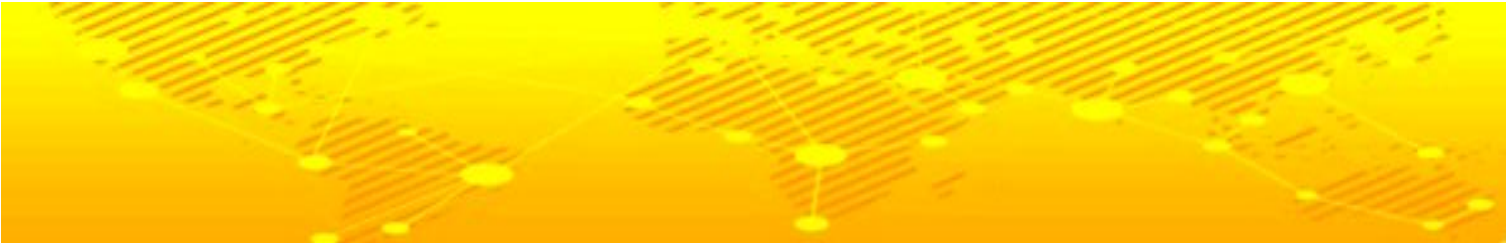




2012

Policy report on migration and asylum

European Migration Network
National Contact Point Luxembourg



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The European Migration Network, created by Decision No 2008/381/EC of the Council dated 14 May 2008, has the aim of providing up-to-date, objective, reliable and comparable information on immigration and asylum to Union institutions, authorities and institutions of Member States and the general public with a view to supporting policymaking and facilitate the decision-making process within the European Union.



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PREFACE

The opinions and interpretations expressed in this report belong exclusively to their authors. They do not necessarily reflect the positions of the Ministry of Family and Integration, nor of the Ministry of Foreign Affairs.

The present report was drawn up by Lisa Li and Adolfo Sommaribas, members of the National Contact Point Luxembourg within the European Migration Network (LU EMN NCP) under the responsibility and coordination of Christel Baltes-Löhr, University of Luxembourg, with the ongoing support of Sylvain Besch, CEFIS - Centre for Intercultural and Social Study and Training; Germaine Thill, STATEC (National Statistics Institute); Sylvie Prommenschenkel, Directorate of Immigration, Ministry of Foreign Affairs and Marc Hayot, Luxembourg Reception and Integration Agency, Ministry of Family and Integration.

This version is a translation of the original report. The French version shall prevail.

SYNTHESIS

The policy report on migration and asylum, intended for the European Migration Network (EMN), provides a glance into Luxembourg's main political debates and developments in this field during the year 2012. The issue of migration was the subject of a number of important political debates, which were related to either legislative changes or to concrete issues and situations.

Whereas various subjects prevailed in the general political debates, such as the economic crisis, the pension system reform and the school system reform, these questions have been mainly discussed without taking into consideration neither the demographic situation particular to Luxembourg, nor the fact that Luxembourg is constituted of 43% non-nationals and that its domestic employment has a workforce composed of 68% foreigners who are residents or cross border workers.

In this context, three themes have dominated the political debates in 2012: migration flows in relation to the free movement of EU citizens, the reception and social aid of international protection applicants and the debate on the nationality reform.

Migration flows in relation to the free movement of EU citizens, with Luxembourg as a destination and coming from the countries of southern Europe, which have been seriously affected by the crisis, have raised some concerns among non-governmental organisations, politics and the media. The question of the right of residence of EU citizens came up regarding the "unreasonable charge" that these people put on the social welfare system.

As in 2011, the year 2012 has been particularly marked by the debate on international protection. Luxembourg continues to be confronted to an important amount of arrivals of international protection applicants, 2/3 coming from one of the 5 countries of former Yugoslavia. On the political, as well as on the public level, this situation weighed heavily on the structures in charge of international protection, whether it were reception or accommodation centres or those responsible for the assessment of applications for international protection.

The authorities, who consider the increase as a direct consequence of the liberalisation of the visa regime for the Balkan countries, attempt to limit the rise of these applications. Therefore, Luxembourg intervenes, together with other Member States, at the European Commission level, but it also continues to dialogue with the authorities of the countries of origin in order to curb migration flows.

Luxembourg maintains its voluntary return policy mainly by collaborating with the International Organization for Migration (IOM) in the context of the European Returns Fund (ERF). In 2012, the number of returns has tripled when compared to the previous year, a rise that is related to the high influx of international protection applicants. 96% of the returns concern Balkan nationals.

In order to manage the rise of international protection applications, Luxembourg has recruited additional personnel who deal with the applications. The Ministry of Labour, Employment and Immigration has asked the European Asylum Support Office (EASO) for help in order to provide the personnel with the necessary knowledge of EU asylum *acquis*.

The Grand-Ducal Regulation of 8 June 2012 on social aid for international protection applicants has significantly reduced the financial allocation they receive every month. The bill raised a lot of reactions from various actors of civil society, who estimated that the measures foreseen were against the dignity of international protection applicants. Nevertheless, the Grand-Ducal Regulation, which was approved and published, maintains the reduction of the monthly allocation while specifying that it can be completed by in-kind assistance or vouchers.

The idea of introducing a quota system for the accommodation of international protection applicants was abandoned even though $\frac{3}{4}$ of the communes of the Grand-Duchy declared themselves ready to accommodate international protection applicants after a joint call for solidarity by the Ministry for Family and Integration (MIFA) and the Federation of Luxembourgish Cities and Communes (SYVICOL).

As in 2011, the local population showed a certain hostility towards the reception of international protection applicants by linking them to a rise in criminality. All year long, various initiatives and voices warned the population of the risk of a rise in racism and xenophobia.

Regarding integration, the debate on the reform of the Law of 23 November 2008 on nationality prevailed in the news. The evaluation report of the legislation in question showed the impact of this law, which introduced the idea of pluri-nationality. The Luxembourgish nationality acquisitions more than tripled since the entry into force of the law in 2009.

In order to achieve a large consensus, the responsible minister launched an open consultation of civil society (organisations, individuals) and a debate in the Chamber of Deputies. A significant number of contributions from civil society as well as from the academic world have enriched the debate, which was concluded by a consultation debate in the Chamber of Deputies. This was the last step before the bill on the reform of the law of nationality was introduced.

One also has to highlight the institutional evolutions that took place within the framework of implementing the Law of 16 December 2008 on the reception and integration of foreigners in the Grand-Duchy of Luxembourg, the so-called “Integration Law”. One should mention the establishment of consulting organs on the communal level – the Communal Consultative Commissions on integration (CCI) - and on the national level - the National Council for Foreigners (CNE), as well as the development of the Reception and Integration Contract (CAI) launched in 2011. The Luxembourg Reception and Integration Agency (OLAI) in charge of the implementation of the integration policy in Luxembourg has put in place a local integration strategy and encourages communes to start innovative projects favouring integration.

Apart from the new Grand-Ducal Regulation on social aid for international protection applicants, there has been one major legislative modification in 2012: the transposition into national law of the Directive 2009/52/CE. It has not been the subject of a major debate, even though various actors have expressed controversial opinions during the law making process. During the adoption of the bill, the Minister for Labour, Employment and Immigration announced an exceptional regularisation measure for third country national workers who are irregular migrants. This was also presented as an opportunity for employers to comply with the law as the transposition of the “sanctions” Directive aims to enhance controls and sanctions against defaulting employers.

The struggle against irregular migration is completed by the adoption of further laws on the approbation of take over and readmission agreements or aiming to fight the illegal trafficking of migrants.

Other reforms which started in 2011 and were completed in 2012 are : the reform of the Employment Administration with the modification of the procedure regarding access to work for third country nationals and the entry into force of the Law of 8 December 2011 which transposes into national law Directive 2009/50/CE, the so called “Blue Card Directive”.

PRELIMINARY CONSIDERATIONS

1. METHODOLOGY

The first two chapters relate to the general evolution of the political and legal system in Luxembourg as well as the political and institutional developments in relation to asylum and migration. Whilst highlighting developments during the year 2012, we refer to the legislative framework and to several legal provisions adopted prior to 2012.

For each subject, under the heading “The general context prior to 2012”, we first of all include general information considered important in order to better understand developments which have occurred recently. Secondly, we deal with developments at a national level in 2012 under the heading “Developments at a national level”. Finally, developments associated with the implementation of European policies, and the transposition of European directives, have been included under the heading “Developments in the European context”, whilst the debates and concerns expressed in the legislative process are included under the heading “Developments at a national level”.

In order to determine the significance of the events or debates, account has been taken of several criteria:

- media coverage of the debate;
- impact of the debate on the political discussions accompanying the legislative process;
- number and type of actors (non-governmental organisations, unions, political parties, Deputies, parliamentary groups, media, members of government, etc.) intervening or involved in the debate.

Account has also been taken of reference documents such as studies and reports in relation to migration and asylum which have fed the debate on migration policy in Luxembourg.

The principal sources of information used are:

- information provided by national, government and non-government experts;
- systematic monitoring of parliamentary debates and questions;
- systematic consultation of all the press articles written in the main daily and weekly newspapers in Luxembourg;
- the detection of reference documents (studies, activity reports from various actors, etc.);
- contacts with non-governmental organisations active in the fields of migration and asylum;
- consultation of the positions taken by non-governmental organisations;
- systematic consultation of the internet sites of Ministries, non-governmental organisations, etc.
- consultation of the database on administrative case law regarding migration and international protection by the National Contact Point Luxembourg within the European Migration Network.¹

Luxembourg has some specific characteristics regarding migration and its population: 86,4% of non-Luxembourgish nationals are European Union citizens (198.700) and 13,6% are third country nationals (31.200).² 43,9% of the domestic employment consists of cross-border workers.³ Politics and the debates on immigration as well as integration issues cannot be understood without taking into consideration this specific reality. We have mentioned these dimensions whenever they appeared relevant for the policies and general debates on immigration and integration.

In certain chapters, we have also mentioned the recent developments that have occurred in the beginning of 2013, with the purpose of giving the report some added value on the national level.

¹ www.emnluxembourg.lu

² STATEC 2013, <http://www.statistiques.public.lu/fr/population-emploi/index.html>

³ ADEM, Bulletin luxembourgeois de l'emploi N°12, décembre 2012.

2. TERMINOLOGY AND DEFINITIONS

As for terminology, we refer to the terms used in the Glossary of the European Migration Network⁴.

The term *foreigner* is the one defined in Article 3(a) of the Law of 29 august 2008 on the free movement of people and immigration⁵ of 29 August 2008, which stipulates that a foreigner is “any person who does not possess the Luxembourg nationality, either who exclusively possesses another nationality, or who possesses none”.

