



The Enforcement Decrees for the “Sarkozy II” Act Have Been Published

April 2007

Three enforcement decrees were published in the Journal Officiel on 22 March 2007: **All the new measures of the July 2006 act, the so-called “Sarkozy II” act, are now applicable.** The decrees focus particularly on residence of nationals from the European Union, the “skills and talents” residence permit, and foreign students. Here is an overview.

1. European Union nationals and family members

The residence of European Union nationals and members of their families is now regulated by decree no. 2007-371 dated 21 March 2007 from the Minister of the Interior, and by the new articles R 121, R 122, R 512-1-1, R 522-9 and R 621 of the Entry and Residence in France and Right of Asylum Code (CESEDA). Decree no. n°94-211 of 11 March 1994 has now been repealed.

a) General provisions: Registration with the city hall

Generally speaking, nationals from the European Union, the European Economic Area and Switzerland have the right to reside freely in France under their national identity cards. If they want to, they can get a residence permit from the French authorities, but there is no obligation to do so. In all cases, they are exempt from needing a work permit to work in France.

However, if they reside in France longer than three months, they are **required to register with the city hall of their place of residence** (art. R. 121-5 of the Entry and Residence in France and Right of Asylum Code). If they do not respect this obligation, they may have to pay **a maximum fine of 750 euros** (class 4 fine – article R 621 of the Entry and Residence in France and Right of Asylum Code and L 131-13 of the Criminal Code).

However, there are exceptions to these general rules:

b). Threats to public order and burden to the social security system:

EU nationals must not **constitute a threat to public order nor “become an unreasonable burden to the French social assistance system.”** For that reason, they must either work or prove they have sufficient resources to live off of. This corresponds to:

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- the amount of the minimum integration income (RMI) for people under the age of 65 (440 euros per month for a single person without children)
- the amount of the old-age minimum (*minimum vieillesse*) for people over the age of 65 (621 euros per month for a single person)

To determine if a Community national has become a unreasonable burden to the French social security system, the authorities take into consideration the “amount of non-contributory social benefits granted, the duration of the person’s difficulties and stay” (art. R 121-4 of the Entry and Residence in France and Asylum Rights Code). Community nationals who constitute a threat to public order or are an unreasonable burden to the social security system could be escorted to the border (art. R 512-1-1 and R 522-9 of Entry and Residence in France and Right of Asylum Code).

c) New Member States:

Nationals from the ten new Member States subject to a transition period are required to get a residence permit and a work permit if they want to settle in France to work. These measure apply to them for the entire duration of the transition period: until 1 May 2009 at the latest for nationals from the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia; and until 1 January 2014 at the latest for nationals from Bulgaria and Romania. The residence permit issued to these EU nationals shall bear the designation “**CE—all professional activities**”. It is valid for the same duration as the person’s work contract.

When EU nationals subject to a transition period work in France continuously with a work permit for more than one year, they **no longer need a new work permit at the end of those twelve months**. However, they still need to renew their residence permit — and need to do so until the end of the transition period.

d) Family members:

Family members of EU nationals who themselves are citizens of **a non-EU country are required to get a residence permit**. If they do not respect this obligation, they may have to pay **a maximum fine of 1,500 euros** (class 5 fine - article R 621-2 of the Entry and Residence in France and Right to Asylum Code and L 131-13 of the Criminal Code).

Family members of an EU national subject to a transition period, who themselves are citizens of a non-EU country or a European Union country subject to a transition period are also required to get a residence permit and a work permit if they want to work.

2. “Skills and talents” residence permit

The modalities for granting the new “skills and talent” residence permit are now regulated by decree no. 2007-372 of 21 March 2007 of the Minister of the Interior, and the new article R 315 of the Entry and Residence in France and Right of Asylum Code.

