



# Family reunification of third-country nationals in the EU: national practices

**Luxembourg**

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The European Migration Network, created by Council Decision no. 2008/381/EC of 14 May 2008, has the objective of supplying up-to-date, objective, reliable and comparable information on migration and asylum in the Community institutions, to the authorities and institutions of the Member States and to the general public with a view to support policy- and decision-making with the European Union.

## Preface

The opinions expressed in this report are those of the authors. They do not necessarily reflect the positions of the Luxembourg Ministry for Family, Integration and the Greater Region or of the Ministry of Foreign and European Affairs.

The present report was drafted by Sarah Jacobs, David Petry and Adolfo Sommarribas, staff members of the National Contact Point Luxembourg within the European Migration Network, under the overall responsibility of Prof. Dr. Birte Nienaber. Continuous support was provided by the members of the national network of the National Contact Point Luxembourg: Sylvain Besch (CEFIS), Marc Hayot (OLAI, Ministry for Family, Integration and the Greater Region), Christiane Martin (Directorate of Immigration, Ministry of Foreign and European Affairs) and Germaine Thill (STATEC).

## Methodology

National reports are produced by the respective National Contact Points (NCPs) on the legal and policy situation in their Member State according to common specifications. Subsequently, a comparative synthesis report is generated by the European Commission with its service provider giving the key findings from each national report, highlighting the most important aspects and placing them as much as possible within an EU perspective. The various national accounts and the summary report are made publicly available.

The EMN engages primarily in desk research, i.e. it collects and analyses data and information already available or published at the Member State or international level. As documentary sources legal texts, official documents (such as parliamentary documents), reports and press articles have been used for this study. Furthermore, semi-structured interviews were conducted with different stakeholders in the field of integration of refugees: the Directorate of Immigration of Ministry of Foreign and European Affairs, CLAE asbl., the Solidarity and Integration Service of Caritas Luxembourg and the Migrants and Refugees Service of the Red Cross Luxembourg.

## Executive Summary

In Luxembourg, family reunification is one of the main reasons for immigration of third-country nationals. In fact, “family member” and “private reasons (family links)” residence permits (first deliveries and renewals) represented more than a third of all residence permits issued during the last three years.

While the right to family reunification was solely provided by international law and regulated by administrative practice until 2008, the transposition of Directive 2003/86/EC of 22 September 2003 on the right to family reunification led to a much more precise and detailed legal framework.

A notable change in legislation has been proposed with the introduction of bill n° 6992<sup>1</sup>, namely the harmonisation of the conditions that apply to third-country national employees with those of Blue Card holders and researchers. Thus, family reunification requirements for certain categories of applicants<sup>2</sup> shall be alleviated through the abrogation of the 12-month residence requirement for the sponsor.

In order to apply for family reunification in Luxembourg, sponsors have to meet a number of requirements for exercising the right to family reunification, which include the provision of suitable accommodation for the size of their family; meeting health and safety standards; health insurance; as well as stable and regular resources to provide for themselves and their family members. As recommended by Directive 2003/86/EC, Luxembourg sets out more favourable conditions to beneficiaries of international protection for the exercise of their right to family reunification. Thus, they do not have to comply with the above-mentioned requirements in case they apply for family reunification within 3 months of being granted the status.

Family members who have come to Luxembourg under family reunification have access to education, orientation, vocational training, lifelong learning and professional retraining once their residence permit has been issued. Family members furthermore have access to the labour market. In case the family member has resided in Luxembourg for less than one year when the application is submitted, it will be submitted to the labour market test. Family members can also, under a number of conditions, benefit from guaranteed minimum income, social aid, long-term residence status as well as citizenship.

National stakeholders noted that the requirement of finding appropriate accommodation and proving stable and regular resources is one of the main challenges for sponsors. For family members as well as sponsors, having sufficient financial resources to cover the costs of family reunification can be another challenge to accessing family reunification. Family members of beneficiaries of international protection in particular face the more procedural challenge of providing proof of identity and family links, which can be difficult due to lacking documentation, differing administrative practices in the country of origin and/or the lack of cooperation of institutions. Gaining access to family reunification is also particularly difficult for beneficiaries of international protection who arrived in Luxembourg as unaccompanied minors but reached adulthood during the examination of their file, as they must provide proof of their family member’s dependency upon them. The limited number of diplomatic representations of Luxembourg abroad poses a challenge both to family members who must present themselves there, as well as for the Luxembourgish authorities who require information on certain countries.

Perceived as a best practice with regard to family reunification are the information that NGOs and the lawyers in the field of migration and asylum provide to beneficiaries of international protection with regard to procedures of family reunification, thereby contributing to the beneficiary’s ability to enter an application for family reunification within the 3-month period. The practice of accepting the submission of an application of family members of beneficiaries of international protection that contains only a commencement of proof of family links and allowing for the finalisation at a later date is also perceived as a good practice, as it enables them to exercise their right to family reunification while benefitting from more favourable conditions. Furthermore, the issuance of a “*laisser-passer*” for beneficiaries of international protection who cannot obtain travel documents is perceived as a big step forward by national stakeholders. Lastly, *Restoring Family Links*, a service provided by the Luxembourgish Red Cross, is also considered a reliable tool with regard to tracing missing family members abroad.

## Section 1: Overview of the situation on family reunification

**Q1.** Please briefly describe the basis for developing legislation/ policy on family reunification in your (Member) State (e.g. Directive 2003/86/EC, Art. 8, ECHR on the right to respect private and family life, etc.). **(If your (Member) State distinguishes between family formation and family reunification, please provide further information here and if applicable, make such a distinction in the subsequent questions).**

A precise and detailed legal framework regulating family reunification in Luxembourg has only been established in 2008, with the entering into force of the amended law of 29 August 2008 on free movement of persons and immigration (Immigration Law). Until then, the right to family reunification was solely provided by international law and regulated by administrative practice<sup>3</sup>. Provisions concerning family reunification in particular, essentially derive from the transposition of the Directive 2003/86/EC of 22 September 2003 on the right to family reunification<sup>4</sup> and which enabled to address this legal shortcoming.<sup>5</sup>

Luxembourg considers family reunification to be one of the principal sources of migration into the country and to be a contributing factor to a better integration of migrants in the host country.<sup>6</sup> Family reunification is considered as the right to establish, and where appropriate, the right to work, which can benefit certain family members of a third-country national legally residing in the country.<sup>7</sup> Furthermore, national law implements the principle established in article 8 of the European Convention of Human Rights<sup>8</sup> according to which every person has the right to a protected private and family life in accordance with principles of public policy of the host country.

The Immigration Law takes into consideration different forms of family life to the extent that they are compatible with national law<sup>9</sup> (e.g. same sex marriages, partnerships<sup>10</sup>, extended family, legal guardian or another family member of an unaccompanied minor<sup>11</sup>, etc.). However, polygamous marriages<sup>12</sup> and marriages with underage children are forbidden.<sup>13</sup> The family formation is not specifically foreseen in national law. In principle, the third-country national family member of a third-country national legally residing in Luxembourg has to follow the normal procedures of entrance for a long-term stay. This includes if required obtaining a D-visa.<sup>14</sup> In the case of a third-country national who is a family member of a European Union citizen, s/he would only need a C-visa if required to enter the Schengen area.<sup>15</sup>

**Q2.** Please provide an overview of **recent (since 2011) changes to law, policy and/ or practice** in the field of family reunification in your (Member) State.

The Law of 8 December 2011<sup>16</sup> transposing Directive 2009/50/EC known as the « European Blue Card » Directive introduced several provisions regulating family reunification:

- a) Family reunification is extended to partnerships in accordance with the Law of 9 July 2004 on legal effect of certain partnerships as amended by Law of 3 August 2010<sup>17</sup>;
- b) The exception that the family members of a highly qualified worker are allowed to join him/her from the moment s/he enters the territory without being subject to the waiting period of 1 year required for salaried workers if the requirements of family reunification are fulfilled;<sup>18</sup>
- c) The authorisation of stay of family members of an European Blue Card holder is granted in a maximum delay of 6 months after the filing of the application.<sup>19</sup>
- d) The duration of the authorisation of stay of the family member of a highly qualified worker is the same as the one of the highly qualified worker.<sup>20</sup>

With the introduction of bill n° 6992<sup>21</sup>, the government further foresees to alleviate family reunification

requirements, namely by harmonising the conditions that apply to third-country national employees with those of Blue Card holders and researchers. Thus, the 12-month residence requirement for the sponsor shall be abrogated.<sup>22</sup> However, it is still required in cases foreseen by article 70 (5) of the Immigration Law (first degree ascendants, adult unmarried depending children, legal guardian or any other family member of an unaccompanied minor who is beneficiary of international protection).<sup>23</sup> The aim of this article is to guarantee the family unity and to enable family members to enter the country with the sponsor.

The bill also reduces the time limit for deciding on the application of a family member of an intra-corporate transferee (ICT) from 9 months to 90 days.<sup>24</sup>

In recent years, public and media debate has been rather limited with regard to issues relating to family reunification. Yet in 2015, the Luxembourgish civil society organisations urged the government on several occasions<sup>25</sup> to remove the 3-month period within which beneficiaries of international protection may introduce an application for family reunification without having to satisfy the general conditions relating to regular and sufficient resources as well as appropriate accommodation (see answer to Q.4 and Q.6).

**3. a.** Please complete the table in Annex 1 below (including data, as well as metadata) if you have national statistics on:

- The total number of applications for family reunification in 2011-2015 and, where available, the first half of 2016, disaggregated by the ground of residence of the sponsor (beneficiaries of international protection (i.e. refugees, BSPs, UAMs), persons admitted for remunerated activities, persons admitted for study purposes, etc.) and sex;
- The total number of accepted/ rejected applications for family reunification in 2011-2015, and where available, the first half of 2016, if available disaggregated by the grounds for rejection of applications.

**b.** Please supplement the data provided above with a narrative on the profiles of TCNs residing in your (Member) State and asking for family reunification, i.e. are the sponsors mostly beneficiaries of international protection and/or other TCNs, e.g. workers, students, etc.?

In Luxembourg, family reunification is one of the main reasons for immigration of third-country nationals. "Family member" and "private reasons (family links)" residence permits (first deliveries and renewals) represented more than a third of all residence permits issued during the last three years. With regard to the first issuance of residence permits in 2015, the highest number of residence permits were issued for the categories "family member" and "private reasons (family links)" cumulatively. In fact, the 1546 permits issued in these categories represented 41.2% of all permits issued in 2015.<sup>26</sup>

Data regarding temporary authorisations of stay

- The number of applications for family reunification has known a constant rise during the reference period, rising from 374 in 2011 to 1271 in 2015, which represents a growth rate of 240%.
- 2/3 of persons applying for an authorisation of stay are female, the share of women in the reference period lying between 65 and 68%. This thus illustrates the 'classic' image of family reunification, in which the male sponsor is later joined by his female spouse/partner.
- In the reference period, 3/4 to 4/5 of all applications made (between 76.1% and 81%) refer to situations in which the sponsor was engaged in a remunerated activity. The status "other" regroups on average 16% of all applications. Other statuses of sponsors are not represented frequently. In 2015, and above all 2016, one can however observe an important rise in applications for family reunification for beneficiaries of international protection (12% of all applications submitted between January and October 2016).

Data regarding decisions

- The number of decisions on authorisations of stay as family member or private reasons (family ties) has been rising constantly from 2011 to 2015, progressing from 352 decisions in 2011 to 1235 in 2015, corresponding to a growth rate of 251%.
- During the period in question, the recognition rate (share of positive decisions in the total number of decisions taken) was always higher than 90%. This rate concerns decisions taken during the reference period, regardless of the date of submission of the application. In other words, the number of applications made over one year is not identical to the total number of decisions taken (positive and negative) during the same year.

## Section 2: Definition of sponsor and family members

**Q4. a.** Who can be a **sponsor**<sup>27</sup> to an application for family reunification in your (Member) State (e.g. UAMs, students, workers, etc.)?

The Immigration Law foresees three different types of family reunification depending on the sponsor:

- a) Luxembourgish national<sup>28</sup>;
- b) EU citizens who have not used free movement (i.e. a Portuguese person born in Luxembourg who applies for family reunification for his Cape Verdean spouse)<sup>29</sup>
- c) Third-country national. In this case, the sponsor must fulfil the following conditions:
  - hold a residence permit that is valid for at least one year (this requirement is not necessary if the applicant is a highly qualified third-country national<sup>30</sup>, a beneficiary of international protection<sup>31</sup>, an intra-corporate transferee<sup>32</sup> or a researcher<sup>33</sup>);
  - have a perspective to obtain permanent residence;
  - have legally resided in Luxembourg for at least 12 months;
  - provide proof that s/he has stable, regular and sufficient resources<sup>34</sup> (salary, wages, income from assets) to support him/herself and the family members under his or her care, without having to resort to social welfare (See answer to Q.6).
  - have appropriate accommodation to host the family member(s)<sup>35</sup> (See answer to Q.6);
  - have health insurance cover for him/herself and the family member(s) (health insurance certificate covering their stay in Luxembourg issued by a Luxembourg or foreign social security authority and/or by a private insurance company) (See answer to Q.6).

In the case of Luxembourgish nationals, none of the above mentioned conditions apply<sup>36</sup> (See answer to Q.11).

If they fulfil the general conditions outlined above, family reunification is granted to the following categories of sponsors:

1. Salaried worker<sup>37</sup>;
2. Independent worker<sup>38</sup>;
3. Highly qualified worker<sup>39</sup>: In this case the applicant has to fulfil the conditions of sufficient resources, health insurance cover and housing, but not the condition of the 1-year waiting period. Family members can enter the territory with the applicant;
4. Athlete<sup>40</sup>;
5. Researcher<sup>41</sup>: The sponsor must fulfil all the conditions mentioned above with the exception of the 1-year waiting period. Family members can enter the territory with the applicant;
6. Intra-corporate transferee<sup>42</sup>: The sponsor must fulfil all the conditions mentioned above with the exception of the 1-year waiting period. Family members can enter the territory with the applicant;
7. Beneficiary of international protection (refugee status and subsidiary protection status)<sup>43</sup>: If the application is made within the three months following the granting of the status, the sponsor does not have to fulfil any of the requirements relating to the 1-year waiting period, stable, regular and sufficient resources, appropriate accommodation and health insurance established in article 69 (1) of the Immigration Law. If the application is made after the three-month period, the applicant must fulfil these conditions.
8. Unaccompanied minor, beneficiary of international protection (See answer to Q.10.a).

The main reason for not allowing family reunification to the student<sup>44</sup>; pupil<sup>45</sup>, trainee<sup>46</sup>; volunteer<sup>47</sup>; au pair<sup>48</sup>; posted worker<sup>49</sup> and seasonal worker categories of residence permits is that these permits are temporary in nature and their holders do not have the perspective to obtain permanent residence.<sup>50</sup>

**b.** Does the national law of your (Member) State allow **beneficiaries of subsidiary protection (BSPs)**<sup>51</sup> to apply for family reunification? **Yes.**

If yes, please elaborate below. If no application procedure is made available to BSPs, how does your (Member) State ensure that the right to family life (Art. 8, ECHR) of BSPs is respected?

Article 56 (1) of the Law of 18 December 2015 on international protection and temporary protection (hereafter Asylum Law) in accordance with article 68 a) and 69 (2) of the Immigration Law allows beneficiaries of subsidiary protection to apply for family reunification under the same conditions as beneficiaries of refugee status.

