in the class. The Council of Ministers of last 21st February noted an improvement: with 98.9%, France has now risen to 16th position for the *total* percentage of transpositions and has set itself a target of 99% before its presidency begins. However, **France still remains the black sheep of infringement proceedings**, with half as many as the United Kingdom and twice as many as the Community average (98 compared with 49), which ranks it 25th out of 27! France also occupies the same dishonourable position for the time needed to resolve disputes, with only Belgium and Ireland doing worse.

In its communication of 10th July 2007, the Economic and Social Council quoted two contrary examples: first that of directive 79/693/EEC on jams, jellies and fruit marmalades, first proposed by the European Commission in 1965 and transposed in August 1985 only – twenty years later – into French law; then that for electronic signatures, proposed by the Commission in May 1998 and adopted by a joint-decision of the Parliament and Council in December 1999, with subsequent transposition into French law from March 2000 – after just three months! These examples show the right and the wrong ways!

2.2. …and far too much corrosive fine-tuning.

The regional Economic and Social Council for Aquitaine has embarked on a very interesting study designed to compare the speed and quality of the transpositions made in France and Spain – knowing that for our partners, the introduction of directives into local law is a matter for the central State or autonomous Communities, depending on the topic.

The first impression, according to one of its members is that *"While Brussels tries to simplify things, the French national machine that manufactures new standards is running at full speed. The outcome being that while we thought borders were being removed, they keep on coming back in different forms."*

This pessimistic comment goes hand-in-hand with the diagnosis made a few years ago by the Chairman of one of our largest public works companies to the *Kangaroo Group*, the highly influential association of MEPs and lobbyists working in favour of completing the single market. I noted down his comments, word for word:

"In the construction business, I can tell you that there is no such thing as the common market. The relevant national bodies that set the technical or safety standards are very efficient when it comes to preserving their specific national features. Being at the head of a major group, that doesn't bother me: I apply British standards in Britain, German standards in Germany, French standards in France – and so on. So I have not come before you to complain. But I just thought that that might interest you, because the others are struggling – those who don't have the same access to the main decision-makers. SMEs are unable to adjust to each of the 27 markets, which means they are condemned to graze on their national pastures only. And the consumer is deprived of the cost-savings that he should have been entitled to expect from the common market."

Which brings us to the content of the transpositions.

II – THE QUALITY OF THE TRANSPOSITIONS

Insufficiencies in transpositions are highlighted by the actions for failure to fulfil obligations and they are sanctioned by rulings of the Court of Justice.

1. France leads the way among the 27 Member States on the blacklist for the actions for failure to fulfil obligations based on article 228 of the treaty, with a good thirty or so cases underway against it. A few examples demonstrate the embarrassing situations that our country gets itself into from time to time.

The 1985 directive on the protection of victims of defective products[66] harmonised the third-party liability regimes in this area. After taking more than ten years to transpose the directive into national law, France then transposed it improperly. It was subsequently found to be in the wrong by the Court of Justice in April 2002, refused to apply the decision and was found to be in the wrong again on 14th March 2006, with a penalty of 31 650 EUR per day: the correct transposition was then made just three weeks later, on 5th April 2006.

It has been more than a quarter of a century that our country has not applied the directive issued on 16th June 1975 on polluting water with nitrate, and this casts a dark shadow over our commitment to Europe. It also makes our protests of sincerity about our willingness to apply the elementary rules of protecting the environment on our farmers and also allows our own consumers to wonder whether their health is a secondary consideration[67]. Since then, fourteen successive French governments have prided themselves with only providing dilatory answers to associations that defend the environment, to the numerous warnings from the Commission and even to the ruling against France by the Court of Justice, handed down on 8th March 2001. How can we seriously argue that thirty years have not been enough to bring our piggeries into line with the cleanliness standards of the last century?

[66] Directive 85/374 dated 25th July 1985.
[67] Directive 75/440/EEC dated 16h June 1975.

Our position is not any better with regard to transposing the directive issued on 12th March 2001 on the dissemination of GMOs. At the time it would no doubt have been possible, as most of our partners did, to rely on the political consensus achieved in Brussels and Strasbourg to bring the topic back on a scientific field only. But that did not happen! Caught between the media moustaches of the reapers and the sterile test tubes of the researchers, the French authorities used double-language towards public opinion as Don Juan did to the two shepherdesses. This rhetoric virtuosity did little to win over the Community milieu, earning us a first negative ruling for our failings from the Court of Justice on 15th July 2004. Then, noting on 12th March 2008 that *"France had not properly transposed all of the provisions of the directive and consequently had not completely carried out the Court's first ruling"*, the general attorney of the European Court of Justice, demanded a fine of 235 764 EUR per day's delay.

French difficulties are not restricted to these issues, whose sensitivity in our national politics is well-known.

In October 2006, the Commission prosecuted France and six other member States through a reasoned opinion, criticising the condition of nationality imposed on access to the profession of notary. In his address to the Higher Council of Notaries, the French Minister of Justice defended the French position by stressing the profession's role as public and ministerial officer, which could explain the exception to the general directive on services, but not the condition of nationality. We have already seen the consequences of the *Burgaud* ruling for all public competition to public office.

A decree issued on 10th August 2005 provided for the creation of a commission responsible for implementing the "Hocsman procedure" to examine cases of European citizen health professionals who obtain a qualification outside the EU that is recognised by one of the Member States, but not by France. Unfortunately, this procedure is not always applied. In the meantime a French midwife, who only had a study certificate from Nantes, but who then worked for ten years in the Cape Verde Islands and had her training ratified in Belgium, has been refused recognition in France.

A German hospital doctor, Dr D, works at Le Mans hospital after gaining his thesis and working for several years in Germany. He has not been able to use his years of practice in Germany as the status for being a hospital practitioner in France does not take account of any experience gained by working abroad under the pretext that the work carried out is not necessarily equivalent. The national Ombudsman has asked for this to be reformed.

Likewise, the Court has just ruled as non-compliant with Community law the French law that prevents non-French EU citizens from being appointed as a captain or officer in the merchant navy[68]. The French authorities have promised to comply by the beginning of 2008.

2. However, our country is far from being the only guilty party in these matters.

Just recently, The Court of Justice ruled as non-compliant with Community law a German law dating from 1998 establishing quotas by region for psychotherapists practising under the national health system, with a system for ratifying professional qualifications and working experience that did not take account of work carried out in another Member State[69].

On 3rd April 2008, the Commission issued a reasoned opinion against Belgium, the Czech Republic and Spain for failure to notify transposition measures for the directive on the recognition of professional qualifications.[70] On the same day, the Commission sent Austria a letter of warning about the non-execution of the Court of Justice's ruling relating to the provision of services by private bodies inspecting "organic" products.

[68] Ruling C-89/07 dated 11th March 2008.
[69] Matter C-456/05 dated 6th December 2007, Commission vs Germany.
[70] This relates to Directive 2005/36/EC.

The Court of Justice had to rectify the very unusual approach that the Flemish parliament was using to meet European targets. An initial decree from this parliament, issued on 30th March 1999, established a social aid that European citizens living and working in Dutch-language areas could benefit from. With the Commission having raised the incompatibility of this condition of residency with the basic directive of 1971, the regional parliament adopted a new decree on 30th April 2004 which extended the benefit of the aid to all Europeans working in Flanders and living either in Flanders or in any other European territory apart from Belgium's French-speaking provinces! The Court of Luxembourg declared this Belgian law as being anti-European because it discriminates against other Belgians. Perhaps the Court was inserting a little humour into the issue by de-dramatising this unfortunate matter by dating its decision on 1st April?[71]

The insufficiencies in transposing the directive on the right to free movement and residence for "non-workers" have even prompted the Commission to commit to no fewer than 19 infringement proceedings, 4 of which have ended up in appeals before the Court. The most frequent difficulties relate to the rights of spouses who are nationals of other countries, as well as to those identity documents that remain required by the administrative authorities or by airlines when crossing internal borders.

Finally, we should mention a case brought to our attention thanks to this mission. Some Dutch retirees living in France have approached MEPs from the South-West about what they consider to be a breach of regulation 1408/71 by the new Dutch health law passed in 2006 (*Zorgverzekeringswet*). Since this law was passed, Dutch retirees living abroad are not only required to contribute to the Dutch health system, but they also have to pay twice as much as their compatriots living in the Netherlands. More than that, this contribution is deducted at source on the pensions that they receive. According to our correspondents, these Dutch retirees living in the United Kingdom, Spain and Italy may also have to pay twice the illness contribution as health insurance is funded by taxes in those countries.

III – CONTROLS AND POSSIBLE IMPROVEMENTS TO THEM

1. Ex ante control : notification.

Directive 1983/89/EEC, complemented since then, obliges Member States to notify the Commission of national regulations that include technical rules at the draft stage. The Commission and the States then have three months to respond. The Commission may adopt observations or detailed opinions.

This procedure has proven well-founded. It has received powerful assistance from the *CIA Security International* ruling[72], through which the Court deemed that a national text adopted without notification should be considered as never having existed, and hence does not have any legal effect! Over a period of twenty years, over 10 000 draft national regulations have been scrutinised this way. The dialogue entered into upstream between national and community governments makes it possible to avoid many subsequent difficulties. The triennial application reports produced by the Commission show that in 90% of cases, national drafts are amended according to what the Commission asked for.

2. Ex post controls: Actions for failure to fulfil obligations (article 226 of the treaty).

2.1. The handling of infringements includes an administrative dialogue phase with the Member State (so-called "pre-226" letter, warning, reasoned opinion) and, if appropriate the submission to the Court. On average, half of the warnings end up with reasoned opinions

[71] Ruling C-212/06 dated 1st April 2008.
[72] Ruling dated 30th April 1996 (C-194/94).

and 15% go as far as the dispute stage. In over 90% of cases, the Court sentences the accused State.

However, these figures should not hide the drawbacks of the process.

- The length of proceedings for the wronged citizen: the waiting time to come before Community courts is added to the time to come before national courts – which can add up to several years. It is not unusual to see a State violate the Community law without being punished in the hope of discouraging the plaintiff and then complying just before the case comes before the Court in order to avoid having a ruling issued against it.

- Complexity. Once the infringement proceedings have been completed, the plaintiff is required to initiate some national proceedings to request compensation for the damage caused by the non-application Community law!

Alongside the infringement proceedings, a Council regulation has introduced a prevention and repression system against persons whose aim is to disrupt the internal market[73]: this is designed to prevent the type of action taken by French strawberry producers against their Spanish competitors[74]. But these proceedings are dedicated to businesses more than individuals.

2.2. The introduction of financial sanctions against States at fault is definitely a progress. It arose first of all from Court case law.[75] Then came the Maastricht Treaty, article 228 of which enables financial penalties to be imposed on Member States that do not comply with the Court's rulings on infringements. It was not until the year 2000 that the first ruling went against Greece: a fine of 20 000 EUR per day until the ruling dated 7th July 1992 for the violation of two directives from 1975 and 1987 relating to the treatment of waste was carried out. In 2003, it was Spain that was ordered to pay a fine of 624 150 EUR for the non-execution of a Court ruling on its failure to transpose the directive on bathing water. The simple fact that the Commission announces its intention to refer to the Court often has a deterrent effect, as in the case of Germany and Italy, which were dragging their feet on transposing a number of environmental directives.

The treaty of Lisbon has brought with it an interesting improvement. If national transposition measures are not communicated to the Commission, it will then be able to refer to the Court *both* for infringement cases *and* for demands for financial penalties. The penalty can be decided on as soon as the ruling on the infringement is made, which will allow for a significant speeding up of the current two successive proceedings.

2.3. Other proposals have been put forward by academics to remedy these shortcomings[76]. The main proposals deal with:

- The abandonment of the prior letter ("pre-226"), which is not provided for by the treaties.
- The shortening of the time that the Commission allows itself to answer.
- The issue by the Commission of a document indicating the period during which the State has not complied with Community law in order to facilitate compensation appeals before the national courts.

[73] Regulation 2679/98/EC dated 7th December 1998.
[74] Ruling dated 9th December 1997 *Commission vs France*, known as "Spanish strawberries".
[75] *Francovitch* ruling C-6/90 dated 19th November 1991.
[76] See "*Control of the application of Community law*" by Professor Rodolphe Munoz from the University of Liège. Also read the remarkable thesis by Maiténa Poelemans on *Sanction in the Community legal order*, with a preface by Professor Henri Labayle (Editions Bruylant).

A simple measure consists of **introducing an execution article into each directive obliging Member States to notify the Commission with a table setting out the provisions of the directive and the corresponding national transposition or execution measures**. The Commission and the Parliament have adopted the habit of proposing this article systematically, which the Council has unfortunately adopted the habit of refusing. The **French presidency may well be an opportunity to reach a political agreement from Heads of State and Government on the principle of a provision that is impossible to refuse at such a high level**.

But we should not delude ourselves: in the end, at least with regard to the application of Community law, we should admit that **a dispute is a way of supplementing the law, rather than a tool to be used to deal with an individual case**.

IV – MAKING FRANCE EXEMPLARY :

France has every reason and all the resources needed to be the best pupil in the class in terms of transposition and application of Community law.

First of all, we should point out that, on average, barely 1 directive out of 6 requires the intervention of the national Parliament to be transposed into internal law: the separation of the areas of the law and the regulations introduced by the Constitution of the 5th Republic means that it is possible to escape the constraints of a parliamentary agenda that is always overloaded.

Certainly this agenda is accountable for a large proportion of the delays encountered: at 30th June 2006, 71% of the directives pending came under the jurisdiction of the lawmakers, at least in part[77]. But there is a procedure that has demonstrated its effectiveness: the *laws bringing various provisions for adaptation to Community law* (DDAC). Why don't we use them more frequently?

In addition, we should not deprive ourselves of any benefits allowed, even in this area, by new information technologies. Specialised French companies have developed software for analysing legislative texts for the purpose of transposition. This software is being tested in Romania, as well as in Asia as part of ASEAN. If the results are conclusive, France would be well-placed to draw inspiration from them.

Other proposals, already mentioned, merit reiterating.

1. In 2007, in response to the report by Jocelyne de Clausade, the Council of State made a series of general proposals to modify our process for examining directives[78]. The main proposals of this report do not yet appear to have been put to good use on a political level.

However, we should note that in a circular letter sent to his Ministers at the beginning of April 2008, the Prime Minister invited them to issue application periods for *national* laws within a maximum time of six months after their publication in the Official Journal and to devote the same amount of attention to the transposition of European texts.

2. In the autumn of 2007, the Committee chaired by Edouard Balladur went further when suggesting three innovations:

[77] Public report 2006 from the Council of State.
[78] Public report 2007 from the Council of State, *"French and European Union administration: what are the influences? What are the strategies?".*

- The creation in each assembly of a *European Affairs Committee* with responsibility for checking the compliance with the principle of subsidiarity and sorting the European issues to be passed onto the permanent committees.

- A highly simplified procedure to adopt transposition laws, with debate being reserved to their examination in committee before a straightforward single ratification vote during a public session. Articles 103 to 107 of the functioning rules of the National Assembly introduced a simplified examination procedure for the ratification of international treaties: so why not transpose this procedure to… transpositions? Other countries have already experimented this type of procedure with success.

- The obligation of passing on to Parliament not only those legislative drafts already provided for by article 88-4 of the Constitution, but also any document or deed emanating from European institutions for the purpose of improving the information given to the Parliament and enabling it to increase its influence upstream of the drafting of European texts.[79]

These proposals deserve examining all the more since they come from institutions and personalities that are eminently competent and who are not known for being adepts of the European federalism dogma.

In this area, as in many others, **the political aim of the French presidency should be to step on the podium as one of the three European champions at least by December 2008**, while providing itself with the resources it needs to stay there for a long time.

A test of our political will will be the transposition of the famous "services" directive. The initial project due to the former Commissioner Bolkestein having being totally rewritten by the European Parliament along the lines wanted by France, it would be particularly detrimental if our country should turn out to be unable to transpose it within the required timetable[80].

[79] Final report of the Committee chaired by Edouard Balladur, dated 29th October 2007.
[80] In principle, the corresponding draft law should be on the agenda for the Council of Ministers before 1st July 2008. Having been one of the authors of the rewriting proves carried out in the European Parliament, Jacques Toubon expressed his concern on 23rd April 2008 at the European information website *Euractiv.fr* about the preparation of this text: *"the means used by France are not sufficient to achieve an 'exemplary transposition' as was announced last year,"* he stated.

CHAPTER IV

THE EUROPEAN CITIZEN AND PUBLIC ADMINISTRATION: THE PROBLEMS

Now we have reached the third stage. The European law has been adopted and then transposed. How are we given information about the decisions taken in Brussels which apply in our own countries? How can the citizens find out about the rights that are granted by the European legislation? And, once they have the information, how can citizens make their cases heard?

It was not possible for the author of the present report, within three months, to consider the hundreds of different cases and the administrations in charge in order to analyse procedures and malfunctions in a very accurate way. However, an attempt has been made to draw up a list of the problems which the administrative machinery is unable to resolve satisfactorily, and of the main possible solutions.

I - INFORMATION ON EUROPE: SEARCHING FOR THE UNKNOWN OCEAN

An obvious subject, a major subject, a source of irritation.

Currently headed by the European Commission vice-president Margot Wallström, DG Communication leads a network of 27 Commission Representations located in the national capitals, plus 800 information relays. It has an annual budget of €88 million. It commissions and manages the *Eurobarometers* on the basis of information from the Commission's other departments: two major general surveys and around twenty polls on specific issues are carried out annually. The *YouTube* site (*EUTube*) received 10 million visits between July 2007 and April 2008. The Community satellite information service, *Europe by Satellite* (EbS) will double its capacity this year. It is expanding to include the communication methods, websites, brochures and even local branches set up by the other main DGs, not forgetting the European Parliament's own actions, either as an institution or through its political groups. We will see below that the European Ombudsman is not lagging far behind.

This network was strengthened after the shock of the 'no' votes in the referendums of May and June 2005, with the creation of the *Europe Direct* information points*,* local outposts of the site of the same name (see below): the Paris Maison de l'Europe became a part of this network on 25 March 2005, and Catherine Lalumière, the new President of the French Maison de l'Europe Federation, aims to obtain authorisation for all 28 of the establishments in the organisation.

And yet, despite these resources, despite the appointment of a Commissioner, constantly increasing budgets, the opening of Commission Representations and Parliament information offices in all the capital cities and other major European towns, and a host of initiatives taken by other Community services, national governments and even NGOs such as the European Movement, the result is distressingly disappointing. **The uninitiated European citizen thirsty for knowledge waves a divining rod in an attempt to prise out little morsels of information, unaware that a vast ocean is within reach. But an ocean that remains unknown**. There is no consistent system of information targeted towards the citizens, but rather a profusion of information sources accessible to those in the know. Some "happy fews", not very happy but very few.

Successive meetings with those in charge of information and the processing of mail or complaints in the various institutions leaves one somewhat puzzled. Highly competent officials, with the best of intentions, sometimes having designed very effective partial systems, face difficulty when trying to find their way in an overall organisation which does not seem to really exist. How many citizens do they manage to reach, and with what results? Is it their responsibility to answer this question, deal with that case? Or is it the task of another Community service, or perhaps Member State? How can we ensure an effective political use of the mail addressed to them? The information services themselves, asked about their own role, tend to reply with question marks.

II – FROM GENERAL INFORMATION TO THE HANDLING OF INDIVIDUAL CASES

The following simplified presentation restricts the focus to information relating more particularly to citizens' rights.

All the Commission's information websites mentioned below can be accessed, more or less easily, from the overall portal *Europa*[8181].

1. The first stage: information on citizens' rights within the Union.

1.1. General information is provided by the portal *Your Europe*. The website has the merit of being easily accessible. It is divided into two parts, information for businesses and information for citizens. It aims at providing practical and detailed information on the "rights and opportunities" of the European Union citizens, with advice on how to exercise these rights in practice. The concept is interesting because, on the basis of the general information provided by the Commission, every Member State is invited to make its own presentation in its official language.

However, after an easy beginning, the journey includes some unpleasant surprises. For example, on selecting the page "France", the users discover a blank screen bearing the inscription: "*This information has not yet been updated by the competent Member State. "* The troubles begin...

1.2. Legal information, while open to all, tends to be aimed at legal professionals. There are plenty of websites and they are difficult to compare and very uneven.

According to its designers, the best website is the national public service network *Legifrance.* It enables the electronic distribution, free of charge, of both Community and national law. It received 23.5 million visits in 2004 and 32.1 million in 2006.

Created by the Commission on the *Legifrance model, the* Community site *Eur-Lex* also has many advantages. The texts are well organised, classified in different collections: treaties, international agreements, legislation in force, preparatory acts, case-law, and parliamentary questions. But the journey on the *Official Journal of the European Communities* (OJEC) area of the website is very difficult, simply because there is no key words search engine.

The other major website is *Curia,* the ECJ website, which naturally specialises in publishing rulings. The Court manages to upload, *in real-time*, its rulings immediately translated in all the official languages of the Union.

[81] All these sites, and many others, are listed at the end of the bibliography in the present report.

For current legislative procedures, the Commission's *Pre-Lex* website is in competition with the European Parliament's excellent legislative observatory, known as *Œil*, which is much easier to use.

In April 2006, the Office for Official Publications of the European Communities launched *N-lex*, an experimental site which offers access to the Member States' national data bases. It was designed along the lines of the US equivalent, the *Global Law Information Network* (GLIN), linked to the *Library of Congress.*

Other information sources intended for the use of specialist lawyers or the general public include:

-The *Eurojus advisory service* One of these is located at the Commission Representation in Paris. It can be contacted by mail, or the office can be visited every Wednesday at 288 Boulevard Saint-Germain. It sends a monthly report to Brussels. *Eurojus* should not be confused with the *Eurojust Agency,* a European judicial cooperation body, which uses the Internet for its own communications with correspondents in Member States.

-The *European Judicial Network* has a very well-run website, *civiljustice*, in 22 languages. Organised into 18 areas of civil and commercial law, it can be freely consulted, but it can be updated only by Community and national administrations. The Commission is in favour of opening it up to legal professionals such as notaries, which would entail a change of presentation and design. It also hopes to systematically collect information from the courts regarding practical difficulties encountered when dealing with actual cases

-The *European Judicial Atlas on Civil Matters* The portal *home/judicialatlascivil* can be used to identify the competent courts, complete forms on-line and in some cases to translate them in other languages.

-The oddly-named *Fiches belges* are designed to facilitate judicial cooperation for criminal cases.

-INCADAT, the *International Child Abduction Database* summarises the key points of case law from the national courts on the application of the 1980 Hague Convention on International Child Abduction.

With an *acquis communautaire* which now fills 70 000 pages of the *OJ*, the time has come to create a single European data base covering primary law, secondary legislation, international agreements concluded by the European union, proposed Community texts, the ECJ's case law, and the texts transposing directives in all the Member States.

Within the framework of the French presidency, the general secretariat of the government has offered to make the most of the experience gained with *Legifrance* on a European scale (see annex). **An overall review could be carried out during a conference on access to European law planned for December 2008 at the Senate.**

2. Second stage: individualised, interactive services for the citizens submitting a specific case

The key website here is *Europe Direct.* Alongside the central information service, *Europe Direct* has developed a network of local branches, often run by the Maisons de l'Europe associations. Oddly, the network is managed not by DG Communication, but by DG Internal Market.

Through *Europe Direct,* the Commission has developed an efficient tool. Consulted by mail or through a single telephone number accessible from all 27 Member States[82], it works in 20 different languages and answers the most practical questions: "*I live in Greece ten months a year, because of my work. Should I register my car there?" "Where can I get a European health insurance card in Lithuania?" "I am unemployed and living in Spain. Will I lose my Spanish unemployment benefits if I have a job interview in Denmark?" etc.* An expert external audit carried out in 2006 demonstrated an impressive level of satisfaction among callers: more than 90% of calls were answered straight away, 80% of callers were satisfied with their reception, and the same proportion received a detailed answer within less than three days. These results were confirmed by the test calls ("*mystery calls*") from anonymous inspectors.

The tool has just one fault: its existence is a carefully guarded secret outside the Community microcosm. In February 2008, following the press briefing held in Brussels to introduce the present mission, a survey was carried out among users of the European Parliament intranet *Newshound.* Of 87 who answered, only 24 people knew about the existence of the website, while 83 - three quarters - were completely unaware of it. The proportion was the same among masters' students studying Community law in Bayonne, and only reached one third among members of the French European Movement who were questioned by their headquarters. Even worse, half of those who said that they had heard of the service never used it. The same survey was then carried out among senators representing France abroad and a group of senior French officials specialised in Community affairs, within even worse results. *Europe Direct* is contacted 100 000 times annually, i.e. around a dozen times per country and per day, whereas it has a potential public of 495 million European citizens of whom 10 million live outside their country of origin.

It is true that there is also a *Citizens Signpost Service* which can be contacted directly or via *Europe Direct.* The service benefits from the participation of a very efficient external service, the European Citizen Action Service (ECAS). Unfortunately the home page of the service is very brief and not very appealing. Bizarrely, the name of the site (*Citizensrights*) corresponds neither to the English nor the French name of the service (*Service d'orientation du citoyen*). And at this stage it only gives legal advice; in the event of dispute, in principle, the CSS does not negotiate with the competent national administrations.

3. The third stage is that of the handling of a case or of a problem.

Here we shall mention two initiatives which reveal the interest of the existing devices as well as their limits.

3.1. The first is the aptly-named *Solvit* network. Individuals or businesses facing some problems related to the internal market can get in touch with this network either directly by telephone or by mail. The network, coordinated by the Commission, depends on *national administrations themselves* exchanging information, cooperating and seeking solutions.

Set up in July 2002, the *Solvit* network has proved to be useful: it makes it possible to resolve disputes in less than two months, while the traditional procedure via the Commission takes no less than 26 months! The on-line submission system, launched in December 2006, increased contacts by 75% in 2007. The success rate for the resolution of cases is very satisfactory, reaching 83% in 2007, and as much as 90% in Germany, France, Italy, Romania, Portugal and the Netherlands.

And yet *Solvit* appears above all as a remarkable success story **for... concealing information**: after six years of operation, the Commission is congratulating itself on the

[82] The number is 00 800 6789 10 11. The Commission's representation in Ljubljana had the intelligence to put it up in large numbers on its street entrance door; as office hours are not unlimited, residents of the Slovene capital have more easily picked up the habit of turning to *Europe Direct....*.

submission of 70 new cases every month. But, given that the network covers the 30 countries of the European Economic Area[83], this actually amounts to an **average of less than 3 cases per country - less than one a week!** Furthermore, the recent increase in submissions is entirely due to the *citizens* bringing their personal problems to the network, while *businesses'* complaints, the original priority of *Solvit*, have stagnated around 150 a year - one every two working days. This rate is not even reached in 13 Member States (including France), where the Commission considers that *Solvit* centres are short of qualified staff: Commissioner McCreevy is due to report to the governments concerned in the near future.

It should be added that an introductory page which starts by detailing what *Solvit* is not and what it cannot do is not particularly appealing to the average visitor. Moreover, 80% of on-line submissions are off-topic (the internal market) and have to be forwarded to other services.

3.2. Another surprisingly under-used service: the 112 emergency call service.

A decision of the European Parliament of 29th July 1991 introduced a *single European emergency call number, 112*, intended to respond to calls for assistance, made no matter where, by any person situated on Community territory. At the time, it was estimated that if the system worked well an additional 5000 lives would be saved each year.

Seventeen years later, the France 2 correspondent in Brussels dialled 112 from the heart of the Union, the Rond-point Schuman. The operator spoke neither Spanish, nor Italian, nor German. The same experience was repeated from the Eiffel Tower, although officially the Paris fire brigade can answer in 20 languages. The magazine *Premier Secours* carried out an independent survey of the delays and imperfections in the system[84]. From the beginning, the 112 emergency number has been a victim of scepticism on the part of administrations and a desire to defend their own patch in the emergency services. In France itself, it was decided to introduce the number on 31 December 1996, but only on a departmental basis, and for the use of "*tourists who are used to using this emergency number at home*." As a result, only 27% of calls in France in 2006 used 112, as against 73% to 18[85].

Following the adoption of a Written Declaration by the European Parliament in 2007, the European Emergency Number Association (EENA) launched a genuine action plan to promote this under-used tool. (see annex).

4. Specialist networks

Other sites are aimed at specialised publics, generally mixing information with the handling of individual cases. Among the dozens of services, a few deserves to be picked out.

4.1. Consumers

DG Health and Consumers has developed a *European Consumer Centres Network* which recorded more than 5000 on-line contacts in 2007, regarding cross-border transactions, in particular e-commerce. The Kehl centre already mentioned is competent for both France and Germany. Where it is unable to resolve a problem itself, it can direct the citizens towards some specialist mediators.

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[83] The European Economic Area includes the 27 Member States of the EU, plus Norway, Iceland and Liechtenstein

[84] *Premiers Secours* no 1. 1 December 2007.

[85] Will the French presidency follow the example set by the Slovene presidency? On the motorways in the former Carniola, very visible panels recommend 112 as the only number to use in a emergency

4.2. Health

The 28th and 29th February 2008 saw the launch of the European Union Network for Patient Safety, "*EUNetPaS*" in Utrecht. This network is not directly aimed at the patients, but rather at professionals, in particular those working in hospitals, with the aim of reducing medical, diagnosis or treatment mistakes.

4.3. Education

4.3.1. A Commission website provides a contact point in each country for the recognition of academic and professional qualifications. In France, this is the Centre ENIC/NARIC, run by the Centre international d'Etudes pédagogiques (CIEP) in Sèvres and responsible to the national Education Ministry.

Created in 1984, this network has merged with its equivalent set up by the Council of Europe and UNESCO, ENIC, and it maintains links with the Information *Network on Education in Europe*, EURYDICE. It is supported financially by the *Lifelong education programme.* Although it is scarcely known outside the circle of Erasmus students, it has at least the merit of giving them satisfaction.

One small reservation: the presentation of the "Naric network" on the Commission's site is a little outdated: at the end of March 2008, the sub-heading stated that the network was aimed at *"Member States of the European Union, the countries of the European Economic Area and the associated countries in Central and Eastern Europe, Cyprus and Malta*". It is to be hoped that the information given is updated more frequently than the home page.

Researchers are more directly targeted by the *European researchers' mobility* portal.

4.3.2. Another source of information on education in Europe is the *Eurydice network.* Eurydice has an accessible website, with national pages on education systems and the reforms under way. It is more reliable than the *Euroguidance network* on "lifelong education and careers guidance" which rapidly orientates visitors towards national websites.

4.3.3. A source of information or of confusion? The *Ploteus* learning and training opportunities portal is well laid out, but directs visitors to the European youth portal *Europa Youth*, which has a broader remit, and to the site *Fit for Europe*, which itself is linked to both *Eures* and *Euroguidance* : what it the logic behind these duplications, if not the emulation of different administrative services?

4.4. The mobility of workers and social rights

4.4.1. The EURES network (*European Employment Services*) was set up in 1993. It is a single Community service bringing together 750 qualified advisers and an Internet portal giving access to more than one million job vacancies throughout Europe. Since 2006, the website includes all the job vacancies offered by Member States' national employment services, accessible on the portal in 23 languages, and advisers offer individual support to mobile jobseekers and their families. The network is supplemented by specialist websites, such as EURAXESS for researchers.

When interviewed by the rapporteur, the Commission admited that it had no recent figures on the effectiveness of the network in helping people into work. This is to admit that the system is far from being ideally exploited. In France itself, the relevant services

acknowledge that the EURES programme and portal are insufficiently used by the public employment services (ANPE, ASSEDIC, local offices).