⁴ The EMN Asylum and Migration Glossary 2.0 is available on the following website:

<http://www.emn.europa.eu>

⁵ <http://www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf#page=2>

3. LIST OF ABBREVIATIONS USED

ADEM	<i>Agence pour le développement de l'emploi</i> (Employment Development Agency)
ADR	<i>Alternativ Demokratesch Reformpartei</i>
AFR	<i>Aides à la formation-recherche</i> (Research-training assistance)
APESS	<i>Association des Professeurs de l'Enseignement secondaire et supérieur du Grand-Duché de Luxembourg</i>
ASTI	<i>Association de soutien aux travailleurs immigrés</i> (Association for the Support of Immigrant Workers)
AVVR-L	<i>Assistance au Retour Volontaire et à la Réintégration</i> (Assistance for Voluntary Return and Reintegration)
CAI	<i>Contrat d'accueil et d'intégration</i> (Reception and Integration Contract)
CBP	<i>Common Basic Principles</i>
CC	<i>Chambre de Commerce Luxembourg</i> (Luxembourg Chamber of Commerce)
CCDH	<i>Commission consultative des Droits de l'Homme</i> (Consultative Commission on Human Rights)
CCI	<i>Commission consultative d'intégration</i> (Consultative Commission on Integration)
CEFIS	<i>Centre d'étude et de formation interculturelles et sociales</i> (Centre for Intercultural and Social Studies and Training)
CET	<i>Centre pour l'égalité de traitement</i> (Centre for Equal Treatment)
CITP	<i>Classification internationale type des professions</i> (International Standard Classification of Occupations)
CLAE	<i>Comité de liaison et d'action des étrangers</i> (Foreigners' Liaison and Action Committee)
CNE	<i>Conseil national pour étrangers</i> (National Council for Foreigners)
CNS	<i>Caisse nationale de Santé</i> (National Health Fund)
CSL	<i>Chambre des Salariés Luxembourg</i> (Luxembourg Chamber of Salaried Workers)
DP	<i>Parti démocratique</i> (Democratic Party)
EASO	<i>European Asylum Support Office</i>
ECRI	<i>European Commission against Racism and Intolerance</i>
EIF	<i>European Integration Fund</i>
EMN	<i>European Migration Network</i>
ERF	<i>European Refugee Fund</i>
EU	<i>European Union</i>

FNR	<i>Fonds National de la Recherche</i> (National Research Fund)
FRONTEX	<i>European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union</i>
UNHCR	<i>United Nations High Commissioner for Refugee Rights</i>
IGSS	<i>Inspection générale de la sécurité sociale</i> (General Inspectorate for Social Security)
INAP	<i>Institut national d'administration publique</i> (National Public Administration Institute)
IPA	<i>International protection applicant</i>
ITM	<i>Inspection du Travail et des Mines</i> (Labour and Mining Inspectorate)
LCGB	<i>Lëtzebuenger Chrëschtliche Gewerkschaftsbond</i> (Luxembourgish Christian Trade Union)
LFR	<i>Lëtzebuenger Flüchtlingsrot</i> (Refugee Collective Luxembourg)
LSAP	<i>Parti ouvrier socialiste luxembourgeois</i> (Luxembourgish Socialist Labour Party)
LU EMN NCP	<i>European Migration Network- National Contact Point Luxembourg</i>
MAE	<i>Ministère des affaires étrangères</i> (Ministry of Foreign Affairs)
MENFP	<i>Ministère de l'Education nationale et de la Formation professionnelle</i> (Ministry of National Education and Professional Training)
MIFA	<i>Ministère de la Famille et de l'Intégration</i> (Ministry for Family and Integration)
MYO	<i>Migrer les Yeux Ouverts</i> (Migrating with Open Eyes)
NGO	<i>Non-governmental organisation</i>
OGBL	<i>Onofhängege Gewerkschaftsbond Lëtzebuerg</i> (Independent Trade Union)
OIM	<i>Organisation internationale pour les migrations</i> (International Organisation for Migration)
OLAI	<i>Office luxembourgeois de l'accueil et de l'intégration</i> (Luxembourgish Reception and Integration Agency)
RETEL	<i>Réseau d'étude sur le marché du travail et de l'emploi</i> (Study Network on the Labour and Employment Market)
RMG	<i>Revenu minimum garanti</i> (Minimum guaranteed salary)
SEW	<i>Syndikat Erziehung a Wëssenschaft</i> (Union for Education and Science)
SIS	<i>Schengen Information System</i>
STATEC	<i>Institut National de la Statistique et des Études Économiques du Grand-Duché du Luxembourg</i> (National Institute for Statistics and Economic Studies of the Grand Duchy of Luxembourg)
SYVICOL	<i>Syndicat des Villes et Communes Luxembourgeoises</i> (Federation of Luxembourg Towns and Communes)

VAE	<i>Validation des acquis de l'expérience</i> (Accreditation of Prior Learning)
VIS	<i>Visa Information System</i>

1. THE STRUCTURE OF MIGRATION POLICY IN LUXEMBOURG

1.1 The structure of the political system and the institutional context

The structure of the political system and the institutional context of Luxembourg were described in detail in the policy reports on migration and asylum for the years 2008, 2009, 2010 and 2011.⁶

1.1.1. Process for a global reform of the Constitution

The amendment of the Constitution by the Law of 12 March 2009⁷ revived the debate on a systematic revision of the Constitution. That same year a proposed revision of the Constitution was introduced to the Chamber of Deputies⁸. On 21 July 2011 the Government took its position on the proposed revision⁹, which covers 145 articles¹⁰.

During 2012, the opinions of the Council of State¹¹, the Venice Commission¹², the High Court of Justice, the Public Prosecutor, the Administrative Court¹³, the Federation of Luxembourg

⁶ LU EMN NCP, Policy report on migration and asylum, 2008, 2009, 2010 and 2011,

<https://www.emnluxembourg.lu/PUBLICATIONS/policy-reports>

⁷ Law of 12 March 2009 on revising Article 34 of the Constitution which removed the right of sanction of laws by the Grand Duke, following the latter's refusal to sign the Law on euthanasia and as a consequence of the wish expressly stated by the Sovereign, and which reduced the prerogatives of the Grand Duke to the promulgation of laws, Memorial A No 43 dated 12 March 2009,

<http://www.legilux.public.lu/leg/a/archives/2009/0043/2009A0586A.html>

⁸ Proposed revision amending and re-organising the Constitution, Parliamentary Document 6030/00,

<http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6030>

See also LU EMN NCP, Policy report on migration and asylum 2010,

<http://www.emnluxembourg.lu/PUBLICATIONS/policy-reports>

⁹ Proposed revision amending and re-organising the Constitution, Parliamentary Document 6030/5

<http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6030>

¹⁰ For more details see: LU EMN NCP, Policy report on migration and asylum 2011,

<https://www.emnluxembourg.lu/type-documentation/rapport-politique-sur-les-migration-et-lasylum-2011>

¹¹ Opinion of the Council of State,

http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServingServletImpl/?path=/export/exped/sexpdata/Mag/150/146/114495.pdf

¹² Interim opinion of the Venice Commission. This opinion, issued in 2009, appeared in the parliamentary documentation in 2012,

http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServingServletImpl/?path=/export/exped/sexpdata/Mag/179/121/117280.pdf

¹³ Opinion of the High Court of Justice,

Towns and Communes¹⁴ and the Consultative Commission on Human Rights of the Grand Duchy of Luxembourg¹⁵ were published. In June 2012 the Commission for Institutions and Constitutional Revision began its work.

The opinion of the Council of State drafted “*from the perspective of a general update of the Constitutional text*”¹⁶ has widened the considerations undertaken thus far.

Several actors (Council of State, Venice Commission, CCDH¹⁷) raised the question of the opportunity to include a basis of fundamental rights in the Constitution, although fundamental rights are protected at an international level and case law holds that the European Convention on Human Rights prevails over the Constitution¹⁸. The debate was also widened to the question of nationality and political rights. Like the Venice Commission¹⁹ and the Council of State, the CCDH considers that the new reform of the Constitution should be the occasion for establishing a precise and complete catalogue of fundamental rights and to adapt the current article relating to political rights, particularly within the context of prisoners.²⁰ Nevertheless, in contrast to the Council of State, it suggests that, with regard to the exercise of political rights, no distinction should be established on this point between European Union citizens who are not Luxembourgish and third country nationals.

In 2011, the government had suggested amending the text of the proposal so as to restrict Article 111²¹ of the Constitution to persons in a regular situation: “*Any person to be found legally on the territory of the Grand Duchy shall enjoy the protection granted to persons and*

http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/168/161/116670.pdf

¹⁴ Opinion of the SYVICOL,

http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/178/176/117775.pdf

¹⁵ Opinion of the CCDH,

http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/190/124/118293.pdf

¹⁶ Opinion of the Council of State, page 6.

¹⁷ The CCDH makes two observations: on the one hand, that a number of rights guaranteed by these conventions are not included in the Luxembourg Constitution. On the other hand, that the conditions generally imposed by international conventions to the limits of fundamental rights and freedoms (cf. inter alia paragraphs 2 of Articles 8, 9, 10 and 11 ECHR) differ from the conditions imposed by the Luxembourg Constitution.

¹⁸ Cour supérieure de justice, (Appeal), 13 November 2001, No 396/01, published by extracts in G. FRIDEN and P. KINSCH, *Luxembourg practice with regard to Public International Law*, Annals of Luxembourg Law, 2002, pp. 455 ff.

¹⁹ “One may thus conclude that the Luxembourg constituent should develop a national catalogue of fundamental rights as ambitious and as complete as possible which takes account of the specific features of the national context. Consideration should therefore be given to the possibility of inserting certain fundamental rights in the Constitution specifically associated with the Luxembourg context. The Venice Commission furthermore encourages the Luxembourg constituent to go in this direction.”

²⁰ Article 53 of the Constitution (Article 65 in the numbering of the proposed revision)

²¹ Article 111: *Any foreigner to be found on the territory of the Grand Duchy shall enjoy the protection granted to persons and property, other than the exceptions established by the Law.*

property, other than the restrictions established by the Constitution and the Laws". The Council of State recommended the following wording: *"Any foreigner to be found on the territory shall enjoy the protection granted to persons and property, other than the restrictions established by the Law"*.²² It draws attention to the fact that *"the addition of the term 'legally' deprives persons to be found illegally on the territory of any protection."* It also proposes replacement of the term "exceptions" by "restrictions" arguing *"that no right may be refused the foreigner unless the legislator has expressly so decided"*.²³ The CCDH more particularly stresses the incomplete nature of the principle of equality and the insufficiency of the general principle of non-discrimination. It shares the concern expressed by the authors of the proposed revision that *"the protection 'granted to persons and property' is not limited to foreigners and that any person to be found on the territory of the Grand Duchy shall enjoy that protection"*.²⁴

As for the debate on the reform of the Constitution, several initiatives from civil society have asked for citizens to be associated with the debate²⁵. Several voices have asked for the organisation of a referendum on the reform of the Constitution²⁶.

²² Opinion of the Council of State on 6 June 2012, Appendix 2, p. 244,

http://www.conseil-etat.public.lu/fr/opinion/2012/06/48_433/48433_1_annexe_2_1_opinion_Textes_juxtaposes_6_6_121.pdf

It should also be noted that the Council of State proposed to transfer this Article to Chapter 2.- Rights and Freedoms, Section 2.- Public Freedoms.

²³ Opinion of the Council of State on 6 June 2012, p. 19

²⁴ Opinion of the CCDH, p. 11

²⁵ For example the monthly *Forum* launched a project by making provision on their internet site of documents, analyses, commentaries and bibliographical references relating to revision of the Constitution. This platform, which enables opinions to be exchanged, is accessible to the general public: <http://www.forum.lu/constitution/> On the invitation of the ALOS – Human Rights League, some twenty associations met on 15 November 2012 with a view to creating in Luxembourg an Alliance for the European Year of Citizens' 2013. In its manifesto, the Alliance asks for the association of citizens with the debate on reform of the Constitution, cf. www.alliance2013.lu

²⁶ The opposition political parties ADR, Déi Gréng, Déi Lénk, DP were rather in favour of the organisation of a referendum whilst the parties forming the government coalition were rather hesitant

1.2. The legislative framework regarding immigration, asylum and integration

Let us briefly recall the legislative framework regarding immigration, asylum and integration in Luxembourg.