**Q5.** Does your (Member) State extend the **scope of family reunification** beyond nuclear/ core members of the family,<sup>52</sup> i.e. parents, adult children, non-married partners, etc.? **Yes.**

If yes, does your (Member) State extend the scope of family reunification to the following family members:

- Parents? **Yes.**

The Immigration Law<sup>53</sup> allows the family reunification of first-degree relatives in the direct ascending line of the sponsor or of his/her spouse or partner, if they are dependent on them and do not enjoy proper family support in their country of origin. Besides the core family (nuclear family), the law grants the Ministry a discretionary power to authorise a family reunification of ascendants in the first degree, who are dependent on the sponsor.

- Adult children? **Yes.**

The Immigration Law<sup>54</sup> allows the family reunification of unmarried adult children of the sponsor and/or of his/her spouse or partner, provided that they are objectively incapable to provide for themselves due to their health condition.

- Same-sex partners who are married? **Yes.**

Same-sex marriages are recognised by the Luxembourgish law. Family reunification of married same sex-partners is allowed in accordance with article 143 of the Civil Code<sup>55</sup> and article 70 (1) a) of the Immigration Law.

- Same-sex partners who are registered? **Yes.**

The Immigration Law<sup>56</sup> allows the family reunification of a same-sex partner with whom the third-country national has entered into a registered partnership in accordance with amended Law of 9 July 2004 on the legal effects of certain partnerships.

Any person legally resident in Luxembourg may register a civil partnership. The future partners must be living together and be aged 18 or over.

To begin the preliminary formalities, they must present themselves to the civil registrar of their place of residence and make a personal and joint declaration. They will then be given a list of documents to provide. All documents must be in French, German or English, whereas documents in any other language must be translated by an official translator. Foreigners may have to provide additional documents.

Documents required:

- 1) Identity card<sup>57</sup> or passport<sup>58</sup> .
- 2) Residence certificate<sup>59</sup> established by the Municipality of the place of residence.
- 3) Full birth certificate (*Acte de naissance intégral*), less than 3 months old if supplied in Luxembourg, or less than six months old if supplied abroad.
- 4) A certificate of single-status (*certificat de célibat*)<sup>60</sup> less than three months old.
- 5) An affidavit stating that neither of the future partners is related in any way. A template is available at the Municipality and is generally filled in and signed at the time the partnership is registered.
- 6) Luxembourg residents (whether or not Luxembourg nationals) have to provide a certificate declaring that they are not already in a partnership contract, issued by the *Répertoire Civil* – Public prosecutor office (Parquet Général) in Luxembourg. Foreigners must provide a “*certificat de coutume*” or a certificate from

the appropriate authorities in their country of origin (usually their Embassy) stating that they are not already in a civil partnership of any kind. If either of the couple has been divorced or widowed, they should supply proof in the form of a certified copy of the final divorce decree or an "acte de décès" (in the case of widowhood)<sup>61</sup>.

Procedure:

Once the documents have been verified by the civil registrar the declaration can be registered immediately by the civil registrar. However, it is possible to make an appointment for the declaration to take place at a set time in the room that is used for marriages.

Following the declaration each partner receives a certificate stating that they are officially registered in a partnership. The civil registrar sends a copy of the declaration to the public prosecutor office (Parquet Général) within three days.

If the partnership was concluded abroad, both parties must address a request of registration to the public prosecutor office.<sup>62</sup>

- Non-married partners? **No.**

Not applicable.

- 'Dependent' persons, i.e. persons receiving legal, financial, emotional or material support by the sponsor or by his/ her spouse/ partner (other than those mentioned above<sup>63</sup>)? **Yes**

Besides first-degree relatives in the direct ascending as well as unmarried adult children<sup>64</sup> (see above), there is no possibility of family reunification for dependent persons.

However, the Immigration Law allows the granting of an authorisation of stay for private reasons to third-country nationals who do not meet the conditions for family reunification, but whose personal or family ties, assessed by reference to, in particular, their closeness, the length of time for which they have existed and their stability, are such that a refusal to authorise their stay would disproportionately affect their right to privacy and family life as measured against the grounds of such refusal.<sup>65</sup>

According to national stakeholders, it is not uncommon that rejected applicants for family reunification apply for this authorisation of stay.<sup>66</sup> Nevertheless it is important to note that they have to provide proof that they have sufficient resources as defined by Grand-ducal regulation<sup>67</sup>, which makes access to such an authorisation of stay much more difficult in practice. This can be particularly difficult for beneficiaries of international protection (refugee status and subsidiary protection) who do not apply for family reunification within the three-month period after being granted the status and thus have to fulfil all the conditions established in article 69 (1). Beneficiaries of international protection benefitting of the RMG (guaranteed minimum income), cannot fulfil the sufficient resources threshold established in article 69 (1) 1 of the Immigration Law because the RMG is of 1348,18 €/month<sup>68</sup> for an adult and the minimum monthly salary required for a 12-months' period is of 1922,96/month.<sup>69</sup>

- Other (please specify, e.g. foster children, applicants in polygamous and/ or proxy marriages, etc.)?

Formally adopted children may apply for family reunification, if judicial proof for the adoption can be provided (i.e. in the frame of the Convention on the Protection of Children and Co-operation in respect of Intercountry Adoption of 29 May 1993).<sup>70</sup> Foster children, for whom no formal adoption procedure has taken place, do not fall into the scope of article 70 of the Immigration Law. However, a residence permit for private reasons can be granted to a foster child if the Ministry assesses the personal ties with the sponsor as well as their closeness, the length of time for which they have existed and their stability and the fact that such refusal to authorise their stay would disproportionately affect their right to privacy and family life.<sup>71</sup> In general, the Directorate of Immigration is cautious to avoid any risk of child abduction.<sup>72</sup>

With regard to proxy marriages, national law<sup>73</sup> does not authorise them. In consequence, persons in such

marriages may not apply for family reunification.

Applications for family reunification of spouses in the context of polygamous marriages are rejected on the basis of article 70 (3) of the Immigration Law, which states that family reunification of a spouse shall not be authorised in the case of a polygamous marriage if the sponsor already has a spouse living with him/her in Luxembourg.<sup>74</sup> Until now, there have not been any attempts to apply for family reunification one spouse at a time. However, the Minister in charge of Immigration<sup>75</sup> indicated that these applications will be refused on grounds of article 70 (3). The only possibility for the new spouse to be authorised to enter the territory under family reunification would be for the sponsor to divorce the first spouse and to have the second marriage legally recognised.<sup>76</sup> Under Luxembourgish Criminal Law, bigamy is a crime punished with imprisonment from 5 up to 10 years.<sup>77</sup>

Whereas no provision within the Asylum Law explicitly relates to polygamous marriages, in the event of an application for international protection by a polygamous family, solely one of the spouses will be considered the spouse, based on grounds of public security.<sup>78</sup>

### Section 3: Requirements for exercising the right to family reunification

**Q6.** Does your (Member) State (plan to) impose the following **requirements**<sup>79</sup> for exercising the right to family reunification (please also indicate if exemptions can be made in individual cases based on e.g. hardship clauses):

- Accommodation suitable for the size of the family, as well as meeting health and safety standards?

**Yes.**

The Immigration Law<sup>80</sup> requires that the sponsor has appropriate accommodation to host the family member(s)<sup>81</sup> (e.g. rental contract, proof of property ownership/title deed). This accommodation must have a floor area of at least 12 m<sup>2</sup> for the first occupant and 9 m<sup>2</sup> per additional occupant<sup>82</sup>, natural light entering through windows that can be opened and closed properly and which measure at least 1/10 of the floor area, heating, running water, electricity, etc.<sup>83</sup> Beneficiaries of international protection who apply for family reunification within 3 months of being granted the status do not have to comply with this requirement.<sup>84</sup>

- Healthcare insurance? **Yes.**

The Immigration Law<sup>85</sup> establishes that the sponsor must have health insurance cover for him/herself and the family member(s). The sponsor must join to his/her application a health insurance certificate issued by a Luxembourg or foreign social security authority and/or by a private insurance company, covering their stay in Luxembourg.<sup>86</sup> Beneficiaries of international protection who apply for family reunification within 3 months of being granted the status do not have to comply with this requirement.<sup>87</sup>

- Sufficient financial resources to provide for the sponsor and his/ her family? **Yes.**

The Immigration Law<sup>88</sup> establishes that the applicant must produce evidence showing that s/he has stable and regular resources which are sufficient to meet his/her own needs and those of his/her family members for whom s/he is financially responsible (e.g. salary slips, tax declaration), without recourse to the social aid system. In practice, the sponsor must provide proof that her/his resources are equivalent to the monthly average rate of the social minimum salary of a non-qualified worker (1922,96 € per month) for a duration of 12 months anterior to the application.<sup>89</sup>

When the sponsor cannot meet this threshold, the Minister in charge of Immigration can issue a positive decision taking into consideration the favorable evolution of the economic situation of the applicant in regard to the stability of his/her employment and income, taking into consideration that s/he is the owner of the property s/he inhabits or that her or his accommodation is free of charge.<sup>90</sup>

In the evaluation of the resources, the Minister in charge of Immigration takes into consideration income from salaried work or independent activity, as any other replacement income and income coming from assets of the applicant. The Minister also takes into consideration the income of the spouse who participates in the budget of the household in a stable manner.<sup>91</sup>

Beneficiaries of international protection who apply for family reunification within 3 months of being granted the status do not have to comply with this requirement.<sup>92</sup>

**Q7. a.** Does the national law of your (Member) State require TCNs to comply with any **integration measures** before and/ or after admission?<sup>93</sup> **No.**

If yes, are TCNs required to comply with the following integration measures:

- Civic integration exams? **N/A.**

If yes, please specify:

- When the civic integration exam(s) takes place (i.e. before admission, after admission, before and after admission):

N/A.

- What knowledge and skills are required from applicants in order to pass the exam(s):

N/A.

- If any support is provided to them during preparation (e.g. preparatory classes):

N/A.

- If/ What costs are incurred by applicants:

N/A.

- Language tests? **No.**

If yes, please specify:

- When the language test(s) takes place (i.e. before admission, after admission, before and after admission):

N/A.

- What knowledge and skills are required from applicants in order to pass the test(s):

N/A.

- If any support is provided to them during preparation (e.g. preparatory classes):

N/A.

- If/ What costs are incurred by applicants:

N/A.

- Other integration measures (please specify)? **No.**

If yes, please specify what these measures entail and when they take place:

N/A.

- If the national law of your (Member) State does not currently require TCNs to comply with any of the above measures – any planned changes? **No.**

If yes, please provide further information below:

There are currently considerations, although at a very early stage, to require international protection seekers to comply with certain integration measures (i.e. language courses). However, these compulsory measures would in no way impact on their right of residence nor their right, in case they are eventually granted status, to apply for

family reunification.<sup>94</sup>

**b.** Please specify if any negative consequences (e.g. refusal to issue a permit or withdrawal of the existing permit) are foreseen for family members not complying with the above-mentioned integration measures – both according to law, as well as how this is applied in practice.

See above.

**Q8.** Does your (Member) State set a **waiting period**<sup>95</sup> before a sponsor's family members can reunite with him/her? **Yes.**

If yes, how long is the waiting period? Can an application be submitted before the period has expired? Are there any exemptions granted in individual cases?

The Immigration Law<sup>96</sup> requires that a third-country national who holds a residence permit valid for at least one year, who has a reasonable perspective to obtain permanent residence and who has been residing on Luxembourg territory for at least twelve months can apply for family reunification. An application cannot be submitted before the period has expired. Bill n° 6992<sup>97</sup> that is currently in the Chamber of Deputies foresees the abrogation of the 12-month residence requirement for the sponsor.

The condition of a minimal period of time of legal residence in Luxembourg does not apply in the following cases:

- a) the sponsor who would like to bring his/her minor children and holds the sole custody<sup>98</sup>;
- b) the sponsor who holds a residence permit "European Blue Card", of transferred worker, of researcher<sup>99</sup> or holder of a long-term resident status in another Member State of the EU and wishes to come to Luxembourg, accompanied by his/her family that was already constituted in the first EU country<sup>100</sup>. These persons can be accompanied by their spouse/partner as well as by their unmarried minor children;
- c) the beneficiary of international protection who introduces a family reunification application within three months of being granted the status.

**Q9.** Does the national law of your (Member) State provide for a **rejection of an application** for entry and residence of family members on grounds of public policy, public security or public health?<sup>101</sup> **Yes.**

Article 70 (1) of the Immigration Law foresees that an application for entry and residence of family members can be rejected based on being a threat to public policy, public security or public health. As the reason for the rejection of an application is not registered, no data is available. However, the rejection on grounds of public policy, public security or public health is rare.<sup>102</sup>

**Q10. a.** In addition to any information you have already provided above, does your (Member) State apply the following provisions concerning the **more favourable family reunification rules for refugees**?<sup>103</sup>

- Application and possible extension of the grace period of (minimum) three months before the requirements for exercising the right to family reunification apply?<sup>104</sup> **Yes.**

If yes, is this grace period of (minimum) three months extended and if so, for how long?<sup>105</sup> Y/ N  
For how long? **No.**

N/A.

- Restriction to relationships established before entry into the (Member) State?<sup>106</sup> **No.**

If yes, please specify:

N/A.

- Application of a wider definition of family members (going beyond parents) when it comes to UAMs?<sup>107</sup> **Yes.**

If yes, please specify:

The Immigration Law<sup>108</sup> establishes that the Minister in charge of Immigration authorises the entry and stay, for

the purposes of family reunification of first-degree relatives in the direct ascending line of an unaccompanied minor enjoying international protection. In this case, the conditions of sufficient resources and dependency are not applied.<sup>109</sup>

Furthermore, the Immigration Law<sup>110</sup> foresees that the minister may allow family reunification of the legal guardian or any other member of the family of an unaccompanied minor enjoying international protection, if the minor has no relatives in a direct ascending line or no such relatives can be traced.

- Have any of these family reunification rules for refugees been changed recently?? **No.**

In the exposition of motives of bill n° 6779 on international protection and temporary protection,<sup>111</sup> it is expressly mentioned that chapter four of the bill reproduces in its integrity the dispositions contained in articles 25 to 55 of the amended law of 5 May 2006 (abrogated Asylum law) adding that the law of 19 June 2013 adapted the content of these articles when transposing the Directive n° 2011/95/EU.<sup>112</sup> There is also no intention of the Government to review the transposition of the directive and the content of the articles remains as established by the law of 19 June 2013.<sup>113</sup>

**b.** If applicable, does your (Member) State apply **similar rules for the family reunification of BSPs** as refugees, i.e. in relation to eligible family members, waiting period and requirements for family reunification? **Yes.**

According to article 56 (1) in regards with article 1 paragraph 1 of the Law of 18 December 2015 and article 69(2) of the Immigration Law, the same rules for family reunification apply to beneficiaries of refugee status and to beneficiaries of subsidiary protection.

**Q11.** Are there any differences in the requirements to be met for exercising the right to family reunification (under Directive 2003/86/EC or national law in some cases) in comparison to a similar request governed by national law by a **(Member) State national who has not exercised his/ her free movement rights** (non-mobile EU nationals)? Overall, to what extent are these requirements for exercising the right to family reunification under national law more or less favourable than those covered by Directive 2003/86/EC?