The Commission's *action plan for mobility* proposes to improve the service to meet the needs of specific categories of people, including the long-term unemployed, young workers, older people, women, and self-employed and seasonal workers, with the aim of helping jobseekers individually to come up with a full career plan including their reintegration into the labour market when they return to their country of origin.

4.4.2. In France the competent body for all social security problems is the *European and international social security liaison centre*, CLEISS, set up in 1959, in the IXth arrondissement of Paris. This is the organisation which acts as a clearing house for liabilities between bodies, but it is also responsible for providing information. At the Community level, disputes between national administrations are handled by a strange and little-known body which the Commission nevertheless considers to be efficient, the *Administrative Commission of the European Communities on social security for migrant workers*, which is responsible to the Council.

4.4.3. *Eulisses (EU Links & Information on Social Security)* was set up in December 2006, as an extension of the European Year of Workers' Mobility. After fifteen months, there is still a vast gap between its ambitions - to handle *all* social security problems, both Community and national - and reality. It is only really operational when it comes to pension issues.

At the same time, each Brussels office is launching initiatives without bothering too much about what already exists or about the synergies which might be developed with other information providers. Thus in mid-February it was in the regional press that European MEPs for Aquitaine and Poitou-Charentes learned that a contact point for a new network, the *Enterprise Europe Network*, had been set up in Bordeaux. This was designed to merge the old network, the *Euro Info Centres,* which provided general information on European policy as it affected the business world, and the *Innovation relay centres* promoting innovation in SMEs. In Bordeaux, it unites the two regional Chambers of Commerce and the regional Oseo delegations. The Commission's press release of 7 February announced that there would be more than 500 contact points of this type, and that "*all SMEs will receive information and a personalised service tailored to their needs".* Would this at last be the common-sense one-stop shop we had all been hoping for? Well, yes... the DG Enterprise one-stop shop.

4.5. A network of decision-makers and leaders of opinion

The European Parliament introduced an *information network pilot project* in its 2007 budget[86]. The idea was to establish a network for the sharing of information and ideas among members of national parliaments, journalists and other leaders of opinion. A website was due for launch in May 2008.

An original initiative has also been taken by the French Ombudsman to monitor the ECJ's case law. Some thirty major decisions had laid the basis for citizenship rights even before the advances in the treaties and the Charter. The Ombudsman sends to the central administrations a monthly memorandum on the evolving case law compiled by a professor of law.

III - THE OUTCOME : CITIZENS OR GALLEY SLAVES?

Once a citizen has been informed of his rights, and has found the person or the

[86] Point 33 of the Resolution of 14 December 2006, budget line 16 03 06.

contact to help him bring his case, will he easily achieve his ends? And how is the administration organised to handle such requests fast and in the right spirit?

In earlier chapters, we have reviewed the areas in which European law seems inadequate (Chapter I) or poorly transposed (Chapter II). It is now a matter of identifying the cases of disputes or misunderstandings which can be attributed to poor information or to the bad faith of the services which are supposed to apply the law.

Alongside the complaints themselves, a valuable source of information is provided by the regular summaries produced by the *Citizens Signpost Service* and by expert networks on the application of the Community law on the free movement of labour, coordinated by the *Center for migration law* at the University of Nijmegen (Netherlands). The difficulties lie around the following points.

1. Exercising the right to residence

The key text here is the Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. This brought together a dozen previous regulations and directives which applied to different categories of the population, and incorporated the ECJ's case law relating to Articles 12 and 18 of the Treaty. The deadline for transposition was 30th April 2006.

1.1. An administration more at ease to enforce a legal obligation than to apply a right to opt granted to the citizens

In France itself, problems related to the right to residence are the most frequently raised, both by consulates (Portugal, Spain, Germany, Poland, Finland, Estonia and Slovenia) and by *Solvit* correspondents. The most frequent complaints relate to the misunderstanding resulting from the abolition of the obligation to obtain a residence card as it came hand in hand with the granting of a right for citizens to obtain such a card by request[87]. This is often an issue for the Portuguese, whose identity cards do not mention their address, which prevents them from obtaining a cheque book or taking out an insurance policy. Some prefectures, notably in Ile-de-France, deliberately fail to observe this right. The Portuguese people also complain about the practice common in some French departments of shortening their family name, traditionally consisting of both their father's and mother's : the complications and misunderstandings arising from this might lead to some resentment.

In the absence of residence cards, some Portuguese consulates, including the consulate in Bordeaux, issue a *consular registration certificate* which is sometimes accepted by some companies or administrations. They may also agree to issue *certificates of declaration of loss of official documents* to Portuguese nationals who do not wish to go to the police, which in any case only records theft reports.

The requirement to provide evidence of income and of benefiting from health insurance for a stay of more than three months often causes practical difficulties due to the obligation to renew the European health insurance card frequently. In addition, there are fairly numerous cases of Europeans moving from the universal medical cover scheme to the state medical assistance scheme, thereafter falling into a private insurance scheme which cost is prohibitive for elderly persons with serious illnesses. Also, as the author of this report has experienced himself, the competent social services are sometimes puzzled and even ill-informed about the authority empowered to certify the level of resources of European migrants in their country of origin.

With the increasing number of pensioners moving to our country, at first as owners of

[87] Article L 121-2 of the Code governing the entry and residence of foreign nationals and the right to asylum.

second homes and later permanently, the problems of disabling diseases are unfortunately more and more frequent. In the case of the Portuguese, for example, the renewal of legal recognition of incapacity must be done in Portugal itself, by an appeal Court, which is the cause of delays and pointless costs.

Another issue evoked by the consuls in France: consular authorities are not systematically informed when one of their nationals is being detained. This duty has recently been restated in a long circular letter of 18th September 2007[88].

The Slovene consulate also reports that prefectures lack an appropriate computer code to deal with certain less common situations (a Slovene national married to an Italian national and living in France for thirty years; a student married to a third country national, etc.).

A next surprise for consulates may well be on the horizon: Community nationals wishing to establish their main residence in France (beyond three months) will be required to make a declaration to the mayor of their municipality. This new obligation is outlined as a service to the citizens concerned: it will help facilitate their registration on the electoral lists. A useful service indeed, when we consider that this declaration does not imply recognition of the right to residence (?), that it will not be necessary in the event of a subsequent change of address (??) and that failure to take advantage of this generous formality will expose the offender to a fine of €750 (!!). Welcome to France! We may still have some time to stop the hand due to sign the draft ministerial decree.

1.2. Is it really a consolation? The situation is not necessarily any better among our partners.

French nationals living abroad report that a residence card is still compulsory in Austria and in the Land of Bavaria. In Spain, the telephone number for the residence permit renewal service is almost impossible to reach, although a valid card is needed, in order to obtain health care refunds, inter alia. Abnormal difficulties in obtaining the card have also been reported in Helsinki and in Italy. In Greece, the Ombudsman has had to intervene to obtain a residence card for the Brazilian wife of a British national, five years after the initial application. The Austrian Ombudsman for his part has had to remind the Klosterneuburg municipality that the seasonal rate to access tourist facilities could not discriminate between "residents" and "non-residents".

When considering the residence right of non-European spouses, the Swedes follow a strange logic which leads them to be more circumspect when the other spouse is Swedish than when he or she is a national of another Member State. A comparable perfectionism leads the Irish authorities to demand that the non-Community spouse of an Irish national should *"provide proof of having resided legally in another Member State before arrival in Ireland"*[89].

1.3. **An unnoticed time bomb: the unconditional right to residence**.

Looking beyond these isolated problems, the medium term consequences of the radically new principle embodied in the directive should not be under-estimated. **From now on, after five years of residence, a European national will acquire a permanent**

[88] Joint circular DAP-PMJ4 of 18 September 2007 issued by the Directorate for Criminal Matters and Pardons and the Prisons Department.

[89] Generally speaking, an unintended consequence of European law and the Commission's diligence is to lead each Member State to monitor much more closely the marriages of its own citizens with third country nationals than the same foreign marriages contracted on their soil by nationals of other European States. Might this suggest a possible new avenue for those promoting fake marriages for immigration purposes?

residence right without any income condition. By doing so the European secondary legislation merely confirms the interpretation given by the ECJ to Articles 39 and 42 of the EC Treaty: since the rulings on the cases of *Martinez Sala* in 1996 and *Rudy Grzelczyk* in 2001, the Court has stated that the Union citizenship is meant to become the fundamental status of the Member States' nationals, enabling them to enjoy the same treatment in law irrespective of whether they are employees, students, unemployed, inactive or retired.

Year after year, this case law is becoming stronger. Let us mention only the most recent decisions, in the *Hartmann* case the Court interpreted an "old" regulation from 1968 by ruling that the unemployed German spouse of a migrant worker working in another Member state could not be excluded from the receipt of the German child-raising allowance on the grounds that she had neither domicile nor habitual residence in Germany[90]. In the joined cases of *Habelt, Möser and Watcher* on the issue of the payment of an old-age pension to displaced persons of German nationality or origin, the Luxembourg Court prohibited the Federal Republic from subjecting contribution periods completed outside the Federal Republic to the condition that the recipient resides in Germany when reaching the age of retirement.

These developments are irreversible. **Since this issue has never been discussed from the beginning, the issue of sharing the financial impact of "social security tourism" might end up being raised in a heated climate.** The serious incidents caused by the case of the Roma in Italy are an indication of what might follow on a large scale in a few years' time. **Why not consider this issue when the European financial perspectives are renegotiated?**

2. The right to social security

This right has aged badly, still being founded on a basic regulation which dates from 1971, and on its implementation regulation of the following year, while awaiting the implementation regulation for the new 2004 regulation[91]. It should therefore come as no surprise if practical problems are more and more common.

The main cases submitted to the Ombudsman or to the Commission in France come from French nationals trying to access healthcare delivered abroad and whose insurance fund refuses to reimburse costs. These refusals are illegal, according to both Community law and case law [92] as well as the French internal law[93]. There are also many cases of reimbursements which are lower than those which would have been obtained for the same care delivered in France, again in contradiction with the most favourable reimbursement principle established by Community law[94].

In 2007, the French Ombudsman was forced to take action against the Caisse d'assurance maladie de Mayenne which refused to allow the transfer of a stroke victim to Belgium on the grounds that this person had already been taken care of at the University Hospital in Angers. Article 22 of the 1971 Regulation allows a patient coming under the legislation of one Member State to receive benefits in kind in the other Member States, regardless of the competent national institution or his place of residence. The necessary *authorisation for treatment***,** which depends on the State of residence, may not be refused on the ground that the cost of treatment in another Member State is higher than in the State of residence, if the latter is unable to offer treatment of the same quality and within the same timeframe.

The same difficulty arose about the "exportability" of the French parental childcare allowance (APE), which the national child benefit office (CAF) refused to pay to Mrs L., living in Austria where her spouse worked as a European public official. This refusal was all the

[90] *Hartmann decision,*C-212/05 of 18 July 2007.
[91] Regulations 1408/71 of 1971 and 542/72 of 21 March 1972.
[92] *Watts decision,* C-3572/04 of 16 May 2006. This decision is analysed above.
[93] Article R 332-4 of the Social Security.
[94] Code *Vanbraekel decsion* of 12 July 2001.

more unacceptable, given that in early 2004, following a letter of formal notice from the European Commission, France had recognised the "exportable" nature of the APE, and that instructions had been issued to paying organisations stating that the residence condition could not be applied to applicants living in another EU Member State.

Even those working for organisations responsible to the EU are not exempt from bureaucratic error, on the contrary! For example, the payment of family allowances due to staff of the European Medicines Agency (EMEA) based in London has caused numerous problems.

Should we be amused, pleased or concerned? A senior Parliament official, a French woman married to a British subject, suffering from a very painful condition, was unable to attend a meeting on this subject in Brussels as part of the present work, due to the fact that a pharmacist in London was unwilling to honour a Belgian doctor's prescription. And this was in Europe, in March 2008...

3. Mutual recognition of diplomas and qualifications

France has not met the deadline for transposition of the basic Directive 2005/36 - July 2007 -. But, even without transposition, the directive came into direct effect on 20 October 2007[9595].

It is in the area of the healthcare professions that the complaints are most numerous. These complaints include:

- Failure to meet the deadline for handling applications for recognition (Directive Article 51). Applicants can wait for several months without knowing the state of progress of their application.

-Refusal to recognise compliance certificates. Certificates issued to Bulgarian doctors have been challenged by the French authorities.

A German nurse wishing to settle in Dublin was asked by the Irish authorities to produce a series of German forms; the German authorities stated that they were unaware of the existence of these forms. She had to retake her qualification in Ireland. She was luckier than the German plumber who cherished the plan of doing his business in Hungary: after studying this tricky case for a year, the Hungarian administration sent him back to request certificates in his country of origin, where the administration thought it best to send him to Community bodies themselves, in Brussels!

Apart from health, we have seen that the French system for public recruitment though an examination has been challenged since the *Burbaud ruling* (see above). But we can only conjecture about the improbable cases of Katrin M. and Cornelia B. Admitted to ENA in summer 2002, their integration into French public employment was still not confirmed six years later, while in the meantime France had adopted legislation and opened its examinations for senior public posts to Community nationals, the Ombudsman had ruled in their favour and these two young women, of German origin, had become naturalised French citizens.

Complaints regarding the non-recognition of university qualifications are also numerous. Himself a university teacher, the Romanian ambassador to Paris has referred to a "diploma catastrophe". His Maltese colleague reported his personal experience: his French doctorate was not recognised in Italy, and was then "downgraded" (sic) in the UK.

4. - The provisional arrangements for workers applicable to the ten new Member States have also caused some practical difficulties.

[95] *Beuttenmüller decision.*

In principle, these transitional measures were to remain in force until 1st May 2009 for the eight countries entering the union in May 2004 and until 1st January 1212 for Bulgaria and Romania. They included an obligation to request a work permit in advance, the issue of which would depend on the jobmarket situation, together with a corresponding residence permit, just like for third country nationals.

Consular officials in Paris reported the unreasonable difficulties which their nationals encountered to obtain a work permit, even in occupations experiencing labour shortages. Under these circumstances, the abolition of this transitional scheme for the eight countries which entered the Union in 2004 appears especially appropriate.

5. Parental abduction

The "Brussels II bis" regulation on the competence, the recognition and the enforcement of judgments in matrimonial matters is regarded as "perfect" by French specialists. The principle is that competence lies in the Member State in which the child habitually resides, and that decisions taken by a competent court for that jurisdiction are automatically applicable throughout the Union.

However, national administrations too often continue to be unaware of this text. In France, cases continue to be dealt with by two ministries (Justice, for the Hague Convention, and Foreign affairs for the remainder), and the communication between them is poor. However, the Ministry of Justice has launched an admirable website on parental abduction, *Enlèvement parental,* to guide and inform parents through their legal or amicable procedures.

6. "But he won't be long now. Look... Here comes his horse..."

The misadventures of Captain Haddock with his steed[96] have become the common lot of European drivers: cars can cross the frontiers, but they are neither insured nor registered.

6.1. The obstruction of the European insurance market

Can a Frenchman insure his car in Germany, take out life insurance in Spain, or join an Italian provident scheme? Yes, say the treaties and European law[97]. No, almost invariably replies any foreign insurance company, on the ground that the customer it rejects does not live in the insurer's country. Disdaining the freedom to provide services allowed by the single market, European insurance companies prefer to enter agreements with local insurers.

The refusal is particularly misunderstood when it comes to car insurance. It is applied not only to comprehensive insurance but even to compulsory civil liability insurance. The reason given: the vehicle runs in another Member State, whose indemnification procedures are unknown to the insurer. But what is the use of having a single area if vehicles are forced to change insurer every time they cross borders which are no longer supposed to be there?

Some insurance companies go so far as to terminate a motor insurance contract when it expires, if the insured spends a prolonged period of 3 to 6 months in another Member State, even if this is for professional reasons. Some policies even contain clauses, which are entirely illegal, for the automatic termination of the contract if the vehicle remains outside the Member State in which it is registered beyond a given period. In France, complaints should be made to the Bureau Central de Tarification, rue de la Rochefoucauld, Paris 9e: but who knows that?

[96] See the great European comic strip classic, *Tintin and the Seven Crystal Balls*, p.2
[97] Not least in the la 5th Motor Insurance Directive 2005/14/EC, for transposition before 11 June 2007.

6.2. The registration of second hand foreign cars in France: an assault course

Private cars approved before 1996 are not subject to Community type-approval. Their definitive registration in France requires a national approval procedure, which is not in itself unusual. What is unusual is the multiplicity and the cost of the checks, paid for by the owner, which are required by the French administration and which duplicate the work done in the country of acquisition. The ECJ rightly ruled that the checking procedures should not "*entail unreasonable cost or delay*" and that the importer should be able *"as an alternative to the checking procedure, to produce documents issued in the exporting member state in so far as those documents provide the necessary information based on checks already carried out*"[98].

6.3. Double taxation on new imported vehicles.

To avoid the problems of re-registration, a French buyer chooses to buy a new vehicle on the other side of the border? Apparently, nothing could be simpler: the VAT is due in the importing state, in our case, France[99].

That would be too easy. The sellers of German cars refuse to issue invoices net of tax, thus forcing the purchaser to pay an amount including all taxes in Germany. The professionals explain that they want to keep the amount of the German VAT provisionally (19%), as a bond, to ensure that the purchaser will send proof of registration of the vehicle in France. This evidence will be demanded *retrospectively* by the German tax authorities, who will verify that invoicing net of taxes is justified where a new vehicle is exported. Why not? And then, once this verification has taken place, the buyer has to obtain the refund of the German VAT which he has unreasonably advanced: that's not always the case...

7. The lessons of border regions

Border regions clearly provide prime locations in which to observe the application of Community law. Several of the dysfunctions that we have evoked mainly occur in these areas. I shall limit myself here to a few more particular remarks about these areas where individuals, enterprises, legal systems and administrations meet.

7.1. The Northern borders

7.1.1. An Ombudsmen network has spontaneously come together along the Northern border of France, serving the greater region: Wallonia, the Belgian French Community, the Belgian German-speaking Community, the Saar, Rheinland-Palatinate, Luxembourg and France. It handles cross-border disputes (traffic, retirement, civil status, insurance etc.) and, where appropriate, it makes some proposals for common reform.

7.1.2. France negotiates some health cooperation framework-agreements with its neighbours for medical and social provision for patients in the border areas. Most recent is the agreement with Belgium, ratified by the law of 3rd October 2007.

In practice, this means that since 1st February, the 150 000 inhabitants of a cross-border region including 18 cantons in the north of the French Ardennes and the Walloon provinces of Namur and Luxembourg may go to any of 13 hospitals of their choice situated on either side of the border, without prior medical authorisation.

As well as this local agreement, on 19 February 2008, Xavier Bertrand and Valérie Létard asked the Nord deputy Cécile Gallez to look into the issues surrounding the provision of accommodation in Belgium for elderly and disabled French nationals. This is an area in which cross-border cooperation works well: 3500 disabled French children and adults are

[98] Decision 406/85 of 11 June 1987, interpreting Articles 28 and 30 of the EC Treaty.
[99] Article 2 of the Council Directive 2006/112/EC of 28 November 2006.

currently cared for in medical and educational institutions in Wallonia. But there are still financial disparities and staff training problems to be solved.

7.1.3. Wallonia and Champagne-Ardenne have reached agreement on two joint programmes for adult training. One focuses on cross-border trainee status. The other aims at promoting the recognition of workers' qualifications, thought the establishment of common benchmarks for skills and training.

7.1.4. Alongside these encouraging examples, the French-Belgian border is also the locus of some surprising dysfunctions.

Thus, like many European countries, Belgium is tempted to refuse employment grants to employers recruiting cross-border staff. However, the positive law is free of any ambiguity and it has also been very clearly interpreted by case law[100]. Despite this, the EURES centre of the European Development Pole reported that the way Belgium was applying this clear principle depended on the changing mood of the government.

A cheerful mood, for the introduction of the "*resumption of work supplement".* ONEM, the Belgian national employment office, pays a €172 monthly income supplement to jobseekers aged over 50 who return to work. The grant follows the ONEM-registered jobseeker, even if he finds work in another European state.

A sulky mood for the "Activa plan", which applies to the Belgian/Dutch/German border regions. Intended to help the long-term unemployed into work, this aid is paid to Belgian employers who recruit a border worker, but it is not paid in the case of Belgian jobseekers who find work on the other side of the border.

An obnoxious mood in the case of the integration grant paid on recruitment of disabled workers in the Brussels-Capital Region. The law specifies that it does not apply under any circumstances to companies recruiting cross-border workers[101].

7.2. The Franco-German border: the bureaucracies' clash

7.2.1. The European Consumer Centre in Kehl reports that free access to cross-border care is not yet always guaranteed in practice.

A French dentist living in Moselle had received written confirmation from the local CPAM that he could carry out outpatient treatment on his French patients in a German border hospital, but the same organ subsequently subjected patients to discouraging formalities.

Similarly, emergency hospitalisation abroad can be very expensive, especially when an establishment ignores the European health insurance card of the patient and charges him or her the rates applicable to privately insured patients, as often happens in Germany and Austria.

In quite another area, an even more disturbing phenomenon is systematic and unjustified refusal of French insurers to guarantee German construction businesses which are subject to the requirement to provide a ten-year guarantee when they are operating a site in France. The Chamber of Trades in Freiburg im Breisgau (Baden-Württemberg) reports that it receives several calls a week from German businesses which have been unable to obtain a

[100] In the judgement C-208/05 *Innovative Technology Center,* of 11 January 2007, the ECJ ruled that the principle of exportability applied to aid to jobseekers. This was particularly opportune, since more often than not, from a fear of overlapping benefits, national authorities refuse to pay grants to enterprises whose workforce is not exclusively based on their territory.

[101] Statements from the European conference, "Cross-border territories: day-to-day Europe", Lille, 8 and 9 November 2007.

ten-year guarantee in France. According to the Baden-Württemberg ministry for the economy, only five of the 500 applications made in 2006 were approved by a French insurer. The results of the European Consumer Centre's intervention will indicate whether this is a matter of bureaucratic obscurantism or a deliberate attempt to limit competition in the trade sector, or, more probably, in the insurance sector.

7.2.2. EURES crossborder Oberrhein /Upper Rhine reports other difficulties:

- When on sick leave, a border worker from Alsace cannot receive the (generous) German allowance paid by a German fund. He will be paid by a French fund, which entails terminating his German employment contract.

- Crossborder tax status only applies within a narrow geographical area, while "commuters" are travelling further and further - which subjects the Alsatian workers concerned to the formidable German regime of "restricted tax liability" at maximum rates.

7.2.3. Based in Sarreguemines, the Moselle border workers' defence committee has compiled a closely argued dossier detailing the instances of discrimination suffered from by its members. It is a fine description of the "gruyere cheese" which is the social and tax status of the border workers. In particular:

- the incapacity of injured or sick employees is recognised by the French institution, but not by its German equivalent, which has much more restrictive regulations. They then find themselves in the practical impossibility of finding work, while only receiving a monthly benefit proportional to their period of work in France. For some, this is no more than €100.

- A particular problem arises when calculating the pensions of border workers. Pensions are calculated on the basis of the 25 best career years for which contribution were paid into the French social security system. But many border workers do not even accumulate 25 years of work on the French side of the border.

- Those French border workers who have not spent the whole of their working lives in Germany - the very great majority - are excluded from receiving the German dependency allowance, the *Pflegeversicherung*, to which they have contributed all their lives. This iniquitous situation, however, is in compliance with the 1971 regulation, *as interpreted in the Molenaar ruling* (C-160/96).

- The border worker going to France for thermal care does not receive payment of his daily subsistence allowance (*Entgeltforzahlung*), whereas he keeps his entire salary if the care takes place in Germany.

- The wives of border workers, who themselves have worked for several years and lived in Germany when their children were young, have no right to benefit from the general social security pension scheme, they can merely benefit from an entitlement to a differential allowance.

- Temporary border workers are victims of the practices of the German tax services - *Finanzamter* - which fail to respect the bilateral agreement exempting from German taxation those border workers who do not spend more than 45 days outside the frontier zone or 20% of the time worked if the year is incomplete.

7.3. The Franco-Italian border: Monaco wins the prize!

The EURES website *Eurazur* monitors the area covering the province of Imperia (Liguria), the Alpes-Maritimes department and the Principality of Monaco.

The Franco-Italian coastal border is a strange example of a net decrease in cross-border employment, which has fallen by two thirds in the last twenty years. In 2006, there were 5244 border workers, accounting for just 1,5% of the 350 000 jobs in the Imperia–Alpes-Maritimes employment area. And it should be noted that the nature of available

employment on both sides of the border is strikingly similar: waiters, employees, bricklayers, sales staff, etc. It is nonetheless hard to understand why there is no draught despite the fact that the French area has more than 10% unemployment while the bordering Italian area has only 4%, and to note that the French side, despite being less prosperous, attracts four times as many border workers as the Italian side. Even so, these movements seem trivial when compared to the daily attraction of the Principality of Monaco: each day, 32 000 French and 3600 Italian workers flock to the city-state.

EURES advisers have identified many obstacles to mobility. They are similar to those encountered elsewhere.

- Vocational training: failure to acknowledge qualifications, no scope for Italian border workers to obtain requalification training placements in France, ignorance, on both sides of the border, of the existing training opportunities on the other side.

- Abnormally slow process (more than a year) for French social security to allocate a registration number, without which the Italian social security does not send out form for reimbursement of health care expenses to border workers or their family members.

- Retirements are a headache. Italian citizens who have worked in Italy, France and Monaco cannot accumulate the contributions paid during their period of activity in these three countries. Border workers do not have access to early retirement in France, and their retirement pensions are subject to double taxation.

- Unemployed Italians who are registered with the French ASSEDIC and have paid contributions regularly still have no right to unemployment benefits in France.

- Female border workers have no right to maternity leave in France, even though the French authorities have recognised this social benefit as "exportable".

- A worker who has worked in the two countries has to wait three years or so, where applicable, to obtain benefits for long-term illness - if he is not cured in the meantime.

7.4. The Franco-Spanish border: Do the Pyrenees mountains have a repelling effect?

7.4.1. The Catalonia—Languedoc-Roussillon—Midi-Pyrénées EURES ("*Pirimed* ") highlights the following issues:

- The lack of coordination between the French and Spanish labour inspection services to carry out controls on border workers, making it a real "no-go area" (sic) to the detriment of the workers.

- The lack of a local employment exchange system, supplied by the Catalan, Spanish and French employment services.

- Spanish health insurance bodies' ignorance of protocols agreed between the French and Spanish social security systems thus misreading the 1971 Regulation.

- From a fiscal point of view, the outdatedness of the limitation of the border area to a 20 km strip, set by the bilateral agreement of 1963: this does not correspond to the current way of life or, all the more, that of the future – the Perpignan-Figueras TGV service will be opened next year.

7.4.2. On the Atlantic side, in the Basque country, the students of the multidisciplinary faculty of Bayonne have carried out a particularly interesting survey which is appended.

The list of formalities and forms required to take up employment in the adjoining country is a Kafkaesque nightmare. Does this explain the low number of border workers

compared to the flows, ten to fifty times greater, on the Northern and Eastern borders of France? The administration estimates that somewhere between 700 and 1500 Spaniards commute into France each day, while between 1000 and 2000 French travel the other way, in an employment area of more than 500 000 people. Even when adding the special case of Spanish citizens who move to Hendaye because of the shortage of building land on the South of the Bidassoa, the flows are ten times lower than those observed on the Belgian, Luxembourg, German and Swiss borders. This situation is all the more strange in that the weakness of this flow of workers contrasts with the increase of commercial trade and tourist travel, or non-professional movements in general.

It should also be noted that the European Health Insurance Card does not seem to simplify the day to day life of these workers, as the administrative formalities that it was supposed to replace are still required.

The contacts between labour administrations and between trade unions across the border are still at the stage of mutual discovery prior to any real joint work. The local labour directorate deplores its inability to pursue a Spanish employer involved in a serious industrial accident beyond the Bidassoa. The salaried workers' trade unions are considering resorting to the *Pyrenean working community (CTP)*[102] to carry out a comparative study on the contents of the professions and training modules in the two countries. In short, we are still light-years away from a crossborder employment market!

*

To counterpoint this list of examples of malfunctions in the application of Community law, let us quote the conclusion of the most recent report of the *Citizens Signpost Service:*

"There is an unfortunate growing gap between the case law of the European Court, the much improved legislative framework and the way it is being applied on the ground by Member States. Some Member States are using the opportunity of the introduction of new legislation, not to simplify the exercise of their European rights by EU citizens, but rather to introduce new national measures that rather serve restrictive purposes, whether to control immigration or to protect their home market of services and workers."

[102] An study and exchange association grouping the three bordering French regions and their four Spanish counterparts in a Spanish judicial structure, a *consorcio*.

CHAPTER V

THE EUROPEAN CITIZEN VS THE ADMINISTRATION: SOME REMEDIES

To solve the problems analysed in the previous chapter, three main courses of action could be taken.

I – INFORMING THE GENERAL PUBLIC, NOT JUST THOSE ALREADY IN THE LOOP

Aware of the great potential for improvement to its system, the Commission has engaged into an external audit, due for completion by April 2008.

Looking at the *Europa* portal alone, the survey of 8,000 users conducted by the consultants indicates the limits of the system: the vast majority of users are students, teachers or civil servants specialised in the handling of European documentation. Two-thirds use it almost daily. 88% of contact made is conducted in English, the only language in which many specialist pages are available. This means that all the websites, portals and services accessible through *Europa* are in fact only reaching a very limited, specialist section of the population.

Whilst waiting for the final conclusions of this audit, it is worth making some recommendations from an outsider's point of view.

1. **The architecture of the entire information system needs to be reviewed.** The system should be designed according to a bottom-up approach, rather than a top-down one: starting at the bottom, looking at concrete needs at grass-roots level. Rather than asking "how are we to communicate our venerable laws to the amazed masses?" European institutions should be wondering "what practical problems do European nationals face in enjoying their rights, and how can our laws, our actions, our specialist services and our funds help them?" It is from this starting point that Ariane's thread must be unrolled.

A common misconception about information on Europe is that it is a supply problem: it begins with demand first! It is of little use to blindly supply information on issues which do not directly interest the public, or over which they feel that they have no influence. Through their very proliferation, the information programmes periodically requested to the Commission, or launched at its initiative, alas demonstrate the limits of the exercise[103]. The *Europe by Satellite* service has been available since 1995, making available some free, "ready to use" audiovisual documentation, even providing technical assistance to smaller media organisations or those which use less-common languages. This constitutes a genuine public service, but one whose remit can scarcely extend beyond institutional communication without falling into propaganda and thus losing all credibility. It is no coincidence that in France the only times the media and public opinion have really cared about European issues have not been during European elections (European citizens felt,

[103] See: *Plan D for Democracy Dialogue and Debate,* COM (2005) 494 of 13 October 2005. *Resolution on the White Paper on a European communication policy* COM (2006) 35 of 1 February 2006. Conclusions of the European Council on 22 June 2007 regarding "the crucial importance of communicating with European citizens." Communication *Communicating Europe in partnership* COM (2007) 568 of 3 October 2007. Communication *Communicating Europe through audiovisual media* SEC (2008) 506/2 of 24 April 2008.

hitherto with some justification, that their vote would make no difference to the content of Community policies), but during the 1992 and 2005 referendums and the changeover to the single currency in 1999.

