

ENTITIES AND PUBLIC POLICIES

ENTRY, RESIDENCE AND INITIAL RECEPTION SERVICES FOR IMMIGRANTS AND ASYLUM SEEKERS

Special Public Report

Summary

April 2020

NOTICE

This summary report is intended to facilitate the reading and use of the Audit Office report.

The responses from the departments and bodies concerned appear in the follow up to the report.

Summary

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Introduction

This report analyses the policies for entry, residence and initial reception services for immigrants and asylum seekers. As such, it deals with the procedures and arrangements as specified by the code governing the entry and residence of immigrants and asylum seekers and the right of asylum (Ceseda), and not immigration in the broad sense, as a social, geopolitical or historical phenomenon. EU nationals do not fall within the scope of this report and are not included in the series of figures presented, except for cases of acquisition of nationality.

This report, the drafting of which was completed in January 2020, does not take into account the implementation by the public authorities of emergency law no. 2020-290 of 23 March 2020 to fight the COVID-19 epidemic, certain measures of which concern the system governing the entry, residence and departure of foreigners, or of the order of 25th March 2020 concerning extensions to the validity period of residence documents.

At the end of its observations, the Cour des comptes formulates fourteen recommendations that are likely to improve the effectiveness of the procedures and arrangements put in place, without calling into question the objectives and balances set by the legislator for several years.



The political and legal grounds for the entry and residence of immigrants and asylum seekers

Since the early 2000s, eight laws have been passed in the field of immigration and asylum, and they all share a general objective of "controlling" the situation. Despite this, the number of immigrants and asylum seekers who entered France in 2019 rose compared to 2010. However, more than the growth in the number of people received, it is the composition of the immigration itself that demonstrates some major changes.

Whereas traditionally it was professional and family-based, immigration has been on the rise in France for around 15 years due to asylum seekers and international students

In 2019, France issued 276,576 initial residence permits. Over the past three years, the number of initial residence permits represents on average 60,000 more people every year compared to the years 2010-2012, i.e. an increase of 30%.

Initial residence permits

Grounds for admission	2010	2012	2014	2016	2018	2019*
A. Economic	18,772	16,406	19,428	23,275	33,675	38,843
B. Family-related	89,071	92,193	99,644	94,345	91,017	88,778
C. Study-related	65,536	59,025	65,201	73,865	83,700	91,495
D. Miscellaneous	12,264	13,302	14,397	15,364	15,558	19,303
E. Humanitarian	18,628	19,134	21,929	30,369	34,979	38,157
Total	204,271	200,060	220,599	237,218	258,929	276,576

^{*} Provisional data. The data for a specific year is only considered definitive by the Ministry of the Interior when reviewed in June two years later.

Source: DGEF, annual reports

Although they are on the rise, these figures show France to be one of the most restrictive Western countries as far as residence permits are concerned. With an average of 3.72 residence permits granted per 1,000 inhabitants in 2016, France is a long way behind

Sweden (14.53 residence permits), Germany (12.18 residence permits) and Spain (7.65 residence permits), and only the US issues fewer residence permits than our country (3.67 residence permits). In addition, within the context of the "European asylum crisis", France

The political and legal grounds for the entry and residence of immigrants and asylum seekers

received 1.86 asylum seekers per 1,000 inhabitants in 2018, behind Greece (5.99) and Germany (2.25) but in front of Italy (1.01) and the United Kingdom (0.57).

A method of presenting immigration figures requiring review

The regular publication of data concerning residence permits and requests for asylum is a major asset, all the more so seeing as it can be supplemented by specialist studies that have improved in terms of quality over the past fifteen years.

However, the data presentation mixes in people who plan to settle down as part of a long-term residence project with others who will only stay in France for a few months, and does not allow for an easy distinction to be drawn between residence permits awarded to people who arrive and those issued to persons already there. That is the reason why the Cour des comptes recommends that this presentation be reviewed in order to make use of four distinct sub-categories based on legal references, but also grouped together in line with the type of stay that corresponds to their individual case.