In the case of Luxembourgish nationals, none of the requirements established by article 69 (1) of the Immigration Law apply. In this regard, the Council of State considered in its legal opinion of 20 May 2008<sup>114</sup> that it was against article 11 of the Constitution of the Grand-Duchy of Luxembourg, which guarantees the constitutional right to a family, to require a Luxembourgish national to fulfill the conditions established in article 6 of the Immigration Law assimilating a Luxembourgish national to an EU citizen in this context. This position has been ratified by the Administrative Courts.<sup>115</sup>

**Q12. a.** Please indicate any **challenges** experienced by i) sponsors and/ or family members associated with accessing the right to family reunification, and/ or ii) your (Member) State in the implementation of any of the above requirements for family reunification (e.g. based on existing studies/ evaluations/ other sources or information received from relevant authorities and stakeholders) and how these can be overcome.

#### Challenges experienced by the sponsors

a) Finding appropriate accommodation: Although this is a general issue in Luxembourg<sup>116</sup>, it may be an all the more concerning factor for third-country national sponsors who apply for family reunification in the frame of Article 69 (1) 2 of the Immigration Law as well as those BIP's who file their application for family reunification three months after being granted international protection status (see Q.6). For both categories of applicants it represents a requirement for eligibility. All national stakeholders consulted within the frame of this study noted the difficulties in practice for these persons to be able to meet the requirements in that regard.<sup>117</sup> Finding appropriate accommodation is particularly difficult for larger family households as well as third-country nationals who have residence permits for a limited duration and/or limited working contracts (which does not enable permanent resources).<sup>118</sup> Furthermore, landlords tend to avoid tenants who benefit from RMG, which can for instance be the case for sponsors benefitting from international protection having applied for family reunification within the 3-month period.<sup>119</sup>

b) The requirement of stable and regular resources: Third-country nationals receiving minimum guaranteed

income (RMG) or any other type of social aid cannot apply for family reunification<sup>120</sup> (See Q.15.a.). In the case of BIP beneficiaries of the guaranteed minimum income, the latter does not prove to be sufficient in practice to meet the criteria.<sup>121</sup>

#### Challenge experienced by the family members

The financial cost of reunifying family members: this can be a challenge for the family member and the sponsor, and can cause delays in the family reunification procedure. These challenges can occur during the application for family reunification, for instance financing legalisation and/or translation of documents, as well as after a positive decision has been issued, for instance financing the procurement of passports, a visa and/or other travel documents, the cost of the journey to the diplomatic or consular body that issues needed documents and the journey to Luxembourg. Caritas Luxembourg and the Luxembourgish Red Cross have in some cases resorted to private donations to help applicants cover the costs of family reunification.<sup>122</sup>

**b.** Please provide any examples of proven (e.g. through studies/ evaluations) **good practices** that might help to overcome the above-mentioned challenges or otherwise. Please specify the source (e.g. based on existing studies/ evaluations/ other sources or information received from relevant authorities and stakeholders).

There are no good practices proven through studies or evaluations that allow to overcome the challenges mentioned above. However, a good practice was identified by stakeholders:

NGOs in the field of migration and asylum inform applicants for international protection of the documentation needed for and procedure of family reunification before having been given the status of international protection. Thereby they contribute to the beneficiary's ability to enter an application for family reunification within the 3-month period in which s/he does not have to comply with the conditions for accommodation, income and health insurance.<sup>123</sup>

**Q13.** Is any research (conducted by relevant authorities, academics, NGOs etc.) on the following available in your (Member) State:

- Effects of the requirements for family reunification as applied in your (Member) State on the right to family reunification and integration of TCNs?

**No research has been conducted on this issue.**

- Effects of the integration measures as applied in your (Member) State on the right to family reunification and integration of TCNs?

**N/A. Compulsory integration measures are not required in Luxembourg.**

- Effects of the minimum age requirement<sup>124</sup> as applied in your (Member) State on the prevention of forced marriages or any misuse of family reunification (e.g. marriages of convenience)?

**No research has been conducted on this issue.**

Although no research has been conducted on the effects of the requirements for family reunification on the right to family reunification and integration of TCNs, several national stakeholders highlighted that while the sponsor awaits the realisation of the reunification, integration into the host society remains a secondary preoccupation.<sup>125</sup>

In Luxembourg, no person aged less than 18 years can contract a valid marriage. A civil registrar may refuse to recognise the validity of a foreign marriage if, at the time the marriage was celebrated, one of the contracting parties was aged less than 18 years.<sup>126</sup> Accordingly, a marriage so contracted is null, void and of no effect.<sup>127</sup> The guardianship judge can lift the prohibition in case of weighty reasons taking into consideration the superior interest of the child.<sup>128</sup> The main objective of these articles is to combat early and forced marriages.<sup>129</sup>

The Immigration Law<sup>130</sup> requires that the sponsor and the family members in the case of marriage or legal partnership must be 18 years old when filing the application for family reunification. Also, the Minister of Immigration and Asylum will not recognise a marriage celebrated abroad when one of the parties was minor at the moment of the celebration.<sup>131</sup> In case of doubt, the Public prosecutor is asked for advice or the marriage has to be registered first at the Luxembourg municipality of residence of the sponsor.<sup>132</sup> There are no statistics with regards

to marriages contracted by minor refugee brides in the country of origin. According to the Public Prosecutor office there have been no more than three applications per year for the recognition of marriages involving minors. These numbers have not been increased by the important numbers of refugee arrivals during the last years.<sup>133</sup>

## Section 4: Submission and examination of the application for family reunification

**Q14.** Please describe the **procedure(s) that apply to the sponsor or his/ her family members** when an application for entry and residence for the purpose of family reunification is submitted, as follows:

**a.** Who is the formal party to an application for family reunification in your (Member) State: the sponsor or his/ her family members?<sup>134</sup>

The application for an authorisation to stay for family reunification must be submitted by the family members before they enter the country.<sup>135</sup> The sponsor can also introduce the application.<sup>136</sup> The applicant has to provide all the required documents of the sponsor.<sup>137</sup> The application will be declared inadmissible in case the family members are on the territory when the application is submitted.<sup>138</sup> However, the Minister in charge of Immigration and Asylum, in exceptional cases duly motivated, can accept that the family members are already on the territory at the moment the application is filed.<sup>139</sup> The third-country national may confer mandate to a third person so as to submit the application on his/her behalf. In this case, the appointed person, except for lawyers, must present a duly signed and dated mandate from the third-country national. The signature must be preceded by the handwritten phrase «good for power of attorney».

These rules apply to all categories of residence permits mentioned in answer Q.4.a (See above).

**b.** If the sponsor's family members must submit an application for family reunification, where can this application be submitted (e.g. consulate of the (Member) State abroad, possibility to submit the application in the (Member) State, etc.)?

Third-country nationals wishing to come to Luxembourg as a family member must submit an application for a temporary authorisation to stay (on plain paper) from their country of origin. The application can be submitted:

- to the Directorate of Immigration of the Ministry of Foreign and European Affairs (through a legal representative in Luxembourg (i.e. attorney);
- to a Luxembourg diplomatic or consular body or to a diplomatic or consular mission representing Luxembourg in the country of origin or in the closest neighboring country if there is no representation in the country of origin.<sup>140</sup>

**c.** What documentary evidence is required from the applicant to confirm i) his/ her identity and ii) the family relationship?

The applicant must file the application with the following documents to prove his/her identity:

- a full copy of his or her passport, certified as true to the original;
- a birth certificate;
- an extract of the criminal record or an affidavit.

In order to prove the family relationship, the applicant must provide the following documents:

1. In case it's the spouse or the registered partner of the sponsor:

- a document attesting of the existence of the marriage or the registered partnership (e.g. marriage certificate, partnership declaration, family booklet);
- a certified copy of the valid passport of the spouse/partner, in its entirety;
- a birth certificate of the spouse/partner
- a recent extract from the criminal records or a sworn affidavit by the spouse/partner, issued in their country of residence

2. In case it's the descendant (minor) of the sponsor or of his/her spouse/partner:

- a certified copy of the child's valid passport, in its entirety
- a document attesting the family relationship with the sponsor (e.g. birth certificate of the child, family book);
- in case of divorce (for minors only):
  - the judgment conferring the custody of the minor child to the parent living in Luxembourg and
  - if the other party has a visitation right: the notarial authorisation of the parental party living abroad to prove this party's agreement that the minor child is allowed to reside in Luxembourg (a copy of the identity document of the parental party living abroad has to be enclosed);
- in case of joint custody (for minors only): the notarial authorisation of the parental party living abroad to prove this party's agreement that the minor child is allowed to reside in Luxembourg (a copy of the identity document of the parental party living abroad has to be enclosed);

3. In case it's an ascendant (parent) of the sponsor or the spouse/partner:

- a certified copy of the parent's valid passport, in its entirety
- a document attesting of the family relationship (e.g. a birth certificate of the sponsor or the sponsor's spouse/partner)
- a document attesting of the civil status and the family situation of the ascendant as well as proof that he/she is deprived of the necessary family support in the country of origin (e.g. family booklet, any other equivalent document issued by the competent authorities of the country of origin);
- a proof that s/he is depending on the sponsor before filing the family reunification application (i.e. bank statements which prove regular money transfer to the first-degree ascendant)
- a document stating the financial situation of the family member in his/her country of origin (i.e. proof of salary, pension, property, etc. )<sup>141</sup>

In case of beneficiaries of international protection, the law foresees that they may prove family bonds by every type of document if they cannot provide official documents.<sup>142</sup> Thus, the Directorate of Immigration may accept, in principle, all types of documents that can serve to establish the identity and/or nationality of the family member, and/or that can prove the veracity of the applicant's statements. I.e. official travel documents such as passport and identity cards, birth certificates, marriage licenses, birth and divorce certificates, driver's license, military record, municipal identification, qualification certificates, journal extracts (articles or photos claiming the identity of the applicant and the relationship with the family member).

In principle, official identity documents and travel documents prevail over other administrative documents, i.e. driver's license.<sup>143</sup>

**d.** What methods of investigation are employed by the competent authorities in your (Member) State in the absence of (reliable) documentation?

See answers to Q.14.c and Q.15

To obtain proof of the existence of family relationships, the minister or the agent of the diplomatic or consular post representing the Grand Duchy of Luxembourg in the country of origin of the family member may carry out interviews with the sponsor or family members and any examination or investigation considered appropriate.<sup>144</sup>

The law does not foresee DNA testing, but if there are no other means to prove the family ties, the Directorate of Immigration may suggest to the sponsor to undergo a DNA test to prove the family ties, especially for establishing paternity.<sup>145</sup>

It should be noted that the national authorities also take into account the information provided by the sponsor during his/her interview within the international protection procedure, in order to verify the identity and family relationships of beneficiaries of international protection and their family members.<sup>146</sup>

**Q15.** Please describe the **procedure(s) that apply to family members** when an application for entry and residence for the purpose of family reunification is submitted, as follows:

**a.** What is the procedure in place in your (Member) State to verify that any **extended family members** have fulfilled the requirements for family reunification (e.g. dependency)? At what stage(s) of the examination procedure is this verified?

Are there any exemptions from fulfilling these conditions and if yes, on what grounds are they granted?

In cases of dependency the Immigration law requires that the sponsor proves that the family members (first-degree ascendants) are dependent on the sponsor and that they do not enjoy proper family support in their country of origin.<sup>147</sup> In practice, the sponsor must prove that s/he has been sending money (e.g. wire transfers via a bank or Western Union) in a continuous manner for a certain period of time. Also, the sponsor must prove that the family member does not have any financial support in the country of origin and does not have sufficient resources to support himself/herself.<sup>148</sup>

In the case of adult unmarried children of the sponsor or of his/her spouse or partner the sponsor must prove that the family member is objectively unable to provide for their own needs on account of his/her state of health.<sup>149</sup> In this case, it is required that the sponsor provides medical certificates which prove that the family member is incapable to provide for his/her own needs because of his/her health condition and that s/he depends on the sponsor or spouse.

There are no exemptions from fulfilling these conditions because the burden of proof lies with the applicant.

**b.** Please describe the procedure in place in your (Member) State to verify that the following **requirements for family reunification** have been fulfilled:

- Please specify how the health and safety standards, as well as the size of the accommodation are determined as suitable in practice:

The applicant must join the lease agreement or a document of the land register proving that s/he has proper accommodation in order to receive the family members. The Directorate of Immigration can verify with the land register whether the property fulfils the conditions (see answer to Q.4.a). If there is any doubt, the Minister in charge of Immigration and Asylum can request additional information and request the Grand Ducal police to conduct a verification of the property.<sup>150</sup>

- Please specify the conditions under which sponsors have access to healthcare insurance (e.g. by having employment/ self-employment or is this access automatic)?

The sponsor must prove that s/he has health insurance cover for himself/herself and the family member(s) (health insurance certificate covering their stay in Luxembourg issued by a Luxembourg or foreign social security authority and/or by a private insurance company). In Luxembourg any legally resident third-country national, who is a salaried worker or independent worker, is automatically insured by the National Health Fund (it is a contributory system<sup>151</sup>).

- Please specify the following in relation to the minimum income requirement sponsors must meet in your (Member) State:
  - The amount of the minimum income requirement in the relevant currency and year:

As mentioned above (Q.6.), the applicant must produce evidence showing that s/he has stable and regular resources which are sufficient to meet her/his own needs and those of her/his family members for whom s/he is financially responsible, without recourse to the social aid system. In practice, the sponsor must provide proof that her/his resources are equivalent to the monthly average rate of the social minimum salary of a non-qualified worker (1922,96 € per month) for a duration of 12 months anterior to the application.<sup>152</sup> The Minister in charge of Immigration and Asylum, in his appreciation of the financial resources, takes into account the income coming from a salaried or independent activity, including replacement income (i.e. unemployment benefits, compensatory income coming from work-related accident, guaranteed minimum income and severely disabled persons income<sup>153</sup>) as well as any permanent income (i.e. rent, capital income, etc.). Other sources of income of the sponsor as well as any resources of the spouse of the sponsor which contributes steadily to the family budget are also taken into account.<sup>154</sup>

- If your (Member) State sets a different income requirement depending on the type of family member being reunited (e.g. minor children):

No.

- The reference period over which this requirement is considered:

The reference period covers the 12 months preceding the filing of the application.<sup>155</sup>

- How any past/ future income of the sponsor is evaluated in practice:

Usually the sponsor must prove his/her income through salary slips, bank statements, income tax returns. If the applicant is a salaried worker, ICT or highly qualified worker, the sponsor must join his/her work contract. The Immigration Law authorises the Minister in charge of Immigration and Asylum to carry out checks and controls<sup>156</sup>. He may access the following databases<sup>157</sup>:

- (a) the general register of natural and legal persons;
- (b) the file in respect of visa applicants, operated on behalf of the Passports, Visas and Legalisations Office of the Minister responsible for Foreign Affairs;
- (c) the file in respect of business permits, operated on behalf of the Minister responsible for small and medium-sized enterprises;
- (d) the file in respect of affiliations of salaried workers, self-employed persons and employers, managed by the *Centre commun de la sécurité sociale* [Joint Social Security Centre]
- (e) the file in respect of registered jobseekers and the file in respect of notices of vacant posts, managed by the *Agence pour le développement de l'emploi* [Agency for the Development of Employment];
- (f) the file in respect of recipients of the guaranteed minimum income, managed respectively by the *Fonds national de solidarité* [National Solidarity Fund] and the *Service national d'action sociale* [National Social Action Service].

- Whether any exemption grounds apply and to what extent non-compliance has consequences for the right to family reunification:

The law foresees that in case the resources of the sponsor do not reach the established threshold<sup>158</sup>, the Minister can grant a positive decision taking into account the evolution of the economic situation of the sponsor, especially in regards to the stability of his/her employment and his/her income or in regards to the fact that s/he is owner of the property or that s/he benefits of it free of charge.<sup>159</sup>

- At what stage(s) of the examination procedure are the above requirements verified?