A) Immigration

- Coordinated text of the Law on Immigration²⁷
- Law of 21 December 2012 on the illegal employment of third-country nationals residing irregularly²⁸
- Law of 8 December 2011 amending the Law on Immigration (and transposing Directive 2009/50/EC of the Council dated 25 May 2009 establishing the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment)²⁹
- Law of 28 May 2009 creating and organising the Detention Centre³⁰
- Grand Ducal Regulation of 25 January 2012 amending: 1. the Grand Ducal Regulation of 26 September 2008 determining the minimum level of remuneration for a highly qualified worker in execution of the Law on Immigration; 2. the amended Grand Ducal Regulation of 5 September 2008 executing certain provisions relating to administrative formalities provided by the Law on Immigration; 3. the amended Grand Ducal Regulation of 5 September 2008 defining the criteria of resources and housing provided by the Law on Immigration³¹
- Grand Ducal Regulation of 17 August 2011 setting the general terms and conditions of the regime of the Detention Centre³²

²⁷ Free movement of persons and immigration, Memorial A No 80 of 26 April 2012, <http://www.legilux.public.lu/leg/a/archives/2012/0080/a080.pdf>

²⁸ Illegal employment of third-country nationals residing illegally, Memorial A No 296 of 31 December 2012, <http://www.legilux.public.lu/leg/a/archives/2012/0296/a296.pdf>

²⁹ Memorial A No 19 of 3 February 2012, <http://www.legilux.public.lu/leg/a/archives/2012/0019/2012A0238A.html?highlight=>

³⁰ Memorial A No 119 of 29 May 2009, <http://www.legilux.public.lu/leg/a/archives/2009/0119/2009A1708A.html>

³¹ Memorial A No 19 of 3 February 2012, <http://www.legilux.public.lu/leg/a/archives/2012/0019/a019.pdf>

³² Memorial A No 180 of 22 August 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0180/index.html>

- Grand Ducal Regulation of 19 May 2011 amending the Grand Ducal Regulation of 26 September 2008 relating to the processing of personal data³³
- Grand Ducal Regulation of 3 February 2009 relating to medical checks on foreigners³⁴
- Amended Grand Ducal Regulation of 26 September 2008 establishing the rules of good conduct to be applied by agents charged with the execution of a measure of removal and amending the Grand Ducal Regulation of 21 December 2006 (transposing Directive 2003/110/EC of the Council dated 25 November 2003 on assistance in cases of transit for the purposes of removal by air)³⁵
- Grand Ducal Regulation of 5 September 2008 on certificates of acceptance in favour of foreigners³⁶
- Grand Ducal Regulation of 5 September 2008 relating to the exercise of a salaried activity by a student, as provided by the Law on Immigration³⁷
- Grand Ducal Regulation of 5 September 2008 relating to the composition and the operation of the Consultative Commission on Foreigners, the Consultative Commission on Salaried Workers, and the Consultative Commission on Freelance Workers³⁸

B) Asylum

- Coordinated text of the amended Law of 5 May 2006 on the right of asylum and additional forms of protection, the so called Law on Asylum³⁹
- Law of 19 May 2011 amending the Law on Asylum⁴⁰

³³ Memorial A No 102 of 20 May 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0102/a102.pdf>

³⁴ Memorial A No 16 of 10 February 2009, <http://www.legilux.public.lu/leg/a/archives/2009/0016/a016.pdf>

³⁵ Memorial A No 180 of 22 August 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0180/index.html>

³⁶ Memorial A No 138 of 10 September 2008, <http://www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf#page=2>

³⁷ Memorial A No 138 of 10 September 2008, <http://www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf#page=2>

³⁸ Memorial A No 138 of 10 September 2008, <http://www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf#page=2>

³⁹ Memorial A No 151 of 25 July 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0151/2011A2180A.html>

⁴⁰ Memorial A No 102 of 20 May 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0102/index.html>

- Grand Ducal Regulation of 1 April 2011 amending the Grand Ducal Regulation of 21 December 2007 setting a list of safe countries within the meaning of the Law on Asylum⁴¹
- Grand Ducal Regulation of 21 July 2006 determining the conditions under which international protection applicants have access to the training provided by Article 14 of the Law on Asylum⁴²

C) Integration

- Law of 16 December 2008 on Integration⁴³
- Grand Ducal Regulation of 2 September 2011 setting the conditions of application and the terms of execution in relation to the Reception and Integration Contract⁴⁴
- Grand Ducal Regulation of 15 November 2011 relating to the organisation and the operation of the Consultative Commissions on Integration⁴⁵
- Grand Ducal Regulation of 15 November 2011 determining the terms of appointment of foreigners' representatives to the National Council for Foreigners and their division by nationalities⁴⁶

In 2012, the principal legislative amendments were as follows⁴⁷:

- Grand Ducal Regulation of 25 January 2012 amending: 1. the Grand Ducal Regulation of 26 September 2008 determining the minimum level of remuneration for a highly qualified worker in execution of the Law on Immigration; 2. the amended Grand Ducal Regulation of 5 September 2008 executing certain provisions relating to administrative formalities provided by the Law on Immigration; 3. the amended Grand

⁴¹ Memorial A No 67 of 11 April 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0067/a067.pdf>

⁴² Memorial A No 131 of 31 January 2006, <http://www.legilux.public.lu/leg/a/archives/2006/0131/a131.pdf#page=3>

⁴³ Law of 16 December 2008 on the Reception and Integration of Foreigners in the Grand Duchy of Luxembourg, Memorial A No 209 of 24 December 2008, <http://www.legilux.public.lu/leg/a/archives/2008/0209/index.html>

⁴⁴ Memorial A No 197 of 20 September 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0197/2011A3584A.html>

⁴⁵ Memorial A No 237 of 22 November 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0237/2011A4006A.html>

⁴⁶ Memorial A No 236 of 22 November 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0236/a236.pdf>

⁴⁷ The legislative amendments and political and public debates relating thereto are described exhaustively in Points 3.1.1, 3.1.2, 3.2.2, 3.2.3 and 3.4.

Ducal Regulation of 5 September 2008 defining the criteria of resources and housing provided by the Law on Immigration⁴⁸

- Ministerial Regulation of 15 February 2012 setting the average annual gross salary by virtue of the amended Grand Ducal Regulation of 26 September 2008 determining the minimum level of remuneration for a highly qualified worker in execution of the Law on Immigration⁴⁹
- Grand Ducal Regulation of 29 May 2012 amending the Grand Ducal Regulation of 5 September 2008 setting the terms and conditions relating to the delivery of a residence permit to a salaried worker⁵⁰
- Grand Ducal Regulation of 8 June 2012 setting the terms and conditions for granting social aid to international protection applicants⁵¹
- Law of 16 May 2012 approving the Agreement between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands (the Benelux States) and the Republic of Kosovo in relation to the acceptance and readmission of persons in an irregular situation (Acceptance and Readmission Agreement) and the Application Protocol, signed in Brussels on 12 May 2011⁵²
- Law of 21 July 2012 on the illegal traffic of migrants by land, air and sea⁵³
- Law of 21 December 2012 on the illegal employment of third-country nationals residing irregularly⁵⁴
- Law of 26 December 2012 approving the Application Protocol between the Government of the Grand Duchy of Luxembourg and the Government of the Russian Federation in relation to implementation of the Readmission Agreement between the European Community and the Russian Federation of 25 May 2006, signed in Luxembourg on 13 September 2011⁵⁵

⁴⁸ Memorial A No 19 of 3 February 2012, <http://www.legilux.public.lu/leg/a/archives/2012/0019/a019.pdf>

⁴⁹ Memorial A No 39 of 5 March 2012, <http://www.legilux.public.lu/leg/a/archives/2012/0039/a039.pdf>

⁵⁰ Memorial A No 134 of 4 July 2012, <http://www.legilux.public.lu/leg/a/archives/2012/0134/a134.pdf>

⁵¹ Memorial A No 123 of 20 June 2012, <http://www.legilux.public.lu/leg/a/archives/2012/0123/a123.pdf>

⁵² Memorial A No 104 of 20 May 2012, <http://www.legilux.public.lu/leg/a/archives/2012/0104/a104.pdf#page=2>

⁵³ Memorial A No 153 of 27 July 2012, <http://www.legilux.public.lu/leg/a/archives/2012/0153/a153.pdf>

⁵⁴ Illegal employment of third-country nationals residing illegally, Memorial A No 296 of 31 December 2012, <http://www.legilux.public.lu/leg/a/archives/2012/0296/a296.pdf>

⁵⁵ Readmission Agreement between Luxembourg and Russia, Memorial A No 283 of 31 December 2012, <http://www.legilux.public.lu/leg/a/archives/2012/0283/a283.pdf>

Other laws and regulations to be mentioned in relation to the integration of foreigners:

- Law of 16 December 2011 amending the amended Law of 9 December 1976 relating to the organisation of Notaries⁵⁶
- Law of 13 February 2011 amending: 1. the amended Communal Law of 13 December 1988; 2. the amended Electoral Law of 18 February 2003⁵⁷
- Law of 13 February 2011 amending Article 457-3 of the Penal Code⁵⁸
- Law of 18 December 2009 on access to the public function⁵⁹ entered into force on 1 January 2010 and its Grand Ducal Regulations⁶⁰
- Law of 17 February 2009 introducing linguistic leave⁶¹
- Law of 19 December 2008 amending the amended Electoral Law of 18 February 2003 and the Law of 4 February 2005 relating to a national referendum⁶²
- Law of 23 October 2008 on Luxembourg nationality and its Grand Ducal Regulations⁶³
- Law of 28 November 2006 on equality of treatment⁶⁴
- Grand Ducal Regulation of 16 June 2009 determining the operation of reception courses and classes for children newly arrived in the country⁶⁵

⁵⁶ Memorial A No 274 of 27 December 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0274/a274.pdf>

⁵⁷ Law of 13 February 2011, Memorial A No 29 of 16 February 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0029/2011A0240A.html>

⁵⁸ Law of 13 February 2011, Memorial A No 33 of 21 February 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0033/2011A0354A.html>

⁵⁹ Law of 18 December 2009 amending and completing a) the amended Law of 16 April 1979 setting the general status of civil servants ; b) the amended Law of 27 January 1972 setting the regime of civil servants ; c) the amended Law of 24 December 1985 setting the general status of community employees; d) the amended Law of 15 June 1999 organising the National Institute of Public Administration, Memorial A No 248 of 22 December 2009, <http://www.legilux.public.lu/leg/a/archives/2009/0248/a248.pdf>

⁶⁰ Memorial A No 78 of 25 May 2010, <http://www.legilux.public.lu/leg/a/archives/2010/0078/a078.pdf#page=2>
<http://www.legilux.public.lu/leg/a/archives/2010/0078/a078.pdf#page=2>

⁶¹ Law of 17 February 2009, Memorial A No 33 of 26 February 2009, <http://www.legilux.public.lu/leg/a/archives/2009/0033/>

⁶² Law of 19 December 2008, Memorial A No 210 of 24 December 2008, <http://www.legilux.public.lu/leg/a/archives/2008/0210/2008A3162A.html>