On the two former issues, the citizens had the last word, and in 1999 they realised they would have to learn to get used to the new currency. How successful would a communication campaign be for a product for which no-one saw either need or purpose?

Such an observation brings us beyond the scope of mere information. It also leads us to take the need felt by European citizens for European "public goods" as the point of departure when drafting legislation itself. The application of the Treaty of Lisbon would be a powerful instrument here: candidates for the European Parliament having full legislative powers will bring forward a genuine legislative programme, based on the voters' expectations.

2. However, other initiatives may be useful to mobilise civil society.

In 2007, the European Parliament and Commissioner Wallström launched their first *AGORA* meeting, which involved two days of talks between Brussels "insiders" and representatives from civil society. A second meeting was held on 12th and 13th June 2008 on the issue of global warming. **Why not organise the third meeting to be held at Strasbourg on the issue of "European citizens and the implementation of Community law"?** If it is of interest to the French presidency, it would be relevant to get in touch with the European Parliament, which organises and funds the event.

Another good example is the prize awarded by the Commission for innovative practices in the field of civil justice. In 2007 the winner was the Austrian city of Linz, to praise its efforts to ensure straightforward public access to justice. **This "beauty contest" method might work just as well for information on the European policies**, with a range of prizes at Union, state and regional level.

3. When starting with the citizen as the point of departure, four principles should guide us:

3.1. A unique contact point. The one-stop shop. The Commission seems to progressively embrace this idea: in its communication of 5th September 2007, it considers dealing with simple requests for information through a one-stop shop, and to make the most of its Representations to this end.

Let us accept this augury. But let it be clear: a one-stop shop. One telephone number. One address. One portal. "One" meaning one single entity, not "one each" nor "one per DG" nor "one in Paris and one in Brussels", nor "an auxiliary one-stop shop to be tacked on to existing services" nor even "one new site per day". No. **Just one-stop shop. Full stop.** This eminently practical recommendation has already been made on several occasions, not only by the European Parliament but also the Veil Panel and by ECAS.

In the virtual world, a "one-stop shop" means that from a single portal **the specialist website any correspondent needs to deal with their specific problem is a maximum of 5 "clicks" away.** This is what the best commercial website specialists recommend.

In the real world, the single network of one-stop shops should be easy for any citizen/constituent/consumer/correspondent/tourist/web-user to find. What is required is **one simple, attractive logo, (such as France's "bison futé" for traffic safety) which is recognisable throughout Europe. Ulysses, setting out on his Odyssey, charting his way throughout the Charybdis of community administration and the Scylla of national bureaucracy, provides a wonderful image.** We might also consider creating a competition around this idea, for art and design schools, advertising agencies or primary schools throughout Europe. The most important thing is that a European citizen lost in Riga,

Thessaloniki, Bayonne or Regensburg knows where to go for help. Not only via the telephone or the Internet, but also, in the major towns and cities, through direct contact.

Even if a better use of IT systems is required (see below, 3.4), we should beware of relying solely in the Internet: 40% of the European population do not know how to use it. And even for the hardened Internet user, a real-life, well-trained receptionist will always be more attractive and flexible than the sexiest Lara Croft.

It is up to each country to organise its own political and administrative organisation. In France, the best solution would undoubtedly be to **train up a specialist civil servant or a service reporting to each department's chief administrative officer, as well as in the major towns and cities.** The services dedicated to foreigners within each prefecture would be split between services for those from third countries and the "Ulysses"-blazoned reception desk.

3.2. Simplicity. The one-stop shop should act as the front desk, behind which runs a back office, which should remain invisible. The aim should be to not necessarily expose defenceless citizens to the inner workings of the administrative machinery, but to make sure that their intervention will set this machinery in motion without them having to understand the workings behind it.

When it comes to online access, a frequently-encountered and quite scandalous obstacle is the absence of specific documentation in translation: too often important documentation is only available in the most common languages, or even only in English. According to the Publications Office, automatic translation software is now sufficiently advanced to provide satisfactory solutions, for legal or technical texts at any rate; Mallarmé, say, may present more of a challenge, for what software could ever translate his poetic and paradoxical prose?

3.3. Speed. The law is not made for lawyers, but for those subject to it. A problem which has only been solved on paper, or which needs to be solved before the Court of Justice, remains for the citizen concerned. Taking into account the multinational legal and administrative problems within Europe, **we need to look into finding equitable solutions, whilst waiting for a final decision which may entail considerable delays.** Moreover, the one-stop shop needs to work on two levels: firstly to provide information to the public, and, when necessary, through referral to relevant back office services; secondly, if the problem cannot be resolved through this method, mediation.

3.4. Modernity. Although there is no substitute for direct human contact, we must also strive to make the most of the opportunities offered by modern technologies, or to make creative use of existing, tried-and-tested technologies. Here we could consider two possible innovations.

3.4.1. **"Europedia"[104] or the citizens' self-constructed Europe**

Render unto Caesar... This idea originates from the *Office for Official Publications of the European Communities*. It is based on the incredibly successful *Wikipedia*-style format to bring together European citizens in a project similar to that of a Citizens' Europe.

The idea is a familiar one: web users are called on to provide information on the widest possible range of subjects, in order to create a genuine reference encyclopaedia.

[104] The word is used as an example, to allude to the *Wikipedia* formula, i.e. a user-created site. However it is already registered for other uses, and non-Europhile Anglophones –they do exist- wouldn't hesitate to take the opportunity to satirise it by cutting the term in two…

There is no bar to entry: anyone can join its vast and anonymous group of authors. An editorial committee ensures ethical standards are maintained and provides a minimum level of supervision to keep out commercial interests, fanatics and the insane. The assumption is that the quality of information will increase together with the number of readers/writers/editors.

We could use this method for our European project. We should not be content with simply having websites dedicated to Brussels-based navel gazing, balanced with a few forums in which citizens may vent their spleen. We can offer hosting a **"suggestion box" portal and provide a space in which people can discuss their experiences.** The aim is to provide a virtual space in which the Erasmus student, the expatriate Airbus executive, the French restaurant-owner in Dublin, the retired German living in Majorca, the Danish spouse of an Italian engineer living in Romania can all find a sympathetic ear and not only discuss the problems they encounter, but also offer solutions. *"Over there, they deal with the situation this way, why not here?" "Why couldn't they admit….on condition that…?"* This would be a way of continuing the work of the survey conducted for this mission on an ongoing basis, thus making an inexhaustible source of popular opinion and a huge range of solutions available to the decision-makers.

The decision makers? Which decision makers? Once the site has been designed, the trickiest aspect will not be its monitoring (in addition to the *Wikipedia* example, we have experience from innumerable discussion forums, including those on the European institutions' websites), but its political exploitation, just like a mine is exploited for its raw material. Its design will guarantee that all content will be available to all, at all times, and thus political parties, trade unions, NGOs, universities, solicitors, etc. will all be able to access it as required. All the organisations that cannot wait to exercise the new right of petition granted under the Treaty of Lisbon will find this a useful resource for collecting signatures. However to ensure that the best use is made of this mine of information, there will undoubtedly have to be a ***Monitoring Committee*** **including some representatives of the Community institutions and national parliaments.** Indeed, solutions will fall either under national or Community competence, and who would be better than their duly-elected representatives to listen to and take on board what their citizens are saying?[105]

From this point, it will be up to each of the institutions represented to organise the way information is to be processed and to decide on the relevant follow-up procedures. The European Parliament will probably entrust this monitoring to one of its committees, and should of course organise an annual debate based on any conclusion drawn by the Executive Committee. The same should apply to each of the national parliaments, together with their respective governments.

Let it also be said that the President of the European Council is unlikely to remain indifferent to this mass of digitally-generated voices issuing forth from the multinational community that he represents without having been elected by them...

3.4.2. **"Europeans speak out": an interactive broadcast**

A radio station broadcasting across Europe could broadcast a popular programme each morning, the idea of which would be to help listeners with any legal problems they may be experiencing, for example with retailers, landlords, even governmental bodies. The presenter would use the considerable power of "live broadcasting" to help

[105] The new website *Debate Europe*, launched by the Commission in April 2008 could start looking into experimenting such a concept. However, it remains too institutional, and too formal to work as the kind of "beta" website suggested here.
It is also worth examining *myparl.eu*, the online debating forum for European issues, aimed at parliamentarians throughout the Union. Started by Daniela Vincenti Mitchener and run by luminaries such as Stanley Crossick, it is due to be officially launched in September 2008.

consumers/tenants/users/tax-payers, representing them, the "little guy" crushed by "the big guy", duped by a con-merchant or ensnared in the mindless machinations of an uncaring system.

Such a broadcast, focussing on European law application problems, could at least be tested by a public service cable channel. In France for instance, *LCP, Public-Sénat, France 24* all have considerable experience of debates, including those which include foreign contributors. Initially, there could be a weekly programme lasting 45 minutes to an hour, during which viewers are invited to discuss their problems with three or four experts in the studio along with a presenter. The Representations of the Commission and of the Parliament and the SGAE would easily put forward the names of some suitable experts.

Another alternative would be to close the programme with a short debate between parliamentarians, European and/or national ones, who could draw some valuable political lessons from this. However, the main focus should be on direct contact with the citizens themselves.

Further action. Among "grass roots" initiatives, the recent launch of *Eur@adioNantes* deserves mention, being the first local European radio station, run by journalism students from across Europe and broadcasting on both the Internet and FM radio. The Commission has linked it to the European radio consortium launched in April 2008. This initiative is worth keeping a close eye on[106].

4. The role of the Commission's Representations and intra-European consulates needs re-examination.

The DG COMM readily acknowledges this. The role of the Commission Representations in the Member States is not a top-level one, whether we compare it to the delegations in third countries or to the task forces in place in candidate countries. An MEP of a new Member State, previously a minister in her own country, gives compelling evidence: *"While we were candidates, the Commission team here had an answer for everything. Now that we are members, the local Representation simply directs us to Brussels, without any further details."* The Representations' *s*upervisory services cannot justify the existence or the specific role of the offices in Cardiff, Edinburgh, Belfast, Munich, Bonn, Marseille, Barcelona and Milan: why in these cities and not elsewhere? The general consensus is that progress should less be sought through the staff numbers of these regional offices than through improving their quality. The systematic nomination of foreign senior officials in the countries in which they are accredited could help improving their local visibility and credibility.

Apart from the Representations themselves, the Commission needs to undertake a thoroughgoing review of its general information networks such as the Europe Houses and the *Europe Direct* points, in collaboration with the Member States' national and/or local authorities. It is amusing to see where these information points are now located on the map: it reflects the local presence of the pioneers in the European cause far better than the current needs of our anonymous contemporaries[107].

The consulates might also take on the new role of systematically informing their nationals on how the host country is set up to ensure that European citizens can fully enjoy their rights and get their documentation processed efficiently. If there is a "Ulysses" network to be, they should be at the very heart of it.

[106] See the May 2008 issue of *L'Europe en France*, the excellent monthly magazine of the European Commission Representation in France.

[107] What weighting is given in the meagre subsidy granted to the network between the tribute to these pioneering Europeans and the determination to inform the youth of today? Each Europe House received 25,000 euros in Community aid and the National Federation 100,000 euros from the French Ministry of Foreign and European Affairs.

5. Information about Europe in France.

In 2004, the then Prime Minister Jean-Pierre Raffarin requested French MP Michel Herbillon to conduct a study on better educating the French about Europe. Released the day after the May 2005 referendum, this remarkably comprehensive document offers a wealth of suggestions on such matters as government, parliamentary and administrative organisation and educating the public[108].

For the latter, a major overhaul of the *Sources d'Europe* European information centre in Paris was proposed. It was founded in 1992 as an EIG (Economical Interest Grouping) and was cofinanced by the Ministry of European Affairs, the European Commission and the European Parliament; it has suffered from a series of crises which eventually led to it abandon its prestigious Arche de la Défence headquarters for the Parisian building which houses the representation offices of the European Commission and Parliament. It no longer had space for public access, and thus disseminated information via the very comprehensive *Touteleurope* website. Michel Herbillon proposed that it should be reformed, under the auspices of the Minister for European Affairs, and organised around five main divisions:

- a specific information division;

- a "permanent dialogue on Europe" division, bringing together elected representatives, the social partners and civil society, who would come together for regular meetings and online exchanges;

- a "network management" division covering all European information distribution points, whether they are part of the European Commission's *Europe Direct* network or not;

- a "training" division, in partnership with the *Centre des Hautes Etudes européennes* in Strasbourg;

- and finally, a "research and publications" division in partnership with the *Documentation française*.

It is clear that the level and the reach of official information that France is disseminating about European politics are not up to the topic nor to France's responsibility as one of its foremost founder members.

II – TACKLING SUPPOSEDLY UNSOLVABLE PROBLEMS

1. A tried-and-tested solution: connecting national administrations with each other.

The Director-General of Social Security acknowledges that the problem of the "European social security area" as such as not been tackled yet.

His services are involved in endless, highly technical negotiations regarding the finer points of the implementation regulation for the basic regulation of 2004. They manage the processing of France's bilateral debts with numerous countries, within and without Europe, and most notably with Germany. They handle complaints, which, depending on the vagaries of the system, are returned to central government. However, even regarding border regions' issues, the information in Paris is limited: many disputes, whether dealt with or not, are stuck at the level of border regions' funds or the Vannes fund, which specialises in reimbursing French healthcare costs incurred abroad.

[108] *La fracture européenne. 40 propositions concrètes pour mieux informer les Français sur l'Europe.* Report dated 29 June 2005, published by *La Documentation Française*.

None of this takes the overall picture into account, and it is not customer/citizen-focused. There are no statistics available on the number of patients affected by cross-border healthcare issues, the number of problematic cases or the solutions to these cases. There are no co-ordination meetings with our partners' appropriate government departments, despite the fact that all agree on the need to create a genuine European-wide social security network.

With the abolition of common border controls fifteen years ago, a Community programme was set up to encourage exchanges between national customs offices. Named *Mattheus* as a mischievious reference to the Christian roots of indirect taxation, this initiative was subsequently followed by the more humbly-titled *Customs 2000, Customs 2007* and Customs *2013* programmes. Initially, it simply involved organising exchanges of officials for a few weeks, a sort of customs officers' Erasmus scheme. The programme's scope has extended since at the WTO the US questioned the fact that different European Member States have different customs and excise practices, accusing the Union of effectively inflicting trade restrictions on American products! *Customs 2013* now has a budget of almost €330 million. However, the main focus is on computerising and simplifying customs procedures, not only to help combat fraud but also to make life easier for honest businesses. Considerable resources have been mobilised to train customs staff.

Lessons learned from this process could be very usefully transferred into other areas in which national government co-operation remains rudimentary, despite the general recognition that it is now essential. Such is the case with social security, where the greatest difficulties arise from procedural and terminological problems. **France could invite the Commission to initiate a "Mattheus programme for social security"[109].**

2. The "**European citizenship card**": an innovative solution.

2.1. The "European health insurance card" is already a move forward, having replaced the old E111 basic form, as well as the specific forms required for temporary visits (E110, E119, E128). It has become mandatory and it is valid beyond the EU, in the European Economic Area countries. It ensures that the cost of any medically necessary treatment undergone whilst temporarily abroad is covered by the host country's healthcare system. However, progress is still slow:

- It is not a payment card and the way it works varies from one country to another. Patients may have to pay any medical charges in advance, and then report to the local health insurance offices in person.
- Each country sets its own validity period. In France the card is only valid for a year. It must be renewed at least two weeks ahead of departure abroad.

The Commission is currently preparing an electronic card scheme, as decided at the Barcelona European Council.

2.2. Why not take this a step further and create a **European citizenship card?** ECAS has already touched on this in its annual report on workers' mobility. The idea is to have a single, simple document which includes all the information and certification a European citizen may require in France, i.e. identity, nationality, place of residence, marital status, employment status and possibly also information on social housing eligibility, qualifications, social

[109] Which symbolic name could be given to this programme? The *Musée national de l'assurance maladie* in Lormont (Gironde) offers a range of suggestions.
- A freed Roman slave by the name of Hermogenes (meaning "he who inspires joy") was the first-recorded person to benefit from a system of mutual co-operation between members of a social community, his tombstone mentions that those who had worked with him had clubbed together to pay for his funeral.
- In the Middles Ages, Eleanor of Aquitaine, who became Queen of England, instituted the first laws compensating accidents at work and even ensured disability benefits for her sailors ("*The Rules of Oleron*", 1190)
- In more recent times, obviously the founders of the current systems are Bismarck and Beveridge.
The name "B&B", as pronounced in English, would strike a jocular note and would avoid the use of Bismarck's full name, which does not have happy associations for the former neighbours of Prussia.

security, pension entitlement, benefits eligibility (universal medical coverage, guaranteed minimum welfare, disability living allowance, etc). Available from a "one-stop shop" it would replace the permanent residence card, work permit, certificate of nationality, health card and also social security card[110]. It would therefore make a significant number of processes much easier.

During the French presidency, the Community's institutions will be looking into a Blue Card scheme. Proposed by former EC Vice-President Franco Frattini, this permit would be granted to highly-skilled non-European workers. It is based on exactly the same principle, i.e. to make administrative procedures more straightforward within host countries and, above all, to make daily life abroad easier for legally-resident foreigners in European countries. **If a kind of "most-favoured foreign national clause" were to be implemented, it would be highly desirable to ensure that European Union nationals benefit from it. This proposal would arouse high interest during the French presidency.**

Such a project might work alongside the STORK[111] pilot project, which is based on a complementary idea, i.e. web-based identification/authentification of European citizens. Launched on 30th May 2008 by Viviane Reding, Commissioner for Information Society and Media, it covers 13 member countries including France, for a three-year trial period. It involves linking different national electronic identity systems to allow "mobile" Europeans to access public services online easily in another Member State. Thus, students should be able to enrol at foreign universities through the electronic identity system in their native countries, whilst a Swedish business, for example, could put in a bid on a procurement contract in Spain as easily as on the municipal market in Stockholm.

3. Crisis resolution: the posting of workers scheme.

When the draft directive on services was under consideration, the application of the directive on the posting of workers[112] has been called into question.

This text restricts the application of Article 49 EC on the free movement of people, services and capital. It applies to employees who are engaged in temporary employment in a Member State other than the State whose law governs their employment contract. It is estimated that around 1 million European workers are in this situation, construction and public works being the most widely affected fields of employment. By defining the minimum employment and working conditions with which service providers must comply, it offers greater protection for posted workers, whose particular status makes them potentially vulnerable: e.g. inadequate knowledge of the language and of the legislation and customs of the host country, difficulties in getting suitable representation, etc. At the same time, this directive is essential to prevent "social dumping".

Nevertheless, in its application, this text has given rise to some extremely varied interpretations, and the implementation of wildly differing control procedures in different Member States. It is hard to make an overall assessment of the situation, as the extent to which dissatisfaction is expressed casually is not reflected in the number of formal complaints or legal proceedings.

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[110] As such, this type of card could replace all the forms which cross-border resident workers and their families have to complete:
- E106 for employed or self-employed persons and the members of their family living with them in the same country;
- E109 for the members of the family living in a different country from the one in which the employed or self-employed person concerned lives;
- E200 to draw a pension in another Member State;
- E121 for pensioners and the members of their family living with them in the same country;
- E122 for members of the family not living in the same country as the pensioner concerned;
- E300 for entitlement to unemployment benefits;
- E303 to claim jobseeker's allowance;
- E400 for entitlement to family benefits.

[111] Peculiar acronym for *Secure idenTity acrOss boRders linKed.*

[112] Directive 96/71/EC of 16 December 1996.

The Commission made an assessment in April 2006, then released a Communication on 13th June 2007[113], and finally a Recommendation was presented on 3rd April 2008 by Commissioner Vladimir Spidla[114]. On the same day, the Court of Justice delivered its own interpretation of the Directive[115]; this turned out to be unfortunate timing, as both unions and management were confused by the message from the Commission, even though the Court decision was scarcely questionable. In the meantime, the European Parliament had adopted most of the Commission's suggestions in a Resolution on 11th July 2007.

These analyses, broadly in line with each other, should now pave the way for action at the European institutional level, as they do at State level: the setting up of a permanent expert committee with the social partners to discuss best practice, encouraging States to co-ordinate their efforts through the Internal Market Information System, the taking of infringement proceedings against those who continue to disregard substantive law and the Court's existing case law in this area…

However, the proliferation of such communications surely indicates that something is wrong: why has the same observation been made three times in three years, without there being any proposal for legal amendments? Which bush are we beating about?

Evidence from the Aquitaine trade unions and regional employment authorities might provide us with some insights. Recently, the building and hotel and restaurant trades have increasingly relied on foreign workers (mainly but not exclusively from Europe), which, although apparently perfectly legitimate on the surface, appears to be a cover for bogus subcontracting arrangements, or bogus self-employment work. Surprisingly, such practices do not seem to be mentioned in public debate, not even by the Regional Economic and Social Council, whose job is to deal with such issues.

The French presidency could flag up this highly sensitive issue, in respect of which too many interested parties seem willing to look the other way. Are we sure of the quality of this European legislation? If not, why not reform it? If so, which countries are not implementing it correctly, and why? **We cannot allow the unions and public opinion to remain in the dark on a subject which is at the heart of any plan for a social Europe.**

4. Specific issues.

4.1. Air passenger rights: application of Regulation (EC) No 261/2004.

This regulation establishes common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights. **It is an interesting and unusual case of regulation which is well-known to the parties affected by it. Unfortunately, the dispute processing system needs improvement.**

France has appointed the French Directorate-General for Civil Aviation (DGAC) as its national enforcement body. The DGAC has reported a steady increase in the number of complaints: 400 in 2004, 1,600 in 2005, 1,800 in 2006 and 3,100 in 2007!

Right from the start, it has been interpreted differently by the Member States, the air carriers and the Commission. The only point on which they are agreed is that the legal debate should not be re-opened, for fear that Parliament will make it even more repressive [sic!]. Under the auspices of the Commission, a working group comprising States and air carriers met to attempt to agree on a "harmonised reading" [sic, again] of the regulation. This

[113] Communication COM 2007/304 "Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers."
[114] Press release IP/08/514.
[115] The Rüffert case C-346/06 of 3 April 2008. The court convicted the Land Niedersachsen for having subjected all foreign businesses to a minimum wage which was only applicable to a single, very small sector. John Monks, the General Secretary of the European Trade Union Confederation described it as "*a destructive and damaging judgement*".

resulted in a document which was published on the Commission's website on 17th February 2008. However, while it provided clarification on 32 identified points of divergence, it has no formal legal value. The problem thus remains unresolved.

4.2. With regard to criminal child abduction, the European Parliament was very interested in the rapid alert system set up in France and Greece for suspected cases missing children, and has allocated resources in the 2008 budget for a pilot project to be extended across the whole of the EU. Its initial conclusions were of such interest to President Barroso that on 6th March this year he announced the setting-up of a new European emergency number, *116 000*, dedicated to dealing with missing child cases. The initiative has the strong backing of the Honorary Board of the International Centre for Missing and Exploited Children.

Very concerned by these family tragedies, Belgium has done commendable work in supplying appropriate information to all the parties concerned, and has created a "federal point of contact" for information on relevant national and international law; it has also published an information pack on international child abduction, which is easily accessible via the Internet.

In the European Parliament, the issue has been subject to intense scrutiny by a group lead by Edward McMillan Scott. At the start of April 2008, a draft declaration was released inviting the Member States to set up a live European database containing information on missing children, drawing heavily on the French system[116].

III – BENEFITING FROM THE UNIQUE EXPERIENCE OF CROSS-BORDER AREAS

1. Overturning the borders.

Established over the course of a thousand years of wars, eternally bristling with barriers, checkpoints, military Maginot lines, customs officials and pen-pushers, ramparts within which national identities are forged through mistrust and hatred of the Barbarians outside, protective, sanitising barriers transforming neighbouring areas into so many "no-man's-lands", European borders are, thankfully, now merely shameful scars, evidence of a past that we no longer understand.

Through the miraculous transformation of the European community, these dead-end areas have now become stop-off points in a perpetual migration process. Flowers, houses and factories began to spring up before the iron curtain had even started rusting. The continent's no-man's-lands became caravanserails.

Nowhere is the European peace revolution more visible, nor has it brought in greater upheavals. However, - and this is the crux of the matter - nowhere is the practical implementation of European law easier to observe than at these borders which function as meeting places, places of exchange and even shared living spaces. A centre for the study of daily life in 21st century Europe would be better placed in Bayonne or Lille than in Châteauroux, and, despite the prestige of its central bank, Frankfurt (Oder) rather than Frankfurt am Main[117].

European leaders have rapidly understood the symbolism of the removal of physical borders, and the conversion of all of the continent's former political and geographic "boundaries". Successive *Interreg* programmes have played an impressive role in encouraging locally-elected representatives to meet, talk to each other, understand each other and start building joint projects together.

[116] Written declaration on emergency cooperation in recovering missing children (0036/2008).
[117] Or, even better: the "double village" on the Franco-German border, which is called Scheibenhard on the French side of the river Lauter, and Scheibenhardt on the German side: an interesting case study for historians, sociologists and lawyers.

However, these projects, which were too slow to come to fruition, were completely overtaken by the spontaneous exuberance of life in these freed-up spaces. This first generation of cross-border co-operation is now behind us. Twenty years later, dozens of binational towns are being built under our very eyes, and almost behing our backs. **This provides a fantastic opportunity to go deeper into our topic: if European law can be applied in cross-border areas, it will succeed everywhere. Conversely, if a shared existence remains unbearably complicated in those hotspots where there is most intermingling of reconciled nations, we have clearly taken a wrong turn somewhere.**

The evidence we have presented above seems, alas, to support the second scenario. It also shows that, alongside the application of European law *erga omnes*, specific cross-border area problems may require specific solutions. Which initiatives might the French presidency usefully take?

2. Promoting the European Grouping and the *EUROMOT* network.

Based on a French initiative which was taken up by the Committee of the Regions, the Parliament and the Council created a specially-designed legal instrument to facilitate cross-border agreements, the European Grouping of Territorial Co-operation (EGTC). Before it was even legally enforceable, this model paved the way to a political solution to the problem of the status of Greater Lille which had been left unsolved for the past fifteen years and thus drew the interest of half-a-dozen other binational towns such as Strasbourg-Ortenau.

France saw this as a very important text and was one of the first countries to amend its legal system accordingly[118]. On 7th February 2008, the Committee of the Regions expressed great disappointment at the speed with which this text was being ratified, with only six members having implemented it. **The French presidency could encourage others to do so with greater haste.**

France has played a pioneering role in the first co-operation initiatives between regional cross-border authorities. Since the mid-1990s, a new cross-border co-operation project (*Mission opérationnelle transfrontalière,* MOT) has brought together these innovative authorities to meet with representatives from the bodies most directly affected, namely Ministries (Interior, Foreign Affairs, Infrastructure and Regional Development), administrative bodies (DIACT), and institutions (Caisse des Dépôts). Drawing on its considerable experience, the MOT brought together similar foreign networks, *Eixo Atlantico* and *City Twins*, which on 8 November 2007 gave birth to EUROMOT, which involves several dozens cross-border towns and provinces. On 11 April 2008, the EUROMOT's political committee adopted a "Manifesto for cross-border co-operation in Europe", which included some twenty concrete proposals. **The French presidency would be ideally placed to take up this issue, as its regional authorities are already one step ahead of most of our partners in this respect.**

3. Free zones or experimental zones?

The first major issue which needs to be examined is that of special legal arrangements for cross-border areas.

For the inhabitants of the same town to have to submit to different legal and administrative rules leads to confusion, injustice and disruption to everyday affairs. All the locally-elected representatives who are engaged in cross-border co-operation quickly come

[118] An amendment to the *Code général des collectivités territoriales* was made on 29 January 2008 by the National Assembly and passed by the Senate on 3 April 2008.

around to the simple idea of offering cross-border towns which have EGTC-type status a common, exceptional legal system, in addition to their respective national rights. It would be far simpler if in the same town, workers were subject to the same employment contracts, taxpayers subject to same local taxes, businesses to the same VAT rates and the same public holidays!

However, clearly this temptation should be resisted. Because **the ultimate outcome of creating such "special zones" is not greater simplicity, but greater complexity.** It would not replace the two national legal systems with a single new one, but rather *add* a new legal system to the existing systems. The border would not be removed, but instead a new border would be created. For example, in the Basque Country, between the North and South of the country, there would be one area under French jurisdiction, one special cross-border area with its own legal system, and then another area under Spanish jurisdiction!

Clearly the "28th regime" approach seems more promising, as it offers the option of Community legislation taking over national legislation on a case-by-case basis. This is fundamentally different from the previous "free zone" plan in that **the option would be available right across the European Union, even though the concept will initially be tested in cross border areas' "test centres".**

4. Initial progress on excise duty harmonisation.

According to some officials from the French Directorate-General for Customs and Indirect Taxes (DGDDI)[119], the Commission and our main partners may all now be open to the idea of discussing fiscal convergence on tobacco. The Commission is expected to release a Communication on this subject next June. **During its presidency, it may be in France's interest to organise an initial technical meeting, selecting a border which is particularly affected by this issue, such as the Basque Country.**

5. Regional cross-border relations within France.

5.1. In 2005, the Ministry of Foreign Affairs commissioned a study on the bilateral co-operation situation on all the French borders. A series of comprehensive proposals were then drawn up. The change of government in June meant that these conclusions were not submitted for interdepartmental review.

In the meantime, there have been a number of other new developments: Franco-Belgian co-operation agreements on Greater Lille and also on healthcare co-operation; the creation of a *Franco-Spanish Forum* bringing together public figures from the economic and cultural sphere to prepare for government summits; the setting-up of a *Basque country Euro-regional Conference*; the start of TGV construction work between Perpignan and Puigcerda; the start of work on the bi-national hospital in Puigcerda; the agreement between France and Luxembourg on social security co-operation of 7th November 2005; the setting up of the above-mentioned EUROMOT network. More recently, the government assigned Gerard Lemaire to conduct an expert investigation on the issue of economic competition and cross-border co-operation. **The French presidency and the State reform should provide an opportunity to follow up on these recent projects and initiatives.**

5.2. It could also **facilitate the relevant French and German Ministries' revision of the Franco-German fiscal agreement as it affects cross-border workers[120].** Drawn up almost half a century ago, and last revised nineteen years ago, this agreement is no longer compatible with current regulations, which are based on freedom of establishment, freedom of

[119] Interview with Mr Henri Havard, Assistant Director of the DGDDI.
[120] Agreement of 21st July 1959, amended by supplementary agreements of 9th June 1969 and 28th September. 1989.

movement for workers, and non-discrimination on the basis of taxpayer nationality. The Court has stated on numerous occasions that whilst direct taxation may fall under the competence of individual Member States, they must nevertheless continue to comply with Community law, and consequently refrain from discriminating on the basis of nationality, either overtly or covertly[121]. The Kehl Consumer Centre has gathered evidence of dozens of cases of irregular fiscal treatment of mixed-nationality couples living in the cross-border area.

[121] Case of *Schumacker* of 14 February 1995 and of *Wielockx*.

CHAPTER VI

REMEDIES AT LAW: FROM OMBUDSMAN TO JUDGE

Appeal possibilities?

Here we are at the final stage. The citizen has been informed of his rights. He has been able to submit his case to an administration, but without obtaining satisfaction. There remains the option of appeal to a higher administrative level, or of seeking some formula for mediation. The final remedy, of course, is an appeal to the courts.

I – THE COMMISSION.

The Commission currently handles 3 200 complaints annually, which is at once an enormous burden and just the tip of the iceberg.