After the application is filed and considered completed by the Directorate of Immigration, the different requirements are verified.

**c.** Please describe the procedure in place in your (Member) State to ensure **integration measures** have been complied with, for example, if an application form for civic integration exam(s)/ language test(s) must be submitted to the authorities, etc. Please specify what exemption grounds apply and to what extent non-compliance has consequences for the right to family reunification.

N/A.

**d.** If the above conditions are not (completely) fulfilled, how does your (Member) State guarantee that individual circumstances are taken into account (e.g. nature and solidity of the person's family relationship)?<sup>160</sup>

N/A.

**e.** What is the procedure in place in your (Member) State to verify whether or not the family member(s) constitute a **threat to public policy, public security or public health**?

Once the application is completed the complete file is transmitted to an agent in the Directorate of Immigration who will begin the examination of the application. The security checks are conducted by the Directorate of

Immigration using the SIS database, the criminal records and by consulting duly habilitated authorities if needed.<sup>161</sup>

There is no definition on which actions constitute a danger to the community (public order). The Minister in charge of Immigration and Asylum has a discretionary power of appreciation in this issue, on a case by case basis.<sup>162</sup> Even though there is no definition of "public order" (public policy) in the Asylum Law nor in the Immigration Law, the concept of "public order" has been interpreted by the Criminal Courts and the European Court of Justice (CJEU). The Court of Appeal establishes that a trouble to public order requires that criminal offences must be sanctioned in the country where the offence was committed,<sup>163</sup> meaning that the criminal offence must be committed in Luxembourg. In this context, serious crimes can be considered (e.g. fraud, grand theft, etc.).

There is no definition of state security. The threat is analysed on a case by case basis by the Minister in charge of Immigration and Asylum who has wide discretion in the appreciation. Actions that can be considered as a threat to national security are the criminal offences established in articles 101 to 136 of the Criminal Code:

- a. Threats and plots against the Grand Duke and the grand ducal family as well as against the Government;
- b. Threats to individuals benefiting of international protection (article 112-1)
- c. Crimes committed against the external security of the State (article 113 to 123; eg. Treason, collaboration with an external power to make war against the Grand Duchy, espionage, providing military intelligence on military installations, etc.)
- d. Crimes committed against the internal security of the State (articles 124 to 135; eg. To stir civil war, killing, destroying or looting of municipalities or villages, raise a militia without the previous authorisation of the Government, taking control of property of the State, etc.)
- e. Terrorist acts (articles 135-1 to 135-17)
- f. Serious violations of international humanitarian law<sup>164</sup>

The threat to public health can only be detected once the family member has arrived in the territory, with the exception of the individual showing evident signs of a serious and infectious disease.<sup>165</sup> Before obtaining the residence permit the family member has to pass a medical test, which has to be practiced by a certified physician in Luxembourg.<sup>166</sup>

**f.** How does your (Member) State define the **term 'minor child'** and how are the **best interests of the child** taken into account during the examination of the application for family reunification?<sup>167</sup>

The Civil Code defines a minor as an individual of any sex below the age of 18 years.<sup>168</sup> The Asylum law defines a "minor" as a third-country national or stateless person below the age of 18 years.<sup>169</sup> The Immigration law does not define the term "minor child"<sup>170</sup> but the definition of the Civil Code applies.

The 'best interest of the child' in regards to family reunification is applied in accordance with the Convention of New York<sup>171</sup> and the European Court of Justice decision *WAGNER AND J.M.W.L. v. LUXEMBOURG*<sup>172</sup> that establishes:

"119. According to the principles set out by the Court in its case-law, where the existence of a family tie with a child has been established, the State must act in a manner calculated to enable that tie to be developed and establish legal safeguards that render possible the child's integration in his family (see, *mutatis mutandis*, *Kroon and Others v. the Netherlands*, judgment of 27 October 1994, Series A no. 297-C, § 32).

120. The Court considers that the positive obligations that Article 8 lays on the Contracting States in this matter must be interpreted in the light of the Convention on the Rights of the Child of 20 November 1989 (see, *mutatis mutandis*, *Maire v. Portugal*, no. 48206/99, § 72, ECHR 2003-VII). ...

133. Bearing in mind that the best interests of the child are paramount in such a case (see, *mutatis mutandis*, *Maire*, cited above, § 77), the Court considers that the Luxembourg courts could not reasonably disregard the legal status validly created abroad and corresponding to a family life within the meaning of Article 8 of the Convention. However, the national authorities refused to recognise that situation, making the Luxembourg conflict rules take precedence over the social reality and the situation of the persons concerned in order to apply the limits which Luxembourg law places on full adoption. ..."

Since then, the Luxembourg authorities and the Luxembourg courts have applied the above mentioned decision, especially taking into consideration the ties between the child and the sponsor and trying not to interfere with

them.<sup>173</sup> The Protection of the Youth Service considers that the best interest of the child is superior to the interest of the family.<sup>174</sup>

**g.** Please describe what is involved in an assessment for family reunification where **children** are concerned, for example, DNA testing, etc. At what stage(s) of the examination procedure is this assessed?

Family ties between the sponsor and the child can be proved by documentary evidence. This lacking, they will be established by any means possible.<sup>175</sup> The law does not foresee DNA testing but if there are no other means to prove the family ties, the Directorate of Immigration may suggest to the sponsor to undergo a DNA test to prove the family ties.<sup>176</sup>

**Q16.** Taking the different steps above into account, what is the **duration** of the procedure deciding on an application for family reunification in your (Member) State – both according to law and in practice:

- Legal time limit for deciding upon an application (if any)?

The legal time limit for deciding a family reunification application is of 9 months from the moment the file is considered complete.<sup>177</sup> However, in exceptional circumstances this legal time limitation can be extended.<sup>178</sup>

- Average duration of the procedure in practice?

The procedure of decision officially starts from the moment the application has been completed; the time limit of 9 months applies from this moment onwards.

In practice, the average duration of the procedure is between one and three months from the moment the file has been completed.<sup>179</sup> Collecting the documents necessary to complete the file can in some cases be a lengthy process and is considered a challenge (see Q.17.a)

- Have any specific measures been taken by your (Member) State to shorten processing times?

When an applicant for family reunification has submitted his or her file to the Directorate of Immigration, the submitted documents are examined upon receipt, even if the file is not yet complete.<sup>180</sup>

**Q17. a.** Please indicate any **challenges** experienced by i) sponsors and/ or family members throughout the above-mentioned procedure(s), and/ or ii) your (Member) State in the implementation of the examination procedure (e.g. based on existing studies/ evaluations or information received from relevant authorities and stakeholders) and how these can be overcome.

According to national stakeholders, the provision of proof of identity and family links is a major challenge that family members of beneficiaries of international protection face. The inability to provide documentation can be caused by the difficult situation in the country of origin, or the differing administrative practices and/or lack of cooperation of institutions in the country of origin.<sup>181</sup> Applicants for family reunification are free to take a DNA test. Administrative Courts<sup>182</sup> consider DNA testing a legal solution, especially since the burden of proof is on the applicant when the family link is not otherwise documented. The Directorate of Immigration accepts DNA results as proof when the process is framed and supervised by credible partners (eg. Via a Belgium embassy). However, since DNA testing is not foreseen in the Law, the Directorate cannot demand a test.<sup>183</sup>

Providing proof of dependency can be a challenge, particularly for beneficiaries of international protection having applied for the status as UAMs, but having reached adulthood during the period of examination of their file. Their parents will not be eligible for family reunification unless proof of dependency can be established.<sup>184</sup> However, the Minister for Immigration and Asylum also takes into account the principle foreseen in article 8 of the EHCR and the best interest of the child when taking a decision.<sup>185</sup>

Luxembourg has only a restricted number of diplomatic representations abroad. In order to file the applications and to get the required visa, the family member must present him/herself at one of the diplomatic missions of another Member State, which represents Luxembourg's interest in the country of origin.<sup>186</sup> It is very difficult to obtain information or make an evaluation in situ.<sup>187</sup> However, applications can also be introduced directly to the Directorate of Immigration.<sup>188</sup>

Challenges relating to income and accommodation requirements are outlined in the answer to Q.12.a.

**b.** Please provide any examples of proven (e.g. through studies/ evaluations) **good practices** that might help to overcome the above-mentioned challenges or otherwise. Please specify the source (e.g. based on existing studies/ evaluations/ other sources or information received from relevant authorities and stakeholders).

There are no good practices proven in studies or evaluations that might help to overcome challenges of family reunification. However, a few good practices have been identified by stakeholders:

a. Luxembourg opted for a strict transposition of Article 12 (1) of the Directive 2003/86/EC providing more favourable conditions to refugees only in a limited time period of three months.<sup>189</sup> However, in practice, if the applicant can only produce commencement of proof of the existence of family links during the first three months, the application will, in principle, be analysed according to article 69 (2) of the Immigration Law.<sup>190</sup> This practice enables beneficiaries to submit an application within the 3-month period while allowing them to finalise their application after the deadline of three months has passed.<sup>191</sup>

b. Family members of beneficiaries of international protection who cannot obtain a travel document can be granted a « *laisser-passer* », if they can provide some proof of identity. UNHCR<sup>192</sup> as well as different national stakeholders<sup>193</sup> welcomed this practice as an advance facilitating family members' ability to join their sponsor. UNHCR<sup>194</sup> also received this practice positively, indicating that the Grand Duchy of Luxembourg thereby contributes in a significant manner to facilitating the arrival of resettled refugees and their family members on its territory in the context of family reunification.<sup>195</sup> The first experiences have taken place with the resettlement of Syrians in Turkey.<sup>196</sup>

c. In some cases, tracing of family members to be reunified may prove to be difficult. 'Restoring Family Links' (*Service de Rétablissement des Liens Familiaux*) is a service provided by the Luxembourgish Red Cross<sup>197</sup> that can help migrants and refugees with tracking family members abroad.<sup>198</sup> When the Luxembourgish Red Cross receives a request for tracing, it will launch the search by using its international network of national Red Cross and Red Crescent societies or by contacting the International Committee of the Red Cross. The latter is generally contacted for a search in a country affected by war or by internal conflict.<sup>199</sup> Applicants for international protection who wish to trace a family member can make a request for tracing from the moment they have applied for international protection (refugee or subsidiary protection status).<sup>200</sup> The Luxembourgish Red Cross informs the individual having applied for family tracing of the results of its investigation.<sup>201</sup>

## Section 5: Access to rights following family reunification

**Q18.** Are family members entitled (in the same way as the sponsor) to access the following rights<sup>202</sup> in your (Member) State (please also comment on any *planned* changes in the national legislation/ policy/ practice):

**a. Access to education?** Yes.

Family members who come to Luxembourg under family reunification have access to education and orientation from the moment that the residence permit is issued.<sup>203</sup>

Every child living in Luxembourg and having reached the age of four before 1st September must attend school. This obligation, extending over twelve consecutive years, exists for nationals and foreigners, regardless of the status of the child's parents.

While children aged under 12 are enrolled within the school services of their municipality of residence, respectively at the secretariat of the municipality, children of migrants aged between 12 and 18 years apply at the *Cellule d'accueil scolaire pour élèves nouveaux arrivants* (CASNA)<sup>204</sup> in order to obtain an orientation interview as well as a test that assesses the child's scholastic aptitude.<sup>205</sup>

- Primary education

Newly arrived children of primary school age are generally speaking enrolled in a 'homeroom' class (*classe d'attache*) in a cycle that corresponds to their age and their preceding school career. However, there are intensive German, French and Luxembourgish courses in the context of a reception course several times per week outside of the framework of the « homeroom class ». <sup>206</sup> There are furthermore reception classes that familiarise the student

with the languages used in the Luxembourgish educational system.<sup>207</sup>

- Secondary and vocational secondary education

Newly arrived foreign pupils who have sufficient knowledge of the required vehicular languages are integrated into regular classes. However, most newly arrived pupils do not master any of the vehicular languages and cannot be integrated into regular or francophone classes.<sup>208</sup>

- Classes with specific linguistic regimes

The classes with a specific linguistic regime (*classes à regime linguistique spécifique*- RLS) that exist in the medium and higher cycle of vocational secondary school do not solely cater to newly-arrived pupils. However, they are also used in this situation. The RLS classes allow pupils who fill all admission criteria for a certain study track but do not speak enough German (the language in which the track is generally taught) to enter the track and follow the courses in French.<sup>209</sup>

- Linguistic support for foreign language pupils and their parents

The Ministry of National Education, Childhood and Youth has expanded its pool of intercultural mediators. The mediators assist teachers in the reception of and interactions with students and parents.<sup>210</sup>

There are currently 55 mediators who speak 27 languages in total.<sup>211</sup>

Requests for intercultural mediation are on the rise: for the academic year 2014-2015, 3.148 requests were made, of which 1.372 (43,6%) were for Portuguese and 779 (24,8%) for Serbo-Croat. In 2013-2014, 2.893 requests were made, of which 1.288 (44,5%) for Portuguese and 909 (31,4%) for Serbo-Croat. 2012-2013, 2.821 requests were made, of which 1.441 (51,1%) in Portuguese and 855 (30,3%) in Serbo-Croat.<sup>212</sup>

- Support for teachers of foreign pupils

A number of initiatives were taken and tools were created in order to better prepare teaching staff for the specific challenges posed by the heterogeneity of Luxembourg's school population. Over the course of 2015, publications were published on topics such as 'Welcome and integrate: guide for teachers welcoming newly arrived pupils', 'orientation of recently arrived pupils', 'international teaching, international schooling'. Other initiatives taken include the conception of a common test at the national level for reception classes and the launch of the translation of teaching manuals into French. Furthermore, teaching staff were able to benefit from targeted training covering a range of issues: 'reception of applicants for international protection: administrative procedures, social care and integration into school', 'the management of pupils' heterogeneity: differentiation, didactic specialised methods, development of autonomous learning', 'linguistic development and language learning of children aged 3 to 6 in multilingual and plurilingual contexts' and 'consistent language learning in secondary school – an approach to promote educational competences of multilingual pupils'.<sup>213</sup>

- Language assistance:

As other foreigners, family members also have access to the Welcome and Integration Contract (CAI).<sup>214</sup> The CAI is offered to any foreigner of at least 16 years of age, who resides legally on the territory of Luxembourg and wishes to remain on a permanent basis. It is aimed as much at European Union citizens as at third-country nationals; at new arrivals as well as at people, who have been living in Luxembourg for many years.

The general goal is the integration of the target population into the Luxembourgish society.

- *Improvement of language proficiency;*

The aim is to enable the signatory of the CAI to reach at least Basic User Level A.1.1 of the Common European Framework of Reference for Languages in one or more of the three administrative languages of Luxembourg – i.e. Luxembourgish, French, or German.

- *Provision of information and civic orientation;*

The CAI provides a 6-hour citizenship training course and information on daily life in Luxembourg during an orientation day. The language training an orientation day, organised at least twice a year, takes place during half a day at a weekend. It includes various partners and is aimed at enabling the signatory candidate to have better knowledge of Luxembourg's official establishments and organisations, in a casual atmosphere. The citizenship training course aims to provide an insight on integration and on the basic conditions of a harmonious cohabitation in a pluralistic country as well as on the history of Luxembourg, its political organization, and its values and customs. There are special courses for illiterate persons.