Proposal for a new presentation of data concerning entries leading to residence (based on 2018 figures)

Immigration with a wiev to long-term residence

85,665 initial residence permits

Alysum and regularisation of those already in the country

71,762 initial residence permits

Source: Audit Office

Students, temporary workers and short-stay residents

98,529 initial residence permits

Alysum seekers awaiting a decision

139,240

The political and legal grounds for the entry and residence of immigrants and asylum seekers

A persistent misconception regarding the objective of "controlling" immigration

Since 2003, the eight laws passed in the field of immigration and asylum have reiterated—with some nuances of expression—the same three objectives that consist of "controlling immigration", "guaranteeing the right of asylum" and "achieving integration".

The objective of control is generally understood as synonymous with a reduction in the number of people authorised to reside in France.

From this standpoint, it has not been achieved for the past few years. However, this term "control" is subject to a misconception regarding the capacity of the public authorities to limit immigration. In actual fact, only half of the initial residence permits granted in 2018 (and only a quarter if we do not include non-European students—the only immigration component to which a growth target is attached) is the result of a decision that is completely in the hands of the public authorities, with the other half being the result of individual rights upheld by the Constitution and the international legal order, which the State can neither forecast nor restrict¹.

Possible experimentation with "quotas" to modernise and diversify professional immigration

Professional immigration fell to a low level throughout the past decade before rising again in 2018 and 2019. In addition, the list of "shortage occupations" drafted in 2008, which is intended to determine for which jobs professional immigration is open, has now become outdated: it almost no longer designates any of the sectors in which the National Employment agency observes difficulties filling positions.

This context suggests that the professional immigration policy should be modernised and diversified by drawing inspiration from the Canadian model, founded on multiyear quantitative targets on the one hand, and a criteria-based individual selection system on the other. The Cour des comptes recommends that some experimentation take place in this regard.

 $^{1\,\}mathrm{Only}$ professional immigration and student immigration are fully under the control (quantity and selection) of the government authorities.



Directing of entry and residence procedures by the ministry of the interior and the prefectures

Within fifteen years, the procedures and arrangements that were directed by the ministries for social affairs, foreign affairs, justice, and labour have been placed under the responsibility of the ministry of the interior.

Prefectures under pressure

In the majority of prefectures, the conditions for issuing residence permits are getting worse, both from the point of view of applicants and the State agents who are assigned to dealing with this. The average time required for decision-making processes increased by 10% between 2016 and 2018 for initial residence permits and by 34% for renewals, before decreasing in the first half of 2019 due to various local initiatives. In 2019, the issuing of permits required on average almost four visits to the prefecture, far from the goal of a single trip as referenced by the Direction Générale des Étrangers en France (DGEF).

Digital modernisation has thus far not affected immigration procedures much. The France Visa and Digital Administration of Foreigners (Administration Numérique des Étrangers en France – Anef) programmes, launched in 2013, have already seen their projected costs increase by 2.4 times to reach €96.9 M, and their schedule has been extended by five to seven years, to such an extent that their deployment—and all positive outcomes that might be hoped for as a result—would only take place by 2021 at the earliest.

Beyond these indicators, it is the concrete reception conditions that are problematic in a number of prefectures: long queues in the mornings and counters being busy as soon as they open, the public only being admitted on a few half-days per week, obligation to attend in person without any guarantee of being seen, and, every so often in the most overcrowded prefectures, closure of services for a few days to a few months so as to catch up on file backlogs.

Directing of entry and residence procedures by the ministry of the interior and the prefectures

A residence legal regime under strain due to the short validity period of residence permits and frequent renewals

These phenomena are linked to an increase in the number of residence permits issued each year, whether initial permits or renewals, which rose by 15% between 2010 and 2018, while the same period saw an increase in asylum requests filed with prefectures of 72%. However, they are above all linked to the residence legal regime itself, characterised by short permits that necessitate frequent renewals: in 2018, 76% of initial residence permits and 66% of renewals were valid only for one year, i.e. a not very substantial decrease compared to 2010 (82% and 70% respectively) despite the extension of multiannual residence cards from two to five years, a measure that will only gradually start to show its effects on prefecture activity levels. However, this system by no means guarantees greater selectivity: the number of renewals refused only represents less than 1% of total decisions each year.

The Cour des comptes recommends that this system be modernised with a view to improving efficiency by extending the validity period of permits, automating the renewals of those for whom it is practical and accelerating digitalisation.