The Commission's most recent Communication *A Europe of Results – Applying Community Law*[122] describes in diplomatic terms the current situation which is far from satisfactory. Of course, 70% of complaints may be closed before a letter of formal notice is sent; around 85% of them are closed before the reasoned opinion; and 93% are closed before going before the Court. But it takes an average of 19 months to close a complaint before a letter of formal notice is sent, 38 months when a case is closed before the reasoned opinion; 50 months when the case is closed without going to the Court of Justice, and 26 months to obtain a judgement from the Court. And the Commission acknowledges that "*A significant number of cases are resolved only after infringement proceedings have been launched.*". This may be acceptable for a large enterprise, but which SME and – to an even greater extent - which private individual can afford to get involved in such a long and burdensome assault course?

1. It would be a start to establish some elementary rules on how the Commission handles complaints: a maximum deadline for response, and access to the dossier for the plaintiff, rather than the current situation where lawyers have to resort to the law on access to administrative documents.

2. A second step, suggested by Mario Monti at a conference on the future of the internal market in November 2006: **why not give the Commissioner for the Internal Market** (the post he then held) **the right to apply legal and monetary sanctions similar to that of the Competition Commissioner** (the post he held subsequently)? Should the Commission have the right to prohibit a Member State from continuing to apply a law in apparent contradiction with a directive, pending investigation of the case? Or, in a different approach, should there be "*class actions*", enabling associations of citizens to act in the interests of the law following a procedure similar to that enjoyed by consumers' groups in the US?

[122] Communication from 5th septembre 2007.

3. Meanwhile, in 2007 the Commission launched a **pilot for an accelerated procedure**.

This consists of setting up a sort of "Super-Solvit", guaranteeing that all complaints will be handled in less than ten weeks. Fifteen Member States have expressed an interest. France is the only country which has expressly refused to take part in it, citing the impossibility for an official to make undertakings on behalf of the State without backup from his line authority... **Is it possible to review this position, which is hardly a good example from the State holding the Presidency of the Union?**

II THE OMBUDSMAN NETWORK

The European Ombudsman is competent to deal with complaints against the Union's institutions and bodies. The national or regional Ombudsman's remit is to deal with complaints against the public authorities of the Member States, including those coming under Community law.

The European Ombudsman receives around 3 300 complaints annually, but two thirds of these are transferred to the Commission, Member States or national Ombudsmen. And the remainder require a good year to be dealt with.

On his initiative, a European Ombudsmen Network has been established. It brings together national and regional Ombudsmen from the Member States and candidate countries. Each has appointed a liaison officer responsible for contacts with their counterparts. The network makes it possible to direct complaints rapidly to the competent Ombudsman (generally from the European Ombudsman to a national Ombudsman). It also makes it possible to distribute information on Community law, and to share experiences and good practice through some seminars, a regular information bulletin, an on-line discussion forum and an electronic daily press service.

Ombudsman Diamandouros is preparing an interactive guide which should be available on his website in all the official languages before the end of 2008. This guide aims to help the public to identify the most appropriate information service (Europe Direct, Citizens Signpost Service, etc.) or the most suited legal remedy to their problem (Ombudsman, Commission for Petitions, Solvit etc.) **It could only be beneficial for France to take part in the launch event for this guide.**

Finally, an update of the Ombudsman's statute was adopted by the European Parliament in April 2008 following the report drafted by Anneli Jäätteenmäki.

II THE EUROPEAN PARLIAMENT

1. An undeveloped pool of information: the mail.

Apart from the mail addressed directly to MEPs, the Parliament itself, or its President in his official capacity, receives 25 000 letters a year – i.e. close to 1000 per Member State on average. Nowadays, nearly two thirds are electronic mail. In contacting the Parliament, the public is exercising a right established under Article 21.3 of the EC Treaty, and restated in the Charter of Fundamental Rights: *"Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language."*

It is most surprising, and regrettable, that no one has thought about making any systematic use of this gold mine of information for the European legislator. According to a well-organised system, this mail is dealt with by an administrative unit, the Correspondence with Citizens Unit, a team able to work in all the official languages of the Union (21 multilingual editors and 18 assistants).

The great majority of correspondents are active people, the proportion of pensioners being below 10%. Reading this correspondence shows what the public expect from the

Union better than any survey. The international or even national news sparks off questions about what Europe is doing, could do or could have done. Images of massacres in the Middle East, Darfur or elsewhere, like violations of Human Rights, provoke many calls for European intervention.

Many messages contain requests for information on European policy or citizens' rights: education, environmental and health issues give rise to numerous comments, questions and even suggestions.

Among the issues handled by the Parliament itself, those which have provoked most mail recently include the Services Directive, the *Open Sky* transatlantic agreement, television advertising, the ban on smoking in public places and immigration.

Mail from France which touches on personal difficulties mainly mentions:

- road traffic problems: licensing vehicles, car insurance, taxation, road safety;

- delays in the transposition of Directive 2003/109/EC on long-term residents[123];

- the Action Plan on the Protection and Welfare of animals;

- the protection of minors against certain websites: violence, pornography;

- the operation of the European Parking Card which, since January 2000, has replaced the scheme for civil and military badge schemes for people with disabilities;

2. Petitions

The right to address petitions to the European Parliament is one of the fundamental rights of the European citizens, set out in Articles 21 and 194 of the EC Treaty. The Rules of Procedure of the European Parliament state that in order to be receivable a petition must relate to "a matter which comes within the European Union's fields of activity and which affects [the petitioner] directly". Submitting the petition is as simple as possible: there are no costs, and it can be done in writing, by fax, post or email, in any official language of the Union.

Despite this simplicity, and the quality of the Petitions Committee's work in close liaison with the European Commission and the European Ombudsman, the achievements of the system are disappointing. The number of petitions is stable, at a rather low level: 1 021 in 2006, 1 032 in the preceding year[124]. A good third of them is irreceivable - which confirms the widespread ignorance of the Union's powers among the public at large. In 2006, a high proportion related to environmental problems, mainly to the impact assessments of European laws and public access to information on the same topics[125]. In fact, petitions are too often used by lobbies or by an opposition party to spread propaganda, which is not the intended purpose of such a procedure.

Finally, though one quarter to one third of the petitions lead to action for failure to fulfil obligations brought by the Commission, it takes almost three years - an average of 35 months - to initiate a procedure under Article 226, and then almost two further years to obtain a ruling from the Court. Experience shows that even when a petitioner receives a favourable outcome either by a voluntary decision of the Member State before a Court order, or by order of the Court, he rarely gets any direct benefit from it[126].

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[123] finally completed on 24 July 2006.
[124] See the assessment in the Iturgaiz Report of 15 October 2007 (2007/2132(INI)).
[125] Application firstly of Directives 85/337/EEC, 97/11/EC and 2003/35/EC, and secondly of Directive 2003/4/EC.
[126] This was the case for the authors of petitions regarding Lloyds and the famous *lettori*, foreign university lecturers in Italy.

IV – THE COURTS

1. National judges seldom apply a law with which they are unfamiliar.

Judicial review of the application of Community law starts with national judges, who are empowered to refer cases for a preliminary ruling to the Community Court to establish whether the national law applicable complies with the law of the Union. Are national judges well-informed regarding Community law and this procedure? Do they apply it effectively? The European Parliament's Committee on Legal Affairs instructed Diana Wallis to produce a very interesting report on *The Role of the National Judge in the European Judicial System*[127]. Her analysis relied on the conclusions of a long survey carried out in the second half of 2007 among 2 300 judges in the 27 Member States.

The survey reveals a somewhat polarised picture. Fifty years after the signature of the Treaty of Rome, 10% of judges in the founding States acknowledge that they do not know how to access the sources of Community law. *Not one* judge specialised in family law or criminal law claimed to consult the ECJ's case law. Several judges in the "new" Member States were unaware that all Community law, including case law, had been translated into their own language. 61% of the judges interviewed had received no training in Community law.

Worse: **in several Member States, a large majority of judges stated that they were not familiar with the preliminary ruling procedure**: we can make excuses for the 84% of Bulgarian judges, but what are we to think of the 87% of Belgian judges and the..... **94% of French judges**? Oddly, the best pupils are not in the founding States: they are in Denmark, Austria and Sweden.

At least, those who had referred cases for a preliminary procedure were satisfied with the quality of the ECJ's decisions: 89% considered that the ruling was readily applicable to the facts of the case, leaving just the decision on costs to the national judge.

These results are relatively disappointing when remembering the succession of training programmes that have been specially designed for legal practitioners. Presided over by the marble image of *Grotius*, an initial programme in 1996 was supplemented by the rather oddly named *Stop* and *Falcone* programmes*,* which merged in *Agis* in *2002.* There is no doubt that Michel Foucault would have seen the expression of a political subconscious gnawed by a bad conscience in these semantic meanderings: how dare they meddle with the training of judges, who remain so intimately bound to the history, tradition and thousand-year old judicial culture of the States? But how can the now joint law be applied to these same States if it continues to be disdainfully overlooked by national training systems? The Praise of Folly, contemporary style....

What follows resembles sports journalism. The rugby version.

It was the previous French presidency, more than seven years ago, which kicked off with a legislative initiative, unfortunately kicked off on the touchline. The European Parliament picked up the ball and drove forward a few dozen metres with a pilot project on strengthening exchanges between national judicial authorities (2003). An easy pass out to the Council, whose *Hague Programme* in the following year demanded an increase in *mutual confidence* between national magistrates. The Commission enters the scrum[128] The ball is kept alive in an impressive pack called the Community Programme on *Fundamental rights and justice 2007-2013* of 25th September 2007. Training for legal practitioners is hidden behind six more visible objectives.

At the end of this laborious progression, all the players are now on the try line - and all the Community institutions have now been mobilised. The French National Magistrates College and the Academy of European Law in Trier played an important role in establishing a *European Judicial Training Network,* which may prove to be a critical tool.

[127] Draft report of 6th March 2008.
[128] Communication 2006/356 of 29th June 2006 *Judicial training in the European Union.*

The European Parliament has even found a new angle of approach: the use which could be made of new communication technologies to provide training and information to national judges. The subject of an own-initiative report entrusted to Diana Wallis, this project is known under the code-name *e-justice*[129]. During an initial exchange of views on 8th April 2008 before the Committee on Legal Affairs, representatives of the Executive Committee expressed their support. At the same time, a specialist Council group investigated the path-breaking experiences in Estonia.

France cannot but benefit from encouraging progress, particularly since the responses to the survey carried out by the Committee on Legal Affairs shows that 37% of the judges interested in training are asking for course in French

A predecessor of the current French Minister of Justice suggested an **Erasmus** scheme for judges, to make young judges aware of the European judicial space[130]. Four years on, the idea deserves to be revived.

2. The Court of Justice.

The European Courts in Luxembourg are clogged. The French expatriates' assembly (AFE) complains about the slowness of proceedings for failure to fulfil an obligation.

The Court of Justice has reduced the duration of its proceedings: preliminary rulings required an average 23.5 months in 2004 and 19.3 months in 2007. For direct appeals and referrals, the average duration of a case has been of 18.2 months and 17.8 months respectively, the latter remaining stable since 2006. But the number of cases closed by the Court remains lower than the number of cases introduced (551 against 580 in 2007), and 741 cases were still outstanding on 31st December. As for the Court of first instance, in 2007 it saw a noticeable increase in the number of cases introduced: 522 against 432 in 2006. In a *communiqué* of 7th March 2008, the Court recognised that the ever-increasing diversity and complexity of cases before the Court required a review of procedures[131].

2.1. Progress is being made.

With initial impetus from the President Vassilios Skouris, some first changes have already been introduced in the preceding year. They should start producing their effect in 2008.

A Council Decision on 20th December 2007 adopted the changes to the Statute and the rules of procedure of the Court required to set up an *urgent preliminary ruling procedure*. Faster than the "accelerated" procedure available under article 104a of the rules of procedure, the urgent preliminary ruling procedure is designed for cases which require particular rapidity: those which are based on title IV of the EC Treaty (specifically the policies relative to the free movement of persons) or on title VI of the EU Treaty (police and judicial cooperation in criminal matters). When they get to the Court, these cases will be handled by a panel of 5 judges, especially appointed for the purpose. Basically, the proceedings are conducted using electronic communications, as the new provisions in the rules make provision for the submission and service of procedural documents by fax or by e-mail.

[129] An update on *e-justice* and *e-law* was given in a Commission Communication presented on 30 May 2008 and during a conference organised by the Slovene presidency on 1 and 2 June 2008.

[130] Statement of Dominique Perben before the National Assembly's Delegation for the European Union on 15 December 2004.

[131] For its part, the new civil service tribunal has completed 150 cases against 157 referrals. It was not in a position to catch up with the accumulated delays of 2006, a year dedicated to establishing its procedures.

2.2. Is there a need to give citizens a direct access to the Court of Justice?

The Treaty of Lisbon opened a breach, but this remains limited to a situation where European law directly affects the petitioner's situation. The principle of referral from a national court remains the rule.

The opt-outs to the Treaty of Lisbon do result in inequalities regarding the rights of recourse available to the citizens: a Briton will be able to invoke the Charter of fundamental rights in France, but a Pole will not be able to do so in the UK. ECAS proposes the following pragmatic solution: if a citizen has exhausted his or her scope for appeal before the Commission, he may appeal to the Court; and/or the European Ombudsman will automatically take up the baton.

However, outside the Court itself, other possible ways for citizens to take action can be envisaged. Let us consider them.

V – EXTENDING THE POSSIBILITIES TO RESORT TO LAW

1. The generalisation of recourse to mediation to solve crossborder civil and commercial disputes.

On 28th February 2008, the Council adopted a common position on a major draft directive intended to facilitate recourse to mediation for crossborder disputes. Accepted by the Commission on 7th March and approved on 8th April by the Parliament's Legal Affairs Committee, this position was to be definitively adopted in June 2008.

It is the French presidency which will be responsible for ensuring the rapid transposition of a text of considerable importance for citizens.

2. Mediation procedures: the special case of consumer law.

In the key sector of consumer law, recourse to the courts cannot be the only means to prevent abuses. A 2004 *Eurobarometer* revealed that three quarters of Europeans declared that they did not want to take their consumer disputes to court. Such proceedings are long, costly and their outcome is uncertain. Most of the time, these disputes are over small sums, and there are too many of them for consumers' associations to take over all of them. Even more so when the consumer does not come from the same State than the business-owner: language barriers and variations between national legislations are additional barriers between the citizen and the judge.

The European Consumers' Centre in Kehl has shown how the Northern countries have been able to compensate for this difficulty by developing mediation procedures. The mediator, being neither a consumer's association nor a judge, in a position of perfect neutrality, is in a strong position for the settlement of small disputes. It is based on seeking mutual agreement between the parties. His aim is to find an amicable solution by applying the law whilst taking into account the principle of equity. This latter characteristic has been criticised by the purists making their voice heard at the French national consumption Council: if solutions on equitable principles become too systematic, consumer law risks becoming "soft law". But the objection holds little weight if the procedure is kept for the small disputes which, today, escape the attention of consumers' associations, as they do that of judges and lawyers.

All the more so as, for the consumer, the mediation procedure offers many advantages. By definition, it is based on free choice. It is very cheap or even free. It is quick: an average 2 months, never more than 6. It is confidential, unlike court hearings. It offers the additional guarantee of the technical skills of mediators, who are often former professionals. Furthermore, the accused supplier will be quicker to respect a solution which he has himself accepted than one imposed on him. That is the reason why this approach has been

successful for many of our (mainly Northern) partners, such as the Netherlands, Ireland, and the Scandinavian countries.

For almost a decade now, the Commission has worked to support the various mediation procedures set up at national level by proposing shared principles to guarantee technical competence, effectiveness and the neutrality of the chosen mediators, and by distributing a list of them[132]. Germany has notified Brussels of more than 200 specialist mediators. Sweden has reported only one, but as he is directly attached to the Ministry for the Economy, he is competent over all areas of daily life, and is in effect a "one-stop shop" for all consumers.

In the case of Germany, it should be noted that the code of civil procedure[133] invites the judge to settle the dispute at any stage. It also authorises him to make a referral to another judge or to a mediator from outside the court. Thus, if the parties agree, to accelerate the search for a solution a judge can play the role of mediator, on the sole condition that he has not been appointed to preside over the legal proceedings itself. The results of this mediation formula are impressive: the statement given to the European Parliament by a judge from the city of Braunschweig reported a success rate above 90% from a total of 400 cases which he mediated.

The case of the United Kingdom is also remarkable. Firstly, the existence of the Ombudsman is universally known there, which leads many citizens to turn to him unprompted. Furthermore, the state has set up a very extensive network of 1500 *Citizens advice bureaux*, offering all kinds of administrative information to individuals. Finally, mediation itself is carried out by around twenty professional organisations covering every sector (property, finance, sales of vehicles, etc.), all offering satisfactory guarantees of neutrality.

For its part, France has listed only a small number of highly disparate bodies of varying merit:

- the PO Box 5000 services, set up in 1977, have general jurisdiction over consumer law. Thirty years after their creation, they remain little known to the public at large, and are present in only 59 departments.

- The committees for the resolution of consumer disputes (CRLC) were set up in ten pilot departments twenty years ago: only three remain, of which only two were notified to Brussels (Ille-et-Vilaine and Pyrénées-Orientales). They have only subsidiary competence, failing any other mediation body. The Directorate-General for Competition, consumer affairs and the fight against fraud (DGCCRF) made a fairly critical assessment of this disorganised nebula of bodies, handicapped by bickering between associations.

- The Ombudsman service of the French federation of insurance companies (FFSA) was set up in 1993 at the initiative of professionals in the sector. Each of these has an in-house Ombudsman. In the event that mediation at the level of the insurer's customer service department fails, the Federation Ombudsman can be brought in. It offers the guarantees of independence called for by the European Commission, and consumers acknowledge it since they initiate nearly 80% of referrals. The European Consumers' Centre in Kehl praises the quality of the work carried out by this Ombudsman. However, the number of crossborder disputes submitted to it remains relatively low: ten or so per year, out of the 1 500 cases that it handles.

- The mediation service of the financial markets authority (AMF) has a very strictly limited area of intervention. It deals exclusively with disputes on information provided to investors, the execution of stock exchange orders, issues with portfolio management, and the marketing of financial products. It will be noted that, like the FFSA Ombudsman, in practice its work hardly ever concerns people from other European countries.

[132] Recommendations of 30th March 1998 and 4th April 2001.
[133] § 278 ZPO.

Recently, other Ombudsmen have been set up in public and private enterprises. In particular:

- The Ombudsman of the long-gone Ministry of economics, industry and employment. Set up in 2002, this body has power to resolve disputes concerning physical persons, but also traders, artisans and enterprises. It receives several thousand applications per year, several dozens of which come from citizens of other European countries. It is not widely enough known, particularly in border regions.

- The national consumers' service. It can mediate disputes for customers of France Telecom and Orange. The service is provided by a former judge.

- The merit of the Ombudsman for EDF is twofold: the rapidity of its procedure (less than 2 months) and the obligations on the part of EDF to apply its recommendations, while the consumer remains free to accept or refuse the proposal made.

- The SNCF and the RATP also have their respective Ombudsmen, who are former judges from the Court of Auditors.

On the initiative of the EDF Ombudsman, the various public mediation bodies have together drawn up a *Common charter for Ombudsmen in the public sector*.

For their part, private enterprises have developed their own mediation system. Bodies of this type now exist in the furniture, architecture, car industry, e-commerce, real estate, optical, banking, construction, rental, mail order selling, and transport /travel sectors. However, the competence of these bodies is often limited, technically or geographically.

The European Consumers' Centre in Kehl regrets that France lacks a neutral Ombudsman open to the general public for motor vehicle-related disputes, which represent 10% of its activity and more than 30% of the requests for information that it receives. The same applies to some fields prone to misunderstandings such as the craft industry, hotels, the medical and paramedical sector (including dentists), the banking sector (the existing Ombudsmen are linked to each institution), advertising (the spam problem), or car repairs.

However, it praises the mediation service of the forum for rights on the Internet. Competent for matters concerning e-commerce, this service handles several thousand disputes every year, and settles nearly 90% of them.

These different analyses and recommendations deserve study by a high level group gathering the professionals and consumers' associations affected.

3. Should the possibility of collective redress be introduced for consumers?

Characterised by the globalisation of supply and an explosion of services to individuals, the new consumerist revolution offers much lower prices under the pressure of competition, but at the price of a legal complexity to which the supplier adapts far more easily than the consumer. The Credoc estimates that an average household manages around 25 types of contract for daily life, and estimates that 15% of French consumers are victims of a dispute with their supplier every year.

The Community authorities were very quick to take action on the rights of the consumer. Information for consumers and the protection of their rights have given way to the implementation of an impressive and on occasion original legal and administrative apparatus[134]. But the main question that arises today is that of collective proceedings in court.

[134] Let us quote specifically: the *European Consumer Centres Network*; Directive 98/27/EC, which allows qualified persons to introduce proceedings to put an end to violations of consumers' rights in other Member States; Regulation 2006/2004 EC, which sets out the legal framework for cooperation between national authorities; Directive 2005/29/EC on unfair commercial practices; and Regulation 861/2007/EC of 11 July 2007, setting up a

At present, none of the 27 Member States has a system equivalent to the USA's *class actions*, but around half of them have set up collective procedures for compensation for individual damages (*collective redress systems*). Thus the United Kingdom has set up a system of grouping cases on the basis of individual engagement, the *group litigation order.* In the area of financial information, Germany has established a pilot system, for a period of five years, combining individual and collective proceedings to allow shareholders to obtain compensation for damage. Since 1992, France has had "proceedings for action with joint representation", but the financial risk which it imposes on the petitioner and the load involved with managing thousands of cases have had a strongly dissuasive effect: the procedure has only been used five times in fifteen years.

Considered overall, these systems are disparate, and the fact that the other half of the Member States (including, for example, Belgium, the Netherlands, and Italy) do not recognise a group action may make it impossible for consumers to take collective action in the country where the accused manufacturer is based, as may the fact of being represented by a public intermediary such as the national Ombudsman.

This is why the idea of a harmonised European system inspired at least by the philosophy of the *class action* has for two or three years been an issue at the meetings of the *Consumer policy network*. In its report of 23rd May 2007 on the *Equitable Life* crisis, the European Parliament scrutiny committee called on the Commission to examine the scope for setting up a legal framework for crossborder collective actions, with guarantees of uniform procedures. The Parliament in plenary included this request in a resolution on the obligations of crossborder service providers on 27th September.

For its part, the Portuguese presidency held a conference on collective redress in Lisbon on 9th and 10th November 2007. When concluding this conference, Commissioner Meglena Kuneva announced her intention to launch a **discussion group on collective redress** and to publish a communication on the subject before the end of 2008. Her initial idea is not to introduce the American model purely and simply, but to consider ways to introduce *group action,* which would make it possible for a group of people from several Member States and suffering from the same damage caused by the same enterprise to be represented either by a national consumer protection body or by a European body to be created.

The French presidency could only benefit from encouraging this popular approach which receives strong support from, inter alia, *UFC-Que choisir.*

It may also draw support from the reactions to the White Paper published in parallel by Commissioner Neelie Kroes on 3rd April 2008 on damages actions for breach of the EC anti-trust rules. These reactions were requested by 15th July 2008.

European procedure for settling small claims, which will soon be supplemented by the directive on mediation in civil and commercial cases. The least one can say is that the consumer has not been forgotten!

CHAPTER VII

IN THE (NEW) BEGINNING WILL BE THE CITIZEN

How can we prevent the results of this survey from leading merely to yet one more action plan to join the dozens of others, at the risk of piling up still further information sources and additional procedures when what we need is to listen, to simplify, and to connect?

Every Community institution and every Member State should adapt to this need for proper application of a European law designed to meet citizens' needs. But there are a few common principles, or some common questions.

I - COMMON PRINCIPLES

1. A common question: should we appoint a special body, or should the principle of 'putting the public first' become the natural concern for all of us?

This is a frequent dilemma in any complex organisation. It is rare for it not to arise when a government is established. When dealing with European affairs, all the national parliaments have already been faced with it, and those who believe that they have found a satisfactory solution can be counted on the fingers of one hand.

On the one hand, the appointment of an individual, a department, or an *ad hoc* body ensures that a new problem will be fully taken into account somewhere; but it has the disadvantage of moving responsibility from the rest of the organisation, which will tend to rely on the newly arrived to deal with this new concern. In contrast, inviting all parts of the organisation to take the issue into consideration in all its proceedings seems to fit the goal better; but it has the disadvantage of confusing the ultimate aim with the necessary means of achieving it. When everyone is in charge, no one is; who will be congratulated in the event of success? Who will we punish if it all goes wrong?

If the overall analysis of this report is shared, then Member States, the Commission, the Parliament, all need to ask themselves this question: should we appoint a Minister, a department, a Commissioner, a parliamentary committee, with special responsibility for the application of European law; or should we rather try to improve the existing organisation?

It will be difficult to avoid the first solution. It has an additional advantage in our multi-national system: the people and the services appointed will almost spontaneously form a network, which will enhance the effectiveness of each. Whereas, as we have seen in the case of social security or in the border regions, huge reserves of energy are required to persuade ordinary administrations, designed for other tasks and safely tucked up in the horizontal and vertical partitions which form their habitual working space, to acquire the habit of working together. But we also need to ensure that these new specialist bodies, even when linked inside a network, will not have a tendency to detach themselves in an isolated fellowship instead of stimulating and inspiring the rest of the Community.

This risk can be limited, perhaps avoided, if the appointment of the main person responsible is accompanied by two further steps:

- the integration of this main person in the ordinary decision-making process of the organisation;

- the arrangement of periodic meetings during which all the other members of the organisation can be assessed in the light of some performance targets proposed and checked by the specialist officer.

2. A new method to put into practice: the citizen as the point of departure for the law

Certainly, the European Parliament has been elected through universal suffrage since 1979, and since 1992 “mobile” citizens can choose to be electors or candidates in their host country.

Certainly, the Lisbon Treaty has completed the process of giving the Strasbourg Parliament full legislative powers, shared with the Council of Ministers. Certainly, in replacing the undemocratic system of a single national list with regional Euro-constituencies, France has made a significant effort to bring its European elected representatives closer to local realities.

Certainly, every member of the Council of Ministers is answerable to his national parliament, before which all the Commission's proposals are now submitted upstream, and which has become judge of the application of the subsidiarity principle.

Certainly, the Committee of the Regions has also acquired the right to turn to the Court of Justice when the Union acts too hastily in those fields which the Treaty reserves for political bodies closer to the public.

Certainly, without waiting for the new EU article 11, the European institutions have long since adopted the custom of working with the social partners and the NGOs which represent civil society, while 12 000 lobbyists are officially accredited at the European Parliament.

Certainly, the consultation and exchange procedures launched through Green and White Papers enable the Commission to explore the ground before sowing its draft laws.

Certainly, ever since the beginning of the Common Agricultural Policy, farmers all over Europe have known how to exploit the media to make their voice heard in the run-up to every Brussels 'marathon', just as the European Trade Union Confederation delegations marching in the streets of Strasbourg knew how to focus TV cameras on the debate on the Services Directive.

Certainly, the general and specialist Eurobarometers enable elected representatives and Brussels officials to keep their fingers on the pulse of public opinion, which never hesitates to seize any occasion of a referendum on a European issue to express loudly their feelings of confidence, or, more often, of anxiety.

Certainly, the myriad of sites on the *Europa* portal, the Ombudsmen's network and the European Parliament's Committee on Petitions offer, at any time, an admirably sharp snapshot of the practical problems of European citizens.

And yet, despite all these precautions, all these procedures, the consultations, the innovations on which the ink is still fresh, we must have the courage to admit it: despite their tangible goodwill, and despite their undoubted representativeness, all those who take part in drafting decisions in Brussels are still too far from the day-to-day problems experienced by individuals. Even the ongoing consultations with the social partners, NGOs, or professional lobbies only give a limited guarantee that the expectations of the average citizen will be taken into account: their representatives, too, are swept up in the Community microcosm, initiating in what the Spanish call a *mundillo*, a web; *aficionados* of Europe. They use *Europe Direct*, but their constituents are not aware of its existence. And the political associations or parties which are - here or there - better rooted in local realities clearly have prejudices which lead them to stain these realities with their own favourite color.

That is why we need to consider a different approach.

In the past, the vertical approach - from the enlightened summit to the ignorant average citizen, top-down, seemed natural: after all, apart from brief revolutionary periods, that is how all democratic States proceed when drafting their own national laws. Once in possession of an electoral mandate, experts identify objectives, take the advice of other self-

styled representative experts, debate the issues among experts, and come to a decision. In the case of European policy, in 1986 the experts met in Brussels and identified 286 subjects for legislation in order to create the legal foundations for the single market. The legal milling machine has been kept busy for twenty years. However, in 2008 the single market for goods is still incomplete, that for services has just seen the light after a particularly painful labour and, as we have seen, the movement of persons remains a legal minefield.

Let us do things the other way around. Let's start from the point of arrival: the man in the street; anonymous, unorganised citizens. How can we reach them? Long ago, professional sociologists and opinion poll institutes developed scientific methods to identify a representative sample in a given population, and methods of qualitative interview to convince random individuals to express their reactions to a brand, a product, a candidate, or an idea. A sample of this nature is obviously not legitimate for *decision-making,* but it is better-placed than a pressure group to give *evidence.*

This evidence would be supplemented by some suggestions which could be posted on a specialist website, as suggested above[135].

Starting from such a panel and the website, let us then listen to the practical problems experienced by the European nomad: the officially abolished formalities which he is still required to complete, the absence of an identified contact or of a brochure published in his language to answer his questions, the manoeuvres of administrations which keep sending back and forth, the inextricable difficulties created by an employment contract which differs from one country to another, the certificates issued by one national public service which are ignored by the service in the neighbouring State, the loving adventure of a mixed marriage which suddenly turns into a legal nightmare. And starting from there, let us act on a case-by-case basis: here, it is enough to improve the information received by the relevant administration, or to put the services in question in the different countries in contact with each other; there, the European law is fine, but badly transposed; elsewhere, citizens have an absolute need for a common rule, which would imply replacing a directive by a regulation, or, in matters of national competence, introducing a “28th regime". In short**, instead of working on the basis of an energy package, a telecoms package, a railway package, let's develop a "citizens’ package",** a real gift-wrapped package, designed trough a bottom-up approach.

Who should take the initiative? The Commission, naturally, since it retains a monopoly on legal initiative in the Union. But all the other players involved in European law, too. The Parliamentary committees, the European Economic and Social Committee, the Committee of the Regions, the political parties, the social partners, the 'civil society' associations: it could only be beneficial to increase the direct questions asked by all these users of Europe who demand to be treated as citizens.

II - THE COMMISSION

The ECAS experience shows that a letter from a Commission official is often more effective than proceedings taken before a national jurisdiction to persuade a government to amend an administrative practice. It should also be remembered that citizens hesitate to take legal action, particularly when their opponent is the almighty administration.

The Commission wants to provide a point-by-point follow-up for the recommendations made by the Parliament in February 2008 based on Monica Frassoni’s report. As of the beginning of April, comments focused inter alia on how the examination of e-mail might be speeded up, the establishment of criteria for urgency when handling complaints, post-legislation package meetings to discuss the harmonisation of interpretations of the texts, the publication of 'citizen's summaries' aiming at translating the legal texts into a simpler language, and improving the use of the resources of the Commission Representations in the national capitals.