The program is publically funded. The participation at the orientation day and the citizenship training are free of charge. The linguistic courses are at reduced rates (at the moment the price for the person who signs the CAI is 5 Euros /10 Euros per course depending on the organiser). This equals with 2 to 5% of the regular price of such courses. Language courses are offered under the responsibility of the Ministry of Education, which has within its responsibilities adult and continuous education. This is implemented through contracted providers, who have an agreement with the Department of Adult Education of the Ministry of National Education.

**b. Access to employment and self-employed activity?**<sup>215</sup> Yes.

Third-country nationals, family members of a Luxembourgish national and/or and EU/EEA citizen can work without previously obtaining a working permit and without restrictions of economic sector or profession (except the profession which requires the exercise of public force).<sup>216</sup>

There is a different procedure when the family member of a third-country national accesses the labour market as an accessory activity as family member that when s/he requests a residence permit as a salaried worker as main activity

- a) third-country national holding a residence permit for family members, who wish to carry out a salaried activity on an ancillary basis: A work permit is required for the third-country national before starting work. The application for a work permit must be submitted by the third-country national. However, they may appoint a third party, such as the future employer, to carry out the necessary procedures.

In case the family member has resided in Luxembourg for less than one year when the application is submitted, he/she will be subjected to the labour market test.<sup>217</sup>

In case the person resides in Luxembourg for more than one year at the moment of the application, the labour market test is not required, but the employer must declare the post vacancy before considering the recruitment of the person. The employer must sign a contract with the third-country national. The contract may include a let-out clause specifying that the employment contract will not take effect until the work permit has been obtained. The employer must provide proof of the vacant position declaration to the third-country national, who must attach it to their work permit application.

- b) third-country nationals holders of a "family member" residence permit who wish to carry out paid employment or self-employment as their main activity must apply for a salaried worker residence permit or for an independent worker residence permit.

Family members must apply for a residence permit which allows them to work in Luxembourg according to the requirements established for salaried workers<sup>218</sup>, independent workers<sup>219</sup> or highly qualified workers.<sup>220</sup>

The access of family members to the labour market is subject to certain conditions during the first year of residence (it is not a waiting period) after the family reunification. If the family member applies for an authorisation as a salaried worker, s/he can have access to the labour market but is subject to a labour market test<sup>221</sup> during the first year of residence.<sup>222</sup>

During the first year of his/her legal employment on the territory, the family member holding a "salaried worker" residence permit shall have access to the labour market, limited to a single sector and a single occupation with any employer.<sup>223</sup>

Another possibility is that the spouse can apply as a self-employed worker if s/he fulfils the required conditions.<sup>224</sup>

If the third-country national family member fulfils the conditions of a highly qualified worker, s/he will not be subject to the labour market test<sup>225</sup> and will have immediate access to the labour market.

**c. Access to vocational guidance and training** Yes.

Family members have access to the generally available vocational training, lifelong learning and professional retraining from the moment their residence permit is issued.<sup>226</sup>

**d. Right to apply for autonomous right of residence** independent of that of the sponsor (also in case of dissolution of family ties)? Yes.

A third-country national holding a 'family member' residence permit can be issued an autonomous residence permit<sup>227</sup>, independent of that of the sponsor in as far as his or her permit as a "family member" was issued for family reunification reasons.<sup>228</sup>

It can be granted, on request, to the spouse, unmarried partner or child who has reached majority, and where appropriate to the first degree ascendant or dependant adult child, who has resided in the territory for five years or whose relationship has suffered a breakdown of cohabitation resulting from:

(a) the death of the sponsor or divorce, marriage annulment or breakdown of the partnership occurring at least three years after the authorisation to stay was granted by virtue of family reunification, or

(b) particularly difficult circumstances, for instance when cohabitation has been broken off on account of acts of domestic violence.

**e. Any other rights granted to family members in your (Member) State**, for example, healthcare, recourse to public funds, possibility for family members to apply for long-term residence status or naturalisation, etc.? Yes.

Healthcare: In Luxembourg the sponsor must have a health insurance in order to apply as a sponsor for family reunification (see above). As the sponsor must also fulfil the sufficient resources requirement and seen that the Luxembourgish social security system is based on a contributory system, the family member of a salaried worker, highly qualified worker or independent worker is immediately covered by the healthcare of the sponsor.

Social assistance: A third-country national family member will be entitled to apply for the Guaranteed Minimum Income (RMG) if the applicant fulfils the requirements established in article 2 (1) or 2(2) of the amended law of 29 April 1999 on the creation of a right to Guaranteed minimum income.

The third-country national is entitled to RMG if:

a) s/he has resided in Luxembourg for at least 5 years in the last 20 years<sup>229</sup>;

b) s/he is at least 25 years old,

c) s/he has an income below the threshold established by the law; and

d) s/he is prepared to exhaust all possibilities not yet used in Luxembourgish or foreign law in order to improve his or her financial situation.<sup>230</sup>

The third country national must have a valid residence permit. This means that it can be a fixed-term residence permit (salaried worker, self-employed, family member, and researcher) or a long-term residence permit. The condition of continued residence is not needed.

Social aid: In Luxembourg social aid is a right which allows any legal resident or his/her family to live with human dignity.<sup>231</sup> It guarantees the people in need the access to goods and services adapted to their particular situation so to allow them to acquire or maintain their autonomy.<sup>232</sup> This palliative, curative or preventive aid is based on a social support services.<sup>233</sup> However, persons who have obtained an authorisation of stay following an engagement of financial responsibility of a sponsor are excluded from social aid.<sup>234</sup> Nevertheless, if the sponsor is in precarious situation, the family can benefit from social aid.

Long-term residence status: Family members who have resided legally in the territory for at least five years are entitled to apply for long-term residence if they fulfil the requirements of article 81 of the Immigration law.

Citizenship: Family members have the right to apply for nationality if they fulfil the following requirements:

1. Be at least 18 years old;
2. Provide evidence of a having resided in Luxembourg for a minimum of 7 years. This is considered the appropriate period for ensuring that the applicant is sufficiently integrated in Luxembourgish society;
3. Provide proof of a sufficient active and passive level of knowledge of at least one of the three languages (French, German, Luxembourgish) and have passed an evaluation test in spoken Luxembourgish (oral

comprehension and oral expression);

4. Having followed three citizenship courses, enabling applicants to acquire knowledge relating to Luxembourg institutions and fundamental rights;
5. Provide evidence of sufficient guarantees of good repute: establishment of objective criteria, making it possible to assess whether the applicant provides a sufficient guarantee of good repute. This condition grants power to the Minister of Justice to suspend the naturalisation application in the event of a judicial criminal proceeding.<sup>235</sup>

**Q19.** Are family members of refugees and/ or BSPs granted refugee/ BSP status in their own right or a 'derived' permit (from that of the sponsor)? Please clarify how the type of permit issued differs in terms of its validity and rights attached to it. If possible, please also provide information on the cost of the permit.

Family members of beneficiaries of international protection derive their rights from the status of the sponsor.<sup>236</sup> The Asylum law establishes that the Minister in charge of Asylum and Immigration shall ensure that family members of a beneficiary of international protection who do not individually qualify for such protection are entitled to claim the benefits of the content of the international protection so far as this is compatible with the personal legal status of the family member concerned.<sup>237</sup>

**Q20. a.** Do any conditions apply to sponsors and/ or family members after admission for the purpose of family reunification in your (Member) State? Yes.

If yes:

- At which stage(s) after admission is examined whether these conditions have been fulfilled?

The conditions will be examined when the renewal of the family member's residence permit is examined. The conditions that apply are those required during the first issuance of the residence permit.<sup>238</sup>

In case there is a withdrawal or refusal to renew the residence permit of the family member or the sponsor, the Minister in charge of Immigration and Asylum takes into account the nature and solidity of the family relationships, of the duration of the stay on the territory and of the degree of integration into Luxembourg society, as well as the existence of family, cultural and social ties with the country of origin when renewing or withdrawing the residence permit.<sup>239</sup>

- Does not fulfilling one of these conditions constitute a ground for non-renewal or withdrawal of the residence permit?<sup>240</sup> Yes.
  - If yes, how are individual circumstances and interests<sup>241</sup> taken into account?

Yes. See above (Q.20.a)

- If no, what are the consequences of not fulfilling the conditions (e.g. obligation to pay a fine, exclusion from more favourable residence permits)?

N/A

**Q21. a.** Please indicate any **challenges** experienced by family members in your (Member) State with regard to accessing the above-mentioned rights (e.g. based on existing studies/ evaluations or information received from relevant authorities and stakeholders) and how these can be overcome.

One national stakeholder noted that the family reunification of teenage children joining a parent sponsor can lead to conflictual situations within the family, behavioural problems and issues in school, as the teenagers lack support in the country of origin preparing them for the significant changes engendered by family reunification.<sup>242</sup>

**b.** Please provide any examples of proven (e.g. through studies/ evaluations) **good practices** with regard to the provision of education/ access to the labour market and vocational guidance and training/ right to autonomous residence for family members in your (Member) State/ etc. Please specify the source (e.g. based on existing studies/ evaluations/ other sources or information received from relevant authorities and stakeholders).

As no measures tailored to family members exist, no good practices can be established.

## Section 6: National and international case law

**Q22.** Has the following CJEU/ ECtHR case law led to any changes in policy and/ or practice in family reunification in your (Member) State:

- *CJEU - C-540/03 European Parliament v Council of the European Union*;
- *CJEU - C-558/14 Khachab v Subdelegación del Gobierno en Álava*;
- *CJEU - C-153/14, Minister van Buitenlandse Zaken v K and A*;
- *CJEU - C 338/13, Marjan Noorzia v Bundesministerin für Inneres*;
- *CJEU - C-578/08, Rhimou Chakroun v Minister van Buitenlandse Zaken*;
- *CJEU - C-356/11 and C-357/11, O. S. and L*;
- *ECtHR - Mugenzi v. France, Application No. 51701/09, 10 July 2014*;
- *ECtHR - Tuquabo-Tekle And Others v The Netherlands, Application no. 60665/00, 1 March 2006*;
- *ECtHR - Hode and Abdi v. the United Kingdom, Application No. 22341/09, 6 February 2013*;
- *ECtHR – Biao v. Denmark, Application No. 38590/10, 24 May 2016*;
- Any other relevant case law (please specify)? **Yes. Wagner v. Luxembourg, EctHR – Wagner v. Luxembourg, No. 76420/01, 28 September 2007.**

If yes, please briefly describe the changes brought about by this case law.

### European Court of Human Rights:

- Wagner and J.M.W.L. v. Luxembourg, No. 76420/01, 28 September 2007.<sup>243</sup>

Facts: Under an enforceable Peruvian judgment Ms Wagner, a national of Luxembourg, legally adopted a three-year-old girl in Peru who had been declared abandoned. The applicants brought a civil action to have the Peruvian judgment declared enforceable in Luxembourg for purposes, in particular, of the child's civil registration, acquisition of Luxembourg nationality (she still had Peruvian nationality) and permanent residence in Luxembourg.

The Luxembourgish Court rejected the request on the ground that the Peruvian full adoption judgment had been in contradiction with the laws of Luxembourg, which were applicable under the conflict-of-law rule enshrined in the Civil Code and which prohibited full adoption by a single person. The applicants appealed. Their appeal was declared unfounded, on the ground that the Court had rightly held that the Peruvian decision was in contradiction with Luxembourg legislation on conflict of laws, under which conditions of adoption were governed by the law of the country of which the adopter was a national, which in Luxembourg restricted full adoption to married couples. The Court of Cassation confirmed the decision.

This judgment addressed two major issues:

1. Discrimination: The issue was whether the interference of the State had been “necessary in a democratic society”. A broad consensus existed in the Council of Europe on the issue of adoption by unmarried persons, which was permitted without further restrictions in most of the member States. Full adoption severed a child's links with its birth family and opened the way to full and complete integration into the new family, and the limits placed on it in Luxembourg law were meant to protect the interests of the adopted child. In this case, however, as the second applicant had been declared abandoned and placed in an orphanage in Peru, it would have been in the higher interest of the child not to refuse to enforce the Peruvian adoption judgment.<sup>244</sup>

Since the Luxembourg Courts had not officially acknowledged the legal existence of family ties created by the full adoption granted in Peru, those ties could not take full effect in Luxembourg. As the child's best interests had to take precedence in cases of that kind, the Luxembourg Courts could not reasonably disregard the legal status which had been created on a valid basis in Peru and which corresponded to family life within the meaning of Article 8.

2. Best interest of the child: Ms Wagner had behaved as the child's mother in every respect since the Peruvian adoption judgment, so "family ties" existed de facto between them. The refusal to declare the Peruvian judgment enforceable – which stemmed from the absence of provisions in Luxembourg law enabling a single person to be granted full adoption of a child – amounted to "interference" with the applicants' right to respect for their family life. The aim had been to protect the "health or morals" and the "rights and freedoms" of the child.

In Luxembourg, it had been the practice to automatically recognise Peruvian judgments granting full adoption (several single women had been able to register the judgment without applying for an enforcement order). On arrival in Luxembourg, the applicants had thus been entitled to expect that the Peruvian judgment would be registered. However, the practice of registering judgments had been suddenly abandoned and their case had been submitted to the judicial authorities. In refusing to declare the judgment enforceable those authorities had let the conflict-of-law rule take precedence over the social reality and the situation of the persons concerned.

#### European Court of Justice:

- CJUE- C-127/08. Metock and others v. Ireland of 25 July 2008.

The court concluded that "Article 3(1) of Directive 2004/38 must be interpreted as meaning that a national of a non-member country who is the spouse of a Union citizen residing in a Member State of which he does not possess the nationality and who accompanies or joins that Union citizen benefits from the provisions of that directive, irrespective of when and where the marriage took place and of how the national of a non-member country entered the host Member State."

This judgment not only changes the outcome in a case before the First instance Administrative Court, 2nd Chamber, n° 23254a of 17 December 2008, but also the policy on family reunification of family members of "non-mobile" EU citizens, namely EU citizens who reside in a MS of which they do not have the nationality and who previously did not exercise their right of free movement.

- CJUE-C-86/12 - Alokpa and Moudoulou v. Luxembourg<sup>245</sup> of 10 October 2013.

This case was a request for a preliminary ruling from the Luxembourg Administrative Court by decision of 16 February 2012.<sup>246</sup> The Court concluded that articles 20 and 21 of the Treaty of Functioning of the European Union (TFEU) "... do not preclude a Member State from refusing to allow a third-country national to reside in its territory, where that third-country national has sole responsibility for her minor children who are citizens of the European Union, and who have resided with her in that Member State since their birth, without possessing the nationality of that Member State and making use of their right to freedom of movement, in so far as those Union citizens do not satisfy the conditions set out in Directive 2004/38/EC ... or such a refusal does not deprive those citizens of effective enjoyment of the substance of the rights conferred by virtue of the status of European Union citizenship, a matter which is to be determined by the referring court."

- CJUE- C-87/12 – Ymegara v. Luxembourg of 8 May 2013.

This case was a request for a preliminary ruling from the Luxembourg Administrative Court by decision of 16 February 2012.<sup>247</sup> In this case the Court ruled that: "Article 20 TFEU must be interpreted as not precluding a Member State from refusing to allow a third-country national to reside in its territory, where that third-country national wishes to reside with a family member who is a European Union citizen residing in the Member State of which he holds the nationality and has never exercised his right of freedom of movement as a Union citizen, provided such refusal does not lead, for the Union citizen concerned, to the denial of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a Union citizen."

These two last cases address issues of family reunification related to EU citizenship.