Increases in expenditure, linked in particular to requests for asylum

The cross-functional policy document "French immigration and integration policy", attached each year to the budget bill, indicates that State expenditure in connection with these policies was estimated at €6.57B in 2019,i.e. 1.41% of gross expenditure in the general budget, which represents an increase of around 48% compared to 2012. Asylum accounts for a third of this increase and State medical assistance one fifth.



Asylum: a policy under pressure for ten years

In 2019, 154,620 people (including 34,920 children) filed requests for asylum in France, representing a threefold increase compared to 2010. This increase, which has been persistent for ten years, has every year defied the forecasts on the basis of which the resources assigned to guaranteeing the right of asylum were scheduled in finance laws.

An overburdened asylum system, struggling to keep to decision processing times as laid out by the legislation

Although it is the responsibility of each Member State to decide on how it grants protection, today the asylum system is subject to harmonisation at EU level, in particular with regard to procedures and reception arrangements.

For the vast majority of those filing for asylum, the process begins in initial reception structures for asvlum seekers (Structures Premier Accueil des Demandeurs d'Asile - Spada), managed by provider organisations (often nonprofits) based on contracts concluded by the French Immigration and Integration Office (Ofii). Spada carries out preregistration of asylum seekers and assigns them a postal address while helping them prepare for their registration at the prefecture, which should take place within three days.

With a view to adhering more closely to this legal deadline that was set in 2015, the 35 dedicated service points for asylum seekers (Guichets Uniques pour Demandeurs d'Asile - Guda) were set up. While these are making real progress in terms of organisation. they are not truly integrated service points, but actually service points that are shared between the prefectures and Ofii, since the Office for the protection of refugees and stateless people (Office de Protection des Réfugiés et Apatrides - Ofpra) is not involved. This in particular prevents a date being set for the appointment based on which the decision to grant or refuse protection is made as soon as the request is filed.

Despite these Guda being set up, public authorities are still struggling to comply with the legal processing time of three days, even though the average time fell from 18.2 days in 2017 to 7.2 days in mainland France for the first eight months of 2019. These averages hide large disparities from one Guda to another and from one month to the next, with frequent saturation periods in some prefectures. In addition, "hidden deadlines" are frequent when asylum seekers do not manage to gain access to a Spada or if the Spada is unable to arrange a Guda appointment for them, even in the medium term.

Asylum: a policy under pressure for ten years

Insufficient material reception conditions in terms of accommodation

During this time, asylum seekers benefit from material reception conditions specified by European legislation, which include accommodation and allocation of a subsistence income—the asylum seeker's allowance (Allocation pour Demandeur d'Asile – Ada)—the management of which is assigned to Ofii.

The Ada currently amounts to €6.80 a day, except in French Guiana and Saint Martin where it is €3.80, and Mayotte where it is not allocated at all. To this amount €7.40 per adult per day is added for homeless asylum seekers². It is managed even more rigorously (non-allocation in case the asylum request case is reopened, suspension without awaiting the exchange of pleadings etc.) after associated expenditure increased from €314M in 2016 to over €510M in 2019.

Accommodation for asylum seekers is provided within the framework of the national reception scheme (Dispositif National d'Accueil - DNA), which at the end of 2018 represented a total of 85,055 places, i.e. an increase of 20% compared to 2015. However, in September 2019, only 47% of asylum seekers were in accommodation. whereas the government forecast made a year beforehand estimated this figure at 72%. In practice, the numerous distinctions in label with regard to accommodation are not very useful: asylum seekers are provided with accommodation taking into account their level of vulnerability and the number of available places. In addition, although DNA's management is in principle assigned to Ofii, it does not have all the required levers to make decisions regarding entry and departures, which would be needed to remedy the fact that at the end of 2018, around 37,000 people were provided with accommodation within the DNA when they were no longer entitled to it.

Target processing times that are barely possible in practice

It is the responsibility of Ofpra or, on appeal, of the French National Court for Right of Asylum (Cour Nationale du Droit d'Asile - CNDA) to issue rulings on requests for asylum. For several years now, the target processing times assigned by the government have been more strict than the legal obligations, as they are partly intended to discourage unjustified requests. This is in particular the case for the socalled "fast track" procedure, which in principle concerns applicants who are from safe countries and for which a theoretical decision deadline of 15 days applies, as opposed to six months with the "standard" procedure.