[135] Cf. Chapter VI. 3.4. “Europedia” or the citizens’ self-constructed Europe”

One organisational issue is key: who should handle letters of complaint? It is natural, faster and more efficient to allow every department to deal with the requests for information and complaints which concern it. **But the Commission, like the Parliament, would benefit from organising a centralised political monitoring of this correspondence.**

Should this centralisation take place within the President's office, or should it be entrusted to a specialist Commissioner? Like the High-Level group under Simone Veil, ECAS recommends this second solution. **A Commissioner for information and the application of Community law could thus coordinate the work of several departments** across the DG Internal Market, Justice, Freedom and Security, Social Affairs, Education and Culture and Consumer Protection. **It would be at the heart of the "Ulysses" information network suggested above.**

III - THE EUROPEAN PARLIAMENT

Right from the beginning, the Parliament has been concerned about its role in the implementation of readily implementable legislation. Its ongoing battle to be involved in the drafting of subsidiary legislation ("comitology") cannot be explained by a mere thirst for power, but also by a concern for the practical application of the texts.

Recent reports already quoted, such as those of Diana Wallis (for the Equitable Life Insurance Society scrutiny committee) and Monica Frassoni, have put forward some recommendations for internal use. To take account of this experience, and to prepare for the future, the European Parliament has set up a working group on the adaptation of its procedural rules, its internal organisation and its practices in the new institutional order post-Lisbon Treaty. Working paper n.14 of 21st January 2008, *Transposition and implementation of Community law,* makes some interesting proposals. At this stage, the competent authorities in the EP have not come to any conclusion, but it may be helpful to mention these proposals, as examples of what the Parliament's contribution to the solution might be.

1. The content of legislative texts

How can the texts be made easier to apply, i.e. *"enforcement-friendly"*? The task seems impossible for a Parliament of 785 MEPs[136] from 27 countries, working in 23 languages and constrained by the Treaties to reach a qualified majority (around two thirds of those present) in order for its votes to count. The search for a compromise almost routinely means a loss of simplicity: everyone needs to find their own added value in the final text.

However, improvements are possible:

- the introduction of “citizens' summaries” in all texts, providing a clear and simple presentation, albeit of no legal value, for the 500 million European citizens who are supposed not only to be aware of the law but also to understand it. The information papers which the Parliament's services distribute to MEPs and the press before every plenary session are proof that the exercise is feasible.

- A more frequent use of the *regulation*, directly and uniformly applied in every Member State, rather than the *directive* whenever the interests of the citizen are more important than subsidiarity.

- The systematic introduction, into the implementing articles of directives, of shorter transposition deadlines, concordance tables for Community and national law for each transposition, and the obligation to provide periodical implementation reports.

- A more frequent use of limited-duration texts (*sunset clauses*), thus making the periodic reassessment of legislation compulsory.

[136] This number will be reduced to 751 in 2009 when the Lisbon Treaty comes into effect.

2. The transposition of directives and the enforcement of legislative texts

This is the fundamental responsibility of the Member States, and to a lesser extent, of the Commission. However, the Parliament can no longer neglect this issue, from a political point of view. Two approaches, which are not mutually exclusive, are possible.

The first consists of making each Parliamentary committee and their rapporteurs responsible for monitoring 'their' texts. The value of such a move is clear: those who have been actively involved in drafting a directive are the best placed to judge the way in which it is subsequently transposed and enforced. The working group is in favour of this solution which makes the “rapporteur for adoption” act as the “rapporteur for implementation” of all the texts examined in Brussels and Strasbourg. Nevertheless, we may fear that, for a legislative committee, the political importance of work on a new draft text will be much greater than that of checking the implementation of old texts. This is demonstrated in France by the enormous time lag between the examination of the draft budget and that of the *loi de règlement*, the subsequent law stating the financial results.

The second approach would lead, in contrast, **to the establishment of a parliamentary committee specialised in monitoring legislative texts.** It would be modelled on the Committee on Budgetary Control, COCUBU, and its relations with the Legal Affairs Committee could be the same as the COCUBU and the Committee on Budgets’ ones: numerous joint members of the two committees, close cooperation between the rapporteur on adoption and the rapporteur on implementation where these are different, frequent joint meetings etc. The Committee on Petitions could be transformed to take on this role. As in the case of the alternative approach, the outlet for these controls would be an own-initiative report.

Whichever solution is chosen, it would be helpful to involve national parliaments in the process. The issue deserves to be put before the COSAC[137]. The European Parliament Information Offices in national capitals and national parliaments’ observers in Brussels could play an important role in this relationship.

V – THE PRESIDENT OF THE EUROPEAN COUNCIL, LISBON VERSION

The introduction of a full-time President of the European Council is simultaneously one of the major innovations of the Lisbon Treaty and one of its greatest enigmas: what purpose will he serve? The Treaty gives him no legal power, no budgetary resources, no dedicated administration, and gives him the task, as majestic as it is vague, of representing the Council and driving forward its work.

The spirit of the Treaty is to have him or her as an authority capable of ensuring the continuity of the European policy, which is perpetually compromised by the current biannual switches of presidency. We should naturally gor for the broadest interpretation of this objective of continuity and effectiveness possible; that is, by inviting him to take responsibility for the scrutiny of the work conducted by the European institutions themselves following the European Council's decisions as far as it is of the Union’s competence, as well as for the scrutiny of the proper coordination of and follow-up of the decisions that come under national governments.

If this interpretation is accepted, the application of Community law, in terms of the required time schedules, shape and effectiveness, should be one of his foremost responsibilities. How? With whom? By wielding which sticks and which carrots?

[137] Acronym for the *Conference of Community and European Affairs Committees of Parliaments of the European Union,* in which representatives of specialists from the 27 national parliaments and the European Parliament meet several times a year.

This will be for the first holder of the office to decide. **It would not be unreasonable to invite the candidates for this new and original position to explain in advance their views on the role of the president** in this area – as, indeed, in every other.

VI. - THE MEMBER STATES: THE CASE OF FRANCE

Parliamentary report by Michel Herbillon; Public report of the Council of State for 2007; Report of the Committee chaired by Edouard Balladur, White paper on foreign policy currently being drafted under the authority of Alain Juppé and Hubert Védrine, guidelines issued by the Council for the modernisation of public policy (CMPP)[138] : there is no shortage of good ideas on how to reorganise our public administration to suit the new Europe that has emerged from the enlargements and the Lisbon Treaty. We shall here restrict ourselves to those which seem to deserve special attention. And some others.

1. A Minister must obviously be appointed to handle this.

The application of the Lisbon Treaty will facilitate the matter by henceforth distinguishing between the Foreign Affairs Council and the General Affairs Council: the government will have to appoint different figures for these two new fundamentally differing roles. The Minister for European Affairs would logically be perfectly placed to monitor the application of European law in France.

Another option would be to entrust this role to a Minister in charge of the application of all laws, national, European or international (various agreements and other treaties).

In the same spirit, someone should be appointed to this task in each Ministry. In principle, this should be carried out in the next few weeks, in accordance with the instructions already given by the Prime Minister.

2. **Building the *Ulysses* network: an office in each prefecture.**

We have already seen what their value and role would be: to provide a point of contact everywhere for every European citizen, including the foreigners living among us. Not to claim to be able to solve all their problems with a receptionist's smile, but by providing them basic information straight away and helping them to reach the service, website or Ombudsman who can handle their case.

The network will need to be associated to other information points for local authorities, consular bodies, and various outposts of the Commission, whose whole organisation itself should undergo an in-depth review.

It will also need to take advantage of the consulates of our 26 partner countries in France, and of our own consulates in those countries. The White paper on foreign affairs which is being drafted at the moment should put forward some proposals on this aspect of the issue.

3. **Set up an accelerated procedure for the national parliament** to transpose Community directives. As noted in chapter III, this issue has been tackled by Edouard Balladur's committee.

[138] These include the decisions of the CMPP of 4 April 2008 on the State's external activities.

4. **Consider the possibility of providing the citizens with a collective redress procedure, a class action-type one**, to be used for cases against the State or the Union in the event of violation or misapplication of Community law but not against enterprises.

While waiting for a Community legal framework to be set up, nothing could prevent France from taking the lead in this matter. Our principal partners would be bound to draw inspiration from our experience.

5. **Allow cases to be referred to the national Ombudsman by MEPs**, which would put an end to an increasingly unjustified anomaly: we have seen that disputes over issues coming under European law already represent an increasing proportion of the Ombudsman's work.

V - … AND THE CITIZENS THEMSELVES!

Taking up one of the major innovations of the draft Constitutional Treaty, the Treaty of Lisbon gives citizens a right of collective initiative. A million citizens who are nationals of "*a significant number of Member States*" can call on the Commission to tackle an issue falling under Community competence. Citizens thus benefit from having a right of political initiative comparable to that of the European Parliament through its resolutions. The Commission is totally free to choose how to follow up on such petitions, but it goes without saying that the most important ones will have to be submitted, at least for discussion, to the Parliament and the Council.

This procedure may enable citizens to push for faster resolution of many problems which are currently bogged down, such as those which we have raised above:

Border workers for their tax and social problems (there are several hundred thousand of them in France alone);

- Mobile employees on the portability of social rights (10 million?);

- Workers on posting – a million people according to the Commission's estimate;

- Students on the recognition of qualifications and the broadening of Erasmus. There are currently has 16.5 million higher education students in the European Union[139] - mobilising a tenth would be enough.

- International couples on the progress of the European family law (700 000 people concerned each year).

- Consumers in favour of the introduction of class actions - hundreds million people.

When drafting the texts on the application of the Treaty, it must be ensured that this vanguard represented by the European citizens living in a country other than their country of origin can take full advantage of this new procedure.

[139] Figures from *Eurostat* on 1 January 2008.

CHAPTER VIII

POST-LISBON: NEW QUESTIONS FOR A NEW CONTINENT

In our introduction, we discussed the "peace revolution" which has swept across Europe. Initially it transformed *lifestyles*. Now it needs to be encoded in *law*, and this report attempts to foresee some of the ways through which this might be achieved. However, whilst doing so, we are also aware that this perpetual peace, the Enlightenment philosophers' utopia as achieved on the continent by the builders of Europe, prompts us to reconsider the *concepts* behind it: some of the fundamental principles on which our predecessors have built the modern political system, or that which was modern in the 20th century.

We will only attempt to deal with the basics here: sovereignty, the citizen and political representation and, finally, the evolution of law itself.

I – THE PEACEFUL COEXISTENCE OF SOVEREIGNTIES.

We have no desire to reopen the debate between the sovereigntists and the federalists, which dates back as far as Robert Schuman's *Salon de l'Horloge* speech. It is obsolete now.

France recognised this when it gave its own definition of the European Union in Article 88-1 of its constitution: "a Union constituted by States which have freely chosen to exercise some of their powers in common". That is all. And that is enough.

What does this mean? It means that sovereignty remains national, as our Constitutions state: "National sovereignty shall vest in the people…" Similarly, all debates about a "European Europe" or a "Europe of nations" are now closed. The Europe which is being built is very much a Europe of States. However the Europe of States is very different from the States without Europe.

Thanks to the now-assured peace between the States, we need to organise the peaceful coexistence of sovereign yet national States.

If this were simply an academic matter, it would have no place in this report. It does however have legal, and therefore practical, ramifications for a growing number of European citizens.

Indeed, as we have seen, when it comes to family law, and also to the transposition of Community directives[140], **different interpretations of the same humanist values by national legislators and judges can place citizens at the centre of insoluble legal conflicts through no fault of their own. That is to say, conflicts of sovereignty.**

With regard to the law on marriage, the French "public policy" law can be invoked by a French judge to prevent Belgian law from being applied to Belgian citizens in France. A failure for Belgian sovereignty!

However, on the same matters, Dutch law can apply to resident foreigners of any nationality, only on the condition of a certain period of residence. A failure not only for French national sovereignty, but for Spain's, Germany's, etc!

[140] See above, Chapters II and III.

As long as the number of legal conflicts remains limited, and involves only a few cases, the debate on the issue remains limited to specialists, and those affected are seen as victims of a sort of rare "disease" emanating from a complex social system, and find themselves passed from one bureaucratic or legal "clinic" to another. However, as the free movement of individuals progresses year on year, the number of cases and issues will inevitably increase. So much that we are likely to find ourselves on the horns of a dilemma, having to choose within the Union between **competing legal systems and competing nationalities, with each citizen intending to go "shopping" for the most favourable national law**. Such competition already exists at fiscal level. The right to permanent residence, henceforth recognised, will extend this to the social domain. **Are we sure that we wish to see this spread to all matters of citizens' rights?**

It would therefore be of interest to study two possible ways of avoiding this situation. Both could be considered by our best legislators and legal experts. Their conclusions would help determine which possible legal and political forms these solutions might take.

1. The first would involve **harmonising our "public order exceptions".**

As much as it is logical and necessary to protect our country from laws which violate our fundamental values (polygamy, repudiation, etc), it is also incomprehensible that any European state should challenge the application of a Union partner's national law to their own nationals: otherwise, what is the use of the Charter of Fundamental Human Rights, drawn up in 2000 by a Committee of European representatives, adopted at the European Council of Nice seven years ago, and introduced into our own respective legal systems by the Treaty of Lisbon[141]? **Why not contemplate an agreement on the definition of a "European public order"** which would replace the various different national public order criteria and which would bring together all the Charter of Fundamental Rights signatories?

2. The second avenue for investigation is the possibility of drawing up a **Community law transposition charter**.

In Chapter III we outlined the problems which arise when the transposition of directives fails, and they are unfortunately quite common in our country. A group of Brussels-based European law practitioners has suggested that France might adopt some form of code of conduct on adapting and applying Community law[142]. A number of their proposed undertakings are already in the Charter of Fundamental Rights. All the same, this initiative would be a useful educational tool for the political and administrative parties involved. Indeed, it should even be directly considered by all 27 Member States, not just France.

The starting point might be the main principles determined by the Court of Justice's case law to ensure effective implementation of Community law: the right of access to justice, the right to a trial, the right to the implementation of a judicial decision, the right to compensation for damage caused by the State or territorial authority due to violation of Community law, principle of "treatment as nationals", the principle of effectiveness, etc.[143]

How should such a text be drafted? Is it possible and desirable to give it legal scope? If so, which one? If not, who would have the competence to brandish which penalty in the event of non-compliance with this charter? Naturally, all these issues require further clarification.

[141] Chapter VII of the Charter specifies that this is only binding for Community law and its implementing provisions; however, aside from those countries which have opted out, I say good luck to those who would attempt to plead before the courts that it is null and void as regards national law.
[142] Cf. appendix
[143] See framework in the appendix.

II – THE CITIZEN: WHAT DOES "CIVIS EUROPEANUS SUM" MEAN?

Our mission is on how Europe serves its citizens. But who in fact are its citizens? As astonishing as it may seem, given that the Maastricht treaty was signed in 1992, here in 2008 **none of the European institutions have yet asked themselves this question!**

When they postulated that the nationality of a Member State was the necessary and sufficient condition to gain European citizenship, and that this was in addition to national citizenship without replacing it, the authors of the Maastricht treaty thought they had found the philosopher's stone: Europe is neither a super-state, nor a twenty-eighth country, and yet European citizenship exists based on a specific legal system.

Unfortunately, the elegance of the architects' reasoning is not reflected in the system's overall legal and political structure. Nationality, citizenship and European citizenship are supposedly discrete concepts which in fact are inextricably linked.

For instance, in amending its laws on nationality, each Member State can speed up or slow down the increase in the number of European citizens. This means that, just as Union members can not be disinterested in one of its members' policies on the control of illegal immigration, **the law relative to nationality will inevitably become a topic of conversation, then discussion, and then negotiation between the twenty-seven[144].**

Indeed, behind the bold talk of "European citizenship", such varied legal statuses coexist in our countries as to invite comparisons with the societies of Pericles' Athens or Augustus's Rome:

- National citizens living in their own country. Legally speaking, they hold the highest rank in society.

- Binational or multinational citizens, with passports and citizenship rights in two (or more) European countries. A colourful yet rare legal aristocracy whose precise numbers have not been officially calculated.

- National citizens living in a European Union country other than their country of nationality. In theory they enjoy all the national rights of the host country, minus the right to vote in national elections. However, as outlined in Chapters II, III and IV above, there have been numerous and serious violations to this principle.

- Foreigners, from non-EU countries, who are legitimately resident in an EU country. In terms of the applicable areas of Community law, they theoretically have the same rights and obligations throughout the 27 Member States - the "blue card" should formalise this. In other areas, they are subject to 27 different regimes. Several Member States grant the right to vote in local or even national elections, to foreigners from certain countries (as is the case for the British Commonwealth, for example).

- Undocumented aliens, who can legitimately be returned to their country of origin.

- Communities of individuals living in Europe but who, for historic reasons, do not enjoy full citizenship rights. Some of the "Russians" in Estonia and Latvia, the "struck off people" of Slovenia. Conversely, some European State nationals can enjoy historic rights in neighbouring States (e.g. Hungarian communities bordering Hungary, or, just the other side of the Union borders, the Croatian communities of Bosnia-Herzegovina).

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[144] The Court of Justice has opened this debate as early as 1992 with the *Micheletti* Judgement (369/90 of 7th July 1992). It considered that whilst giving Member States total jurisdiction over the defining conditions for recognition of their nationality, Community law does not give other States jurisdiction to challenge these criteria.

- Not to mention the Roma, who hope to combine the benefit of European rights with some form of special nomadic rights - at the cost of a generally unenviable situation.

This ranking prompts a number of observations.

1. Whilst respecting the accretions of history, and, of course, national sovereignties, **is it not about time we had at least one exchange on the different interpretations that we give to the legal definitions of *citizenship* and *nationality*?** The aim should eventually be to reduce the number of categories and to invite Member States, using this simple comparison, to put an end to irregular situations: there is such a diversity of electoral rights between States that it results in shocking inequalities within an area which claims to have a uniform definition of citizenship. Thus, British citizens living in France for over ten years lose their right to vote in UK elections, without of course gaining the right to do so in France; whilst French citizens living abroad can vote at their consulate, and Commonwealth citizens resident in the UK can even vote in British national elections!

2. The second observation is more disturbing.

The two equations "national citizenship = automatic enjoyment of European citizenship" and "European citizenship = a guarantee of non-discrimination by the national law of each of the Member States" should lead to the logical solution: "European citizenship = sum of the 27 nationalities". The theoretical response is: yes, when it comes to rights related to residency, no when it comes to rights related to the individual. This hardly concludes the debate however, so long as national legal systems themselves differ on the distribution of issues between these two fundamental legal categories.

Again, is it not time to take this debate out of the hallowed halls of the legal experts and into the public arena? **In what way does European citizenship differ from the sum of the 27 nationalities without being a 28th? Can we agree upon a common list of rights related to residence and rights related to the individual?**

These issues will not be resolved overnight. In the meantime, **might it not be possible for us to engage pragmatically in a gradual extension of dual nationalities?** The previous French government planned at some stage to propose to Germany that the French and German nationalities should merge. The idea was not followed up. It was either too much (with some citizens on both sides who did not wish to take on their neighbour's nationality) or too little (why should we only propose this "merger" to Germany?) Why not review this situation; this time taking a more realistic approach and taking into account both national sensibilities and personal preferences? A few ideas which spring to mind are: the automatic granting of dual nationality to two partners in a mixed-nationality marriage (also giving them the option of rejecting this, of course), as well as to their existing or future children; making it easier to acquire and pass down several European nationalities in a hereditary manner; developing improved co-operation or, if the issue does not fall under Community competence, equivalent agreements between **a hard core of countries willing to build a common *legal* area beyond the *judicial* area.**

Who knows, this may one day lead to an "Edict of Caracalla" for the citizens of Europe…

III THE CITIZENS' POLITICAL REPRESENTATION

In internal politics, few topics are as sensitive as the electoral system and constituency boundaries. For a long time these questions were of secondary importance in the Union, as long as the European Parliament's image was that of a mainly consultative assembly. With the Lisbon Treaty, they will become more and more pressing. It should be noted, in both cases:

- it is neither desirable nor possible to invoke these issues in the second half of 2008, while the ratification of the Lisbon Treaty is neither completed nor ensured.

- However, these issues are essential to the success of a political Europe. We should already think about the method, the approach, the timetable, the judicial solutions, for their possible resolution.

1. The electoral system: elected or appointed representatives?

Any consideration on the relationship between citizens and the Union cannot skip the problem of the electoral system chosen for the European elections.

Contrary to appearances, we are not going off topic here. **This is very precisely the point.** Unlike the situation that has prevailed for decades in local, regional or national political life in our democracies, the citizen does not know what is decided on, or by whom, or how it can influence decisions in Europe. As a grammarian voter once put it, "*Europe? Who decides what where and what can I do about it?"* It is no answer to say that the question has too many relative pronouns to deserve an unqualified response. The truth is that **if the public had the real authors of Europe's law at the other end of a ballot paper, as they do for their national laws, their day-to-day problems would have surfaced much more rapidly in all European political programmes.**

The gradual increase of the powers of the European Parliament has had the disadvantage of endlessly putting off the real, fundamental debate on the problem of the most appropriate system for appointing its members. On all sides, we get no further than superficial prejudices which ignore the huge change that the institution has undergone.

For governments and national parties, the European Parliament is a sort of international senate, in which everyone has the right to choose their quota of members. The election itself is treated as a full-scale opinion poll of the popularity of governments and opposition parties, **which ends up turning the electors into referees, not between the best from each side but between the supporting actors**: in any case, proportional representation in vast constituencies ensure the election of the heads of party lists. **MEPs are appointed by their parties rather than elected by the public. How will this be compatible with the new Treaty, which finally turns the Strasbourg assembly into a real legislative Parliament?**

The Parliament's Committee on Constitutional Affairs has asked Andrew Duff to consider ways in which new progress could be made towards the convergence of national electoral systems, and which could be implemented in time for the 2014 election. The French presidency and our major national political parties would be highly wrong if they did not take interest in this debate.

Even if proportional representation as a method is too deeply-rooted to be challenged, there are ways of limiting its disadvantages and to bring electors closer to the elected: reducing the territorial size of constituencies and the use of preferential voting for the electoral system itself, and the use of transparent and democratic procedures for the selection of candidates, as far as the responsibility of political parties is concerned.

2. The composition of Parliament: some citizens are more equal than others

In return for taking into account the demographic weight of the 'big' States during votes in the Council of Ministers, the less populous States continue to be over-represented in the Parliament. But the extent of over- and under-representation is not set out in the Treaty, which simply refers to a principle of 'degressive proportionality' The formula would have delighted a spirit as subtle as that of Edgar Faure, inventor of the "plural single prices" of the early days of the CAP. Unfortunately, it lends itself to an infinite number of mathematical interpretations with the most diverse political consequences. The solution has been

dispatched to the level of secondary legislation, in the case a unanimous decision of the European Council, taken at the initiative of the Parliament and with its approval[145].

Last autumn, the Parliament and the European Council came to an agreement on a definition of "degressive proportionality" that everyone could finally agree on[146]: all MEPs must represent a population higher than that of his counterpart from a less populous country, and lower than that of his counterpart from a more populous country. The results applicable in the June 2009 election are set out in an enclosed table.

By doing so, the two institutions have temporarily abandoned any attempt to agree on a mathematical formula which would be automatically applied as new States joined the Union and/or demographic shifts took place within Member States.

Since the European Parliament has succeeded in defusing this problem for the time being, and since the question has been resolved for the 2009 electoral deadline, **the wisest thing to do would be to leave the European parliament to work on possible amendments to be adopted for future elections,** on the basis of the report entrusted to Andrew Duff. There will in any case be nothing on which a decision can be given until the evaluation of the new system is available. The best time to adopt an amendment would be after the re-election of the Parliament, and before the entry of the next Member State, Croatia[147].

IV THE DOMAIN OF THE LAW

Along the way, **we have encountered a fundamental contradiction in the course of our survey. An unexpected one. Between the interests of the citizen and the principle of subsidiarity**.

For twenty years, all European politicians have had to pay tribute to this household god, the principle of subsidiarity, all the more sacred since it contains an implicit reference to canon law. The “local”, first and foremost[148]. Handling problems as close as possible to the public. What democrat would dare to protest? What citizens could object?

Well, actually, the 'nomads'. The euro-travellers. The mobile citizens. The border-hoppers. The people who don't just talk about the European project, but who breathe life into it. **Like the enterprises who simply want to work on a level playing field in the internal market, citizens need a minimum of uniform rules to live and flourish in the single European space.** Now, this "single" space is cut up by twenty seven countries all jealous of their judicial independence, a dozen of which even include regional authorities with legislative powers: like an aeroplane flying about the invisible boundaries of national air controls, the migrating Euro-citizen stumbles over the equally invisible but much more onerous borders of the legislating powers which make up the continent. Powers whose multiplicity and whose different, even contradictory decisions make his life impossible.

There's a proverb: *"The traveller calls for the sun. The farmer calls for rain. And the gods hesitate."* **The "sedentary" European who stays in his own country or region loudly calls for subsidiarity[149]. But the 'nomadic' European wants uniformity. *And, 'united in diversity'*, the Union hesitates.**

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[145] Article 14-2 EU.

[146] With the exception of the Italian Prime Minister Romano Prodi, who used his right of veto in a completely arbitrary manner to obtain an additional seat for Italy.

[147] "Entry" can mean the date of signature, ratification, or the entry into force of the accession treaty. Naturally this has to be decided on when the time comes.

[148] Article 5 EU of the Lisbon Treaty. "Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.”

[149] In Belgium, Spain, Scotland and to a lesser extent in Italy, even the already very generous statutes are unable to satisfy an insatiable appetite for the proximity of power.

There are short term solutions. Some can be found in the Treaty of Lisbon: a new division of powers between the Union and Member States, a hierarchy of laws, entrusting the national parliaments with the monitoring of subsidiarity, etc. In the medium term, the present report suggests exploring some little-investigated paths, such as the "28th regime".

But in the long term, **how can we prevent an avalanche of laws from overwhelming the unfortunate citizen of a continent all too well-endowed with decision-making levels -** town, conglomeration, region, nation, Europe? We mock the "70,000 pages of the Official Journal of the European Union" which gathers the *acquis communautaire*, the legal sediment accumulated over forty years of the Union's life; but every year 20,000 pages of national official journals join them. Plus the collections of local authority administrative acts at different levels. Plus the countless decisions of all the levels of jurisdiction which supplement substantive law with their learned case law. Too many democratic layers kill democracy itself[150].

Pity the citizens! Pity the “administereds” on the receiving end, who are not only tax payers! Alongside the "tax shield" (the French "bouclier fiscal" setting a maximum level of overall direct taxation), let us give them an umbrella to protect them from the deluge of regulations. **Beside the principle of subsidiarity, let us introduce the *principle of simplicity*.** It is true that complexity is an integral aspect of social progress: more citizens, carrying out thousands of different activities, assembled in an infinite number of communities and inter-relations, calling at once for freedom and social justice, constantly demanding new rights, and, what is more, governing themselves democratically - all that requires more and more sophisticated mechanisms. Just as the Airbus A380 is infinitely more sophisticated than the good old *Laté* 28 in which Jean Mermoz crossed the south Atlantic. Yet Mermoz' task as pilot was much more demanding than that of his distant successors; all the complexity has been transferred to the machine, to electronics, to robots. **We should design a political, administrative, judicial and social organisation which relieves the ordinary individual of the weight of the complexity inevitable in our advanced societies.**

How can we transpose into our political architecture the miracle of the keystone, capable of transferring the weight of the dome onto the pillars alone, leaving the artist free to use a lace-like structure of painted windows for the walls?

Will the combination of unity and diversity, the European equilibrium as magical as it is elusive, be possible without a new separation between the domain of *law* and that of *customs* and manners? **Is this not, in the end, another form of subsidiarity, to keep the law solely for the things that cannot be left to the arts of living?**

All the great legal traditions have passed through these alternating phases of accumulating law, followed by simplifying codifications, sometimes even starting from scratch as on the Night of the 4th August 1789, before the law begins to sprout once more[151]. It is doubtless too early to try and judge the accumulative impact of Community law, national law - including the transposition of directive -, and the new law introduced by internally devolved legislating bodies (the German *Länder*, the autonomous Spanish communities, the Belgian regions, Scotland etc.), not forgetting the international conventions which have been integrated into our internal judicial systems.

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[150] All the more so, since all levels are tempted to succumb to a passion for legislating, ignoring the warning of Montesquieu, which should be put up over the entrance of every parliament: "*Useless laws weaken the necessary laws."* A former French prime minister explained some time ago that the law had become a method of responding to social impatience, even if that impatience was linked with something else: while the draft was prepared, debated and adopted, the media spotlight moved on, public interest was attracted by other prey, and no one paid any further interest in the application of the law. Are we sure that the civic spirit is advanced by allowing the law to become a tool for managing popular emotions?

[151] The news remind us that the judeo-christian moral principles make a fantastic illustration. Moses’ ten commandments have been summarized in five words in the wonderful adage of Saint Augustin: *“Ama, et fac quod vis” – “Love and do what you want to do!”.* Sixteen centuries of theological in-depth analysis later, the *Catholic Church Cathechism* edited in 1992 was made of 2 865 paragraphs and 975 pages. The Pope Benedict XVI has recently published a 208-page short-version...

So this is a question which politicians cannot yet ask to any useful purpose. But at the frenzied pace of this ebullient century, it is not too soon to encourage researchers, scientists, and philosophers of law to light their way.

EPILOGUE: THE PARABLE OF THE PLOUGHSHARES

They will beat their swords into plowshares, and their spears into pruning hooks: Nation will not take up sword against nation, nor will they train for war anymore.

Isaiah, II, 4.

A persistent, but apocryphal story attributes to Jean Monnet the remark, *"If I were to begin again, I would begin with..."* Depending on the speaker's preference, this might be culture, art, science, sport, gastronomy, or ecology.

Today, as we have seen, we need to begin again. Europe needs to be reinvented. Where should we begin? A little parable will sum up the conclusion of our work better than any austere summary.

*

When Europe had achieved the miracle of turning swords into ploughshares, the tribal chiefs set to work to make the best use of them.

The appointed a panel of wise men to report to the council of Elders.

First they put the plough in front of the oxen. But neither the one nor the other moved. The gathered crowd watched in silence.

After much discussion, the wise men put the oxen on either side of the plough. The beasts remained immobile, so an inventive spirit suggested swapping around the white ox and the red ox. This had no effect. There were mutters, and musings, and then grumbling.

An Elder urged the wise men to be more proactive. The fluttering of a standard whipped up by the wind ran through the relieved crowd. The oxen were placed on top of the plough. An abandoned shield was used as a bulwark.

This time, a gleam appeared. In the eye of the ox, flattered by this superior position, from which he dominated a sea of hopeful sighs which fast turned into a storm of jeers. No breath stirred the plough.

Breath was no lacking in the commentators, however. Mild dreamers from the hard sciences, and doctrinaire rhetoricians of the soft sciences vied, not to suggest ways of succeeding, but to explain the causes of failure. The diet of the oxen was suggested, then the noxious methane vapours, the final emissions of slow and placid rumination. Physicists examined the polluting metal work improperly used to forge the plough. Learned economists argued over the relative merits of monetary liquidity and purchasing power. After putting the oxen on the psychiatrist's couch, a famous sexologist blamed the emollient effects of castration, which an overdose of Viagra was unable to correct. A women's magazine over-optimistically offered a magnificent sample of 'fair trade' frills to cloth the perfect nakedness of Truth when she finally emerged from her well.