**Q23.** Has any national case law led to changes in policy and/ or practice in family reunification in your (Member) State since 2011 onwards? Y/ N

No. The Judgment of the Administrative Court, n° 28952CA of 11 July 2013 following the decision of the CJEU C-87/12 ratifies that the sponsor must prove the family links and the financial dependency of his parents in order to grant family reunification.

## Annex 1 Statistical Annex

With reference to Question 3.a. above, please complete the following table with national statistics on the (estimated) number of applications for family reunification, if available.

Year	Total number of persons applying for family reunification																	
	2011			2012			2013			2014			2015			2016		
	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total
<b>Status of the sponsor</b>																		
Beneficiaries of international protection: - Refugees - Beneficiaries of subsidiary protection; - Unaccompanied minors (UAMs).	4	8	12	7	8	15	5	13	18	5	13	18	32	45	77	56	88	144
Persons admitted for remunerated activities*	98	200	298	166	406	572	223	445	668	275	541	816	313	654	967	300	563	863
Persons admitted for study purposes	0	5	5	3	5	8	0	8	8	4	9	13	6	15	21	2	15	17
Other categories of migrants (private reasons, EU family members, long term residents, other)	20	39	59	48	64	112	40	91	131	58	109	167	65	141	206	56	125	181
<b>Total</b>	<b>122</b>	<b>252</b>	<b>374</b>	<b>224</b>	<b>483</b>	<b>707</b>	<b>268</b>	<b>557</b>	<b>825</b>	<b>342</b>	<b>672</b>	<b>1014</b>	<b>416</b>	<b>855</b>	<b>1271</b>	<b>414</b>	<b>791</b>	<b>1205</b>

Year	Total number of persons applying for family reunification whose applications have been successful																	
	2011			2012			2013			2014			2015			2016		
	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total
<b>Status of the sponsor</b>																		
Beneficiaries of international protection: - Refugees - Beneficiaries of subsidiary protection; - Unaccompanied minors (UAMs).	3	6	9	7	5	12	4	12	16	3	7	10	19	40	59	35	59	94
Persons admitted for remunerated activities*	87	186	273	162	381	543	208	425	633	255	523	778	297	629	926	275	503	778
Persons admitted for study purposes	0	5	5	3	4	7	0	8	8	3	8	11	6	12	18	2	12	14
Other categories of migrants (private reasons, EU family members, long term residents, other)	13	32	45	35	47	82	31	72	103	42	84	126	41	115	156	37	84	121
<b>Total</b>	<b>103</b>	<b>229</b>	<b>332</b>	<b>207</b>	<b>437</b>	<b>644</b>	<b>243</b>	<b>517</b>	<b>760</b>	<b>303</b>	<b>622</b>	<b>925</b>	<b>363</b>	<b>796</b>	<b>1159</b>	<b>349</b>	<b>658</b>	<b>1007</b>

Year	Total number of persons applying for family reunification whose applications have been rejected																	
	2011			2012			2013			2014			2015			2016		
	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total
<b>Status of the sponsor</b>																		
Beneficiaries of international protection: - Refugees - Beneficiaries of subsidiary protection; - Unaccompanied minors (UAMs).	1	1	2	0	2	2	1	1	2	0	5	5	11	3	14	8	9	17
Persons admitted for remunerated activities*	7	6	13	4	14	18	8	10	18	10	12	22	8	16	24	13	20	33
Persons admitted for study purposes	0	0	0	0	1	1	0	0	0	1	0	1	0	0	0	0	1	1
Other categories of migrants (private reasons, EU family members, long term residents, other)	2	3	5	12	12	24	8	14	22	11	15	26	18	20	38	14	23	37
<b>Total</b>	<b>10</b>	<b>10</b>	<b>20</b>	<b>16</b>	<b>29</b>	<b>45</b>	<b>17</b>	<b>25</b>	<b>42</b>	<b>22</b>	<b>32</b>	<b>54</b>	<b>37</b>	<b>39</b>	<b>76</b>	<b>35</b>	<b>53</b>	<b>88</b>

(\*) 'Persons admitted for remunerated activities' includes employed, self-employed, business owners, highly qualified workers under the Directive 2009/50/EC (Blue Card), highly qualified workers under national labour permits for (highly) skilled workers, seasonal workers and intra-corporate transferees

<b>Indicator definition:</b>	Total number of persons applying for family reunification, disaggregated by gender (M, F) of the sponsor and/ or family members) (2011, 2012, 2013, 2014, 2015 and 2016)
<b>Explanation of indicator definition:</b>	2016: until 31/10/2016
<b>Information source:</b>	Immigration Directorate
<b>Final source publishing the information (including link if available):</b>	
<b>Disaggregation by gender:</b>	Yes
<b>Other disaggregation available (e.g. age)</b>	No
<b>Method of data collection:</b>	Administrative data
<b>Date that information was last accessed:</b>	3-Nov-16
<b>Data scope:</b>	National
<b>Supporting Comments:</b>	Data on applications only have low reliability, as the system collecting applications is not designed for producing statistical data of this kind, therefore, double counting can't be avoided.

Please provide here a brief explanation of the metadata, describing for example the population covered, the method used to reach the estimates, any caveats as to their likely accuracy etc. It should be noted, given the differences in methods used to make the estimates, that it will not be possible to synthesise this information to produce a 'total EU estimate' for the Study.

Methodological notes:

- The data refers to applications for temporary authorisations of stay and linked decisions (granted or denied) and not to applications for residence permits and linked decisions (first deliverances and renewals).
- The data refers to persons (adults and children) and not to files (households).
- The data regarding applications / decisions takes into account authorisations of stay for family members and for private reasons (family ties).
- The data for 2016 covers the period up to 31/10/2016.
- The applications of family members wanting to join a sponsor admitted for educational reasons are not treated as family members but as authorisations of stay for private reasons on the basis of existence of family links. The sponsors are for instance PhD students who have a working contract and who benefit from a remuneration that is superior to the social minimum wage.
- Due to the nature of the organisation of the database, it is possible for one person to be indexed multiple times within the same year, according to the processing status of the application (for example: to be treated, to be printed, delivered).
- The decision was taken to retain each single person only once over the course of the year, this in accordance with the most recent processing status of the application.
- If a person was denied the authorisation of stay as family member in 2014 (most recent status) and was granted an authorisation of stay as family member in 2015, the person will appear in the application statistics of 2014 and 2015, considering that the authorisation of stay was granted based on a new application.
- If a person was denied an authorisation of stay as family member in 2014 and after a requalification of his or her application was granted an authorisation of stay for private reasons in 2015, the person will be included in the statistics only once, in 2015 (most recent status of the application). In this case, it is considered to be one single application.
- Positive decisions include persons who, after having been denied an authorisation of stay as family member have later been granted an authorisation of stay for private reasons. A person having been denied the authorisation of stay as family member and later was granted authorisation of stay for private reasons was accounted for only once, in the category of *positive decisions*.

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<sup>1</sup> Parliamentary document n° 6992/00 of 18 May 2016. Bill n° 6992 amending 1) the amended Law of 29 August 2008 on free movement of persons and immigration ; 2) amended law of 28 May 2009 on the Detention Centre ; 3) the law of 2 September 2001 regulating the access to the professions of craftsman, merchant and industrial.

<sup>2</sup> The 12-month period is still required in cases foreseen by article 70 (5) of the Immigration Law (first degree ascendants, adult unmarried depending children, legal guardian or any other family member of an unaccompanied minor who is beneficiary of international protection).

<sup>3</sup> See Parliamentary document n° 5802/17 of 3 July 2008, p.23

<sup>4</sup> [Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification](#)

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- <sup>5</sup> See Parliamentary document n° 5802/17 of 3 July 2008, p.23
- <sup>6</sup> See Parliamentary document n° 5802/00 of 7 November 2007 on free movement of persons and immigration, p. 7. See also Parliamentary document no 5802/17, p. 23.
- <sup>7</sup> Ibidem.
- <sup>8</sup> European Convention of Human Rights of 4 November 1950. See also Parliamentary document no. 5802/17, p. 22.
- <sup>9</sup> [Parliamentary document n° 5802/00 of 7 November 2007](#), p. 7.
- <sup>10</sup> Article 70 (1) b) of the amended Law of 29 August 2008 on free movement of persons and immigration in accordance with the amended law of 9 July 2004 on legal effects of certain partnerships.
- <sup>11</sup> Article 70 (5) c) of the amended Law of 29 August 2008.
- <sup>12</sup> Article 70 (3) of the amended Law of 29 August 2008.
- <sup>13</sup> Article 70 (2) of the amended Law of 29 August 2008.
- <sup>14</sup> Information provided by the Directorate of Immigration, 2 December 2016.
- <sup>15</sup> Information provided by the Directorate of Immigration, 2 December 2016.
- <sup>16</sup> Law of 8 December 2011 amending the amended Law of 29 August 2008 on free movement of persons and immigration.
- <sup>17</sup> Article 1 (1) and 1 (18) 1 of the Law of 8 December 2011 amending article 70 (1) b) of the amended Law of 29 August 2008.
- <sup>18</sup> Article 1 (19) of the Law of 8 December 2011 amending article 71 (b) of the amended Law of 29 August 2008.
- <sup>19</sup> Article 1 (21) of the Law of 8 December 2011 amending article 73 (6) of the amended Law of 29 August 2008.
- <sup>20</sup> Article 1 (22) of the Law of 8 December 2011 amending article 74 (1) of the amended Law of 29 August 2008.
- <sup>21</sup> Parliamentary document n° 6992/00 of 18 May 2016. Bill n° 6992 amending 1) the amended Law of 29 August 2008 on free movement of persons and immigration ; 2) amended law of 28 May 2009 on the Detention Centre ; 3) the law of 2 September 2001 regulating the access to the professions of craftsman, merchant and industrial.
- <sup>22</sup> Article 1 28° (1) of the bill n° 6992 amending article 69 (1) of the amended Law of 29 August 2008. See Parliamentary document n°6992/00, p. 22.
- <sup>23</sup> Article 1 28° (2) of the bill n° 6992, amending article 70 (5) of the amended Law of 29 August 2008. See Parliamentary document n°6992/00, p. 26.
- <sup>24</sup> Article 1 29° (2) of the bill n° 6992, amending article 73 of the amended Law of 29 August 2008. See Parliamentary document n°6992/00, p. 74.
- <sup>25</sup> Luxembourgish Refugee Council (*LFR*), « Réfugiés: le droit d’asile va de pair avec le devoir d’accueillir », Press release, Luxembourg, 15 September 2015 and Asti asbl., Amnesty International Luxembourg, « Le regroupement familial refusé aux réfugiés reconnus- quelle logique ? », Press release, Luxembourg, 8 April 2015
- <sup>26</sup> Directorate of Immigration, « Bilan de l’année 2015 en matière d’asile et d’immigration », URL : <https://www.gouvernement.lu/5680602/Bilan-2015.pdf>
- <sup>27</sup> Articles 2 and 3 in Chapter I of 2003/86/EC define who can be a sponsor to an application for family reunification in the EU.
- <sup>28</sup> Article 12 (3) of the amended law of 29 August 2008.
- <sup>29</sup> Article 14 (1) of the amended law of 29 August 2008. This article is in line with the Judgment of the CJEU, *Metock and Others v. Ireland*– C-127/08 of 25 July 2008 and the Judgment of the First instance Administrative Court, 2<sup>nd</sup> Chamber n° 23254a of 17 December 2008.
- <sup>30</sup> Article 71 (b) in regards to article 45-1 of the amended law of 29 August 2008.
- <sup>31</sup> Article 69 (2) of the amended law of 29 August 2008.
- <sup>32</sup> Article 71 (b) in regards to article 47 of the amended law of 29 August 2008.

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- <sup>33</sup> Article 71 (b) in regards to article 64 of the amended law of 29 August 2008.
- <sup>34</sup> The level of the resources of the third-country national who is applying for family reunification is assessed with reference to the average monthly minimum wage of a non-qualified worker over a period of 12 months. The resources of the third-country national must be at least equivalent to this reference level. If the resources are below this level, the Minister may nonetheless issue a favorable decision, having taken into account the current situation of the third-country national (such as the stability of their job and income, access to home ownership or the use of free of charge accommodation); Article 69 (1) 1 of the amended Law of 29 August 2008 in accordance with Article 6 (1) of the amended Grand-ducal regulation of 5 September 2008 establishing the criteria of resources and accommodation foreseen by the Law of 29 August 2008 on free movement of persons and immigration.
- <sup>35</sup> Article 4 of the amended Grand-ducal regulation of 25 February 1979.
- <sup>36</sup> In this regard, the Council of State in its legal opinion of 20 May 2008 (See Parliamentary document n° 5802/10 of 20 May 2008, p. 6) considered that it was against article 11 of the Constitution of the Grand-Duchy of Luxembourg, which guarantees the constitutional right to a family, to require Luxembourgish nationals to fulfil the conditions established in article 6 of the Immigration Law, assimilating a Luxembourgish national to a mobile EU citizen in this context. This position has been ratified by the Administrative Courts (See First instance Administrative Court, 3rd Chamber, n° 34065 of 30 April 2015).
- <sup>37</sup> Article 42 in accordance with article 69 (1) of the amended law of 29 August 2008.
- <sup>38</sup> Article 51 (1) in accordance with article 69 (1) of the amended law of 29 August 2008.
- <sup>39</sup> Article 45 (1) in accordance with article 69 (1) and 71 b of the amended law of 29 August 2008.
- <sup>40</sup> Article 54 (1) in accordance with article 69 (1) of the amended law of 29 August 2008.
- <sup>41</sup> Article 64 in accordance with articles 69 (1) and 71 (1) b) of the amended law of 29 August 2008.
- <sup>42</sup> Article 47 in accordance with articles 69 (1) and 71 b) of the amended law of 29 August 2008.
- <sup>43</sup> Article 56 (1) of the Law of 18 December 2015 on international protection and temporary protection (Asylum Law) in accordance with articles 68 a) and 69 (2) of the Immigration Law.
- <sup>44</sup> Article 57 (1) et 59 of the amended Law of 29 August 2008.
- <sup>45</sup> Article 60 (2) of the amended Law of 29 August 2008.
- <sup>46</sup> Article 61 (2) of the amended Law of 29 August 2008.
- <sup>47</sup> Article 62 (2) of the amended Law of 29 August 2008.
- <sup>48</sup> Article 62bis (2) of the amended Law of 29 August 2008.
- <sup>49</sup> Article 48 (1) of the amended Law of 29 August 2008.
- <sup>50</sup> Article 69 (1) of the amended Law of 29 August 2008.
- <sup>51</sup> Currently, BSPs are not covered by Directive 2003/86/EC.
- <sup>52</sup> Art. 4 in Chapter II of Directive 2003/86/EC stipulates that (Member) States shall authorise the entry and residence of certain family members, including the sponsor's spouse and minor (including adopted) children of the sponsor and/ or his/ her spouse.
- <sup>53</sup> Article 70 (5) a) of the amended law of 29 August 2008.
- <sup>54</sup> Article 70 (5) b) of the amended law of 29 August 2008.
- <sup>55</sup> Civil Code of 17 March 1808. Article 143 was amended by the Law of 4 July 2014 introducing same sex marriages.
- <sup>56</sup> Article 70 (1) b) of the amended law of 29 August 2008.
- <sup>57</sup> Luxembourg nationals.
- <sup>58</sup> All other nationalities.
- <sup>59</sup> Certificate of residence. See article 3 § 1 of the Law of 9 July 2004.
- <sup>60</sup> Article 4.2 of the Law of 9 July 2004.