⁶³ Law of 23 October 2008, [Memorial A No 158](http://www.legilux.public.lu/leg/a/archives/2008/0158/2008A2222A.html) of 27 October 2008, <http://www.legilux.public.lu/leg/a/archives/2008/0158/2008A2222A.html>; Grand Ducal Regulation of 31 October 2008 concerning the organisation of civic education courses to be followed in order to be naturalised; Grand Ducal Regulation of 31 October 2008 concerning the organisation of tests and the certificate of competence in communication in the spoken Luxembourg language in order to be naturalised; Grand Ducal Regulation of 14 November 2008 setting the amount of stamp duty applicable to certificates of nationality, http://www.mj.public.lu/nationalite/droit_nationalite.pdf

⁶⁴ Law of 28 November 2006, Memorial A No 207 of 6 December 2006, <http://www.legilux.public.lu/leg/a/archives/2006/0207/index.html>

Some bills in the field of migration policy are also to be mentioned:

- Bill amending 1. the Law on Asylum; 2. the Law on Immigration⁶⁶
- Bill on the reception of young au pairs amending 1. the Law on Immigration and 2. the Law of 4 July 2008 on youth⁶⁷
- Bill aimed at amending the legal age for marriage and the provisions relating thereto as well as repealing the widowhood deadlines and completing certain provisions of the Civil Code⁶⁸
- Bill approving the Protocol, signed in Brussels on 4 July 2012, between the Benelux States (the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands) and Montenegro relating to application of the Agreement between the European Community and the Republic of Montenegro concerning the readmission of persons residing irregularly⁶⁹

⁶⁵ Memorial A No 144 of 19 June 2009,

<http://www.legilux.public.lu/leg/a/archives/2009/0144/2009A1992A.html>

⁶⁶ Bill No 6507,

http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServingServletImpl/?path=/export/exped/sexpdata/Mag/177/126/117265.pdf

⁶⁷ Bill on the reception of young au pairs,

<http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6328>

⁶⁸ Bill No 6172A,

http://www.chd.lu/wps/PA_RoleEtendu/PrintServlet/?user=guest&library=Docpa&id=6172A

⁶⁹ Bill No 6481,

http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServingServletImpl/?path=/export/exped/sexpdata/Mag/158/102/115071.pdf

2. OVERVIEW OF ASYLUM AND MIGRATION POLICY DEVELOPMENTS

2.1. General political developments in 2012

2.1.1. Luxembourg faces the crisis

Growth forecasts for the Grand Duchy of Luxembourg varied considerably throughout the year. In 2012, GDP increased by 0.3% while forecasts were for a 2% growth. The deficit in the public finances was limited to € 359 million and the deficit at a central administration level to € 1,157 million.⁷⁰

In order to re-establish a budgetary balance, the government introduced a series of measures. On the one hand there was an increase of certain taxes such as solidarity tax for households and businesses, and a reduction of the deductibility of debit interest. Automatic salary indexation was limited to one tranche per annum. The return to school allocation was reduced.

At a social level, note should be made of the Law of 16 December 2011 which extended various measures for the year 2012 aimed at combating the effects of the crisis. The employer can thus benefit from various measures for recruiting and safeguarding existing jobs, particularly with regard to partial unemployment and jobs for young people.

The economic crisis which began in 2008 resulted in an increase of immigration from countries in Southern Europe and particularly Portugal.⁷¹ (see section 3.1.1.5.)

⁷⁰ The central administration deficit had to be financed by a loan of 2 billion euros at an interest rate of 3.75%. Cf. Jean-Claude Junker, state of the nation address, 10 April 2013,

http://www.gouvernement.lu/salle_presse/actualite/2013/04-April/10-etat-nation/index.html#res

⁷¹ RTBF.BE, Luxembourg, an Eldorado for Portuguese “euro refugees”?, 24 April 2012, http://www.rtbf.be/info/monde/detail_le-luxembourg-un-eldorado-pour-les-refugies-de-l-euro-portugais?id=7753685

2.1.2. Reform of the Employment Administration

As the unemployment rate had increased significantly between 2011 and 2012 (11.8%) to reach 6% in March 2012⁷², the government decided to act accordingly.

The Employment Administration (ADEM) was reformed by the Law of 18 January 2012 creating the Employment Development Agency.⁷³ The objective of the reform⁷⁴ was to move from an approach of simply managing unemployment to a proactive approach of promoting work and employment development, thus guaranteeing more personalised monitoring of job seekers, as well as the coordination of job offers and applications. Indeed, the ADEM sees itself now as a public service provider aligned to its clients. (see section 3.1.1.1)

2.1.3. Reform of the pension system

At the end of a long preparatory phase, on 31 January 2012 the Draft Law reforming pension insurance⁷⁵ was lodged with the Chamber of Deputies. It was finally passed in the form of the Law of 21 December 2012⁷⁶ following up the government declaration from the legislative elections on 7 June 2009 and the orientation debate in the Chamber of Deputies on 2 June 2010.

The Draft Law aimed at reforming the pension system in order to adapt it to economic and demographic evolution and with a view to ensuring its sustainability. The favourable situation of the Luxembourg pension system results principally from continuous growth of the labour market over past decades, following sustained migration and a contribution from the considerable non-resident work force. This growth permitted an increase of contribution receipts serving to pay pensions. Furthermore, confronted by population ageing and an increase in life expectancy which to date is not reflected by any extension of the professional

⁷² Luxembourg.Pro, Unemployment in Luxembourg, 11.8% increase in one year, March, 2012, <http://luxembourg.pro/taux-chomage-luxembourg-mars-2012-457.php>

⁷³ Employment Development Agency, Memorial A No 11 of 26 January 2012, <http://www.legilux.public.lu/leg/a/archives/2012/0011/a011.pdf>

⁷⁴ Draft Law creating the Employment Development Agency, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=6232>; Reform of the Employment Administration, http://www.gouvernement.lu/dossiers/social_emploi/reforme-adem/index.html

⁷⁵ Draft Law No 6387 reforming pension insurance pension, 31/01/2012, http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/189/035/108384.pdf

⁷⁶ Law of 21 December 2012 reforming pension insurance, Memorial A No 279 of 31 December 2012, http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/180/165/117694.pdf

career, in the medium term the system will face problems of sustainability in terms of the adequacy of the necessary provisions and financial resources.⁷⁷ The challenge is to guarantee a balanced and viable pension system (financial, social and political viability) which takes account of demographic evolution and extended periods of retirement while ensuring that future beneficiaries have a level of pension comparable to that of current beneficiaries.

While the reform does not affect the departure conditions for retirement, or the rights of pension beneficiaries and active insured persons, or access to early retirement, future beneficiaries will be confronted however by choices between a retirement allowance comparable to current rates linked to an extension of the active career, or lower allowances as a consequence of retirement taken earlier.⁷⁸

The Council of State⁷⁹ criticises the fact that the reform is based on a hypothesis of GDP growth at 3%, although the reform foresees adjustments in relation to the economic and financial situation, as for instance a gradual increase of contributions.

2.1.4. Reform of the education system

In 2012, Luxembourg was once again confronted by a large number of pupils arriving for the first time. One of the greatest challenges of the Luxembourgish education system is to manage the increasing heterogeneity of the school population, due to migratory phenomena, while improving pupil success. In order to meet this challenge, since 2009 the government has been tackling a vast reform process aimed at education and the introduction of education based on core skill levels. The reform is being implemented gradually and covers all orders of education. In 2012, criticism resurfaced as to the reforms that already began (basic and professional education) and in relation to the draft reform of post-primary education also based on the introduction of core skill levels. The latter had to be postponed in view of the extent of objections in 2012, particularly from teachers' and pupils' unions⁸⁰. The objections

⁷⁷ Reform of the pension system: stakes and objectives, http://www.gouvernement.lu/dossiers/social_emploi/reforme-systeme-pension/index.html

⁷⁸ Reform of the pension system: stakes and objectives, http://www.gouvernement.lu/dossiers/social_emploi/reforme-systeme-pension/index.html

⁷⁹ Report by the Health and Social Security Commission dated 29 November 2012, in: Draft Law No 6387, p. 14.

⁸⁰ L'Essentiel, Teachers will take to the streets, 19 March 2012, <http://www.lessentiel.lu/fr/news/luxembourg/story/21158300>; OGBL-SEW, The reform of basic education doomed to failure! (Patrick Arendt / Monique Adam) Journal 5/2012, <http://www.sew.lu/cgi-bin/apps/base?com=0I241I0I2I&base=dossiers&item=4-2096-5590-2>

culminated in a protest event held on 22 March 2012. Until April 2013, the situation continues to be tense between the main unions (SEW and APESS) and the Ministry of National Education.⁸¹

⁸¹ L'Essentiel, There is a running battle between the Minister and the unions, 22 March 2013, <http://www.lessentiel.lu/fr/news/dossier/reforme/story/10368057>

2.2. General developments with regard to asylum, immigration and integration

2.2.1. Luxembourg and immigration

As at 1 January 2012, 524,900 people were resident in Luxembourg. This represents an increase of 2.4% on 2011. This population is composed of 295,000 Luxembourgish nationals and 229,900 foreigners (43.8%). Nationals of EU countries represent 86.4% (198,700) of the foreign population and third-country nationals 13.6% (31,200)⁸². As in previous years, population growth is explained by the positive natural balance (2,114 in 2011) and the positive migratory balance of 11,004 people.

EU nationals appear 78.1% in the positive migratory balances and third-country nationals 27.7%.

Table n° 1: Arrivals and departures according to nationality 2012

	Arrivals	Departures	Balances	Balances (%)
EU citizens	14954	6360	8594	78.1
Luxembourgish nationals	1160	1793	-633	-5.8
Third-country nationals	4154	1111	3043	27.7
Total	20268	9264	11004	100

Source: STATEC, 2012 © LU EMN NCP

The overall natural balance remains broadly positive due to births exceeding deaths among foreign nationals. EU nationals account for 82% of the global natural balance and third-country nationals only for 18%.

⁸² STATEC, 2013 <http://www.statistiques.public.lu/fr/population-emploi/index.html>

Table n° 2: Natural balances of the population according to nationality 2012

	Births	Deaths	Natural balances	Natural balances (%)
EU citizens	2391	649	1742	82.40
Luxembourgish nationals	3029	3049	-20	-0.95
Third-country nationals	454	62	392	18.54
Total	5874	3760	2114	100

Source: STATEC, 2012 © LU EMN NCP

The data on the 2011 population census published by STATEC and the University of Luxembourg confirms the central importance of migratory phenomena in Luxembourg. Indeed, approximately 170 nationalities were present on 1 February 2011⁸³. Foreigners contribute to the rejuvenation of the population, while the average age of Luxembourgish nationals is higher than that of foreigners (41.3 against 35.3 years). Between the population censuses of 2001 and 2011, the population increased by 72,814 people, or more than 16.6%. The number of Luxembourgish nationals rose slightly, and this is principally due to the acquisition of the Luxembourgish nationality. Migratory phenomena also had their impact on the presence of foreigners in communes. Indeed, between 2001 and 2011, the proportion of people of foreign nationalities increased in practically all communes of the Grand Duchy of Luxembourg. In 5 of the 116 Luxembourg communes, more than one half of the residents are of foreign nationality: Luxembourg (64.88%), Larochette (61.53%), Strassen (55.10%), Differdange (51.92%) and Esch-sur-Alzette (51.88%).⁸⁴

The population census reveals a socio-economic and socio-demographic profile showing significant differences between Luxembourgish nationals and foreigners (socio-economic status, unemployment, level of education, household size).⁸⁵

⁸³ François Peltier, Germaine Thill, Andreas Heinz, Population Census. First Results No 4, August 2012, STATEC, University of Luxembourg, Inside.