But the imminent arrival of an election among the Elders was beginning to raise the emotional temperature. A complete reversal of position was tried: the plough was mounted on top of the oxen. This didn't last long. For once, the tick lobby, which didn't like the oxen, joined in with the oxpeckers, who were big tick-eaters, to ensure that the over-sharp blades of the ploughshares, the cover and the hoe did not injure either one of the parasites. The silent majority bowed.

The red party won the election. Its ox had the honour of leading the parade, while the white ox endured the humiliation of defeat. Nothing happened, apart from the complaints of the disappointed audience. It was decided to hold a fresh election, straight away. The white party had its revenge. But it appeared that the colour of the ox changed absolutely nothing. Public anger turned to despair. The wise men were roundly insulted, and threatened with the gallows or the stake.

*

Condemned despite themselves to modesty the Elders called on foreign wise men. A call to tender appointed a consultant, more Angle than Saxon. His expert conclusion was that "This is a typical case of the story of the chicken and the egg".

The lawyers debated how this learned judgement should be interpreted. Money was thrown into the purse of a second consultant, charged with explaining the wisdom of his colleague: "The origin of everything", he commented, "is neither the chicken nor the egg, but the combined action of both".

So farewell calves, cows, horns, cattle! An egg and a chicken were harness to the plough, before ten thousand pairs of astonished eyes.

And it happened exactly as one sorrowful spirit had dared to predict: the chicken proceeded to sit on the egg, completely ignoring the plough.

*

"And all this time the ice caps are melting!" said a telegenic Cassandra. It was easy to convince people that the sweat of the wise men, now threatened with seeing their heads paraded on pikes, was due to global warming. The time had come!

The time of eastern philosophers.

A Bedouin in Felix Arabia remarked, "The dogs bark, the caravan moves on". No one dared to tell him that this was beside the point. For no special reason, they bought his naphtha oil, in case someone invented the tractor.

The Himalayan monk tuned his prayer wheel. "The way that can be seen is not the way". When pressed to say a little more, he elaborated: "The path you can walk is not the path." The Elder's envoy passed his own.

The African poet advised prudence: "Wait until you've crossed the river before you tell the crocodile he is ugly!" For no special reason, the ritual spitting contest on the Great Monetary Manitou of Frankfurt was suspended.

But the fashion was for post-Confucian China. "If you give a poor man a fish, he will eat for one day; if you teach him to fish, he will eat for the rest of his life". That seemed as clear as the hectares of neon lights which cover the towers of Beijing.

- Yes, of course, approved the Chief Elder. But who will teach the ox to fish with a plough?

They went searching for a teacher. The messenger who returned from Asia told hold there, when a wise man loses his strength, a blond child with a pure heart and obsidian eyes is appointed to replace him.

They found him!

They hurried, they pushed and shoved, they created a great brouhaha. They led him to the place. The whole procession was there, as on the first day. The anguish of the many, seeking the unobtainable certainty of the One: the "shhhh!" deafened all ears, teeth gnawed at all the nails, which, on the heads on the bald, maddened fingers tried to erase the memory of hair.

The child's gaze did not rest on the white ox. Nor on the red ox. He climbed onto the plough, turned slightly and then suddenly stopped.

And everyone saw. Something which no one had seen until then.

The farmer.

*

The farmer spoke softly to the oxen, attached them to the plough, and the crowd had to part to make way for the first furrow of the first labour of a Europe which, at last, had started again.

And the newly canonised Saint Schuman, returning to his tomb with his halo, concluded:

"If I were to begin again, I would begin with man. With what the man of tomorrow sees in the man of all time. With a child's gaze. ".

Annex 1

Minutes of the meeting with the consuls and other diplomatic and consular representatives of the Member States of the European Union, organised with the support of Mr Janez Sumrada, Slovenian Ambassador in Paris, on 14th March 2008

The guiding principle of the mission is to put under the spotlight a new way of assessing European law based on a "bottom-up" approach, taking as a yardstick the expectations of citizens wanting to be able to exercise the rights conferred to them by the treaties in force. When it comes to individual citizens, the application of EU law is not satisfactory, be it as regards right of residence, health insurance, the ability to carry social security entitlements from one Member State to another, the recognition of diplomas, or freedom of establishment.

It is therefore important to get some feedback on people's experiences, both from French nationales living in others Member States and from nationals of other Member States living in France. Hence the importance of the feedback from the consuls and diplomatic and consular representatives of the Member States when it comes to pinpointing the day-to-day problems and difficulties, in order to gain a better understanding of good practices and thus to be able to make proposals and recommendations, both at national level in France and at EU level.

I) Inventory

After hearing each participant, the situation could be summarised under several headings.

The problem of residence cards in respect of Germany, Spain, Estonia, Finland, the Netherlands, Poland, Portugal, the Czech Republic, Romania, Slovakia and Slovenia

The 26th November 2003 law has put an end to the complusory nature of the residence card while the ministry instructed the prefectures to issue this card when nationals of other Member States requested it. The French administration's website (www.service.public.fr) mentions this possibility. However, too many prefectures still refuse to issue this document on the grounds that EU nationals no longer need it and that henceforth only nationals of third countries need it. Refusal is reported to be even more frequent in cases where applications are made by the spouses of EU nationals.

This amounts to denying the specific characteristics that still exist in matters of civil status in several Member States (no mention of an address on the Portuguese identity card, use of a woman's maiden name in Spain), not to mention the difficulty that some shopkeepers or bank employees can face to decipher a card in Greek, for example, which is not accepted for the opening of a bank account – a problem often faced by Romanian nationals, too.

Moreover, the residence card is a document deemed by many EU nationals as easier to carry around than a biometric passport. The representative from Slovakia asserts that the nationals of the new Member States still have to hold a residence card to obtain a work permit.

As a result, there are many inconsistencies depending on the regions and/or prefectures. As regards Slovenian nationals, in several cases they have not been able to lodge their applications for a residence card, or their applications have remained locked, since the prefecture does not have the right computer code to register a specific situation. French town councils likewise have different approaches as regards certificates of place of residence. There have been several cases of unemployed Romanian nationals finding themselves without a residence card, but needing such a document for their administrative .... to prove that they are residing in France. They are often refused the document on the grounds that after Romania's accession to the European Union, they no longer need it.

By decree no. 2007-371 of 21st March 2007, the French authorities transposed a European directive on the right to residence of EU citizens. This new regulation has had consequences on the healthcare coverage of unemployed EU nationals in France (refusal of affiliation to the Universal Medical Cover (CMU) scheme, refusal to protect acquired entitlements). Some requests for social assistance made by Germans established in France for a long time have been turned down by the French administrative authorities, which invoked an irregularity in the residence situation of the persons.

The European health insurance card is however regarded by the Dutch nationals as a step forward.

Family law: Germany, Estonia, Poland, Portugal and Romania

From now on a divorce or a decision on parental authority handed down in one EU Member State does not need to go through a recognition procedure in the other Member States, provided that the court pronouncing the decision issues a certificate. The clerks at the Courts of First Instance often only issue this certificate to the nationals of other Member States after the latter have made repeated requests to this end. On the contrary, Portuguese nationals do not experience this kind of problem.

The French administration's lack of knowledge of international law in the field of family law and affiliation law, and therefore of the specific characteristics that continue to exist in the different national laws, is detrimental to many Belgian nationals. In the event of a birth being declared in France in a case where the father is Belgian and the parents are not married, the administration deals with the request as if both parents were French. Now, Belgian law requires that the mother give her express consent. If she does not do so, Belgian law does not deem the paternal affiliation as having been established, which may cause subsequent problems.

As regards documents pertaining to births, marriages and deaths, Romanian nationals face difficulties since, once the birth certificate has been drawn up, Romanian law does not make provision for the subsequent issuing of copies of it. The French administrative authorities do not always accept the certificates and certified copies issued by the Romanian consular authorities. In addition, the Romanian consular services are not notified (which should occur "without delay", according to the terms of the Vienna Convention) by the competent French authorities in the event of a protective measure (tutelage or guardianship) concerning a Romanian national.

Mutual recognition of diplomas: Germany, Spain, Malta and the Netherlands

On the one hand, young Dutch graduates who arrive in France very often suffer from a general lack of information when they wish to work in France. On top of this there is the great complexity of the procedures. Spanish graduates come up against a very restrictive interpretation by the departments of the Ministry of Education. Young Maltese also suffer from the fact that they come from a school system based on the British model and where the *baccalauréat* does not exist.

In the field of academic and professional recognition of diplomas, there are some ENIC-NARIC centres in the Member States. But German students still very regularly turn to the German embassy on the grounds that these centres, on the French side and on the German side, have not provided the help expected.

On the other hand, the Europass document is well-liked by Dutch nationals, who see it as a progress since its EU dimension is clearly identified.

Employment situation for EU nationals subject to a transitional period: Estonia, Lithuania, Czech Republic, Slovenia and Slovakia

Once the employment contract has been obtained and the application for a work permit has been lodged with the prefectural services, the waiting time is often of six months for an answer, a period that is incompatible with an employer's desire to take on staff quickly. Czech nationals, for example, find themselves sometimes given contradictory information, while the relevant websites are not sufficiently up-to-date.

Labour law and social security law, questions relating to retirement pensions: Germany, Spain, Malta, Portugal and the Czech Republic

The EU's information services (EURES, SCADPLUS and MISSOC) provide general information but the particularities of each country are not detailed enough. It would be advisable for all the national institutions and bodies responsible for these issues to develop multilingual information resources, as is already the case as regards social security through the Centre of European and International Liaisons for Social Security (CLEISS). Additionally there is the issue of portability of entitlements in the context of pensions, all the more so since many French town councils are unaware that they can issue the life certificates necessary for the EU nationals established in France in the place of the consulates. However, bilateral agreements have enabled the expectations of Portuguese nationals to be met.

Double taxation also affects Spanish nationals because of the existing differences between the two tax legislations.

Czech nationals experience communication difficulties with the social security services, which are not always informed about the latest rules and regulations concerning the nationals of the new Member States. This particularly affects the youngest people, students, holding a Masters II or an equivalent diploma, when they want to register with the French social security system.

Right to vote and/or to run as a candidate in local elections: Spain and Portugal

Whilst Spanish and Portuguese nationals do not face any difficulty, some Slovenian nationals have had to take the matter to the administrative court in France after they were refused registration on the electoral lists in the local elections.

Holding of other Member States' nationals in French prisons

Whilst cooperation between French and Spanish authorities is good as regards Spanish nationals, the information on the holding of a Slovenian national is almost never forwarded to the Slovenian embassy, contrary to the provisions of a French circular letter of 18th September 2007.

The Romanian embassy is also often faced with delicate situations with the families of detainees, since the 10-day period for which provision is made in particular in the consular convention between Romania and France is often not respected.

The consuls and diplomatic and consular representatives of the other Member States say that it is still too early, bearing in mind the recent existence of the circular of 18 September 2007, to make suggestions, in full knowledge of the facts, about the changes brought about by this text. They stress that they remain vigilant, this point being on the agenda of all the consuls' meetings.

Vehicle ownership and use: Germany, Estonia, Poland and Romania

In the case of the registration of a vehicle that has previously been registered in another EU Member State, the authorities have to request that parts I and II of the registration certificate be handed over and that the authorities of the Member State that issued the certificate in question be notified. The French administration has not applied this procedure to a large number of registrations of vehicles from Germany. In some cases, the request for a German driving licence to be exchanged for a French one has been turned down on the grounds that the German licence contains the following words: "the authorisation to drive has been issued on the basis of a driving permit of country "X" (often a non-EU country) for vehicles in category "Y". Obviously, the reason for the refusal lies in the fact that in the eyes of the French authorities, the licence was issued without prior authorisation, which is not the case. This question was raised with the French Ministry of Transport. In spite of this, cases of refusals to allow licences to be exchanged are still reported.

As regards the document for export, it is the old version of this card that is issued in France. It continues to bear the words "driving prohibited" (which in any case only concerns French territory), which has raised many problems for Polish nationals when they have returned to Poland.

Added to this is the fact that some French insurance companies do not accept Romanian driving licences and ask for international driving licences. Likewise some of these insurance companies refuse to contract policies for cars bought in France by Romanian citizens whose place of residence is in another country of the European Union, which prevents them from taking their car to the country where they live.

II) Perspectives, proposals and suggestions

1) Perspectives

The Swedish ambassador wanted to make an **overall assessment of the application of EU law within the European Union**. Whereas it was taken seriously when the European construction began, he feels that this is no longer so much the case today, and that this is harmful. In a context marked by a form of scepticism, in his mind, the political players appear to be back-pedalling faced with the European institutions' sometimes overly zealous attitude towards the production of laws. The mission with which Alain Lamassoure has been entrusted by the President of the Republic comes at an auspicious time for giving priority to effectiveness and efficiency.

In the context of three million jobs unfilled in the European Union, the Bulgarian ambassador made a call for genuine **enhanced coordination of resources and improvement in the entire field of recognition of diplomas.** This should enable a better recognition of the skills potential offered by the new Member States in general, and Bulgarian doctors in particular.

The Maltese ambassador highlighted the existence of **a good information network** in Malta, based on an information centre that everyone knows and specific TV programmes, which has helped maintain the "momentum" that accompanied EU membership. The representative of the United Kingdom mentioned the fact that France has a large number of newspapers specially intended for British expatriates.

The Cypriot ambassador emphasised the problems associated with illegal immigration, which could affect all the Member States. He pointed out the specific situation of Cyprus, which had 7,000 requests to deal with in the first quarter of 2007 alone. He called above all for **momentum towards a political Europe, while people talk more of a consumers' Europe than of a citizens' Europe**.

The counsellor from the Netherlands also pointed to a generic problem relating to the **lack of any demarcation**, in particular as regards Dutch nationals, **between matters falling under EU law** (and application thereof by the competent French authorities) **and national law.** However, he stressed the **improvement in the quality of the reception services** provided by government departments in recent years and the beginning of a **simplification in the administrative procedures, most notably thanks to administrative forms being made available electronically**.

2) Proposals and suggestions

The representative of the Czech Republic pointed out that the **SOLVIT system** was working very well as far as the Czech Republic was concerned, and saw it as an efficient regulatory channel for the settlement of disputes.

While several delegations were in favour of the idea of a document that could take the form of a "**European identity card**" enabling EU nationals to avoid a number of administrative procedures and checks, the Estonian consul was more inclined to advocate for the **creation of a database or an electronic register**. This could be used, for example, to ascertain the exact number of birth, marriage and death certificates executed by Estonian nationals residing in France, as well as the actual number of Estonians living in France. Since some States do not require their nationals to report their residence to their embassy by way of an obligatory declaration, these figures per Member State are not always necessarily very accurate. These estimates for example refer to 2,000 people for Slovenia, 20,000 for the Czech Republic, 70,000 for Belgium, 100,000 for Germany, 200,000 for Spain, and more than 300,000 for the United Kingdom.

The German first counsellor, the Bulgarian first secretary and the Slovenian representative highlighted **the usefulness of multilingual forms** at police stations (police and Gendarmerie) and aimed at the millions of tourists who come to France, in the event of theft or loss of one's wallet or identity papers. The Czech Republic's representative confirmed the difficulties that Czech nationals in France have experienced to obtain this form of loss or theft. The German first counsellor also advocated for a **European registration system** (also enabling a better collection of fines) since the European licence will soon be available.

The Czech Republic's representative also recalled the difficulties experienced in the process of having documents authenticated in the offices of French town councils, even when these documents are written in French.

While the so-called "2+2+3" provisions by way of transitional measures in the membership treaties oblige the Member States, in May 2009, to explain their conception of the free movement of workers from Poland, Lithuania, Latvia, Estonia, the Czech Republic, Slovakia, Hungary and Slovenia, the Slovakian counsellor in particular wants **France to remove the obligation to hold a residence card in order to obtain a work permit before this date** to the benefit of the nationals of the countries in question.

The Dutch counsellor recalled that it was important for **employees in the French administration to receive suitable training**, especially since, apart from what was said about the residence card, other European initiatives in the field of family law are expected, in respect of estates and inheritance. Lack of knowledge of the rules in force, but also of the jurisprudence of the Court of Justice, causes mistrust and resistance, which is confirmed by the Lithuanian representative. On top of this, there is the impression of distrust among the local population which is perceived by some Dutch nationals. This could be overcome by greater communication by the local authorities on the contribution made by the citizens of the

other Member States. The Dutch counsellor also highlighted a specific point by expressing the wish for increased resources **in French nursery schools and primary schools to enable children from other countries to learn French.**

Annex 2

Minutes of the meeting held on 7th April 2008 at the Regional Prefecture of Bordeaux with the administrative departments, consular organisations, information bodies, specialist associations, and representatives of foreign communities, which are established in Aquitaine and play a role in the dissemination and application of EU law

Introduction

Mr Alain Lamassoure, MEP, is preparing specific proposals for the end of April to improve effective application of EU law to the citizens. This mission, with which he had been entrusted by the President of the Republic further to the letter of 18th January 2008, will be used to prepare the future French Presidency of the European Union, which will start on 1st July 2008.

Europe has just celebrated its 50th anniversary. Today it seems necessary to pursue the construction of Europe by harmonising certain rules and certain laws that directly concern Europe's citizens, such as the right of residence, the rights of cross-border workers (unemployment insurance, social security rights), the mutual recognition of diplomas, and the freedom of establishment of self-employed persons, craftsmen and members of the professions.

After a quick reminder of the general framework regarding EU law, Mr Lamassoure explained that working meetings had already been held at national level with the civil servants in charge of these matters, the cabinet of Mr José Manuel Barroso, President of the European Commission, and representatives of the networks of associations interested in EU policy. He expressed the wish for a meeting to be held in Aquitaine, a region with a long tradition of exchanges with the neighbouring countries.

The participants to this meeting (the list of whom is presented as an annex) were asked to send their written contributions to Mr Lamassoure either via the General Secretariat for EU Affairs or directly.

The following agenda was examined:

- Problems associated with the right of residence: residence cards, health care, registration of vehicles, etc.
- University exchanges and the recognition of diplomas and qualifications.
- Problems faced by employees: the portability of social rights, the posting of workers.
- Freedom of establishment for self-employed persons, craftsmen, and the professions.
- Family and inheritance law.
- EU nationals' exercise of their right to vote.
- Tax problems.

> The right to residence

The residence card and identity document

One of the participants drew attention to the importance of the Portuguese population in the greater Southwest region (approximately 104,000 people). He stressed the difficulties related to obtaining a residence card, since it is no longer compulsory for EU residents. However, the prefectural departments have to issue it when the request is made. It seems that the interpretation differs from one prefecture to another, and that some prefectures no longer issue this document.

What is more, as regards identification, the compound family name of Portuguese nationals is often cut by the French administration, which causes problems since the name that is usually used is the last one.

For Portuguese citizens, the lack of any residence document means that a Portuguese national identity card has to be issued by the consulate. However, this document does not mention the address, which obliges the holder to produce additional documents (electricity bill, etc.) to provide proof of residence.

Theft or loss of identity documents:

Following the theft or loss of an identity document, a duplicate may be drawn up. Portuguese nationals who go to the police to report the *loss* of their identity papers can be refused this kind of report. Indeed, the police only record reports of theft. However, in the event of fraudulent use of the documents and in particular in the event of loss, the complainant who was not allowed to lodge a complaint may be considered as an accomplice.

To avoid such eventualities, the consulate advises its nationals to lodge a report at the consulate.

Vehicles and driving licence:

In principle, pursuant to the treaties, EU nationals in France are entitled to drive freely within the territory of the EU. There is no obligation to change driving licence and the texts appear to be interpreted correctly.

Difficulties may be encountered in the validation by the French authorities of certain licences (heavy goods vehicles, for example). A person deciding to reside in France as a lorry driver has to obtain a certificate that has no equivalent in the European Union (although an attestation from the previous employer may suffice under certain conditions). Mr Lamassoure said that the European Court of Justice was currently considering this problem.

Persons put in tutelage or placed under guardianship:

Official recognition of a decision to place an individual in tutelage or under guardianship poses difficulties for EU nationals living in France (or vice versa). Indeed, such a decision implies ratification of the other country's decision by a French judge, which takes some time and raises the problem of estate management.

Mr Lamassoure said that a directive on this matter was currently being prepared, which should solve these problems.

Social security:

Problems concerning social security not only arise for nationals in transition in an EU country other than their own, but also for all EU nationals in general. For the former, it seems that the fact of having to provide proof of sufficient funds and health insurance prior to arrival in the host country is a genuine problem. As regards all the other nationals, the fact that a European social security card with a sufficient period of validity does not yet exist causes numerous difficulties, particularly when the stay in France is longer than three months.

It was stressed during the meeting that the main obstacles were encountered by elderly people or persons with serious pathologies. The fact that there is a sometimes sizeable difference in standards of living and cost of social security cover in Europe demonstrates the need for the Member States to conclude an agreement on this issue as soon as possible.

A number of benefits are means-linked. However, means testing is often very difficult in the case of persons receiving income in one country and whose main place of residence is in another (example of residents in France receiving the CMU (free health care for people on low incomes) or the RMI (minimum benefit payment) while they have sizeable earnings in another country).

Finally, a genuine mechanism of access to rights and support should be set up for EU nationals retiring on the French territory – something which would also apply to French citizens retiring in another EU country.

> **Difficulties relative to university exchanges and the recognition of diplomas and courses**

Recognition of diplomas and courses:

One of the participants explained that the European institutions had been working since 1957 towards total harmonisation of the law, in particular as regards the mutual recognition of diplomas and courses. There are several directives, and yet the difficulties remain. After the failure of the concept of "correspondence of diplomas", the Bologna process (the commitment to build a European higher education area before 2010) has worked well and is still being integrated into the university systems of the 27. This involves putting the diversified national systems in a common framework, the LMD system (from the French terms "*Licence, Master, Doctorat*": Bachelor's, Master's, Doctorate). Since 1992, it has been the concept of "transparency" that has met with a degree of success, in a broader perspective than that of university courses. This concept finds its de facto expression in a European certification framework that fits into a logic of readability.

The remaining difficulties relate more to the "former diplomas" such as the "maîtrise" (Bac+4), and the job one is supposed to be able to secure after the studies. On this latter point, it seems that in many cases the person is over-qualified for the job in question, since the diploma obtained in another country is not recognised by the employer. People sometimes find themselves forced to obtain the same diploma in the country where they wish to settle. In this respect, the Council has issued a recommendation (an act which has no legal value) inviting the Member States to take a stand on the issue.

University exchanges:

In practice university exchange programmes like "Erasmus" pose certain difficulties concerning the degree of knowledge of foreign languages. According to the teachers and students attending the meeting, it appears that there are indeed two "types" of foreign students:

- those who come to France *to learn* French
- those who some *to attend classes* in French.

However, it should be noted that this problem comes under the universities' responsibility, as they should offer preparatory courses to students leaving to study in a country where the language is not their mother tongue.

> **Difficulties concerning workers' mobility (social security entitlements, contracts of employment, posting of workers)**

In the framework of the Interreg programme, a cross-border employment watchdog has been created. One of its main objectives is to analyse the concerns of cross-border commuters. Nowadays around 3,500 people commute across the Franco-Spanish border every day (1,500 going to Spain and 2,000 going to France). The information required for the commuters' needs is there, but it is too fragmented or directed at specialists and not at the general public. The proposal has been put forward to create a "cross-border workers' centre" to centralise the information.

In short, harmonisation is needed, since the same term used does not have the same meaning or does not refer to the same profile or the same training in all the countries.

The main difficulties are encountered by cross-border workers: massive use of cross-border services and cross-border sub-contracting in various fields such as building and civil engineering works or catering, with the aim of making profits on labour costs.

In the *département* of Pyrénées-Atlantiques, a "false subcontracting" watchdog has been set up to look into the distortions caused by this phenomenon on the French market. There seems to be some confusion between the provision of a service and mere posting of

employees. Some of the sectors supplying the French market are getting organised and workers' social security entitlements are not systematically respected (discrepancies between pay slips and the sums actually paid to employees, for example). The lack of concerted action between employers and the administration is being felt.

Aside from the problems thrown up by cross-border working, the professions also experience problems as regards the administrative formalities to be fulfilled. For example when a business manager wishes to settle in France, the Chamber of Commerce and Industry and the Prefecture sometimes do not agree on the order in which the administrative formalities have to be fulfilled (for example, the Chamber of Commerce will require a residence document for registration in the register of trades, and the Prefecture will ask for the registration in the register of trades in order to issue the residence document).

The proliferation of European and national rules means that there is a need for a comparison of the applicable law in each country. Procedures need to be simplified.

> **Family and inheritance law**

No specific problem was highlighted in this field during the meeting, since on this issue EU law makes do with adopting the rules laid down by private international law. According to Mr Lamassoure, the idea of a "28th system", of a genuinely European statute, should be examined in greater depth.

This concept is based on the creation of a marriage settlement different to that of each of the European countries, but as acceptable as possible by all, which can be chosen by the couple when they get married and is applicable in all EU countries.

> **The right to vote**

The Maastricht Treaty imposes reciprocity between the EU Member States, which is limited to local elections. This obligation already existed for the election of MEPs.

The main problem lies in the lack of information: barely 10% of EU nationals living in Aquitaine voted in the last local elections. The political parties do not mobilise this category of voter enough. However, the vote of EU nationals is more important in small towns and municipalities.

Mr Lamassoure pointed out that UK nationals have brought a matter before the European Court of Human Rights. If they are absent from the national territory for more than ten years, they can no longer take part in the vote for national elections. This right to vote in national elections does not exist in France, either, for EU nationals.

> **Tax matters**

Tax law does not fall under EU law. National laws apply. Basically, this involves bilateral agreements between States. Some bilateral treaties, such as the "Franco-German tax treaty", have to be re-adapted since they no longer fit the current needs.

The French find it hard to understand the question of free movement, and in particular the differences in duties imposed by countries on wines, alcohol and tobacco. These differences give rise to numerous complaints, especially from tradesmen working in the Basque Country. A reflection is under way at EU level with a view to bringing duty levels more into line.

There are two Europe Direct branch offices in the Aquitaine region. It appears that many of the citizens' requests relate to problems concerning the administration. The lack of training of civil servants is highlighted, particularly at the stage when information is given to the general public for the first time. It is therefore suggested that a single quality-label be introduced, making it possible for "Europe correspondents" to be identified within each administration.

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As a conclusion, Mr Lamassoure recalled that we were approaching 80% of texts applicable in the EU countries falling under the implementation of EU law. This reality should be more widely known. Moreover, consideration for this reality will smooth out the effects of the distortions between States, which is one of the conditions for our fellow citizens to give the European idea their backing.

Finally, he mentioned the Treaty of Lisbon, which will be applicable in 2009 after ratification by all the Member States. This treaty will reinforce the democratic legitimacy of the European institutions and in particular the Commission, with the President of the Commission becoming more visible and acquiring an undeniable stature.

Annex 3

GENERAL SECRETARIAT OF THE GOVERNMENT

DRAFT INITIATIVE
FOR THE FRENCH PRESIDENCY OF THE EUROPEAN UNION
"A better access to law for a better legislation"

The success of the French concept of electronic dissemination of the law, i.e. the success of the free website Légifrance, shows the extent to which the new information technologies offer new possibilities in facilitating access to law. The method's economic appeal is also borne out, to the extent that the development of this public website has boosted the legal publishing market (I).

There is more than one reason to think that this experience could be a source of inspiration on a European scale, albeit bearing in mind that multilingualism constitutes a parameter that gives the reflection a singular character at this level. While it does not fall within the fields of competence explicitly set forth by the founding treaties, access to the law of the Community and the European Union is part and parcel of the natural extension of the normative activity of the European institutions, which are henceforth taking a great interest in it. In fact, this issue is taking on an ever greater importance, as a result of the position that EU law has assumed in national legal orders. Now, there are certainly margins for progress to be made in simplifying access to the basic resources of existing data. The improvement of this access would fit in coherently with the European institutions' efforts to get closer to the citizens. Access to the law could therefore usefully be declared an indispensable complement to the main working themes defined in the framework of "better legislation" to simplify or codify EU law (II).

With the French Presidency of the European Union coming up in the second half of 2008, there is call for an initiative aimed, in the short term, at bringing about a visible improvement in access to EU law. An initiative of this kind would undoubtedly give rise to certain technical questions, or, albeit to a very limited degree, questions of financing. But progress could certainly be made within a reasonable space of time and at a moderate cost. The main issue would appear to reach an agreement between the Member States and between the institutions, as to the method to be adopted in this field. From this point of view, too, it would seem that the French experience could usefully be taken into account (III).

I. The French system for dissemination of the law by electronic means

I.1. The legal framework

Pursuant to decree no. 2002-1064 of 7th August 2002, the public service for dissemination of the law on the Internet was organised, according to conditions such as to make it easier for the public to consult the texts in force and case law.

The main characteristics of this public service are as follows:

- it gives the public free access to most of the normative instruments in force (Constitution, codes, acts, regulatory instruments issued by State authorities, and instruments resulting from international commitments entered into by France, including the directives and regulations as distributed by the European institutions themselves), presented as they result from their successive modifications;

- it enables access to several databases of case law, be it constitutional, judicial, administrative or European case law; users of the website are offered free daily subscription to the electronic version of the Official Journal of the French Republic sent by e-mail;

- the design of the website is based on the grouping together of databases organised as much as possible with a view to facilitating the user's search on the Légifrance website; the website also acts as a portal towards other reference public websites, for example those of the parliamentary assemblies, and directs the user to private legal websites;

- licences for re-use of the data appearing in the public databases are granted free of charge to persons wishing to use these data in the framework of their activity, be this of a commercial or non-commercial nature;

- for the management of this public service, the Prime Minister relies on the committee of the public service for dissemination of the law by Internet, whose members include representatives of companies specialised in the fields of legal publishing. This committee's annual report is published on the Légifrance site.

I.2. The visitors to the Légifrance site

The public service for dissemination of the law by Internet is becoming increasingly successful year by year. The number of visits to the Légifrance site totalled 23.5 million in 2004 and 27.2 million in 2005. It reached 32.1 million in 2006.

The number of pages consulted was more than 34.5 million in December 2006, whereas it was slightly more than 31 million in December 2004.

Légifrance is very widely considered by practitioners to be the reference website when it comes to finding out about, and consulting, the law in force.

I.3. The aspects of the formula that make it appealing

Légifrance has asserted itself as a valued tool for pursuing the objective of access to the law, an objective that has a constitutional value (Constitutional Council, 16 December 1999).

It also constitutes a major vector for the promotion of French law worldwide, in particular since translations of several codes have been made available on-line. It turns out that certain foreign laws have drawn their inspiration fairly directly from the wording used in French law, as published on Légifrance (example of the environmental law in Costa Rica).

The total cost born by the State further to the operation of this service remains limited in view of the contribution it makes to the dissemination of the law both in France and beyond its borders. It is partly covered by the revenue stemming from the running of this service by means of the issuing of licences for re-use of the data distributed.

The economic data available show that over the last few years the growth of Légifrance has gone hand-in-hand with a sustained boom in the legal publishing market, both in paper format and electronic publishing. Specialists of the market believe that the development of a free service offering "raw" legal data has served to spur on the market players, by prompting them to innovate by expanding the content of their range of expositions on doctrine.

In all, whilst the dissemination of the law applicable to different legal situations was conceived as being one of the tasks of the public authorities themselves, the system

described not only bears several types of positive externalities, which are very clearly perceived by very regular users, the legal professions or academics, for example, but is also well-received by the legal publishing market for publications in paper or electronic format, the development of which has been given something of a boost.