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- <sup>61</sup> Article 4.2. of the Law of 9 July 2004. For nationals of the European Community, the divorce should be evidenced by a "Certificate Referred to in article 39 concerning Judgments in Matrimonial Matters".
- <sup>62</sup> See articles 1126 ss of the New Civil Procedure Code in regards with articles 4 and 4-1 of the amended law of 9 July 2004.
- <sup>63</sup> I.e. other than those referred to in Art. 4 of Directive 2003/86/EC.
- <sup>64</sup> Article 70 (5) a) and b) of the amended Law of 29 August 2008
- <sup>65</sup> Article 78 (1) c) of the amended Law of 29 August 2008.
- <sup>66</sup> Information provided by the Directorate of Immigration, interview on 27 October 2016, the Luxembourgish Red Cross, interview on 20 October 2016 and CLAE asbl., interview on 21 October 2016.
- <sup>67</sup> Article 78 (2) of the amended Law of 29 August 2008.
- <sup>68</sup> [Social parameters valid since 1 January 2016.](#)
- <sup>69</sup> [Social parameters valid since 1 January 2016.](#)
- <sup>70</sup> Information provided by the Directorate of Immigration, interview on 27 October 2016. See also: Wagner and J.M.W.L. v. Luxembourg, n° 76240/01 of 28 September 2007.
- <sup>71</sup> Article 78 (1) c) of the amended Law of 29 August 2008.
- <sup>72</sup> Information provided by the Directorate of Immigration, interview on 27 October 2016
- <sup>73</sup> Article 144 paragraph 1 of the Civil Code.
- <sup>74</sup> Joint Answer of the Minister of Foreign and European Affairs and the Minister of Justice of 18 July 2016 to the parliamentary question n°2155 of 17 June 2016. There have already been applications for family reunification involving polygamous marriages that were rejected on the basis of article 70 (3) of the Immigration Law.
- <sup>75</sup> Article 391 of the Criminal Code
- <sup>76</sup> Answer of the Minister of Foreign and European Affairs of 18 July 2016 to the parliamentary question n°2155 of 17 June 2016
- <sup>77</sup> Article 391 of the Criminal Code
- <sup>78</sup> Joint Answer of the Minister of Foreign and European Affairs and the Minister of Justice to parliamentary question n° 2155 of 17 June 2016, 18 July 2016.
- <sup>79</sup> Article 7(1) of Directive 2003/86/EC stipulates that Member States may require the person who has submitted the application to provide evidence that the sponsor has: accommodation suitable for the size of the family, as well as meeting health and safety standards; sickness insurance; and sufficient resources to provide for himself/ herself and his/ her family.
- <sup>80</sup> Article 69 (1) 2 of the amended law of 29 August 2008. Also Article 9 (1) of the amended Grand-ducal regulation of 5 September 2008 establishing the criteria of resources and accommodation foreseen by the Law of 29 August 2008 on free movement of persons and immigration.
- <sup>81</sup> Article 9 (1) of the amended Grand-ducal regulation of 5 September 2008 establishing the criteria of resources and accommodation foreseen by the Law of 29 August 2008 on free movement of persons and immigration.
- <sup>82</sup> Article 5 of the amended Grand-ducal regulation of 25 February 1979 establishing the criteria of renting, health and hygiene which have to fulfil all rental accommodation
- <sup>83</sup> Article 4 of the amended Grand-ducal regulation of 25 February 1979.
- <sup>84</sup> Article 69 (2) of the amended Law of 29 August 2008.
- <sup>85</sup> Article 69 (1) 3 of the amended Law of 29 August 2008.
- <sup>86</sup> Guichet.lu, Government of the Grand Duchy of Luxembourg, "Family reunification for third-country nationals", URL: <http://www.quichet.public.lu/entreprises/en/ressources-humaines/recrutement/ressortissant-pays-tiers/regroupement-familial/index.html>
- <sup>87</sup> Article 69 (2) of the amended Law of 29 August 2008.

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- <sup>88</sup> Article 69 (1) 1 of the amended law of 29 August 2008.
- <sup>89</sup> Article 6 (1) of the amended Grand-ducal regulation of 5 September 2008 establishing the criteria of resources and accommodation foreseen by the Law of 29 August 2008 on free movement of persons and immigration.
- <sup>90</sup> Article 6 (1) paragraph 2 of the amended Grand-ducal regulation of 5 September 2008 establishing the criteria of resources and accommodation foreseen by the Law of 29 August 2008 on free movement of persons and immigration.
- <sup>91</sup> Article 6 (2) of the amended Grand-ducal regulation of 5 September 2008 establishing the criteria of resources and accommodation foreseen by the Law of 29 August 2008 on free movement of persons and immigration.
- <sup>92</sup> Article 69 (2) of the amended Law of 29 August 2008.
- <sup>93</sup> Art. 7(2) of Directive 2003/86/EC stipulates that Member States may require TCNs to comply with integration measures, in accordance with national law.
- <sup>94</sup> Information provided by the Luxembourgish Reception and Integration Office (OLAI), Ministry of Family, Integration and the Greater Region, telephone interview, 8 November 2016.
- <sup>95</sup> Article 8 of Directive 2003/86/EC stipulates that Member States may require the sponsor to have stayed lawfully on the territory for a period not exceeding two years (or three years by derogation in specific circumstances) before having his/ her family members join him/ her.
- <sup>96</sup> Article 69 (1) of the amended law of 29 August 2008.
- <sup>97</sup> Parliamentary document n° 6992/00 of 18 May 2016. Bill n° 6992 amending 1) the amended Law of 29 August 2008 on free movement of persons and immigration ; 2) amended law of 28 May 2009 on the Detention Centre ; 3) the law of 2 September 2001 regulating the access to the professions of craftsman, merchant and industrial.
- <sup>98</sup> Article 71 a of the amended Law of 29 August 2008.
- <sup>99</sup> Article 71 b of the amended Law of 29 August 2008.
- <sup>100</sup> Article 72 (1) of the amended Law of 29 August 2008.
- <sup>101</sup> Article 6 of Directive 2003/86/EC stipulates that Member States may reject an application for entry and residence of family members on grounds of public policy, public security or public health.
- <sup>102</sup> Information provided by the Directorate of Immigration, interview on 27 October 2016
- <sup>103</sup> Article 9-12 in Chapter V of Directive 2003/86/EC set out more favourable conditions for family reunification of refugees.
- <sup>104</sup> Article 7(1) of Directive 2003/86/EC.
- <sup>105</sup> Article 7(1) of Directive 2003/86/EC.
- <sup>106</sup> Article 9(2) of Directive 2003/86/EC.
- <sup>107</sup> Article 10(3)(b) of Directive 2003/86/EC.
- <sup>108</sup> Article 70 (4) of the amended Law of 29 August 2008.
- <sup>109</sup> Article 70 (5) of the amended Law of 29 August 2008.
- <sup>110</sup> Article 70 (5) c) of the amended Law of 29 August 2008.
- <sup>111</sup> That later became the Law of 18 December 2015 on international protection and temporary protection.
- <sup>112</sup> See [Parliamentary document n° 6779/00 of 19 February 2015](#), p. 47.
- <sup>113</sup> See [Parliamentary document n° 6779/00 of 19 February 2015](#), p. 47.
- <sup>114</sup> Parliamentary document n° 5802/10 of 20 May 2008, p. 6.
- <sup>115</sup> See First instance Administrative Court, 3<sup>rd</sup> Chamber, n° 34065 of 30 April 2015.
- <sup>116</sup> In 2012, the cost of housing represented 15% of the average gross household income or 19% of the average net household income after income tax and social security contributions. See: Statec, Regards sur le coût de logement pour les ménages, n° 22,

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- Novembre 2013, p. 2. The average monthly cost of rent in 2014 was established at 995 €. See Stateg, "Privation matérielle et coûts du logement 2003 – 2014", URL: [http://www.statistiques.public.lu/stat/TableViewer/tableView.aspx?ReportId=12958&IF\\_Language=fra&MainTheme=3&FldrName=1&RFPPath=29](http://www.statistiques.public.lu/stat/TableViewer/tableView.aspx?ReportId=12958&IF_Language=fra&MainTheme=3&FldrName=1&RFPPath=29) As an indicator, the monthly rent price of a studio is 876 € and a two bedroom apartment is 1400 €. The price for a 4-bedroom house is 2500€. See: Luxembourg.public.lu, Le portail officiel du grand-Duché de Luxembourg, "Le Luxembourg au quotidien- cher ou pas cher?", URL: <http://www.luxembourg.public.lu/fr/vivre/qualite-et-cout-de-vie/cout-de-vie/cher-pas-cher/index.html>.
- <sup>117</sup> Information provided by the Directorate of Immigration, interview on 27 October 2016, the Luxembourgish Red Cross, interview on 20 October 2016, Caritas Luxembourg, interview on 20 October 2016 and CLAE asbl., interview on 21 October 2016.
- <sup>118</sup> Information provided by Caritas Luxembourg on 29 November 2016.
- <sup>119</sup> Information provided by Caritas on 12 December 2016.
- <sup>120</sup> Article 69 (1) 1 of the Immigration Law.
- <sup>121</sup> Guaranteed minimum income (RMG) is of 1348,18 €/month per adult, whereas the minimum monthly salary required for a 12-months' period is of 1922,96/month per adult. See: [Social parameters valid since 1 January 2016](#).
- <sup>122</sup> Information provided by the Luxembourgish Red Cross, interview on 20 October 2016, Caritas Luxembourg, interview on 20 October 2016
- <sup>123</sup> Information provided by CLAE asbl., interview on 21 October 2016 and Caritas Luxembourg, interview on 20 October 2016
- <sup>124</sup> Article 4(5) of Directive 2003/86/EC stipulates that Member States may require the sponsor and his/ her spouse to be of a minimum age, and at maximum 21 years, before the spouse is able to join him/ her, in order to ensure better integration and to prevent forced marriages.
- <sup>125</sup> Information provided by the Luxembourgish Red Cross, interview on 20 October 2016, Caritas Luxembourg, interview on 20 October 2016 and CLAE asbl., interview on 21 October 2016.
- <sup>126</sup> Articles 144, 146 and 146-1 of the Civil Code.
- <sup>127</sup> Article 144 of the Civil Code amended by the Law of 4 July 2014.
- <sup>128</sup> Article 145 of the Civil Code amended by the Law of 4 July 2014.
- <sup>129</sup> Exposition of motives of the bill n° 6172A, Parliamentary document n° 6172A/01, 6172A/04 and 6172A/06. See LU EMN NCP, Misuse of the right to family reunification: Marriages of Convenience and False Declaration of Parenthood, Focussed Study, Luxembourg, 2012.
- <sup>130</sup> Article 70 (2) of the amended Law of 29 August 2008.
- <sup>131</sup> Article 69 (1) in accordance with article 70 (2) of the amended Law of 29 August 2008 and articles 144, 146-1 and 170-1 of the Civil Code.
- <sup>132</sup> Information provided by the Directorate of Immigration, 2 December 2016.
- <sup>133</sup> Answer of the Minister of Justice of 7 July 2016 to Parliamentary question n° 2145 of 13 June 2016.
- <sup>134</sup> Article 5 of Directive 2003/86/EC specifies that Member States determine whether, in order to exercise the right to family reunification, an application for entry and residence must be submitted to the competent authorities by the sponsor or his/ her (family) members.
- <sup>135</sup> Article 39 (1) of the amended law of 29 August 2008.
- <sup>136</sup> Information provided by the Directorate of Immigration, 2 December 2016.
- <sup>137</sup> Guichet.lu, Government of the Grand Duchy of Luxembourg, "Autorisation de séjour du membre de famille d'un ressortissant de pays tiers", URL: <http://www.guichet.public.lu/citoyens/catalogue-formulaires/immigration/tiers-regroupement-familial/autorisation-sejour-note/regroupement-familial-tiers-note-FR.pdf>
- <sup>138</sup> Article 39 (1) in accordance with article 69 (1) of the amended law of 29 August 2008.
- <sup>139</sup> Article 73 (5) of the amended Law of 29 August 2008.

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- <sup>140</sup> Guichet.lu, Government of the Grand Duchy of Luxembourg « Family reunification for third-country nationals », URL : <http://www.guichet.public.lu/entreprises/en/ressources-humaines/recrutement/ressortissant-pays-tiers/regroupement-familial/index.html> (last accessed on 21 November 2016).
- <sup>141</sup> Directorate of Immigration, Ministry of Foreign and European Affairs, « Authorisation to stay for a family member of a third-country national », URL : [www.guichet.public.lu/entreprises/catalogue-formulaires/immigration/tiers-regroupement-familial/autorisation-sejour-note/regroupement-familial-tiers-note-EN.pdf](http://www.guichet.public.lu/entreprises/catalogue-formulaires/immigration/tiers-regroupement-familial/autorisation-sejour-note/regroupement-familial-tiers-note-EN.pdf)
- <sup>142</sup> Article 73 (3) of the amended law of 29 August 2008.
- <sup>143</sup> LU EMN NCP answer to NL EMN NCP Ad-Hoc Query on Checking identity and family relationships in case of family reunification with a beneficiary of international protection launched on 8 June 2016.
- <sup>144</sup> Article 73 (2) of the amended law of 29 August 2008.
- <sup>145</sup> First instance Administrative Court, second chamber, n° 23176 of 27 February 2008 and First instance Administrative Court, n° 38236 of 26 July 2006 and Information provided by the Directorate of Immigration, interview on 27 October 2016.
- <sup>146</sup> Information provided by the Directorate of Immigration, interview on 27 October 2016.
- <sup>147</sup> Article 70 (5) a) of the amended law of 29 August 2008.
- <sup>148</sup> See judgment of the First instance Administrative Court, n° 36309 and n° 36310, 1<sup>st</sup> Chamber of 4 July 2016.
- <sup>149</sup> Article 70 (5) b) of the amended law of 29 August 2008.
- <sup>150</sup> Article 133 (1) and (2) and 134 of the amended law of 29 August 2008.
- <sup>151</sup> See LU EMN NCP, Migrant access to social security and healthcare: policies and practice, Luxembourg, EMN Main Study, 2014, p. 53. In regards to healthcare, the access is immediate if there is an obligatory contribution. However, if it is a voluntary contribution, there is a trial period of three months.
- <sup>152</sup> Article 6 (1) of the amended Grand-ducal regulation of 5 September 2008 establishing the criteria of resources and accommodation foreseen by the Law of 29 August 2008 on free movement of persons and immigration.
- <sup>153</sup> Guichet.lu, Government of the Grand Duchy of Luxembourg, “s’affilier à la sécurité sociale et se faire rembourser ses soins de santé en tant que personne bénéficiant d’un revenu de remplacement”, URL <http://www.guichet.public.lu/citoyens/fr/sante-social/affiliation-remboursement/prestations-personnes-inactives/revenu-remplacement/index.html>
- <sup>154</sup> Article 6 (2) of the amended regulation of 5 September 2008.
- <sup>155</sup> Article 6 (1) of the amended Grand-ducal regulation of 5 September 2008 establishing the criteria of resources and accommodation foreseen by the Law of 29 August 2008 on free movement of persons and immigration.
- <sup>156</sup> Article 133 of the amended law of 29 August 2008.
- <sup>157</sup> Article 138 of the amended law of 29 August 2008.
- <sup>158</sup> Article 6 (1) paragraph 1 of the amended regulation of 5 September 2008.
- <sup>159</sup> Article 6 (1) paragraph 2 of the amended regulation of 5 September 2008.
- <sup>160</sup> This is laid down in Article 17 of Directive 2003/86/EC, as well as the principles of effectiveness and proportionality (as interpreted by the CJEU in K. and A., paragraph 60 and O.S and L, paragraph 81) and the EU Charter of Fundamental Rights (O.S. and L, paragraphs 77, 78 and 80).
- <sup>161</sup> Information provided by the Directorate of Immigration, 2 December 2016.
- <sup>162</sup> See First instance Administrative Court, 3rd Chamber n° 30584 of 27 February 2013.
- <sup>163</sup> Cour d’Appel, 7 March 1908
- <sup>164</sup> See LU EMN NCP answer to SK Ad-hoc query on the criteria for application of exclusion clause – danger to the community and danger to the state security – while reviewing the applications for international protection launched on 6 September 2016.
- <sup>165</sup> According to article 39 (1) all the application of family reunification must be submitted from abroad.