⁸⁴ François Peltier, Germaine Thill, Andreas Heinz, Population Census. First Results No 4, August 2012, STATEC, University of Luxembourg, Inside.

⁸⁵ François Peltier, Germaine Thill, Andreas Heinz, Population Census. First Results No 5, September 2012, STATEC, University of Luxembourg, Inside, François Peltier, Germaine Thill, Andreas Heinz, Population Census. First Results No 6, November 2012, STATEC, University of Luxembourg, Inside.

Three themes dominated policy and/or discussion in 2012:

- “New” migrations within Europe
- Reception of and social aid for asylum seekers
- The debate on the reform of the Nationality Law

2.2.2. Luxembourg confronted by new migrations within Europe

In 2011, Luxembourg posted a positive migratory balance with 11,004 people. This balance is due to the stagnation of departures and the increase of arrivals.

The economic and financial crisis had an impact on migratory movements from the countries of Southern Europe. For Portuguese, Italians, Spanish and Greeks, a considerable rise was observed in the migratory balance to Luxembourg. STATEC observed that “*The migratory balance from all the countries of Southern Europe (Portugal, Spain, Italy, Greece) rose from 2,459 in 2007 to 4,550 in 2011*”⁸⁶. For the Portuguese, the balance rose from 2,293 in 2007 to 3,506 in 2011. STATEC also reveals that people originating from the countries of Southern Europe are less inclined to leave and makes the hypothesis that the economic crisis not only had effects on arrivals but also on departures. New migrations within Europe aroused discussion in the Chamber of Deputies, requested by the DP parliamentary group. (see section 3.1.1.5.)

2.2.3. Reception of and social aid to international protection seekers

As in 2011, the reception and housing of international protection seekers dominated asylum policy in 2012. An agreement was found between the Minister of Family and Integration and the SYVICOL in regard to housing international protection seekers after receiving positive responses from the communes to the call for solidarity made by the MIFA. Once again, on a local level the reception of refugees aroused hostile reactions from inhabitants.

The reform of the Grand Ducal Regulation setting the terms and conditions for granting social aid to international protection seekers⁸⁷ rapidly aroused reaction from the media, institutions,

⁸⁶ Germaine Thill, Paul Zahlen, A view of migratory flows No 13, June 2012, STATEC.

⁸⁷ The text essentially contains three measures: 1. reduction of the social aid paid to asylum seekers and to beneficiaries of the temporary protection regime: the amounts were brought closer to the amounts in force in neighbouring countries; 2. in the future, the OLAI can offer community services to beneficiaries of social aid

political parties⁸⁸ and associations.⁸⁹ The final version of the Grand Ducal Regulation of 8 June 2012⁹⁰ had to take account of a certain number of criticisms.⁹¹ For example, the Luxembourg Refugee Collective (LFR) had indicated that *“It will all the more increase the precarious position in which international protection seekers already live in Luxembourg.”*⁹² (see section 5.2.3.2.)

2.2.4. The debate on the reform of the Nationality Law

In 2012 a major debate involving both the Chamber of Deputies and the civil society was launched by the Minister of Justice on the reform of the Luxembourgish nationality, with the aim to achieve as much consensus as possible within the Luxembourgish society. This debate was fuelled by the report of the assessment by the Minister of Justice of the Law of 23 October 2008 on the Luxembourgish nationality⁹³ and the request for consultation sent to civil society by the Minister of Justice, as well as the website of the Ministry of Justice.

The 24 January 2013, the Minister of Justice presented the results of the consultation containing some 200 written contributions⁹⁴, emanating both from citizens and institutions, associations and the academic world. On 21 March 2013, the Minister presented the new Draft Law on the Luxembourgish nationality.⁹⁵ (see section 3.6.2.1.)

in housing structures; 3. finally the text provides an increased number of cases for limitation or refusal of social aid. Council of Government, Retrospective 2012, 31 December 2012,

http://www.gouvernement.lu/salle_presse/conseils_de_gouvernement/2012/12-decembre/31-retrospective/

⁸⁸ The Green Party asked a parliamentary question to the Minister of Labour, Employment and Immigration on this subject. Cf. Parliamentary Question No 1980 of 8 March 2012,

<http://www.greng.lu/sites/greng/files/20120302-1980-BR-SchmitImmigration-QR.pdf>

⁸⁹ Press release, LFR, Lowering social aid to international protection seekers: to stigmatise the weaker?, 13 January 2012,

http://www.clae.lu/pdf/migration/asylum/lfr/13.01.12_communique_presse.pdf

⁹⁰ Memorial A No 123 of 20 June 2012, <http://www.legilux.public.lu/leg/a/archives/2012/0123/a123.pdf>

⁹¹ Le Quotidien, Social aid limited to 25 euros, 22 June 2012. The paper says: “Accident or chance? It was in fact on Wednesday, on World Refugee Day, that the new Law on social aid granted to asylum seekers came into force in Luxembourg.” <http://www.lequotidien.lu/politique-et-societe/35817.html>

⁹² Le Quotidien, Immigration, 25 June 2012, <http://www.lequotidien.lu/politique-et-societe/35875.html>

⁹³ http://www.mj.public.lu/actualites/2012/09/reforme_nationalite/index.html

⁹⁴ Various comments sent to the Minister of Justice, Reform of the Law of 23 October 2008 on the Luxembourgish nationality, December 2012.

⁹⁵ Release. Nationalities: Minister François Biltgen presents the new Draft Law, http://www.gouvernement.lu/salle_presse/communiqués/2013/03-mars/21-biltgen/

2.2.5. Against racism and xenophobia – for social cohesion

On various occasions, the question of racism and xenophobia came under the spotlight. Whether for the publication of the new report from the Anti-Discrimination Commission of the Council of Europe, the presentation of the activity report for 2011 from the Centre for Equality of Treatment (CET), the closure and then reopening of an internet site with racist content, the sentencing of a Luxembourg citizen for inciting racial hatred, or positions expressed by the report on asylum seekers, the problem regularly appeared on the public stage in 2012.

The President of the Chamber of Deputies had to state his concerns about the increasing xenophobia⁹⁶. The same concerns were at the origin of a huge awareness initiative entitled “Making Luxembourg”⁹⁷ launched by the ASTI, with a multiplicity of partners from association, economic and media circles.⁹⁸ (see section 3.5.2.9.)

2.2.6. Transposition of the “Sanctions Directive” and the announcement of a regularisation process

On 18 December 2012, the Chamber of Deputies passed the Draft Law No 6404 transposing Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. The Law of 21 December 2012⁹⁹ provides in particular for a widening of financial, administrative and criminal penalties for employers, as well as a strengthening of checks. It abolishes the possibility of regularisation for third-country nationals who reside illegally in the territory of the Grand-Duchy of Luxembourg since at least 8 years and have worked regularly.¹⁰⁰

⁹⁶ When he presented his New Year wishes for 2012, cf. L’Essentiel on 6 January 2012.

⁹⁷ Initiative bringing together a multitude of partners from civil society rallying to the idea that Luxembourg works as a whole thanks to the residents of all nationalities and cross-border workers. We are all 100% Lëtzebuerg. Instead of seeking what could bring us into opposition, we seek that which unites us in the economic, cultural, social and political construction of Luxembourg, cf. <http://www.makingluxembourg.lu/>

⁹⁸ <http://www.makingluxembourg.lu/>

⁹⁹ Law of 21 December 2012 on the illegal employment of third-country nationals residing illegally, http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexdpata/Mag/171/179/117708.pdf

¹⁰⁰ Article 89 of the Law on Immigration says : (1) Subject to the condition that his presence is not likely to pose any threat to public order, public security, or public health, and under the condition that he did not use false or misleading information on his identity and has shown real commitment to integrate, a residence permit can be granted by the Minister to the third-country national in view of the following exceptional reasons:

1. he provides proof that he resided continuously by any means on the territory and that he has regularly worked on the territory since at least eight years, or

On 18 December 2012¹⁰¹ the Minister of Labour, Employment and Immigration, Nicolas Schmit, announced opening a regularisation process within the legal framework of the Law of 21 December 2012¹⁰². In the service note dated 21 December 2012, two essential conditions to be met by candidates for regularisation are stated¹⁰³: providing proof of having been engaged for at least 9 months in Luxembourg and presenting a permanent contract (CDI) with remuneration equivalent to the minimum social wage for a weekly period of work of 40 hours. The period for making an application for regularisation to the Immigration Department of the Ministry of Foreign Affairs is set between 2 January 2013 and 28 February 2013. (see section 4.1.2.3.)

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2. he provides proof that he has completed at least six years of education at a school in the Grand-Duchy of Luxembourg, under the condition that he has submitted his application within the year after his eighteenth birthday.

¹⁰¹ Europaforum.lu, The Chamber of Deputies unanimously transposes a European Directive which penalises the employers of third-country nationals residing illegally, 18 December 2012, <http://www.europaforum.public.lu/fr/actualites/2012/12/chd-directive-emploi-sit-irreguliere/index.html>

¹⁰² The Law authorising this single measure aims to transpose a Directive of the European Parliament and the Council dated 18 June 2009 providing minimum standards concerning penalties and measures against employers of third country nationals residing illegally.

¹⁰³ Service note of 21 December 2012. The other two conditions: holding a valid passport and not constituting a danger to public order. Le Quotidien, “*The hope of regularisation*”, 28 December 2012, <http://www.lequotidien.lu/politique-et-societe/40837.html>

2.3 Institutional developments with regard to immigration, asylum and integration in 2012

2.3.1. Reception and Integration Contract (CAI)

Introduced by the Law on Integration¹⁰⁴, the CAI was officially launched on 29 September 2011.

The implementation of the CAI, defined by the Grand Ducal Regulation of 2 September 2011¹⁰⁵, is incumbent upon the Luxembourgish Reception and Integration Agency (OLAI) of the MIFA.

The CAI constitutes a reciprocal and optional undertaking between the State and the foreigner aged more than 16, legally established in Luxembourg, and wishing to stay there on a permanent basis. Provided for a maximum term of two years, the said contract is intended both for EU citizens and third-country nationals, for new arrivals and for people already established for several years in Luxembourg.

Among the services offered by the CAI are language trainings in at least one of the three administrative languages of Luxembourg, courses in civic instruction and an orientation day, the first of which was held on 3 March 2012.¹⁰⁶

In 2012, there were 972 signatories in total, of which 606 women and 366 men.¹⁰⁷ 60% of the signatories were nationals of a Member State of the European Union, of which Portuguese were by far the most numerous (350 signatories), followed by Italians (42) and then French (39). The other 40% of signatories were third-country nationals.

¹⁰⁴ Law on Integration, <http://www.legilux.public.lu/leg/a/archives/2008/0209/2008A3156A.html?highlight=>

¹⁰⁵ Grand Ducal Regulation of 2 September 2011 setting the conditions of application and terms of execution in relation the Reception and Integration Contract, <http://www.legilux.public.lu/leg/a/archives/2011/0197/2011A3584A.html>

¹⁰⁶ <http://www.olai.public.lu/fr/accueil-integration/mesures/contrat-accueil/index.html>

¹⁰⁷ OLAI, General Statistics from 01 January 2012 to 31 December 2012.

2.3.2. National action plan for integration and combating discrimination 2010-2014

The national action plan for integration and combating discrimination¹⁰⁸ constitutes the instrument for strategic and operational coordination of transversal integration policies.