II. Access to European Community and EU law is still perfectible

II.1. An overview of the existing tools and work carried out by the European institutions

II.1.1. The range of electronic legal data on offer at Community level

As was highlighted, in particular, by the Council of State's 2007 public report, at the moment "*the fact that information is scattered between the many websites of the European institutions hardly helps accessibility, which nonetheless constitutes one of the conditions for legal security and correct application of EU law*".

The resources for access to the law of the European institutions are currently the following:

- *the general databases of the European institutions* can be accessed via the "Europa" site, managed by the Commission. Access is thus given, in particular, to the Scadplus database, which presents a summary of European legislation according to a thematic classification. Likewise, the European Parliament's "Europarl" site gives thematic sheets on EU policies.

- *the main website for dissemination of the law is "Eur-Lex"*, a new version of which was put online in 2005, with extended search possibilities covering all resources.

The texts here are organised in the form of collections – treaties, international agreements, the legislation in force, preparatory work for legislation, jurisprudence, parliamentary questions – and are accessible using hypertext-type links. The texts in force and/or the texts recently adopted or published are presented within each collection. The user chooses the documents that are of interest to him by going through the structured lists offered to him. However, it is difficult to access the consolidated versions of the documents.

It has been announced that new functions are to be developed, such as LexAlert, a system giving notification of new documents.

The other main legal website of the European institutions is Curia, the website of the European Court of Justice.

- *two websites contain information on decision-making procedures under way*: Pré-Lex, the Commission website which can be used to monitor ongoing inter-institutional procedures, and the European Parliament's legislative watchdog which has been christened "Oeil" (i.e. "eye");
- *on 28 April 2006 Nat-Lex was opened, an experimental site helping users to browse through the laws of the Member States*. This joint access to the sources of national law was developed by the Office for Official Publications of the European Communities in cooperation with the EU Member States. On the basis of the same uniform search mask, it enables national sites to be searched.

The search masks are available in eleven official languages. The search interfaces are connected to the national legal sites, one per Member State, which give access to the legislation. Member States are added as and when their collections are accessible. The

objective is to be able to offer search pages for all the Member States in all the official languages of the European Union.

The search mask offers different fields for entering a search as well as a direct link to the national site in question. When a search by words is possible, N-Lex also offers access to a multilingual thesaurus, Eurovoc, which serves as vocabulary and enables the user to key in more easily a term in a language that is not his own.

The N-lex project differs from its American equivalent, the Global Law Information Network (GLIN). Supervised by the Library of Congress, the GLIN is intended to collate national laws translated into English, keep them, and make them available. Conversely, N-lex's calling is to make available to Internet users a search and automated translation platform enabling them to carry out comparative searches in the different national databases. Thus it is not a matter of building a single, centralised system but, on the contrary, of offering an integrated system that takes account of the specific characteristics of the national databases.

- in 1998 the Council launched the Eugelis project, making provision for the creation of a European database with several entries: relations between institutions, legal information players, texts being negotiated.

II.1.2. The work of the European institutions

Reflection on access to law is carried out at technical level by the "legal information" group, which is made up of experts dispatched from the 27 Member States. This group's mandate includes the provision of advice to the COREPER on the decisions it would be called upon to take regarding the development of European policies helping to disseminate legal information and the convergence of technical resources implemented in order to ensure easy access to the applicable law for both citizens and companies.

The vocation of this group chaired by the general secretariat of the Council of the European Union is, on the one hand, to monitor the work carried out by the Office for Official Publications of the European Communities for the development of European legal databases and, on the other hand, to examine or try to federate Member States' best practices in this field.

One of the group's main working areas at the moment is the Legal Information Network in Europe (LINE) programme, for the pooling of best practices in the field of production and dissemination of the law online. Three aspects required for a better convergence of production and dissemination resources are tackled here:

- the technical aspect, the main issue being that of harmonisation of meta-data by means of the XML protocol and the convergence of computer-assisted legal writing;

- the legal aspect relating to authentication of the official publications. It is the intention of all the official journals of the European Union to have an authenticated on-line version. The real question is to ascertain whether issuer authentication or authentication of the file itself will be the procedure to which priority is given. Three Member States, including France, have already resolved to put the authenticated official publication on-line. Another topic of legal debate is that of the anonymisation of court orders, a matter on which the Member States are still very divided.

- the financial aspect and implications of the free nature of the service. The success of the "Légifrance" website is one of the reasons that have prompted the decision to ask the Office for Publications to prepare a free dissemination of European law, which involves the

abandonment of the *CELEX* database, a paying database on European substantive law and jurisprudence, in favour of a reorganised *EURLEX* database.

In the first half of 2007, the legal IT group was also called on to examine the outlines of an "e-justice" project. Strongly backed by the German presidency, this aims at promoting dematerialised cross-border communications between Member States in the field of justice. The idea would be to set in place a cross-border portal giving access to the judicial procedures available in a digital format at Member State level. Each Member State would be encouraged to develop its own judicial portal which would be connected to a common interface developed at EU level, so as to make it easier for EU nationals to access the judicial procedures of each Member State.

II.2. Critical appraisal of the results of the policy for dissemination of the law of the European institutions

With the decision to make it free of charge, the creation of Eur-Lex has certainly made progress from the point of view of access to the law of the European institutions. After some teething troubles, the number of people using the system has risen steadily, to reach 140,000 working sessions per day in October 2005.

The fact remains that Eur-Lex suffers from a certain lack of exhaustiveness, which is in large part explained by the efforts that the EUR-OP has had to make in recent years, with limited funds, to adapt to the expansion of the EU's linguistic system. There are recurrent translation problems. From 2005, the texts were available in the 11 languages of the first fifteen Member States. But the same did not apply to the languages of the States that have joined more recently. These difficulties were chiefly attributable to a lack of translators holding a legal qualification in the respective languages of the new Members. However, these translations were completed on 1st January 2006. Translation nonetheless continues to mobilise a very sizeable part of the resources that the Office for Publications devotes to the dissemination of law. The accession of Bulgaria and Romania to the EU on 1st January 2007 called for the translation of the EU corpus into the languages of these two States. The EUR-OP has also had to put itself in a position to translate the texts published in the Official Journal of the European Union into Gaelic.

Within the current system, it is still difficult for the Member States to organise links in their legal databases between the consolidated Community texts and the national measures taken for their application, even though this would be essential to take account of incorporation of the Community legal order into the national legal orders. However, at the beginning of 2008 France will be in a position to report a step forward in this field, with the placing on line, in a new version of Légifrance, of links between national measures and the text of the directives they implement, as available on the Eur-Lex website.

The range of legal data offered electronically suffers overall from a lack of coherence and visibility, which is not such as to stimulate the legal publishing market or help promote European Community law internationally, even though the EU's multilingualism constitutes a sizeable asset in this respect. There is only very little coordination between the three poles of the institutional triangle in terms of federation of the initiatives for dissemination of legal data on the Internet.

In the context of a proliferation of legal data supplied on the Internet, be it through the agency of professional initiatives or not, public authorities that have drafted rules have a responsibility to assume in enabling simple and reliable access to an authenticated law.

III. The outlines of a French initiative

111.1. Taking access to law into account as an integral part of the process of "more effective legislation"

Although it appears in the inter-institutional agreement of 9th October 2003, the notion of accessibility is only understood therein from the point of view of the transparency of the process of drawing up the Community rule.

While the efforts for consolidation, codification and simplification of the law are very important for the persons for whom the Community rule is intended, it seems at least as important, to go by national experience, to work towards a better accessibility of the applicable rule.

What is undoubtedly at stake, at EU level and at national level, is the good functioning of democracy since nobody would be able to plead ignorance of the law applicable to him, but also the very influence of the law applicable to all European citizens or even the importance of stimulating the legal publishing market and having the legal professions and universities benefit from certain positive externalities linked to the establishment of a reliable supply of legal data.

In many respects, it seems that France, if only on account of its experience, has something useful to say on the occasion of the Presidency in order for the outlook hitherto adopted in the process of "more effective legislation" to extend to matters of accessibility of Community law.

111.2. Several types of specific progress could be promoted

III.2.1. By way of objectives for the European institutions, it could be suggested that by 2010:

- the European Union be able to offer a system of free subscription by e-mail to the Official Journal of the European Union, just as every morning the Légifrance website enables any user who so wishes to obtain the Official Journal of the French Republic. Questions of opposability could, if necessary, only be settled at a subsequent stage, the most pressing issue being to stimulate the use at EU level of the new possibilities offered by new information technologies for dissemination of the law;

- a more ergonomic and user-friendly assess be offered to Internet users on the Eur-Lex site, in particular for a so-called simplified research;

- a common referential be defined to help create links between the national websites and the EU reference site.

III.2.2. France's intention in the handling of these questions could also be methodical.

For a dynamic to get under way at EU level on questions of access to law and that the European institutions are enlightened and spurred on in their practices in this field, it might be worth setting up a body along the lines of that existing in France, bringing together the players involved to make suggestions about improving access to Community law. It would be useful for this body to gather figures from the university sector or the legal publishing sector, and representatives of the institutions or of Member States.

Annex 4

EUROPEAN PARLIAMENT

23.4.2007

0044/200

7

WRITTEN DECLARATION

pursuant to Rule 116 of the Rules of Procedure

by Diana Wallis, Gérard Onesta, Marc Tarabella, Alejo Vidal-Quadras and Dimitrios Papadimoulis

on the European emergency call number 112

Expiry date: 6.9.2007

0044/2007

Written declaration on the European emergency call number 112

The European Parliament,

– having regard to Rule 116 of its Rules of Procedure,

A. acknowledging the importance of an efficient European emergency call number for citizens moving around the EU,

B. aware that the 112 emergency call number was established in 1991 and that new obligations in connection therewith were introduced in 2002,

C. having regard to the poor quality of service that has thus far been provided to citizens through the 112 number,

D. considering that proper implementation of the 112 number calls into play several EU policies (telecommunications, health, internal security and civil protection), and has implications for others (transport, tourism),

E. considering that the EU needs to establish high quality, interoperable emergency telecommunications between citizens and emergency services with a view to reducing suffering and the loss of human life caused by everyday accidents and major disasters,

1. Calls upon the Member States and the Commission to engage the necessary processes and resources for ensuring an efficient 112 service throughout the EU;

2. Calls upon the Commission to organise the evaluation by independent bodies of the real state of implementation of the 112 number throughout the EU, using the methodology developed in 2003;

3. Calls upon the Commission to consider all relevant policies when addressing the question of emergency telecommunications systems and to build on the example of countries which deal with this issue in new and innovative ways;

4. Instructs its President to forward this declaration, together with the names of the signatories, to the Council and the Commission.

Annex 5

Four thematic analyses on specific application of Community law made by Master 1 and 2 students studying European and International Affairs at the Faculty of Bayonne, under the responsibility of Maiténa Poelemans, Research Engineer at the CDRE (Benoît Camiade, Emilie Darjo, Marjorie Fourteau, Jennifer Naili, Kathyleen Yatime and all the M1 students)

Effectiveness of Community law in cross-border regions as regards the profession of lawyer

The free movement of lawyers takes two forms, the freedom to provide services and the freedom of establishment. These two notions, which each have their own rules, have evolved significantly, concomitantly to the construction of the European Community.

Indeed, a clear distinction needs to be made between these two freedoms, the exercising of which raises different problems. The freedom to provide services applies to the services provided occasionally or permanently by a lawyer who is a national of another Member State (Articles 49 and 50 TEC). Freedom of establishment enables an EU lawyer to register with the Bar in another EU Member State (Article 43 TEC).

The European Court of Justice very quickly recognised the direct effect of these two provisions of the Treaty establishing the European Community, as regards the freedom to provide services, in the Van Binsbergen ruling of 3 December 1974, (case no. 33/74), and in respect of the freedom of establishment, in the Reyners ruling of 21 June 1974, (case no. 2/74).

The free movement of lawyers is a specific question since it applies to a regulated profession, that is to say a profession controlled by local or State laws and governed by a professional association which sets the criteria for access to it, assesses the qualifications and diplomas of the candidates, and grants the certificate, reserved qualification or licence to practise to qualified candidates.

Community law has dealt with this profession rather late, since it is a very specific profession and by nature linked in many respects to the State that issued the qualification.

The process of getting into the lawyer's profession will differ from one EU country to another, since each State's regulations will make access subject to very different rules. Indeed, under the **French rules**, the candidate must hold a Master 1 in law, whereupon enrolment in the college of lawyers will be subject to success in a competitive examination. In the **Spanish case**, it is enough to have a law degree to enrol in a college of lawyers without an entrance exam.

This particular example enables us to tackle the difficulty of such a Community regulation, especially when one multiplies the number of sets of national regulations by the number of member countries of the European Union.

Moreover, the professional activity of lawyer will imply two aspects, advice and representation. Indeed, the lawyer is involved in two main directions: on the one hand, he forms the link between the litigant and the judge (his judicial duty); and on the other hand, he provides consulting services in non-litigation matters and drafts instruments (what is generally referred to as his legal duty).

The question is to ascertain whether, as and when Community rules concerning the freedom to provide services and the freedom of establishment have evolved, these two freedoms are henceforth real, or if the current rules are insufficient to guarantee them.

It will be worth combining the procedure established by primary Community law, as well as its derived law, with the actual practising of the profession of lawyer in order to draw conclusions concerning the existence of an improvement in the laws set in place by the European Union.

It is by using this approach that we will be able to answer the existing procedural distinction between freedom to provide services (I) and freedom of establishment (II).

I - Freedom to provide services

The freedom to provide services in respect of European Community lawyers was the subject of the directive of 22nd March 1977. It establishes "a general freedom for any Community lawyer to provide a legal service in another Member State", with two corollaries: on the one hand, the provision of the services is temporary, with regulated access and, on the other hand, it covers all the activities of the legal profession.

A – Access to the freedom to provide services

The diversity of the legal systems and legal training in the Member States has made it extremely difficult to achieve the complete mutual recognition of diplomas and other certificates of access to the profession – something that would have enabled effective freedom to provide services. It is with a view to reaching this effectiveness that the Community and the Member States have tried to establish "rules".

Initially, Council Directive 77/249 of 22nd March 1977 was adopted in application of the Treaty of 1957, recalling that any restriction regarding the provision of services based on nationality or on residence conditions was prohibited as of the end of the transitional period. It then made provision for a whole series of general conditions intended for the States for the freedom to provide services to be exercised.

First of all, the actual performance of a lawyer's activities under the provision of services implies that the host Member State recognises the persons carrying out this profession in the different Member States, as lawyers.

Then, any beneficiary of the Directive will use the professional qualification of the Member State in which he is established. However, it only authorised an occasional freedom to provide services. A lawyer could thus only carry out his activity in another Member State under his original qualification from time to time, which differentiates the freedom to provide services from freedom of establishment.

Then, the directive made provision for more specific conditions governing free access to this provision of services. For example, the lawyer had to be registered with a Bar in the European Economic Area, more especially in the State in which he had his main activity.

Moreover, he had to be affiliated to and pay his membership contributions in his Bar of origin. The lawyers of another Member State "use their professional qualification expressed in the language(s) of the Member State of origin, with an indication of the professional organisation they come under". The activity relating to representation and defence of a client in court or before a public authority must be performed in each host Member State under the conditions laid down for the lawyers of that State.

Moreover, the lawyer must comply both with the professional rules of the host State and those of the State of origin. The host State may oblige lawyers providing services to be introduced to the presiding judge of the court to which the matter is being referred or the competent president of the Bar, in accordance with the local rules and practices, and to act in concert with a lawyer of the host State.

Furthermore, each Member State may bar-salaried lawyers bound by contract of employment to a public or private company, from defending or representing said company, insofar as the lawyers established in this State are not authorised to do this.

Finally, this 1977 directive stipulates that the host Member State may ask the service provider to establish his capacity as a lawyer.

Despite a good first approach to this freedom to provide services in respect of lawyers, the 1977 Directive had several lacunae: as an example, it did not make a distinction as to whether the activity related to counsel or pure defence.

With a view to mitigating the persistent gaps, the Council of the European Communities adopted a second, more general, directive, on 21 December 1988. This directive related to a general system of recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration.

On the basis of the two directives of 1977 and 1988, France adopted a decree, the consolidated version of which dates from 16th May 2007 (decree of 1991). This decree includes the terms and conditions under which a lawyer may exercise his freedom to provide services. Thus, we can cite the inclusion of the temporary nature of the activity. Then, and according to the European Commission, the activity should have a "discontinuous" character. The main centre of activity should be located in a Member State other than that in which the service is rendered, and the lawyer providing the service must be affiliated to and pay the membership contributions in the system laid down by his Bar of origin. Moreover, a lawyer wishing to provide services in another Member State must abide by the rules of professional ethics applicable in his State of origin and those applicable in the country hosting his services.

The series of conditions governing access to the freedom to provide services sometimes make the exercising of this freedom a delicate matter.

B – Exercising the freedom to provide services

Here we seek to find out what the conditions surrounding and regulating the practising of the profession of lawyer are in the framework of the freedom to provide services, and whether these may in practice constitute a curb on the exercising of the freedom to provide services.

In principle, a European lawyer can benefit from the freedom to provide services immediately, without being subject to any prior formalities vis-à-vis the host State. In particular, he is exempt from any condition obliging him to register with a professional organisation in the host Member State, or conditions relating to knowledge of the host State's law.

However, the 1977 Directive calls for a Community lawyer to establish his capacity as a lawyer by presenting his professional identity card issued by the Bar of origin. This card should be accompanied by the mention of a university qualification, the issue of which is conditioned by the right of authorisation of the State of origin (CJEC, Kraus, 31 March 1993).

The lawyer also has to abide by the principle of double code of ethics, which consists in the application both of the code of professional ethics of the host Member State and that of his Member State of origin.
Furthermore, the directive distinguishes between judicial activities to which the professional rules of the host Member State have been applied, and extra-judiciary activities to which the rules of the Member State of origin are applied.

The Directive also calls for disciplinary control. It should be noted that both the Directive and jurisprudence (CJEC, Gullung, 19 January 1988) deem that "when the lawyer's capacity to practise has not been established, and the party concerned finds himself prohibited from accessing this profession on these grounds, it should be considered that he does not meet the conditions laid down by the directive for the freedom to provide services."

Concerted action also exists: the Member States may impose the obligation to act with a local lawyer where representation in court is concerned.

In the light of all these obligations, we can say that there are no insurmountable obstacles.

Firstly, as regards compliance with the principle of the double code of ethics, this requirement does not call for any specific action on the part of the lawyer. It is a purely intellectual obligation.

Then, the CCBE card (European Bar Card) is a kind of "lawyer's record book" which lists all the information concerning him, which is available from the Bar of the country of origin. It will enable him to identify himself more quickly, and therefore make access to the courts of other Member States easier for him.

Finally, as regards concerted action, we can say that this helps promote freedom to provide services because it enables better integration. Indeed, by calling on the services of a local fellow lawyer, who has a better knowledge of the law of the country in question, the freedom to provide services becomes more efficient.

In conclusion, we think that this system has a twofold effect. On the one hand, as has already been said, it favours the provision of services, and on the other hand, it also allows improved legal security for the person subject to trial, since he can obtain as much information as possible about his representative. Having said that, its efficacy will depend on the good will of the lawyers, since these mechanisms are not compulsory.

When we tried to demonstrate that the exercising of the freedom to provide services is effective in practice, we came up against a problem we had not expected. After contacting the *Maison des avocats* and numerous lawyers' firms, we found that freedom to provide services was not very successful in cross-border regions. We ended up by obtaining the testimony of Maître LOUSTEAU, lawyer at the Bayonne Bar and director of the cross-border watchdog (Iuris Muga).

He revealed to us that when he was faced with a dispute that involved him having to go and plead in Spain, he worked together with a Spanish law firm so that this firm could plead in his stead. He was to justify this course of action with an inescapable argument, namely lack of knowledge of Spanish law. Indeed, we note that it is very difficult to gain an in-depth knowledge of a national law different to the law of one's country of origin, when one has not learnt it. In the typical case of France and Spain, some obvious legal principles, such as means of proof, for example, will differ completely from one country to the other, with one favouring holographic evidence and the other favouring witnesses. If differences appear on such a specific point, they are all the greater when it comes to matters of procedure.

It is therefore for this reason that a working approach based on cooperation prevails over the freedom to provide services, since it removes the functional obstacles and was seen to be the option envisaged by the majority of practitioners.

II – Freedom of Establishment

The objective of freedom of establishment is to enable any EU lawyer to be automatically registered, at his request, at a French Bar. A very precise set of rules controls both access to and practising of the profession.

A - Access to Freedom of Establishment

To be able to start practising in France, a lawyer who is a national of another Member State has to register at a French Bar. The directive of 16th February 1998 (aimed at facilitating the permanent practising of the profession of lawyer in a Member State other than that in which the qualification was obtained) lays down a single condition for the national of a Member State to secure registration as a lawyer with a Bar of another Member State. An EU lawyer who wishes to settle in France must be able to prove that he is legitimately registered with another Bar of the European Union.

However, in practice we can see that other requirements are made. Before being able to **register with the French Bar of his choice**, a lawyer who is a national of another Member State has to apply for a registration form. To complete this correctly, he has to provide:

- the attestation by the Bar of his country of origin mentioning any disciplinary procedures pronounced against him.
- an attestation concerning professional liability insurance.

A lawyer wanting to settle in France has to pay a membership fee to the Bar of his State of origin and to the Bar of the host State. This double payment of dues is a curb on freedom of movement.

We can also note a minor case of discrimination between lawyers. Each French Bar has two lists of lawyers. One contains French lawyers and the other lists the lawyers who are nationals of another Member State. However, after three years' actual and regular work in France and in French law, a lawyer has the possibility of enrolling under the title of French lawyer. Other minor cases of discrimination can be seen, in particular the requirement for an aptitude examination subject to authorisation after a request made to the National Bar Council. If the lawyer passes, he is issued an attestation enabling him to apply for registration at the French Bar of his choice.

*In the case in point, let us look at the case of **a Spanish lawyer established in France**: Maître W., who obtained a masters in law in Spain in 1994, after which she registered at a Spanish Bar as "*abogado*" (lawyer). She then decided to come and practise her profession in France. She registered with the CRFPA in Strasbourg, so as to be able to present herself for homologation of the lawyer's diploma. It is interesting to note to start with that the first difficulty encountered related to her enrolment as a person registering to sit in on lectures in this training centre. Indeed, whereas the training is free of charge for nationals, the management of the centre demanded that she pay FRF 10,000 to be able to follow this course.*
These costs seem discriminatory, since they appear to be subject to a discretionary decision of the management.

Directive 89/48/EEC "on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration", obliged her to undergo a procedure involving several stages.

In practice, she first had to apply to the French National Bar Council to obtain a file in which she had to report the subjects she had studied during her degree course in Spain. Then she had to find a sworn translator, which proved problematic for the transcription of the subjects. The National Bar Council then had four months in which to give an answer as to the admissibility of the application, and the examination could not be re-sat more than three times.

There, a parallel between the subjects studied in Spain and the classes to be passed for homologation was carried out. In the case of Maître W., the classes selected were reduced on account of the fact that she had attended the training centre in Strasbourg.

She was keen to point out that for lawyers resident abroad and wanting to set up in France, the training relating to the profession of lawyer was very difficult to get into and did not in any way favour the recognition of diplomas and consequently freedom of establishment. In practice, she realised that the procedure linked to establishment in a Member State other than the State of origin is very unwieldy and that a deliberate desire has appeared on the part of French Bars to limit access both to the freedom to provide services and to freedom of establishment. The main problem is linked to competition. Indeed, Maître W, who had been registered at Bars that are not in a geographical cross-border situation, noticed that registration at the Bar and freedom of establishment were more accessible, whereas in cross-border regions the French Bars deliberately limited access.

She was also keen to point out that for her, Directive 89/48/EEC was more favourable than Directive 98/05/EEC on freedom of establishment, since in practice she found that it was difficult to prove three years' actual practice in France in order to be granted freedom of establishment.

B - Exercising of freedom of establishment

What is involved here is ascertaining the conditions surrounding and governing the practising of the profession of lawyer in the framework of freedom of establishment, and establishing whether they can in particular constitute a curb on the exercising of freedom of establishment.

In theory, a lawyer established in the host Member State may perform the same professional activities as a lawyer who is a national of this host country. That is to say that under his original professional qualification, he can aspire to carry out the traditional duties of any lawyer: advice and consulting / representation and defence of a client.

Nonetheless, Directive 98/5/CE makes provision for some dispensations from this rule:

• when a monopoly has been granted to another profession for the execution of certain deeds, which refers in practice to activities reserved for notaries-public, or when a monopoly has been granted to specialist lawyers before the supreme courts.

A Member State is not authorised to provide for other exceptions, which the ECJ endeavours to monitor. The ECJ sanctioned Luxembourg, for example, for having wanted to exclude from the scope of freedom of establishment the activity of companies' paying agent, by reserving it for professionals in the financial and insurance sectors, company auditors and chartered accountants, and lawyers belonging to the national profession.

• when the State deems it necessary for the lawyer who is a national of another Member State to be assisted by a national lawyer to carry out his duties of representation and defence: we then talk of concerted action.

This is not an obligation but a possibility for the State. However, in practice, some Bars easily impose concerted action under the pretext that the foreign lawyer does not have a good enough knowledge of how the national courts work even though no procedural difficulty appears. On the other hand, some lawyers say that this concerted action is perceived as cooperation with the host State, enabling them to integrate more easily into the host country's legal customs and practices.

In principle the directive does not impose any control as regards the degree to which the foreign lawyer has a command of the host country's language. However, this has already harmed some lawyers, who have been victims of cases of legal "nationalism". Fortunately, the ECJ keeps a close eye on these deviations.
A Member State therefore cannot make the right to practise the profession of lawyer dependent on the command of the language, since the directive makes provision for other mechanisms liable to highlight this criterion in cases where it is necessary (mention of the original professional qualification, concerted action, observance of rules of professional ethics, disciplinary sanctions).

Then, a lawyer established in a Member State other than his own is subject both to the rules of professional ethics of his country of origin and those of the host country. At first sight this aspect is not really problematic since it would appear to act as a factor for harmonising the rules of professional ethics of each EU country. After all, it renders necessary a degree of cooperation and dialogue between the States. For the established lawyer, it is not a heavy burden to bear even if an overall harmonisation would facilitate his situation.

In the same spirit of cooperation, disciplinary procedures, although specific to each country, oblige the Member States to agree on their rules since a host State instituting a procedure against a foreign lawyer has to inform that lawyer's country of origin, and this same country of origin then has to follow up the disciplinary decision in accordance with its own rules of substance and form. However, some Bars have international sections which allow a degree of harmonisation of the rules surrounding the profession of lawyer.

Finally, the directive enables the established lawyer, under certain conditions, to be put in the same category as the lawyer of the host Member State.

A distinction can be made between two hypotheses:

- after actually and regularly practising the profession for three years without interruption and in the law of the host State, the lawyer may become a member of the lawyer's profession in the host Member State, i.e. be a fully-fledged member of a Bar, in the same capacity as a national lawyer, without sitting any exam or undergoing any refresher course.

- at any time, the lawyer may ask the national authorities to practise under

the professional qualification of the host State. For this, Directive 89/48/CEE allows a recognition of diplomas. If the training is not equivalent to that of the host State, the latter may require the lawyer to undergo a refresher course or sit an exam in order to assess his knowledge of the host country's law.

According to the testimony of a **Belgian lawyer practising in Spain**, the required exam presents difficulties, since it relates to the totality of the law of the host State and the basic subjects. Nevertheless, he regards it as essential to have an overall knowledge of this law, without which he would not be able to discharge his duties correctly.

Conclusion

Thus, at the end of this presentation, we can note that the mobility of lawyers at EU level is very far from being an established fact, and that the opening up of the profession to nationals of Member States for the time being remains fairly tentative.

This is not due to the inevitability of a mere conflict of national laws, which, depending on the States, can either be similar or fundamentally different. Basically, we are seeing a veritable lack of goodwill on the part of the profession's regulatory bodies, which are often organised in Bar Associations and apparently regard the status quo as a blessing.

We will therefore note the perceptiveness of the European Parliament which, for the follow-up of the "Report on competition in the sector of the professions", adopted a resolution on 12th October 2006, further to the report for an initiative drafted by Mr Jan Christian EHLER (PPE – Economic and Monetary Affairs Commission), stating that: "He (Mr EHLER) felt that the traditional right to enact regulations based on specific customary, geographic and democratic characteristics should be limited and eventually abolished."

In a nutshell, this creates the prospect of a Le Chapelier law at European level, which would be the only way of achieving genuine liberalism in this economic sector and limiting what Jacques ATTALI readily terms "privileged positions" within the legal professions.

STUDENTS AND THE RECOGNITION OF DIPLOMAS

In order to increase the mobility of European citizens in the Member States, the European Union and the member countries of the European Economic Area have set in place instruments aimed at favouring the transfer of academic qualifications and skills.
Facilitated by the international cooperation of the States and universities, student mobility has been experiencing a boom for some years.
Nonetheless, students are still faced with certain obstacles, in particular as regards recognition of diplomas.
To underline this mobility we will focus our reflection on the Franco-Spanish example.

I- THE CURRENT SITUATION CONCERNING STUDENT MOBILITY

Further to an inter-governmental initiative, the Bologna Conference set up the LMD system: a single system of university diplomas structured around "Bachelor's, Master's and Doctorate".

The ECTS, a system of credits validating education and training, in the framework of the SOCRATES and LEONARDO programmes, constitutes the main tool for this recognition.
An ECTS credit corresponds to a unit of value attributed to a course, according to the workload involved, with 60 credits representing an academic year.

Now adopted by all French universities, the Bologna process has shaken up the Spanish university landscape. In 2005 Royal Decrees defined "*grados*" (Bachelor's degree) and "*posgrados"* (Master's degree) and the government has to publish a catalogue of the new diplomas introduced in universities.

However, outside this LMD system, this recognition is not automatic and administrative steps have to be taken to have one's level of studies validated.

In most European countries, the higher education establishments are autonomous as regards admission. Nonetheless, some countries have retained a centralised system giving decision-making power to the ministry competent for higher education, which is the case in Spain (*Ministerio de Educación y Cienca*), whereas others, like France, have created bodies for this purpose: the Centre for Information on the Academic Recognition and Professional Recognition of Diplomas (ENIC-NARIC).

II- DIFFICULTIES ENCOUNTERED IN THE REGISTRATION PROCEDURES

Not all students fall under the same mobility programme. In fact, there are three main categories of foreign students:

- those coming under the international cooperation of the State;
- those coming under university cooperation: ERASMUS;
- individual foreign students.

The members of this last category, which constitutes more than two thirds of students going to another country to study, experience a specific problem concerning the homologation of their diploma in the host country.

This homologation is a long and complicated procedure since copies have to be furnished of the lists of marks, the diploma and the breakdown of the syllabuses studied per years – not to mention the fact that a sworn translation of all these documents may be requested, which poses a problem as regards the cost involved.

What is more, in some cases only a partial homologation is issued, which may force the student to re-sit subjects in the host country and/or undergo a linguistic assessment.

Not to mention the fact that the random result of this procedure and the time spent waiting for a reply may discourage the student.

Other difficulties associated with finding out information on courses and accessing the application procedure may be dissuasive, in particular:

The search for information from abroad proves difficult, on account of the fact that universities' websites are not very up to date regarding their syllabuses or academic content, versions of websites in a foreign language are too strange, and finding one's way around the websites is difficult.