The matter of deadlines is therefore obscured by contradictions between the legal processing times under European law, processing times that are assigned by the government, and genuine deadlines.

Asylum: a policy under pressure for ten years

Target decision processing times and processing times actually observed (2018)

	Fast-track procedure	Standard procedure
Legal processing times	15 days	183 days
Targets written in the objectives and performance targets contract between the State and Ofpra	15 days	122 days
Actual processing times observed	121 days	189 days

Source: Ceseda and Ofpra on outgoing application cohorts

Ofpra managed to substantially reduce its decision processing times, as they fell from 213 days on average in 2015 to 137 days in 2018 thanks to almost doubling (+216%) the amount of employed protection officers. However, Ofpra never suc-

ceeded in processing 75% of the requests for asylum filed for a given month in fewer than 203 days and 95% in fewer than 517 days, which suggests that a large proportion of requests are subject to long case processing times.



Management of regular immigration procedures: long-overdue modernisation

Unnecessarily long and low priority procedures

Regular, family-based and professional immigration procedures have been insufficiently modernised. They seem unnecessarily long and complex, of low priority with respect to the organisation of the services' activity, and not very guided by qualitative targets.

The issuing of residence permits to the spouses and partners of foreign reunification"). citizens ("family which involved 21,795 people in 2018, is subject to an Ofii review, which in particular sets out to ensure that the conditions in terms of accommodation and applicant resources have been met. In principle, it is the municipal authorities who are responsible for performing these checks, but in practice many of them fail to do it, to such an extent that Ofii does it for them. While the prefect's decision regarding whether or not the family reunification request should be issued is supposed to be made within six months, the processing times actually observed are seven months on average, with a high degree of disparity depending on the département, without this timeframe seeming to be linked to any factors of rigour and/or selectiveness.

As for professional immigration, this takes two very distinct paths: if applicants have a talent passport (a higher education degree) and initiate proceedings themselves (8.591 in 2018, 55% of whom are scientists and artists), low-skilled salaried applicants are subject to an application filed by their future employer, which needs to justify the fact that recruitment could not take place from within France. The checks carried out by the decentralised services of the ministry responsible for employment are formal and lead to refusal rates of between 5% and 8%. The Cour des comptes recommendation of testing a double system of quotas and criteria-based individual selection is an attempt to modernise this system, one marked by its failure to adapt to the needs of economic sectors and the low added value of the checks performed.

Due to its continued failure to be reformed along the guidelines set down by the French Public Health Council in 2015, the scope of compulsory medical examinations for people granted authorisation to reside in France has been reduced by half in three years, after it abolished several categories of people. Focused on the detection of tuberculosis, this medical examination, which is still

Management of regular immigration procedures: long-overdue modernisation

unrelated to granting a residence permit, should be reviewed from a public health perspective.

Issuing residence permits to people already residing on French territory

The legal system for regularisation, referred to as the exceptional residence admission system (Admission Exceptionnelle au Séjour – AES), is based on the discretionary assessment powers of the administration regulated by

circulars (circulaires, in French law, are instructions for interpreting and applying law and regulations). Since at least 2004, these circulars suggest that prefects retain a minimum stay duration of five years, to such an extent that it now virtually has the status of a regulation. The currently applicable circular, dated 28th November 2012, contributed to resolving situations that had been queued, and this was reflected by a substantial increase in the number of residence authorisations issued in 2013. This trend subsequently stabilised up until 2018.

Issuing residence permits to people already present on French territory

	2010	2011	2012	2013	2014	2017	2018
Professional grounds	515	3,023	2,116	4,134	4,682	6,826	7,564
Personal and family ties	19,499	18,946	20,649	29,670	25,518	21,046	19,630
Total AES and associated	20,014	21,969	22,765	33,804	30,200	27,872	27,194
Other forms of regularisation	609	698	732	637	728	765	715
Initial residence permits issued to foreign citizens who entered as minors	3,971	4,232	5,181	6,186	6,669	9,044	9,872
Total initial residence permits issued to people already present	24,594	26,899	28,678	40,627	37,597	37,681	37,781

Source: Agdref data for initial residence permits 2010-2018

The services suggest a form of balance to the AES, in the sense that the most problematic situations are resolved through this. In this sense, the new elements introduced by the 2012 circular—and in particular the creation of a category entitled "parent of a child educated in the school system"—have played a positive role.