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<sup>166</sup> Article 41 (1) of the amended law of 29 August 2008.

<sup>167</sup> Article 5 of Directive 2003/86/EC

<sup>168</sup> Article 388 of the Civil Code.

<sup>169</sup> Article 2 I) of the Law of 18 December 2015.

<sup>170</sup> See definitions established in article 3 of the amended Law of 29 August 2008.

<sup>171</sup> Article 3 (1) of the Convention on the Rights of the Child of 20 November 1989 transposed into national law by Law of 20 December 1993, published in the Memorial A-104 of 29 December 1993.

<sup>172</sup> *Wagner and J.M.W.L. v. Luxembourg*, n° 76240/01 of 28 September 2007.

Under an enforceable Peruvian judgment Ms Wagner, a national of Luxembourg, legally adopted a three-year-old girl in Peru who had been declared abandoned (the applicants). They brought a civil action to have the Peruvian judgment declared enforceable in Luxembourg for purposes, in particular, of the child's civil registration, acquisition of Luxembourg nationality (she still had Peruvian nationality) and permanent residence in Luxembourg. The court rejected the request on the ground that the Peruvian full adoption judgment had been in contradiction with the laws of Luxembourg, which were applicable under the conflict-of-law rule enshrined in the Civil Code and which prohibited full adoption by a single person. The applicants appealed, contending *inter alia* (in a section entitled "Public Policy Implications") that in placing Luxembourg law above an international agreement in order to refuse execution, the judgment was incompatible with Article 8 of the Convention. See: [Information Note on the Court's case-law No. 98](#), June 2007, Council of Europe/European Court of Human Rights, *Wagner and J.M.W.L v. Luxembourg* - 76240/01 Judgment 28.6.2007 [Section I]

<sup>173</sup> See First instance Administrative Court, n° 38236, of 26 July 2006.

<sup>174</sup> *Maryse Hansen et Nathalie Koedinger*, « L'intérêt supérieur de l'enfant », *Forum*, n° 284, March 2009, p. 43. This service indicates that when applying the best interest of the child they focus on the psychological and physical well-being of the child.

<sup>175</sup> Goeders, Tom, Direction de l'Immigration, Pratique et législation nationales sur le regroupement familial, Session II : L'article 8 CEDH et le regroupement familial, Powerpoint presentation, Luxembourg, 27 Septembre 2016, slide 6. See also First instance Administrative Court, 3rd Chamber, n° 30740 of 17 April 2013.

<sup>176</sup> First instance Administrative Court, second chamber, n° 23176 of 27 February 2008 and First instance Administrative Court, n° 38236 of 26 July 2006.

<sup>177</sup> Article 73 (6) of the amended law of 29 August 2008.

<sup>178</sup> Article 73 (6) of the amended law of 29 August 2008.

<sup>179</sup> Information provided by the Directorate of Immigration, interview on 27 October 2016.

<sup>180</sup> Information provided by the Directorate of Immigration, interview on 27 October 2016.

<sup>181</sup> Information provided by the Directorate of Immigration, interview on 27 October 2016, the Luxembourgish Red Cross, interview on 20 October 2016, Caritas Luxembourg, interview on 20 October 2016 and CLAE asbl., interview on 21 October 2016.

<sup>182</sup> First instance Administrative Court, second chamber, n° 23176 of 27 February 2008.

<sup>183</sup> LU EMN NCP answer to NL EMN NCP Ad-Hoc Query on checking identity and family relationships in case of family reunification with a beneficiary of international protection launched on 8 June 2016.

<sup>184</sup> Information provided by the Luxembourgish Red Cross, interview on 20 October 2016 and Caritas Luxembourg interview on 20 October 2016.

<sup>185</sup> Information provided by the Directorate of Immigration, 2 December 2016.

<sup>186</sup> Goeders, Tom, Direction de l'Immigration, Pratique et législation nationales sur le regroupement familial, Session II : L'article 8 CEDH et le regroupement familial, Powerpoint presentation, Luxembourg, 27 Septembre 2016, slide 9.

<sup>187</sup> Goeders, Tom, Direction de l'Immigration, Pratique et législation nationales sur le regroupement familial, Session II : L'article 8 CEDH et le regroupement familial, Powerpoint presentation, Luxembourg, 27 Septembre 2016, slide 9.

<sup>188</sup> Information provided by the Directorate of Immigration, 2 December 2016.

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- <sup>189</sup> Article 69 (2) of the amended Law of 29 August 2008.
- <sup>190</sup> Goeders, Tom, Direction de l'Immigration, Pratique et législation nationales sur le regroupement familial, Session II : L'article 8 CEDH et le regroupement familial, Powerpoint presentation, Luxembourg, 27 Septembre 2016, slide 9.
- <sup>191</sup> Information provided by the Directorate of Immigration, interview on 27 October 2016, the Luxembourgish Red Cross, interview on 20 October 2016, Caritas Luxembourg, interview on 20 October 2016 and CLAE asbl., interview on 21 October 2016.
- <sup>192</sup> Goeders, Tom, Direction de l'Immigration, Pratique et législation nationales sur le regroupement familial, Session II : L'article 8 CEDH et le regroupement familial, Powerpoint presentation, Luxembourg, 27 Septembre 2016, slide 8.
- <sup>193</sup> Luxembourgish Red Cross, interview on 20 October 2016 and Caritas Luxembourg, interview on 20 October 2016.
- <sup>194</sup> Goeders, Tom, Direction de l'Immigration, Pratique et législation nationales sur le regroupement familial, Session II : L'article 8 CEDH et le regroupement familial, Powerpoint presentation, Luxembourg, 27 Septembre 2016, slide 8.
- <sup>195</sup> Goeders, Tom, Direction de l'Immigration, Pratique et législation nationales sur le regroupement familial, Session II : L'article 8 CEDH et le regroupement familial, Powerpoint presentation, Luxembourg, 27 Septembre 2016, slide 8.
- <sup>196</sup> Goeders, Tom, Direction de l'Immigration, Pratique et législation nationales sur le regroupement familial, Session II : L'article 8 CEDH et le regroupement familial, Powerpoint presentation, Luxembourg, 27 Septembre 2016, slide 10.
- <sup>197</sup> Service Migrants et Réfugiés, Croix-Rouge luxembourgeoise, Rétablissement des Liens Familiaux (RLF) et regroupement familial, presentation powerpoint, Luxembourg, 27 September 2016, slide 7.
- <sup>198</sup> International Committee of the Red Cross, « Le rétablissement des liens familiaux au Luxembourg », URL : <https://familylinks.icrc.org/fr/pages/pays/luxembourg.aspx>
- <sup>199</sup> Information provided by the Luxembourgish Red Cross on 6 December 2016.
- <sup>200</sup> LU EMN NCP answer to LU EMN NCP Ad-hoc Query on family tracing of unaccompanied minors launched on 16 July 2015.
- <sup>201</sup> Information provided by the Luxembourgish Red Cross on 6 December 2016.
- <sup>202</sup> Article 14 of Directive 2003/86/EC in your (Member) State stipulates that family members are entitled (the same way as the sponsor) to access education, employment and self-employed activity, as well as vocational guidance and training. Article 15 of Directive 2003/86/EC additionally specifies that family members are entitled to apply for autonomous right of residence after no more than five years, independent of that of the sponsor (also in case of dissolution of family ties).
- <sup>203</sup> Article 74 (2) of the amended law of 29 August 2008.
- <sup>204</sup> CASNA (*Cellule d'accueil scolaire pour élèves nouveaux arrivants*) is a unit inside the Ministry of National Education, Childhood and Youth that guides the student, based on his school record, towards a school corresponding to his profile, *Ministère de l'Éducation nationale, de l'Enfance et de la Jeunesse*, URL: <http://www.men.public.lu/fr/systeme-educatif/scolarisation-eleves-etrangers/informations-parents/index.html>.
- <sup>205</sup> Ministry of National Education, Childhood and Youth, September 2012, « *Informations concernant l'accueil des demandeurs de protection internationale destinés aux directions de l'enseignement postprimaire et aux membres des SPOS* », [http://www.men.public.lu/fr/systeme-educatif/scolarisation-eleves-etrangers/informations-enseignants/demandeurs-protection-internationale/130218\\_info\\_lycees.pdf](http://www.men.public.lu/fr/systeme-educatif/scolarisation-eleves-etrangers/informations-enseignants/demandeurs-protection-internationale/130218_info_lycees.pdf) .
- <sup>206</sup> Ministry of National Education, Childhood and Youth, 2016, *rapport d'activité 2015*, p.78.
- <sup>207</sup> Ministry of National Education, Childhood and Youth, November 2016, "Guide pédagogique pour enseignants de l'école fondamentale", URL: <http://www.men.public.lu/catalogue-publications/themes-transversaux/scolarisation-eleves-etrangers/brochures-enseignants/accueillir-integrer/fr.pdf> and [grand ducal regulation of 16 June 2009 establishing the functioning of reception courses and of the reception classes for new arrival students in accordance with the law of 6 February 2009 on the organisation of fundamental education.](#)
- <sup>208</sup> Ministry of National Education, Childhood and Youth, 2016, *rapport d'activité 2015*, p.78.
- <sup>209</sup> Ministry of National Education, Childhood and Youth, 2016, *rapport d'activité 2015*, p.78.
- <sup>210</sup> L'Essentiel, 3 Mai 2016, « Les enfants de réfugiés s'intègrent bien à l'école », URL : <http://www.lessentiel.lu/fr/luxembourg/story/12790485>

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- <sup>211</sup> Answer of the Minister of National Education, Childhood and Youth to Parliamentary Question n° 1984 of 5 April 2016 concerning the schooling of refugee children, URL: <http://www.men.public.lu/fr/actualites/articles/questions-parlementaires/2016/05/03-gp-1984/engel.pdf>
- <sup>212</sup> Ministry of National Education, Childhood and Youth, 2016, rapport d'activité 2015, p.79.
- <sup>213</sup> Ministry of National Education, Childhood and Youth, 2016, rapport d'activité 2015, pp.77-78.
- <sup>214</sup> It was instituted by the Law of 16 December 2008 on the Reception and Integration of Foreigners in the Grand Duchy of Luxembourg. The CAI was officially launched on 29 September 2011.
- <sup>215</sup> In addition to Directive 2003/86/EC, there are further Legal Migration Directives containing specific provisions on access to employment of family members of certain sponsors, for example, family members of Blue Card holders or ICTs.
- <sup>216</sup> Article 22 paragraph 1 of the amended law of 29 August 2008.
- <sup>217</sup> The labour market test works in the following manner: Any employer who wants to hire a third-country national employee must declare the position vacant at the ADEM. This declaration allows the ADEM to verify if there are job seekers available for that position who benefit of an employment priority ("priorité d'embauche") on the national or European labour market. If the position cannot be taken by a national or European citizen (EU or EEA) job seeker registered at the ADEM, the employer is authorised to hire a third-country national after a deadline of 3 weeks and under certain conditions. The Director of the ADEM will issue a certificate authorising the employer to hire a third-country national for the position. When the third-country national has passed the labour market test s/he can apply for an authorisation of stay and must fulfil the conditions established in article 42 (1) 1-4 of the amended law of 29 August 2008. See Article 622-4 of the Labour Code. See
- <sup>218</sup> Article 42 of the amended law of 29 August 2008.
- <sup>219</sup> Article 51 of the amended law of 29 August 2008.
- <sup>220</sup> Article 45 (1) of the amended law of 29 August 2008.
- <sup>221</sup> Article L. 622-4 (1) of the Labour Code expressly mentions that in the interest of maintaining full employment, of the analysis of the labour market and of taking motivated decisions in regards to employment of third-country nationals, every vacant position must be posted at the ADEM. The ADEM will try to find a job seeker (EU/EEA citizen or third-country national legally residing in the territory) who can fulfil the requirements for the position. If the ADEM is not capable of providing an adequate candidate within three weeks after the declaration of the vacancy, the ADEM must issue a certificate to the employer so s/he can hire a person of his/her choice. See LU EMN NCP, DETERMINING LABOUR SHORTAGES AND THE NEED FOR LABOUR MIGRATION FROM THIRD COUNTRIES IN THE EU, Luxembourg, 2015, p. 5.
- <sup>222</sup> Directorate of Immigration, Interview of 27 October 2014.
- <sup>223</sup> Article 43 (2) of the amended law of 29 August 2008.
- <sup>224</sup> Article 51 of the amended law of 29 August 2008.
- <sup>225</sup> Article 45 (1) of the amended law of 29 August 2008.
- <sup>226</sup> Article 74 (2) of the amended law of 29 August 2008.
- <sup>227</sup> Article 76 (1) in regards to article 79 (1) of the amended law of 29 August 2008.
- <sup>228</sup> Article 76 of the amended law of 29 August 2008.
- <sup>229</sup> See article 2 (2) of the [Law of 29 April 1999 on the creation of the Guaranteed minimum income](#)
- <sup>230</sup> See article 2 (1) a – d of the [Law of 29 April 1999 on the creation of the Guaranteed minimum income](#)
- <sup>231</sup> Article 1 of the amended law of 18 December 2009 organising social aid.
- <sup>232</sup> Article 2 of the amended law of 18 December 2009 organising social aid.
- <sup>233</sup> Article 3 of the amended law of 18 December 2009.
- <sup>234</sup> Article 4 of the amended law of 18 December 2009.
- <sup>235</sup> Article 6 and 7 of the Law of 23 October 2008 on Luxembourgish Nationality.
- <sup>236</sup> Article 69 (2) in accordance with article 74 (1) of the amended Law of 29 August 2008.

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<sup>237</sup> Article 56 (2) of the Law of 18 December 2015.

<sup>238</sup> Article 75 (1) of the amended Law of 29 August 2008.

<sup>239</sup> Article 77 (1) of the amended Law of 29 August 2008.

<sup>240</sup> Article 16 of Directive 2003/86/EC

<sup>241</sup> Article 17 and Article 24 of the Charter

<sup>242</sup> Information provided by CLAE asbl., interview on 21 October 2016.

<sup>243</sup> Wagner and J.M.W.L. v. Luxembourg, n° 76240/01 of 28 September 2007. URL:  
<http://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2276240/01%22%5D,%22itemid%22:%5B%22001-81328%22%5D%7D>

<sup>244</sup> See [information note n° 98](#) on the Wagner and J.M.W.L. v. Luxembourg, 76240/01.

<sup>245</sup> Ms Alopka is a Togolese national who was irregular staying in Luxembourg after having applied for international protection.

<sup>246</sup> Administrative Court, n° 29435C of 16 July 2012.

<sup>247</sup> Administrative Court, n° 28952C of 16 July 2012.