Note: In the context of the ERASMUS programme, the drafting of the study contract, which is submitted for validation by the university of origin before departure, may pose a problem in respect of its modification once the student is in the host university (subjects no longer available, problem of compatibility of the subjects in the student's timetable).

- The process of putting together a file may prove dissuasive for students due to the fact that the sending of money or payment by cheque, and the requirement of providing pre-stamped reply envelopes, may constitute an obstacle to registration.
- The requirement for a student to travel to attend interviews or for other admission procedures underlines another problem.

III- DIFFICULTIES ENCOUNTERED IN EVERYDAY LIFE

As regards financing: the European grants in the framework of a European programme constitute an undeniable advantage, even though they are still insufficient in relation to the cost of living. Not to mention the fact that students external to the programme do not automatically receive financial help.

As regards accommodation: securing a place in a university hall of residence (in both France and Spain) is possible, but is still difficult for foreign students.

Spanish students receive Personalised Housing Assistance, which makes their search for accommodation easier, but French students do not have access to this in Spain.

As regards health: the creation of a European Health Insurance Certificate simplifies matters considerably in the event of healthcare or hospitalisation.

However, the applicant has to register in advance: in Spain, at a public health centre, and in France, at a student social security body.

THE EU CROSS-BORDER WORKER: A SPANIARD COMES TO FRANCE...

The Treaty of Rome cites the free movement of persons as one of the foundation stones of the European Community. Article 39 of the Treaty establishing the European Community states that "freedom of movement for workers shall be secured within the Community", the aim of this being to enable them to reply to jobs actually offered. Other Community texts have since supplemented the original treaty: regulation, Directive and even Communications from the Commission. In a cross-border area such as ours, how will an EU national, a Spanish cross-border worker coming to France, be able to exercise this basic freedom?

The outline of the liberalised field was defined by derived right and jurisprudence, in particular as regards the interpretation of certain exceptions, which are also becoming scarcer all the time, for free movement to be fully effective. This is the case for activities involved in the exercising of public authority. Interpretation of this right should take into account the fact that the Member States can make provision for special systems for non-nationals, which are justified on the grounds of public order, public security and public health.

The interest is understandable in a cross-border region such as ours, where many workers have exercised, are exercising or will exercise this right.

Therefore, how does Community law stand on the subject? What formalities does a Spanish cross-border worker have to fulfil to come to France? What are the limits, the positive points or the problems that can thus be drawn from this?

I. The state of Community law: freedom of movement for cross-border workers

Community law on the freedom of movement for workers is applicable the moment an EU national exercises his right to mobility, even if he has returned to his Member State of origin after exercising his right of freedom of movement for workers. By exercising this right, the citizens are taking part in the creation of a genuine European labour market.

Before going any further, it should be recalled that there are workers referred to as salaried workers and workers referred to as self-employed persons. Beyond this distinction, the Court had declared the homogeneity of freedom of movement in the Royer ruling (ECJ 8th April 1976, Case 48/75); self-employed persons enjoy both the right to establishment in order to perform this activity and the right of freedom to provide services. It stems from the Community principle of non-discrimination based on nationality that a migrant worker should

be treated in the same way as national workers, in particular as regards access to work, terms and conditions of employment and working conditions, and social and tax benefits.

Cross-border workers are salaried workers or self-employed persons who perform their professional activity in the territory of a Member State and reside in another Member State, to which they return at least once a week.

However, there are still practical, administrative or legal obstacles that prevent the workers from making full use of the advantages and potential of geographic mobility.

II. A formalistic practice: the case of the Spanish cross-border worker

A. Ancillary preliminary formalities: entry and residence...

On arrival in France, a Spanish EU national has to fulfil certain simple practical formalities. He has a period of three months in which to report to the town hall of the municipality/town where he has decided to reside for practical questions.

Thereafter, he also has to report to the nearest Spanish consulate (at ***Bayonne, résidence du Parc, 4 avenue du BAB)***, with his identity documents: identity card and passport. If he has come with his family, he should not forget the family record book. In addition, to attest to his residence in France, the consulate asks the applicant to provide the original of the EDF (French Electricity Company) or GDF (French Gas Board) Declaration in his name or an attestation by the host with these same documents, for example. Once this has been done, the consulate produces the necessary papers attesting to the new residency, and others, within a week. This is simple and does not entail any real constraint other than the trip to the consulate. Language does not present a problem, either, since the staff there speak Spanish.

These formalities at the consulate serve a double purpose: - being struck off the electoral list in Spain at the place where he used to live, and being registered on a B list in France, at the consulate; in this way, the Spanish national will be able to receive all the information needed to exercise his right to vote from France, and thus avoid double voting.

- this will also enable him to go the police station of his former place of residence in Spain to change his identity card with an indication of his new address (although this is not an obligation).

B. A specific case: the registration of a self-employed worker

Registration formalities:
In France, any self-employed person is obliged to register with the professional register corresponding to his activity and to pay self-employed persons' social security contributions.

First and foremost, a Spanish national holding Spanish diplomas will have to declare his activity at the CCI (Chamber of Commerce and Industry) or register with the chamber of trade.

- the chamber of trade (self-employed workers): he has to follow a five-day information course (legal status, bank loan), and will be given a brochure on how to set up one's own business. This will contain details of all the formalities to be fulfilled, which vary from one activity to another and are compulsory or not depending on the trade or profession.
-- difficulties: turning his Spanish diplomas to good account in France.

If he does not have any diplomas, he must prove three years' experience, and seeing as by definition this will often have been acquired in Spain, he has to have it validated by the DDTEFP (the Departmental Department of Work, Employment and Vocational Training).

- the CCI: this course is only recommended here, and is not compulsory.

Case 1: case of self-employed status in France. If he performs a regulated activity, he has to have his Spanish diplomas validated in France (for a non-regulated activity, it is not compulsory). In this case, if he carries out a commercial activity (e.g.: opens a shoe shop), he must furnish his civil status, nationality, and a lease proving he can practise in these premises, and affiliate to the social security service and others.
If it is a regulated self-employed activity, he must have a professional qualification and have his vocational training qualification and/or certificate of technical education, and his experience, validated.

Case 2: case of "*autonomos*": the Spanish national owns a company in Spain and wants to create a subsidiary and/or branch office in France: he must have a translation of the articles of association in French and of the trade register of the country of origin, as well as a lease. *Registration formalities:* contact the CFE (Centre for Companies' Formalities) which is located in the chamber of commerce for tradesmen, the chamber of trade for self-employed persons, and in the premises of the URSSAF and sometimes in the premises of the Family Allowance Funds for the professions. The applicant will be asked to fill out two bundles of documents: the "declaration of commencement of a non-salaried activity" (cerfa no. 90-0192) and the "application for affiliation by way of a non-salaried activity" (cerfa no. 90-0177).

C. Significant formalities in respect of social security and URSSAF (the body managing social security payments and funds)

a) Social security

1) the worker

The State health insurance office (CPAM) in Bayonne is responsible for international relations, which means it provides all the information necessary for Spanish cross-border workers.
Today, if he presents his identity card and an E 106 form issued in Spain, this worker is entitled to hold an EHIC and have his Spanish cover shifted to France. So, as regards health protection, the Spanish cross-border worker has an **EHIC**, which guarantees rapid and simplified reimbursement of the expenses incurred on site or a reimbursement shortly after return to the place of residence. It replaces the forms on paper that used to be used, such as the infamous E 111 document. But France continues to issue social insurance smart cards. Before, most States, including France, used to request a declaration from the sub-prefecture in order to avoid exposure to double legislation, but as of 2006 France no longer acts in the same way as all the other Member States bar two. So, the Spanish cross-border worker will be treated as a national, and will have access to all jobs but for those in the field of national security (e.g. with the DST, the French counter-intelligence agency).

The following principles apply to salaried and non-salaried workers:

- **if he is subject to the legislation of one Member State at a time:** for the worker who is covered by the Community provisions, irrespective of the number of States in which a professional activity is performed. There is just one minor exception: someone who is simultaneously a salaried worker in one Member State and a non-salaried worker in another may – in exceptional cases – be insured in these two States.

- **if he is insured in the country in which he performs his professional activity:** for him and, including when he is resident in the territory of another country or his companies or employers are established in another Member State. If he stops working in one Member State in order to carry out a professional activity in another Member State, he falls under the legislation of the "new" country where he works. Consequently, he stops building up entitlements in the "old" country and begins to acquire these in the "new" one, irrespective of whether or not he is resident in the "new" country of work. Even as a cross-border worker who continues to live in the country where he used to work, he will be insured under the legislation of the country where he is now working.

Moreover, a distinction needs to be made between different situations:

- if the Spanish cross-border worker is a salaried worker in France:

- *and lives in France*: he will be treated as a national and will be summonsed to appear with the certificate or contract of employment, bank account details for direct debits, and a copy of the birth certificate, which will entitle him to the valid card for the reimbursement of expenses. The employer will take the necessary steps. However, it is still possible to provide himself with an EHIC for a shift of Spanish and French cover.

- *and lives in Spain*: the new employer will have him register with the URSSAF (the body managing social security payment and funds).

This body manages the various social security and unemployment insurance systems. Once registered, he will receive a certificate of affiliation to the Social Security with his social security number and a social insurance smart card. It is important for him to find the CPAM office (*Caisse Primaire d'Assurance Maladie* – state health insurance office) corresponding to the district where he lives, since this will become his main point of contact with the social security system. And the procedure is identical to that in the previous case: to receive the social insurance smart card, he will have to present a copy of his birth certificate, certificate or contract of employment, and bank account details for direct debits, and procure the E 101 and E 106 forms in Spain (valid for one year in order to receive Spanish care where he lives), forms issued by the CPAM. The E 106 forms must be sent to the competent social security authorities of the country where the activity is temporarily being performed, to give the worker entitlement to receive healthcare and reimbursement of healthcare costs identical to that of insured persons affiliated to the system of that State.

- If the cross-border worker is self-employed: he must declare his activity to the CPAM and apply for affiliation to the national insurance scheme. Being a national of an "old" Member State, he will only have to present his identity document. Here, too, he may also provide himself with an EHIC, simplifying the procedure all the more.

Health insurance is also issued by a special supplementary insurer, the CANAM (the National Health Insurance Fund for the Self-employed Professions: self-employed persons). The RAM (Union of Health Insurers) corresponds to the professions, and the CIPAV (Inter-professional Provident and State Pension Scheme Fund) is the supplementary retirement, old age and life insurance fund for the professions.

2) His family:

Principle: his family is entitled to medical and dental care, medicines and hospitalisation in the Member State in which it lives with him.

The general European rule states that the family's medical care should be reimbursed in the country of residence, irrespective of the place where contributions are paid (France). The administrative procedures are managed via the E 106 form.

Exception: European Regulations admit one exception to this principle for cross-border workers: the possibility of choosing medical care in France or in Spain, but beware:

- this right to choose cannot be extended to the members of your family, whose entitlement to medical care must be in the country of residence.

- he loses this right to choose on retirement, and will then receive these benefits in the country of residence.

The body responsible for managing medical care is the NSS ("Instituto Nacional de la Seguridad Social"). It takes care of management of the E-106 form, issued by the competent social security body in France (the "Caisse Primaire d'Assurance Maladie"), a document that certifies that, even though he is paying contributions in France, the right to medical care stems from Spain. Spanish doctors will then claim reimbursement from France for the health care received by his family.

The worker and all the members of his family are taken care of in France in the event of a health emergency (on presentation of the E 111 form). But if it is not an emergency, the

costs of their healthcare will only be covered in France if he has a prior authorisation (regularised by means of the E 112 form).

SUMMARY OF THE FORMS:
Form E 106 for salaried or non-salaried workers and the members of their families living with them in the same country,
Form E 109 for the members of the family who live in a country other than that in which the salaried or non-salaried worker in question lives;
Form E 121 for pensioners and the members of their family living with them in the same country;
Form E 122 for the members of the family who do not live in the same country as the pensioner in question;
Form E 127 for each pensioner or annuitant and for each member of his family.

b) The formalities to be fulfilled vis-à-vis the URSSAF

First and foremost, as soon as an employer takes on a salaried employee in France, he/it is obliged to make a declaration of appointment to the "Union de recouvrement des cotisations de sécurité sociale et d'allocations familiales" (URSSAF – the body managing social security payments and funds) to which he/it is answerable. With this declaration, an application can be made for registration with the social security system if the interested party does not have a registration number and affiliation to unemployment insurance. If he does not have a social security number, the employer should send a single declaration of appointment to the URSSAF under which his establishment falls, within eight days of the appointment.

Then, several cases may present themselves for this Spanish Community worker who has come to France:

- **case 1:** he is self-employed and has come to work in France. He carries out an activity on Spanish soil and on French soil (double activity): this is the "***autonomos***" system. In this case, he must be attached to a social security system in Spain and pay contributions in Spain (as for the RSI (Social Security System for Self-employed Persons) in France).

- **case 2**: he is a salaried employee seconded to France in the employ of a Spanish company, and is now working in France: he will be attached to the Spanish system.

- **case 3**: if he sets up a branch office in France on behalf of companies in Spain: a URSSAF in Strasbourg facilitates the steps to be taken:

-- *if he is an EU worker and Spanish national, and is a self-employed person working on French soil*, he is subject to the French system. If he practices a profession, he will pay his contributions directly to the URSSAF (after providing his address, bank account number, and identification with Siret number). If he is a salaried employee, the contributions will be deducted directly on his pay slip. He should register in the independent system with the URSSAF ("Union de Recouvrement des Cotisations Sociales et d'Allocations Familiales") in the RSI (the Self-employed Persons' Social Security System) and should provide all the documents requested. This is done without appointment and on the spot, by procuring the Self-employed person's Declaration to obtain a number.

-- *if he is a Spanish salaried employee coming to France*, he fills in the E 101 form, to prove that he is affiliated in Spain and has declared himself there.

- case 4: he is a self-employed person working in France but if he goes back to Spain and already pays his contributions in Spain, he is exempted from CSG (supplementary social security contribution in aid of the underprivileged).

Moreover, if he is a salaried employee, he may ask to receive entitlement to luncheon vouchers and travel expenses (fixed by zones) for travel from the place of residence to the place of work (building site, for example), for which he has to provide a document in evidence proving his address: either an electricity bill in his name, or, if he is staying with someone, a letter from the host and a bill in the latter's name. This is all to avoid an

adjustment with the URSSAF, and if not the employer may be accused of disguised salary if these allowances are too high, for example.
NB**:** *It is absolutely necessary to provide proof of an address, and the case of persons living in caravans poses problems because they are unable to give proof of an address.* ***NB****: If a worker lives in San Sebastian, and works in Bayonne, he will not necessarily receive travel expenses. Should he receive them, they will not be higher because the zone is bigger. This is not an obligation, but up to the employer's discretion. If he is a good worker, and there is a lack of skilled staff, if he is the most competent, and no one else is available, then he will present his receipt and receive allowances*.

D. Unemployment

a) The ASSEDIC (the organisation managing unemployment insurance payments)

The worker in question must prove a number of hours and time in order to receive ASSEDIC allowances.

Registration with the ASSEDIC (Association pour l'Emploi dans l'Industrie et le Commerce). It is not this organisation that pays the allowances, but it can assess the training requirements and in some cases may also reimburse the individual for travel expenses for job interviews. It is the ASSEDIC that will register him with the ANPE (the French national employment office)

To register with the ASSEDIC: the worker must look as close to his home address as possible. Once the registration has been recorded, the ASSEDIC gives the applicant a job seeker's card.

After registration with the ASSEDIC: he has four weeks in which to make an appointment at the ANPE for a job-search interview. During this time he will fill out a file with a ROME code (Répertoire Opérationnel des Métiers et des Emplois – Operational List of Trades and Jobs) which will determine the type and category of job sought (without a code, the file will not be considered).

Attention! *The European rules concerning unemployment are very strict and are not always applied correctly. To receive unemployment benefit payments, salaried employees must:*

** have worked for at least six months during the preceding 22 months,*
** be registered on the list of job seekers held by the ANPE,*
** not have left their job involuntarily,*
** be aged under 60,*
** be physically capable of performing a job.*
** be permanently and actively looking for a job (the applicant will be asked to report to the ANPE once a month for a check that he is indeed looking for work).*

b) Unemployment benefit

FORM: E 300 series: to accredit entitlement to unemployment benefit.

In the case of the cross-border worker practising his profession in France as a salaried employee (self-employed persons are excluded from this benefit) and living in Spain, where he returns at last once a week, when he loses his job a distinction has to be made between two situations:

1. Situation of partial or intermittent unemployment (short-day working, part-time work or permanent work on a discontinuous basis): he is entitled to receive the corresponding unemployment benefits, in accordance with the legislation of the State in which he is insured (France), as if he were living in this country, and thus apply for his unemployment benefit in the country in which he has paid contributions (in this case, France). It is possible to be in receipt of unemployment benefit and at the same time practise a professional activity on a part-time, reduced-time or discontinuous basis, even without being resident in France.

2. Situation of total unemployment:

Case 1: he will only receive unemployment benefits in accordance with the legislation of the State in which he resides, in this case Spain, as if he had been insured and

paid contributions in this country. For the calculation of the benefit, Spain will take into account the pay he received in France (via the E-301 form). It is supposed that as a border worker he will have a greater chance of finding work in Spain, since he lives there.
If he does not agree, he may prove that he maintains closer links with France (where he had his last job), and claim unemployment benefit in France. However, this possibility is seldom if ever applied by the management bodies. For any further information on rights concerning unemployment benefits, the applicant can contact the office of the corresponding competent Spanish and French management bodies (INEM and ASSEDIC, respectively).

Case 2: if the cross-border worker lives in France: and subsequently involuntarily loses his job, he will be able to benefit either from the unemployment benefit system (if he has worked and paid contributions previously) or from the State-funded solidarity system.

c) Aid for getting back to work ("*Aide au Retour à l'Emploi*" – ARE)

If he wants to receive the "ARE" allowance for helping unemployed people get back to work, he will also have to present:

- an employer's or employers' attestation(s),
- a copy of his social security registration card,
- bank account or post office account details for direct debits.

Specific case: if he receives the ARE allowance in France and then wants to look for a job in another EU Member State, he can obtain **form E 303** from his **ASSEDIC** office. He then has seven days in which to submit this form to the authorities with competence for unemployment matters in the State where he wishes to look for a job. He may then receive French unemployment benefit paid by the institutions of the State of destination on behalf of France, for a period of three months.

E. Other complementary and useful benefits

a) Receipt of a pension in another Member State **FORM:** E 200 series for the calculation and payment of pensions. EU nationals are allowed to retire in another Member State. The countries where the worker has paid contributions for his pension are responsible for paying this pension pro rata the period during which the individual worked.

b) Disability insurance

This insurance compensates the reduction in income of a person who can no longer work at full capacity. To be entitled to this insurance, the following criteria must be met:

- to have a degree of disablement of at least 2/3
- to be aged under 60 (over this age, the old-age pension applies)
- to be registered with the Social Security and be paying one's contributions
- to undertake to agree to any medical examinations.

c) State pension scheme and widow(er)hood insurance

There are two kinds of state pension scheme: contributory (including the old-age pension) and non-contributory.

If he is an individual worker, he must register in the self-employed persons' system with the URSSAF (*Union de Recouvrement des Cotisations Sociales et d'Allocations Familiales*) and make all the payments requested. Moreover, health insurance is provided by a special complementary insurer, the CANAM (the National Health Fund for Self-employed Professions). He must also pay contributions for his pension and the invalidity funds, grouped under the common body CNAVPL (National State Old-age Pension Fund for the Professions).

d*) Family allowances and maternity benefit*

FORM: E 400 series for entitlement to family allowances.

To benefit from these allowances, the interested party must have been registered as insured under the social security system for at least 10 months on the date on which the baby is due to be born, and must have paid contributions on a certain pay level. On 1 January 2004, the PAJE (Infant Care Allowance) was set up. This comprises an allowance upon birth or adoption, a basic allowance, a supplementary benefit for the free choice of the way the child is looked after (for children looked after by a childminder or at home) and a supplementary benefit for the free choice of activity for insured parties reducing or discontinuing their working activity in order to take care of their child. These benefits are means tested and paid by the Social Security Office (*Caisse d'allocations familiales* - CAF).

F. Tax matters in brief

Cross-border workers who give proof of this status may only be taxed on the wages, salary and other pay they receive in this capacity in the contracting State of which they are resident. After making his declaration to the URSSAF, this body will take care of sending the documents to the Treasury.

If he lives in France: he must pay his taxes in France (income tax (IR), corporate tax (IS) if self-employed, wealth tax (ISF), etc.)
If he lives in Spain: he will only be taxed in France, the place where he works, for income tax (IR) and wealth tax (ISF) if he owns property in France.

III. Limits, observations or problems?

Some statistics:
The flows of workers in either direction across the border are still quite low on account of structural disparities. It is estimated that around 700 Spaniards cross the border every day to go to France, with a thousand Frenchmen making the same journey in the other direction. On the other hand, in those areas closest to the border, we can see a growing number of Spaniards settling in France. For example, around 20% of the population of Hendaye is Spanish. This phenomenon is attributable to the marked pressure on land on the Spanish side, since the region of Gipuzkoa is very uneven, densely populated and almost crowded out. Trade is sizeable, with operations effected in both directions.

More practical observations
Do the formalities in respect of social security and employment constitute an obstacle to the freedom of movement? The national is subject to the same – perhaps unwieldy – formalities, so will they not in fact be such as to dissuade people from exercising this freedom?

At the same time, each country has its own system, and settling there implies accepting the "procedural difficulties". It could be said that at the end of the day, the worker will be totally assured of genuine protection which seems to be a matter of priority in France. The cooperation of the national health bodies is in place and facilitates the procedures.

Aside from this, since the EHIC is supposed to facilitate the movement of workers, why isn't full use being made of it in the Member States? Why are the administrative formalities being retained in practice, even though they should have been done away with when it was brought in?

The worker is thus faced with having to have his diplomas recognised. And that is where the problem arises of the validity of his knowledge in France and the validity of his experience when he goes back to his country of origin... which is not always easy.

The Community rules certainly show a commitment to total freedom of movement. But it is more the administrative formalities of the host country, France, that are restrictive and numerous and could dissuade more than one. On the other hand, these are in most cases formalities that nationals also fulfil at some point or another, so the principles of equal treatment and non-discrimination are respected.

To sum up, there are a lot of formalities, but they are expedited quickly, according to the bodies that were questioned. One merely has to be well informed about the procedure one has to follow, and that's often the most difficult part.

Access to healthcare for Spanish nationals in France

The aim of the mission is to make an appraisal of the current situation as regards access to healthcare, and more particularly access to healthcare for Spanish nationals in France.

The ultimate objective was to see how, using survey elements, it would be possible to improve laws or facilitate procedures as much as possible in order to enable the free movement of the beneficiaries of medical services.

What kinds of migrants are involved?

On the one hand there are so-called "permanent" migrants who habitually live in a Member State other than that in which they work or have worked. On the other hand, there are so-called "short-stay" migrants, a category that includes people who go on holiday to a Member State other than their own.

The EHIC is intended for this second category.

Those in the first category should fill in forms E106[152] for persons in work, and E121[153] for retired people. *What does access to healthcare consist of?*

152 Cf. form in the annex "Attestation of the right to benefits in kind under sickness and maternity benefits in the event of persons residing in a country other than the competent country" and form E109 "Attestation for the registration of the members of the family of the salaried employee or non-salaried worker and the keeping of inventories".
153 Cf. decision of the Administrative Committee of the European Communities no. 202 of 17 March 2005 and form E121 "Attestation for the registration of pensioners or annuitants or the members of their family and the keeping of inventories".

It is the freedom to go and receive medical treatment from a provider of medical services or in a medical establishment of another Member State, in the case that concerns us, the situation of a Spaniard who wants to come to France to receive treatment. Article 49 of the Treaty establishing the European Community opposes the application of any national regulation resulting in making the rendering of services between Member States more difficult than the provision of services on a purely internal basis within one Member State (a regulation of this nature would constitute an obstacle to the freedom to provide services).

Specific difficulties for EU nationals

After a meeting with an officer responsible for international relations at the Bayonne CPAM, it emerges from our study that there are few difficulties, since we find ourselves in the classic case of freedom of movement of persons, and Spaniards will have the same rights as nationals. Our correspondent at the CPAM assured us that access to healthcare was well regulated, that at their level they did not come up against any cases of disputes, and that the reimbursement procedures were also very well regulated, hence the lack of any real problems or major difficulties. Despite this, we should note a recent decision which does not concern France but which nonetheless illustrates the potential difficulties that an EU national may encounter. The CJEC has pointed out that a national system that excludes any possibility of reimbursement of medical care administered in another Member State is in

contravention of Article 49 of the Treaty establishing the EC and is disproportionate with regard to the general interest pursued on account of its absolute character.
ECJ, 19th April 2007, Aikaterini Stamatelaki

A few practical details about the European Health Insurance Certificate (EHIC)

A basic tool enabling EU nationals to gain access to the national healthcare systems of the Member States, the European Health Insurance Certificate, which was introduced in June 2004, considerably facilitates medical assistance for the citizens of the European Union.

It also guarantees rapid and simplified reimbursement of expenses incurred on site or a reimbursement shortly after return to the place of residence. The certificate has been issued since 1 January 2006 and is recognised by all the countries concerned. It replaces the paper forms that used to be used, such as the infamous E111 document.

The beneficiaries of the EHIC. These are EU nationals and nationals of the European Economic Area. Entitlement to cover extends to the members of the family of the aforementioned persons, irrespective of their nationality.

How to apply for the EHIC. The national has to apply to his national health insurance fund before leaving for another country of the European Union.

The advantages of the EHIC. The purpose of this certificate is to guarantee easy access to healthcare services during a temporary stay in another country, but it also offers a series of additional advantages to healthcare providers, patients, and insurers. The main advantages of the EHIC can be summed up in six key ideas:

easier access to healthcare abroad;
swift and easy reimbursement of expenses;
data security;
reliability;
fewer administrative formalities;
simplicity.

Generally speaking, this certificate contains all the basic information, such as the identity of the cardholder and his date of birth, but no medical data. It is important to stress that the EHIC does not make provision for all the situations where a patient intentionally decides to receive treatment in another country.

It is intended more to insure people travelling to other countries for a limited period and covers the medical care that proves necessary during a stay on the territory of another Member State. If medical treatment proves necessary, the treatment will be provided in accordance with the rules of the country in question.

Difficulties in getting hold of the forms

Notable difficulties are noted in the process of procuring the forms that EU nationals need for their social protection.

Indeed, in this respect the website of the CLEISS (Centre of European and International Liaisons for Social Security) is quite unusual, since it indicates the procedures to be followed but does not give access directly to the necessary documents.

It would be desirable for consideration to be given to a website to be created by the EU institutions, listing the steps and documents needed to make the free movement of persons wishing to access the healthcare systems of the States of the EEA (European Economic Area) more fluid.

The process of obtaining the E121 form intended for pensioners provides for an even more eloquent example. This can only be procured via the website of the CNAV (National State Old-age Pension Fund), and procuring it is subject to an in-depth investigation in the various headings.

Annex 6

Memorandum of the European Independent Reflection Group (GIRE) - April 2008

The main principles of case law brought out by the ECJ with a view to ensuring that Community law is applied effectively to the citizens

In the specific context of the implementation of Community law, national authorities must guarantee ***effective appeal to a court*** *(I). Application of the European rules must respect the principles of equivalence and effectiveness.*

The same procedural methods should be applied to national cases and to those basing themselves on Community law (II). Furthermore, these methods should not be arranged in such a way as to make application of Community law impossible or excessively difficult (III)

I Appeal to a court

This is the right to challenge any act or to have a ruling handed down in any dispute liable to harm one of the rights granted by Community law.

- Right for anyone **to have access to a judge** with the appropriate powers *(right to a judge)*
- Right **to obtain a decision** in a court *(right to a judgement)*
- Right to see the decision **fully enforced** *(right to full effectiveness of Community law)*
- **Right of redress** of prejudice caused by a Member State or its sub-national entities further to the infringement of Community law *(state responsibility is founded in Community law)*

II Principle of equivalence or principle of national treatment

The national procedural methods for ruling on an issue falling under Community law may not be less favourable than those concerning similar appeals of an internal nature

- Right **not to bear costs and undergo additional waiting time** when a right granted by the Community legal order relating to an appeal based on a purely internal law is invoked.
- The national courts must rule under the **same monitoring conditions** as those reserved for any administrative act which, taken by a national authority, is liable to cause a grievance.
- Authority conferred upon the national judge automatically to raise legal practical grounds stemming from restrictive Community rules.
- The conditions for implementation of **state responsibility** for infringement of Community law may not be less favourable than those applying to similar claims of an internal nature. *(They may not result in it being made practically impossible or excessively difficult to obtain redress).*

III Principle of effectiveness or principle of the minimum threshold of effectiveness

The notion of full effectiveness is the corollary of the principle of supremacy of Community law

- Obligation of the States or any centralised or non-centralised body to take any positive measure required for the effective application of Community law.
- A **period for appeal** under national law against a claim relating to rights stemming from a European directive may only start to run from the date of its actual transposition into national law.
- Possibility for the national judge to order **temporary measures** (deferred sentence, summary judgements) and to suspend application of the criticised national law, in the event of an interlocutory question put to the Court of Justice.

Annex 7

Composition of the European Parliament after the elections to the EP of June 2009

Member States	Population (millions) (1)	Number of MEPs for the period 2009-2014 (according to the Treaty of Lisbon)	ratio population/number of MEPs
Germany	82.438	96	858 729
France	62.886	74	849 811
United Kingdom	60.422	73	827 699
Italy	58.752	73	804 822
Spain	43.758	54	810 333
Poland	38.157	51	748 176
Romania	21.610	33	654 848
The Netherlands	16.334	26	628 231
Greece	11.125	22	505 682
Portugal	10.570	22	480 455
Belgium	10.511	22	477 773
Czech Republic	10.251	22	465 955
Hungary	10.077	22	458 045
Sweden	9.048	20	452 400
Austria	8.266	19	435 053
Bulgaria	7.719	18	428 833
Denmark	5.428	13	417 538
Slovakia	5.389	13	414 538
Finland	5.256	13	404 308
Ireland	4.209	12	350 750
Lithuania	3.403	12	283 583
Latvia	2.295	9	255 000
Slovenia	2.003	8	250 375
Estonia	1.344	6	224 000
Cyprus	0.766	6	127 667
Luxembourg	0.460	6	76 667
Malta	0.404	6	67 333
EU 27	**492.881**	**751**	**657 175**

Population figures as forwarded officially by the Commission to the Council on 7 November 2006 (see doc. 15124/06 listing the figures as gathered by Eurostat).

List of persons heard (drawn up as at 24 April 2008)

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- Mr Nikiforos DIAMANDOUROS, European mediator
- Mr Jean-Claude BONICHOT, French judge at the CJEC
- Mr Serge MUCETTI, French consul general in Brussels
- Ms Monica FRASSONI, MEP, rapporteur on application of Community law
- Mr Edward MCMILLAN-SCOTT, MEP specialising in the problem of parental abductions
- Ms Martine REICHERTS, Director General of the Office for Official Publications of the European Communities, Ms Monique DEJEANS, communication manager, Ms Maria-Manuela CRUZ, Eur-lex manager
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- Ms Martine MERIGEAU, Director of Euro-Info-Consumers
- Mr Dominique VOILLEMOT, President of the delegation of the French Bars in Brussels
- Mr Tony VENABLES, Director of ECAS (European Citizen Action Service) and Ms Claire DAMILANO, legal advisor
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