In 2012, the MIFA and the OLAI invited communes to submit actions which were appropriate to the action plan and which could thus benefit from co-financing via the budget article “Subsidies to communal administrations initiating and supporting projects with a view to the integration of foreigners”.¹⁰⁹

On the actions retained within the framework of the Action Plan is “training in the intercultural competences of key actors in the administration, Luxembourg and foreign association life, the social field, as well as education and youth”. In order to guarantee that training, the OLAI mandated the CEFIS to create a network of trainers based in Luxembourg. A network was created of 9 certified Luxembourgish and non-Luxembourgish trainers capable of speaking in the three languages of the country.¹¹⁰

2.3.3. Renewal of the consultative bodies at a national and communal level

2.3.3.1. Communal Consultative Commissions on Integration (CCI)

The Grand Ducal Regulation of 15 November 2011 relating to the organisation and the operation of communal consultative commissions on integration repealed the Grand Ducal Regulation of 5 August 1989 setting the organisation and operation of consultative commissions for foreigners.¹¹¹ By virtue of Article 23 of the Law on Integration, a commission of this type must be established in all communes while, previously, it had only been obligatory in communes with at least 20% foreigners. Among the foreign members there must be one person with a third-country nationality, unless no third-country national has applied (Article 2 (2)).

¹⁰⁸ National action plan for integration and combating discrimination 2010-2014, http://www.olai.public.lu/fr/publications/programmes-planactions-campagnes/plan/olai_plan_daction_fr.pdf

¹⁰⁹ MIFA and the Ministry of Interior and the Greater Region, Circular No. 3016 of 16 July 2012.

¹¹⁰ CEFIS, press conference on 6 June 2012.

¹¹¹ Memorial A No 237 of 22 November 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0237/2011A4006A.html>

2.3.3.2. The National Council for Foreigners (CNE)

The CNE is a consultative body charged, on its own initiative or on the request of the government, with studying problems concerning foreigners and their integration. The Grand Ducal Regulation determining the modes of appointment of foreigners' representatives to the CNE, as well as their division by nationalities was passed on 15 November 2011.¹¹²

On 28 March 2012 elections were held with a view to the appointment of foreigners' representatives to the CNE in the presence of the Minister of Family and Integration. Article 19 of the Law on Integration, amending the composition of the CNE¹¹³, stipulates that the CNE includes two representatives of civil society, appointed for a term of 5 years, and so a call for applications was launched by the OLAI on 13 February 2012.

The CNE is now composed of 34 members (representatives of foreigners, refugees, SYVICOL, employers' organisations, the most representative union organisations of the civil society), elected for terms of 5 years, and the number of foreigners' representatives is raised from 15 to 22, including seven third-country representatives. The individual mandate ends when the foreigners' representative acquired the Luxembourgish nationality, or when he or she moves their residence outside the country.

2.3.4. Abolition of the Consultative Commission for Foreigners

The law of 21 December 2012 transposing the "Sanctions Directive" abolishes the Consultative Commission for Foreigners. This mission of this commission was to provide a mandatory advice, except in the case of urgency, before any Ministerial decision relating to withdrawing or refusing the renewal of a residence permit. (see section 4.1.3.1.)

2.3.5. Increasing the workforce of the Ministry Refugee Department

In order to deal with the exceptional influx of international protection seekers, particularly from Serbia, on 14 September 2011 the Council of Government approved the recruitment of

¹¹² Memorial A No 236 of 22 November 2011,
<http://www.legilux.public.lu/leg/a/archives/2011/0236/2011A4000A.html?highlight=>

¹¹³ Previously the CNE was composed of 30 members including 15 representatives from Luxembourg society and 15 foreigners' representatives; their mandate ending after 3 years.

six additional employees¹¹⁴, on a temporary basis, for the Refugee Department of the Directorate of Immigration responsible for recording and processing international protection applications in Luxembourg. These employees joined the Department in January 2012.¹¹⁵

¹¹⁴ 5 representatives of the higher career bracket and 1 representative of the average career bracket, all for a limited period of time. Press Conference of Mr. Nicolas Schmit, Minister of Labour, Employment and Immigration, Balance Sheet 2012, 14 March 2013.

¹¹⁵ MAE, Directorate of Immigration, Press Conference, Balance Sheet 2011, 31 January 2012, www.mae.lu

3. REGULAR MIGRATION AND MOBILITY

3.1. Economic migration

3.1.1 National developments in 2012

3.1.1.1. Reform of the ADEM

The Employment Agency was restructured and renamed the *Agence pour le développement de l'emploi* (ADEM – Employment Development Agency)¹¹⁶.

This reform aims to improve the efficiency and quality of ADEM's services, benefiting jobseekers and employers by providing more personalised support for job applicants and closer relationships with enterprises. The IT system installed to manage jobseekers' dossiers is being modernised in order to provide more effective, efficient management of job applications and offers. Furthermore, new regional agencies were created throughout the country.

From 1 September 2012 the new management of ADEM took office. A call centre was established to answer the frequent questions of citizens and thus reduce the burden of professional advisors. Another novelty is that the collaboration agreement. This agreement establishes a partnership between the person looking for a job and ADEM, based on a mutual commitment. Under this agreement, the focus is to tackle youth unemployment with the implementation of the "youth guarantee". This measure guarantees that no young person should remain more than four months without a job, training or any other alternative measure.

In the same context, an employment market observatory, the Labour and Employment Research Network (RETEL)¹¹⁷ was created, with the aim to, through analysis gain a better understanding of the operations of the employment market and to make forecasts, carry out

¹¹⁶ Law of 18 January 2012 creating the *Agence pour le développement de l'emploi*, Memorial A No 11 of 26 January 2012,

<http://www.legilux.public.lu/leg/a/archives/2012/0011/a011.pdf>

¹¹⁷ Ministry of Labour and Employment, RETEL, Employment Observatory, <http://www.mte.public.lu/retel/index.html>

longitudinal surveys and research into the flows of immigration and human capital, unemployment and the evaluation of measures to promote employment.¹¹⁸

Several events took place in 2012. The RETEL conference on the evaluation of measures to promote employment took place on 14 May 2012¹¹⁹, followed by a symposium on active ageing on 26 and 27 November 2012.¹²⁰

3.1.1.2. Procedure to be followed by third country nationals to access employment

The law of 18 January 2012 creating ADEM amends various articles on the procedure to be followed by third country nationals to access employment.¹²¹

The amendment of article 42 of the law on Immigration involved in turn an amendment of the Grand-Ducal regulation of 5 September 2008 specifying the terms and conditions for the granting of a residence permit as a salaried employee.¹²²

Previously, the employment market test (verification of the priority of recruitment for Community workers) was carried out as part of the examination of the application for a residence permit. Henceforth, the market test will be carried out prior to the application in question. The employer must advertise the job vacancy through ADEM. If, within three weeks of the job vacancy being advertised, ADEM has not proposed to the employer a candidate who matches the job description for the advertised post, the employer may request a certificate from the Director of ADEM allowing him to recruit the person of his choice for this post. The certificate must be drawn up within five working days of the employer's request (article L 622-4 of the Labour Code).

Since this market test has already been carried out, there is no longer any need to consult the *Commission consultative pour travailleurs salariés* (Advisory Committee on Salaried

¹¹⁸ National plan for intelligent, sustainable and inclusive growth, Luxembourg 2020, pp 23/24, http://ec.europa.eu/europe2020/pdf/nd/nrp2012_luxembourg_fr.pdf

¹¹⁹ Ministry of Labour and Employment, Evaluation of measures to promote employment, <http://www.mte.public.lu/actualites/retel/2012/05/evaluation-mesure/index.html>

¹²⁰ Jointly organised by the Ministry of Labour and Employment, ADEM, IGSS, STATEC and CEPS/INSTEAD, <http://www.ceps.lu/?type=news&id=65>

¹²¹ Articles L 622-4 et Art L 622-5 of the Labour Code and article 42 of the law on Immigration, http://www.legilux.public.lu/leg/textescoordonnes/codes/code_travail/

¹²² Grand-Ducal regulation of 29 May 2012 specifying the terms and conditions for the granting of a residence permit as a salaried employee, Memorial A No 134 of 4 July 2012, <http://www.legilux.public.lu/leg/a/archives/2012/0134/2012A1696A.html?highlight=>

Employees) systematically. As a result, the amendment of article 42 of the law on immigration applies.¹²³

During 2012, the Directorate of Immigration has issued 9,702 new residence permits divided into categories. These are the categories established in the law of immigration and the asylum law. This represents an increase of 18.7% in comparison with the previous year (8163).

Table n° 3: Residence permits issued (First issuances and renewals) by category of residence permit (2009 – 2012)

	2009	2010	2011	2012
European Blue Card				183
Researcher	15	36	48	58
Pupil	200	241	353	239
Student	204	266	317	346
Family member	3391	2999	3021	3443
Community service provider	1	3	3	
International protection	296	225	218	246
Long term resident	1104	770	1259	1770
Sportsman or coach	15	28	30	34
Trainee	12	12	11	16
Posted worker	23	18	21	36
Community service provider worker				1
Highly qualified worker	195	128	186	45
Self-employed worker	87	70	53	106
Retired worker	195	105	72	
Salaried worker	1815	1306	1556	1590

¹²³ <http://www.legilux.public.lu/leg/a/archives/2012/0080/a080.pdf#page=2>

Transferred worker	167	226	282	325
Private reasons (not specified)	386	504	392	15
Private reasons - other			170	816
Private reasons - 78 (1) a (sufficient resources)			109	173
Private reasons - 78 (1) b (autonomous permit)			1	21
Private reasons - 78 (1) c (family or personal bonds)			52	221
Private reasons - 78 (1) d (humanitarian reasons)			3	8
Volunteer	5	8	6	10
Total	8111	6945	8163	9702

Source : Directorate of Immigration, 2013 © LU EMN NCP

Of the total 9702 residence permits issued by the Directorate of Immigration, 4390 are first issuances (45.2%) and 5312 correspond to renewals (54.8%).

Table n° 4: Residence permits issued in 2012 (with the respective reason)

	Total	Family reasons ¹²⁴	Educational reasons ¹²⁵	Job activities ¹²⁶	Other ¹²⁷
Permits issued (1 st issue)	4390	1018	388	661	2323

Source: Directorate of Immigration, MAE, 2013

¹²⁴ Residence permits issued to family members who are third country nationals.

¹²⁵ Pupils: 238; Students: 150.

¹²⁶ EU Blue Card: 152; Employees sent abroad: 25; Employees of EU service providers: 1; Highly qualified employees: 21; Freelancers: 30; Salaried employees: 267; Transferred employees: 134.

¹²⁷ Under international protection: 94; Long-term residents: 1748; Sporting or coaching reasons: 17; Trainees: 15; Private (return): 2; Private - other: 243; Private - 78 (1) a (sufficient resources): 30; Private - 78 (1) b (independent): 2; Private - 78 (1) c (family or personal links): 119 ; Private - 78 (1) d (humanitarian reasons): 6; Volunteers: 9; Researchers: 38.

The high number of 1st issued permits represented in the category “others” may be explained by the important number of permits issued long-term residents¹²⁸ – 1748 corresponding to 40.1% of the total issued. Those are followed by residence permits issued for family reasons (1018 – 23.4%). This means that all other residence permits together amount to only 36.6% of the total issued.