Access to social rights, integration measures, and naturalisation

An integration requirement only embodied in practice by the Republican Integration Contract (Contrat d'Intégration Républicaine – Cir)

Despite the ambitions demonstrated by the laws that have been enacted over the past fifteen years, the public schemes mobilised with a view to integrating people are limited to the first few years of presence in the country before common law takes over, and are almost exclusively embodied by the Republican Integration Contract (Cir), which benefited 97,940 people in 2018 (students were exempt).

Recommended actions include compulsory civic education (Formation Civique - FC) provided over a fourday period, as well as French lessons (depending on the initial level observed) for a standard duration of 200 hours extendable up to 600 hours, with the goal being to reach level A1 of the European reference framework. This target being increased in 2018 explains the fact that half of signatories now take French classes as opposed to a guarter beforehand. For the remainder, the length of the training course is often insufficient to meet the required leve.

There are no genuine penalties for those who do not take the training, but this problem is only a minor one: the percentage of Cir courses cancelled for poor attendance was 1.7% in 2018.

Access to French nationality, a long procedure that de facto replaces permanent resident status—a status that is uncommon in the current residency regime

In 2019, 74,933 people acquired French nationality either at their request (49,671) or by marrying a French citizen (25,262). Despite this number seeing a marked decrease over the past ten years (-30%), for those who want it, naturalisation remains a major step in the process for foreign nationals since it de facto replaces permanent resident status, which is virtually impossible to obtain for non-Europeans.

To remedy the critical situation observed in 2011 (abnormally long processing times and highly fragmented refusal rates, ranging

Access to social rights, integration measures, and naturalisation

from 25% to 80%), depending on the département, the ministry of the interior committed to an ambitious modernisation plan that is yet to produce the desired outcomes. Processing times continue to be very long (the target processing time by decree of 270 days for naturalisation requests is not complied with by 19 processing platforms out of 42 active ones, but above all this processing time is exceeded by dozens and even hundreds of days in some of these platforms).

The "assimilation interview" provided for by the regulations now consists of a face-to-face interview of twenty to thirty minutes in length between an agent of the prefecture and the applicant. Three quarters of this allotted time are spent assessing the documents in the file, while the rest is dedicated to questions and answers on French history and civilisation. This brief, formal interview contrasts with the legal and symbolic context that justifies it. The requirement set by article 21-24 of the French Civil Code. which references "assimilation monitoring", is therefore only met from a superficial point of view.



Managing the departure of persons present illegally

The effectiveness of the policy for the departure of persons present illegally is mostly measured by the ratio of the number of actual departures compared to the number of orders to leave the French territory (Obligations de Ouitter le Territoire Français - OQTF) issued by prefects and inadmissible statuses (Interdictions du Territoire Français - ITF) pronounced by judicial courts. In 2018, the ministry of the interior recorded 30.276 departures, 19.957 of which were as a result of an administrative measure. With the number of pronounced measures at 132.978, the ratio for this year is around 15%.

These figures confirm the idea of a departure policy that is not very effective. While this quantitative observation is not false, the objective difficulties encountered by the services underestimated, should not be especially since in a large number of cases they correspond to legal stalemates due to the sovereignty of the home countries or protected rights. Managing departures therefore falls within an alternative approach "principlesomewhere between based" (obliging persons present illegally to leave) and "pragmatic" (getting people to leave who are likely to do it of their own free will, and finding solutions for the others).

Assisted voluntary departures managed by Ofii—represent the most effective and least expensive means of achieving the departure of persons obliged to leave the French territory. This system takes the form of lumpsum financial assistance (€650, to which may be added an exceptional increase amounting to a maximum of €1,850), assistance with a view to a return trip, and in some cases, assistance with a view to reinsertion in their country of origin. After a low point of 4.758 assisted returns in 2015. this number has increased, reaching a total of 10,676 in 2018 under the effect of a new framework. It did however fall in 2019 and currently stands at 8,772.