Reminder: The “skills and talents” residence permit is granted for three years to nationals from non-EU countries authorized to come to France as part of a specific project. It gives the holder the right to work within the framework of the said project. His/her family can accompany him/her from the beginning and will get a “private and family” residence permit: his/her spouse can work. The permit can be renewed. However, foreign nationals from a country that is a member of the priority solidarity zone can only renew it one time.

The new enforcement decree stipulates that a foreign national who wants to come to France as part of a “skills and talents” stay must apply for it with the consulate of his/her country of origin at the same time as his/her long-stay visa application. The consulate will evaluate the application and send it, with an opinion, to the Ministry of the Interior in France, who will make the final decision. The following criteria are taken into consideration: localization of the project, sector of activity, planned employment created, applicant’s level of studies, applicant’s qualifications and professional experiences, and the planned investments. If the Ministry of Interior accepts the application, the Consulate will automatically grant the long-term visa. Once in France, the foreign national has six months to get a medical examination.

Foreign nationals already present in France and holding another type of residence permit can apply for a “skills and talents” permit, under the condition that they do so four months prior to expiry of their current residence permit.

3. Foreign students

New measures are now applicable to foreign students as stipulated by Ministry of the Interior decree no. 2007-373 of 21 March 2007.

- **Required means:** All foreign nationals who want to study in France must have means at least equal to 430 euros per month. (art. 15 of decree no. 2007-373 of 21 March 2007, art. R 313-7 of the Entry and Residence in France and Right to Asylum Code).
- **Authorized working hours:** Foreign students have the right to work—with a work permit—within the limit of 60% of an annual full time position. (art. L 313-7 of the Entry and Residence in France and Right of Asylum Code often cited in decree no. 2007-373 of 21 March 2007). Students who work beyond this limit will lose their residence permits and will have to return to their country of origin without finishing their studies (art. 7 of decree no. 2007-373 of 21 March 2007, art. R 311-15 of the Entry and Residence in France and Right of Asylum Code).

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- Residence permit renewal: Foreign students who pursue higher studies in France leading to at least a Master's degree (5 years of study after upper secondary education diploma) can renew their residence permit for a duration greater than one year. (art. 28 of decree no. 2007-373 of 21 March 2007, art. R 313-37 of the Entry and Residence in France and Right to Asylum Code).
- End of studies Temporary Residence Authorization (*autorisation provisoire de séjour — APS*): (Art. 8 of decree no. 2007-373 21 March 2007, art. R 311-32 of the Entry and Residence in France and Right to Asylum Code). Foreign students finishing their studies and getting a **degree equivalent or higher than a master's** (5 years of higher education) can apply for a **“temporary residence authorization”** (APS) that will permit them to **work in France for six months** following their studies. If, during the six months they are authorized to reside and work in France, they find salaried employment, they have 15 days to change their status and to apply for a “salaried employee” residence permit.

4. Various other provisions

- a) The receipt for a *first* application for a residence permit that authorizes the holder to work, as well as the receipt for a renewal application for such a residence permit now give the applicants the right to work. They no longer have to wait for actual issuance of the residence permit in order to work. (art. 4 of decree no. 2007-373 of 21 March 2007, art. R 311-6 of the Entry and Residence in France and Right to Asylum Code).
- b). Foreign nationals can have their residence permits withdrawn by the French authorities, and run the risk of being escorted to the border, if they work without a valid work permit (art. 7 of decree no. 2007-373 of 21 March 2007, art. R 311-15 of the Entry and Residence in France and Right to Asylum Code):
- c) Foreign nationals authorized to work in France who are involuntarily deprived of their employment can apply for renewal of their “salaried employee” residence permit, if they can prove that loss of this employment was actually involuntary and that they receive unemployment benefits. Those who voluntarily leave their employment cannot renew their residence permit and have to leave France. (art. 28 of decree no. 2007-373 of 21 March 2007, art. R 313-38 of the Entry and Residence in France and Right to Asylum Code).

L'Élan can provide you with a more detailed description of these three Sarkozy II act enforcement decrees. Don't hesitate to contact us.