3.1.1.3. Recognition of qualifications and professional experience

Recognition of secondary school diplomas

In regard with the recognition of secondary school diplomas there have not been major changes in 2012, with the exception of the admission procedure at the University of Luxembourg. At the end of 2012, the University of Luxembourg implemented a new admissions system for students coming from third countries which are not signatories of the Paris Convention. Students whose secondary school diplomas are not recognized by the MEFNP must undergo a mandatory entrance examination.¹²⁹ In Africa, this examination takes place in Dakar, Senegal.¹³⁰

Recognition of qualifications and diplomas obtained abroad

The procedures for recognising qualifications and diplomas obtained abroad have not been changed in 2012. The procedures for recognising diplomas and qualifications depend not only on the applicant’s nationality but also the country where the qualification was obtained.

In 2012, 5142 diploma equivalencies were issued. Most concerned health profession qualifications (1458) and secondary school certificates (1353).¹³¹ 136 equivalencies were issued for tertiary qualifications from a third country.¹³²

¹²⁸ It is related to first issuance of residence permit for a long term resident. It is important to mention that the 1748 individuals have already a residence permit for another category.

¹²⁹ Interview avec la Directrice du SEVE de l’Université du Luxembourg, 11 avril 2013. Voir aussi.

¹³⁰ http://www.fr.uni.lu/students/informations_utiles_de_a_a_z/reconnaissance_de_diplome. This exam already existed before 2012.

¹³¹ CEP: 1207; socio-educational professions: 245; technicians: 496 ; CATP : 310; master craftsman’s diploma: 26; study levels: 47. MENFP, internal document, 2013.

¹³² BAC, BACTEC, BACINT, BACEUR, TECHN, EDUC, SANTE. Note: the CATP and “brevet de maîtrise” type applications do not include any information on the country where the qualification was obtained. This means that only 3453 equivalencies issued include statistics on the countries where the qualification was obtained. MENFP internal document, 2013.

The First instance administrative court, third chamber, in its decision 29744 of 20 February 2013 clearly stated that in certain professions it is necessary to prove that the diploma submitted may allow to access to that profession in another Member State. The Court added: « However, it should be noted that the certificate of competences or the diploma of qualifications required under Article 8, 1 ° of the Law of 19 June 2009, are those prescribed by another Member State to access this same activity in its territory or pursuit, in this case, a qualification prescribed by the Portuguese State to enter the profession of dietician or pursuit. In the present case, the applicant has not submitted to the court an explanation as to whether his degree in Portugal gives access to the profession of dietician, or to determine which profession his diploma gives access in Portugal, so that the argument based on a violation of Article 8 of Law 19 June 2009 is to be rejected as unfounded. »¹³³

Validation of knowledge and experience acquired (VAE)

VAE was introduced with the reform to vocational training¹³⁴: it validates professional or extraprofessional experience by certifying it. Each person with at least three years of work experience may now make an application to the Ministry for National Education and Vocational Training. Each person who meets the conditions can obtain, in whole or in part, a certificate of technical and vocational studies (*certificat d'initiation technique et professionnel* – CITP); a manual skills certificate (*certificat de capacité manuelle* – CCM); a technical and vocational skills certificate (*certificat d'aptitude technique et professionnelle* – CATP); a master craftsman's diploma (*brevet de maîtrise*); a technician's diploma (*diplôme de technicien*) or a technical school leaving certificate (*diplôme de fin d'études secondaires techniques*).

The VAE procedure exists since spring 2010.¹³⁵

764 applications for approval – the first step in the process – were introduced until 31 December 2012,¹³⁶ of which, 617 were deemed admissible, 39 dossiers considered incomplete and 108 inadmissible¹³⁷. Finally, 184 applicants failed to submit their basic certification request for one of the two certification sessions.

¹³³ <http://www.ja.etat.lu/29744.doc>

¹³⁴ Law of 19 December 2008 reforming vocational training, Memorial A No 220 of 30.12.2008.

¹³⁵ EMN NCP LU, 2011 policy report on migration and asylum, www.emnluxembourg.lu

¹³⁶ 2010 (299 applications), 2011 (226 applications), 2012 (239 applications)

¹³⁷ Not having 5000 hours of experience, application required the approval of a university degree

To date, 245 basic certification dossiers (second step in the process) have been analysed by the competent committees. 68 candidates have obtained full certification, 54 partial certification and 123 candidates have been rejected.

The full and partial certification results refer to:

- 54 technical and vocational skills certificates
- 31 technical school leaving certificates
- 21 master craftsman's diplomas
- 16 technician's diplomas.

In total, 363 candidates required assistance to draw up their basic certification dossiers.¹³⁸

3.1.1.4. Cooperation with third countries on economic migration

The conclusion of a bilateral agreement with Cape Verde on circular migration is specified in the mobility partnership. Negotiations took place in 2012 but there are no final documents at this stage.

3.1.1.5. New internal migration flows in Europe

CLAE¹³⁹ was among the first ones to highlight this phenomenon during its discussion panel held on 9 February 2012 on new internal migrations in Europe.¹⁴⁰ The Minister responsible for employment and immigration explained in an interview the reasons for this migration to Luxembourg: a) the economic crisis and unemployment and b) Luxembourg's attractiveness in terms of its high standards, having the highest minimum wage in Europe and a large Portuguese community. This migration flows entail new challenges for Luxembourg. Those were pointed out by the minister: migrants with a variety of profiles – poorly qualified as well as qualified, linguistic problems, problems with school integration and accommodation. Sometimes, these people work for a short period under fixed-term or temporary contracts, then lose their jobs without necessarily being entitled to unemployment benefit. The Minister also pointed out the rise in unemployment of Portuguese workers – they represented 35.7% of

¹³⁸ MENFP, internal document.

¹³⁹ Consular representatives and NGOs have emphasised the extent of the phenomenon.

¹⁴⁰ CLAE, panel discussion: *Terre d'immigration ou d'émigration*, 9 February 2012.

jobseekers as of 31 December 2011.¹⁴¹ The Minister then denounced enterprises and temporary work agencies for entrapping these people, profiting from their despair and failing to offer them genuine future prospects¹⁴². The Minister also said that it is necessary to give the people the possibility to look for a job in another country, without leading to social dumping or labour casualization.¹⁴³

According to a study entitled: “The new Portuguese migrations, associative actors and access to the labour market in Luxembourg”.¹⁴⁴ The recent Portuguese immigration tends to consist of young, qualified persons without professional prospects in Portugal¹⁴⁵: in such cases, a lack of knowledge of the official languages and recognition of qualifications can cause problems. According to the Portuguese consul, most of the Portuguese who arrive are not qualified and adventure themselves into what they believe is the Luxembourgish Eldorado.¹⁴⁶ “Once, the man would come first and later be joined by his family. Today, we have sometimes entire families who arrive or even monoparental families or even the wife comes with the kids while the husband remains in Portugal. We have also older people, in its fifties, who come”.¹⁴⁷

NGOs have pointed out that many people, even if they have family or friends in Luxembourg, are often ill-informed about the realities of life in Luxembourg before they leave home.¹⁴⁸ In order to tackle this problem, the *Association de soutien aux travailleurs immigrés* (ASTI)¹⁴⁹ has set up a website providing useful information.

¹⁴¹ Europaforum.lu, « On ne peut pas retenir les gens, il faut donc mener un travail d’information en collaboration avec les autorités portugaises », states Nicolas Schmit concerning the rise of the number of arrivals from Portugal to Luxembourg, 7 march 2012,

<http://www.europaforum.public.lu/fr/actualites/2012/03/schmit-lw-migrants-pt/>

¹⁴² The General Secretary of the *Union luxembourgeoise des entreprises de travail intérimaire*, Marc Kieffer, has responded to these remarks by stating that such practices should not be allowed and that, if they were proven to be occurring, the ULEDI would call upon the temping agencies to desist.

¹⁴³ <http://www.europaforum.public.lu/fr/actualites/2012/03/schmit-lw-migrants-pt/>

¹⁴⁴ Adrien Thomas, “Nouvelles migrations portugaises, acteurs associatifs et accès à l’emploi au Luxembourg”, *Les cahiers transfrontaliers d’Eures*, Luxembourg n°2/2012, p.4.

¹⁴⁵ L’essentiel, « 39% des jeunes Portugais sont au chômage », 14 November 2012,

<http://www.lesessentiel.lu/fr/economie/story/20245411>

¹⁴⁶ Europaforum.lu, Le nombre de ressortissants de l’UE arrivés au Luxembourg des pays en crise est en nette augmentation depuis 2009 : le CLAE a organisé une table ronde sur ce phénomène nouveau afin de « sortir ce débat de la clandestinité », 13 February 2012,

<http://www.europaforum.public.lu/fr/actualites/2012/02/clae-table-ronde/>

¹⁴⁷ Le Quotidien, “Migrer les yeux ouverts et en connaissance de cause”, 15/02/2012.

¹⁴⁸ Le Quotidien, “Migrer les yeux ouverts et en connaissance de cause”, 15/02/2012.

¹⁴⁹ <http://www.bienvenue.lu/>

The problem finally led to a topical debate held on 10 May 2012 in the Chamber of Deputies on new internal migrations in Europe following the economic crisis.¹⁵⁰ The repercussions for Luxembourg were also discussed¹⁵¹. The Deputies referred to certain problems that had already been mentioned in connection with immigration and migration caused by the crisis: organisations and local administrations facing at-risk cases, difficulties for the persons in question, who are sometimes families with children, in finding work and/or accommodation, new exploitative situations in the accommodation and job market, the problem of school integration for the children of migrants and the need to protect the State against “social tourism and profiteers”¹⁵².

Although this migration is based on the free movement of people and employees, several pathways were suggested: providing more information before departure from the country of origin, applying the laws in Luxembourg and tightening controls on the job and accommodation market.

The debate also proposed the concept of a registration statement based on a promise of recruitment or a short-term contract with the risk of being left without resources.¹⁵³ For several months, the *Fonds national de Solidarité* (National Solidarity Fund) has seen a rise in applications for the RMG (state benefit to cover basic needs) from European Union citizens¹⁵⁴. The Portuguese-language press¹⁵⁵ has highlighted situations where the authorities are attempting to revoke the residence permits of Portuguese nationals receiving the RMG: in these cases the persons concerned are notified and then required to comment on the notification within 8 days.

¹⁵⁰ According to Liberal MP André Bauler, “Luxembourg has to carry out a clear migration policy, which does not necessarily imply an antisocial state. It has to be implemented in the interest of the country, the companies and employees. It would allow people to “migrate with open eyes and with the necessary knowledge”. Europaforum.lu, a debate on internal migration within the EU at the Chamber of Deputies revealed the economic divergences between countries and their consequences in this major crisis, 10 May 2012,

<http://www.europaforum.public.lu/fr/actualites/2012/05/chd-migration-interne-ue/index.html?highlight=d%C3%A9bat%22sur%22les%22portugais>

¹⁵¹ A further debate took place at the Festival of Migrations.

¹⁵² Europaforum.lu: a debate on internal migration within the EU at the Chamber of Deputies revealed the economic divergences between countries and their consequences in this major crisis – Marc Lies, <http://www.europaforum.public.lu/fr/actualites/2012/05/chd-migration-interne-ue/index.html?highlight=tourisme%22social>

¹⁵³ Paula Telo Alves, Todos os dias um portugues recebe um aviso da Direccao da Imigracao, in Contacto of 18 July 2012, p. 3.

¹⁵⁴ Ibid, p.3.