There were 15,677 forcible removals in 2018 and 18.906 in 2019 in mainland France, an increase of compared to 2012. removals are almost systematically preceded by an assignment to an administrative retention (Centre de Rétention Administrative - Cra), which is indispensable even though its efficiency is structurally low (40% of persons detained were actually deported in 2018 at an average detention cost estimated at €6,234) and they are expensive establishments (2,341 public agents and police officers are assigned to these retention centres for a total of 1,814 places in 2019).

Managing the departure of persons present illegally

It is doubtful that the number of forcible removals can continue to rise steadily as long as the procedure is faced with a situation of deadlock. In effect, some of the people ordered to leave the French territory (OQTF) do not have any proof of identification, therefore without certainty regarding their nationality and identity it is not possible to remove them. In addition, many consulates are not very responsive to receiving consular Laissez-Passer applications, even when these people have been formally identified. Lastly, forcible removals involving flights—required in the majority of cases—are structurally not very efficient: the number of tickets for commercial flights is limited to a few units and it is essential to provide an escort of between two and four police officers. Over the past few years, only collective flights operated by European agency Frontex have demonstrated any operational progress.

There is therefore no genuine plausible alternative between assisted returns and forcible removals, with the two procedures seemingly indispensable for a departures policy.

Conclusion and recommendations

At the end of its observations, the Cour des comptes observes that beyond implementation conditions that are often difficult and have deteriorated, policies for the reception, entry and residence of immigrants and asylum seekers are hampered by the setting of general goals and targets that are not sufficiently explicit. Without

defining precisely what they cover or what they involve, they run the risk of conveying the notion that the policy is not succeeding. There is therefore an essential requirement to set more tangible, more specific and more realistic targets. The recommendations formulated in this report are in keeping with this point of view.

Recommendations

- 1. Review the public communication of official data concerning immigration by organising it into four distinct subsets representing the following types, based on regulatory references that form the grounds for residence permits:
 - (i) immigration with a view to longterm residence;
 - (ii) temporary and study-related immigration;
 - (iii) beneficiaries of asylum rulings and regularisations;
 - (iv) pending asylum applications (Ministry of the Interior).
- 2. Set up an experiment, as covered in article 37-1 of the Constitution, aimed at organising professional immigration around multi-year targets based on qualification levels and professional sectors, built on an individual criteria based selection system (Ministry of the Interior).
- **3.** Simplify the residence system by extending the validity period of some permits, automating renewals for those where this is practical and easing procedural formalities (*Ministry of the Interior*).
- **4.** Simplify the organisation of accommodation for asylum seekers by limiting the distinction between accommodation that is booked for them and emergency accommodation under common law, and merging the management of the national reception system under Ofii's authority (*Ministry of the Interior and Ofii*).

- **5.** Set up a bolstered system for logging and rapidly processing asylum requests in Mayotte (*Ministry of the Interior and Ofpra*).
- **6.** Align the decision processing times expected by Ofpra for asylum requests at first instance with the times set in the legislation, while ensuring they are credible (*Ministry of the Interior and Ofpra*).
- 7. Assign the management of the family reunification procedure to a dedicated national Ofii service, by allocating the management of surveys to it instead of to municipalities, while maintaining the need for the mayor's opinion (Ministry of the Interior and Ofii).
- **8.** When involving pre-scheduled foreign labour services, bring together reception and processing of applications for employee permits at prefecture level (*Ministry of the Interior*).
- **9.** Amend the decree of 11th January 2006 regarding preliminary medical examinations by favouring a public health approach along the lines drawn up by the French Public Health Council (Ministry of the Interior and Ministry of Health).
- **10**. Establish a Republican Integration Contract (Cir) suited to Mayotte (Ministry of the Interior and Ofii).

Recommendations

- **11.** Transfer the management of decentralised loans for initiatives and systems conceived to build on the Cir to Ofii (*Ministry of the Interior and Ofii*).
- **12.** Overhaul the assimilation interview to give it a collegial format and make the conditions imposed by the French Civil Code more substantial (*Ministry of the Interior*).
- **13.** Modify the texts that apply to the code governing the entry and residence of foreign nationals and the right to asylum (Ceseda) as regards voluntary return assistance, specifying that it may also be awarded to persons whose residence permit is close to expiry (*Ministry of the Interior*).
- **14.** Put in place the necessary means of increasing the number of assisted returns (*Ministry of the Interior and Ofii*).