¹⁵⁵ Direcao da Imigracao envia avisos de revogacao do direito de residencia, in Correio of 16 February 2012, p. 9. Luxemburgo abre caça a beneficiarios do RMG, in Contacto of 18 July 2012, pp. 1-3.

The authorities consider that these persons do not fulfil the conditions of article 6(1) of the Law on Immigration to the extent that they do not have sufficient resources to avoid becoming an unreasonable burden on the social assistance system. This situation has been the subject of a parliamentary question¹⁵⁶. The Minister for Immigration explained that “*the concept of the ‘unreasonable burden on the social assistance system’ in article 24, paragraph (4) of the amended law of 29 August on immigration and the free movement of persons specifies that ‘the burden on the social assistance system is evaluated in particular by taking into account the amount and duration of the non-contributory benefits provided and the duration of the right to residence’*”¹⁵⁷. The Minister stated that, since the entry into force of the law on immigration and the free movement of persons, 110 residence permits had been withdrawn from EU citizens but that none of these decisions had “*been accompanied by a deportation order; this has enabled the persons concerned to regularise their situation in terms of their residence permit and thus to meet once more the conditions of article 6.*”¹⁵⁸

Some of the involved parties have brought the case before the administrative tribunals.

The administrative tribunal, judging on a suspended sentence that revoked the right of residence on Luxembourgish territory in its decision n° 31722 of 29 November 2012, has indicated : “*It appears to be at the level of the second plea which is basically derived from the inapplicability of articles 6 (paragraph 1 part 2) and 24 of the law of 29 August 2008 in consequence of the vagueness of the criterion of the ‘unreasonable burden on the social assistance system’, considering that, from a theoretical point of view, the criterion in question does not seem to constitute an imprecise or arbitrary criterion but it rather seems to be a measurable criterion leaving a wide discretion to the administering authority, however on one side, it is a discretion that is required to be enforced under the supervision of a judge, and on the other side, from a concrete point of view, it is not sufficiently clear in the elements of discretion presented at this stage whether the Minister failed to take into account any of the*

¹⁵⁶ Parliamentary question No 2216 by the Deputy Fernand Kartheiser of 26 July 2012. http://www.chd.lu/wps/PA_Archive/FTSShowAttachment?mime=application%2fpdf&id=1154305&fn=1154305.pdf

¹⁵⁷ Reply by Minister Nicolas Schmit of 25 September 2012. http://www.chd.lu/wps/PA_Archive/FTSShowAttachment?mime=application%2fpdf&id=1154306&fn=1154306.pdf

¹⁵⁸ Reply by Minister Nicolas Schmit of 25 September 2012. http://www.chd.lu/wps/PA_Archive/FTSShowAttachment?mime=application%2fpdf&id=1154306&fn=1154306.pdf

relevant elements of discretion in question or whether he has exceeded the limits of his discretion.”¹⁵⁹

Finally the administrative tribunal, third chamber in its decision n° 29901 of 23 January 2013 has been in favour of the government. The tribunal has made the following statement : *“As a result, the citizen of the European Union and the members of his family have a right of residence until a duration of three months under the conditions of articles 5 and 13 of the law of 29 August 2008 under the circumstance that they do not become an unreasonable burden on the social assistance system and that they have a right of residence of more than three months when they meet the conditions as indicated in articles 6 (1) and 7 or in articles 14 and 16 to 18.*”¹⁶⁰

3.1.1.6. Impact of the instruction by the tax administration (Luxembourg Inland Revenue) on tax savings for highly qualified workers

The tax system in place since 1 January 2011 for highly qualified expatriates specifies that the employer is responsible for certain expenditure incurred in the recruitment or posting abroad of highly qualified staff. Between 1 January and 3 October 2012, 49 applications were made to the *Administration des contributions directes*, mainly from the finance sector. 23 applications were approved. However, the condition created by Circular No 95-2 LIR of 31 December 2010 in the “scope” section such that: “the person concerned must make a significant economic contribution or contribute to the creation of new economic activities with a high added value in Luxembourg” has become a sometimes insurmountable barrier for highly qualified applicants.

3.1.2 European developments

3.1.2.1. Transposition of the “Sanctions Directive”

The law of 21 December 2012¹⁶¹ transposing the so-called “Sanctions Directive” was the result of the governmental amendments intended to re-establish, by modifying the Labour Code and the Law on Immigration, a priority of recruitment for some workers. These

¹⁵⁹ <http://www.ja.etat.lu/31722.doc>

¹⁶⁰ <http://www.ja.etat.lu/29901.doc>

¹⁶¹ Article VII, Memorial A No 296 of 31 December 2012.

amendments have been introduced, even though the Administrative Court, in its decree No 29416C of 15 March 2012¹⁶², confirmed the judgment of 28 September 2011 by the Administrative Tribunal¹⁶³ revoking a decision by the Minister of Labour, Employment and Immigration to refuse a residence permit for a salaried worker to a third country national on the basis of the “priority of recruitment for certain workers under EU or national law”.

The Administrative Court ruled that the referral to other “EU or national law” did not necessarily entail a right to prioritise the recruitment of Luxembourg nationals or European Union citizens.¹⁶⁴

The law of 21 December 2012¹⁶⁵ transposing the Sanctions Directive specifies that, for the purposes of simplification and efficiency of the renewal procedure, the *Commission consultative pour travailleurs indépendants* (advisory committee for self-employed workers) will no longer be consulted regarding applications for the renewal of a residence permit as a freelance worker.

3.1.2.2. Single permit for residence and employment

Draft Law No 6507, which transposes Directive 2011/98/EU¹⁶⁶, hereafter referred to as the “Single Permit Directive”, into national law, was lodged on 30 November 2012.¹⁶⁷ The Single Permit Directive does not lay down new residence conditions. It is a horizontal instrument that grants rights to any worker from a third country legally residing in a Member State. Since the law on immigration has already introduced the single permit for salaried workers, the transposition of the Directive only requires slight modifications, some of which are especially interesting:

¹⁶² <http://www.ja.etat.lu/29416C.doc>

¹⁶³ <http://www.ja.etat.lu/27602.doc>

¹⁶⁴ The Administrative Court stated: “The respondent was right to consider that all the provisions of European law invoked by the Government Representative which were applicable when the decision at issue was taken specify only that there should be equality of treatment between nationals of a Member State and citizens of the EU, in line with the exercise of their right to freedom of movement of workers, in the sense that, if the national law of a Member State grants a right to its nationals, it must grant the same right to other EU nationals who are in the same situation; likewise, this implies that, if a right is not applied to the Member State’s nationals, it must not be applied to other EU nationals. These laws do not allow EU nationals to be prioritised under EU law over third country nationals in gaining employment: this issue is governed by Member States’ national law in accordance with article 1(1) of Regulation (EEC) No 1612/68, which requires the same priority in gaining employment to be given to other EU nationals as to nationals of a Member State under its internal law.”

¹⁶⁵ Article VII, Memorial A No 296 of 31 December 2012.

¹⁶⁶ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

¹⁶⁷ Chamber of Deputies, Parl. Doc. No 6507/00, www.chd.lu

- Confirmation of an applicant's authorisation to work must appear on all the residence permits issued to third country nationals, regardless of their category.¹⁶⁸
- The restriction on third country nationals being employed in a single sector and profession only applies for the first year of their legal employment in the country concerned. Renewed employment permits give beneficiaries the right to carry out a salaried activity in any sector or profession. The current law specifies the restriction to a single sector and profession for a maximum of three years.¹⁶⁹
- After one year, employment permits may be renewed for a maximum of three years if the person concerned has a contract for a post advertised as vacant with ADEM.¹⁷⁰ Currently, permits may be renewed for a maximum of two years.
- The deadline for processing the dossier for a salaried worker is reduced to 4 months from the time the file is complete.¹⁷¹ This deadline may be extended in exceptional circumstances where the examination of the application is particularly complex. If the applicant has not received a reply before the deadline, he or she may consider his/her application rejected and may appeal to the Administrative Tribunal.¹⁷²

The Chamber of Commerce gave its opinion on the Draft Law on 21 December 2012. It endorsed the law but criticised the fact that its authors did not include any assessment of the impacts of the measures proposed, “in order to determine to what extent the single permit procedure really is a simplified procedure both for applicants and employers.”¹⁷³

¹⁶⁸ Proposed amendment to article 40(3) of the amended law, Chamber of Deputies, Parl. doc. No 6507/00, www.chd.lu

¹⁶⁹ Article 63 of the Law on Immigration, Memorial A No 138 of 10 September 2008, <http://www.legilux.public.lu/leg/a/archives/2008/0138/2008A2024A.html>

¹⁷⁰ If the beneficiary cannot prove that he has actually worked during the period covered by his residence or employment permit, or if the renewal occurs during a period when he is receiving unemployment benefit, his residence or employment permit is renewed for a maximum of one year.

¹⁷¹ Proposed amendment to article 42(3) of the amended law, Chamber of Deputies, Parl. doc. No 6507/00, www.chd.lu

¹⁷² Proposed amendment to article 42(3.2) of the amended law, Chamber of Deputies, Parl. doc. No 6507/00, www.chd.lu

¹⁷³ Chamber of Deputies, Parl. doc. No 6507/01, p. 2, www.chd.lu

3.1.2.3. Unemployment

As of 31 December 2012, 2281 third country nationals were registered with the ADEM as jobseekers, which equates to 13.4% of the total number of registered jobseekers¹⁷⁴ (16,963). However, the unemployment rate as of 31 December 2012 rose to 6.4%.

Table n° 5: Unemployment rate

	Total	Share of third country nationals
as of 31/03/2012	6.3 %	15.7 %
as of 31/12/2012	6.4%	13,4%

Source: IGSS, ADEM and calculation made by LU EMN NCP, 2013¹⁷⁵

3.1.2.4. Transposition of the “EU Blue Card Directive”

European Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment was transposed into national law by the law of 8 December 2011. The policy for highly qualified workers in Luxembourg is based on employment market demand and the qualifications needed.¹⁷⁶

The law of 8 December 2011 complements the provisions on highly qualified workers already contained in the law on immigration.¹⁷⁷

¹⁷⁴ ADEM 2012, Definition of available resident jobseekers: “resident persons not in employment who, on the date of the statistical return, have not been either on sick leave or maternity leave for over 7 days.”

¹⁷⁵ <http://www.statistiques.public.lu/fr/actualites/population/travail/2013/02/20130222/bulletin-janvier-2013.pdf>

¹⁷⁶ Government Programme 2009-2014, p. 21,

<http://www.sante.public.lu/publications/systeme-sante/politique-nationale-sante/programme-gouvernemental-2009/programme-gouvernemental-2009.pdf>

¹⁷⁷ It should be noted again that, during the drafting of the Law on Immigration, the draft Directive was taken into account. The law now permits the recruitment of highly qualified workers without their having to undergo the usual procedure for salaried workers consisting of verifying the priority of their recruitment and submitting a request for consultation by the Advisory Committee for salaried workers. Apart from the fact that the simplification of the procedure increases the speed of processing of the applications, highly qualified workers are henceforth authorised to be accompanied or joined by the members of their nuclear family without being subject

The law enables the creation of a residence permit in the form of an EU Blue Card to be issued to third country nationals who are authorised to reside here and carry out highly qualified employment. During the transposition, the political discussions centred on the argument that there was a lack of highly qualified labour in Luxembourg.

The transposition entailed in turn an adaptation of the Grand-Ducal regulation of 26 September 2008 determining the minimum level of pay for a highly qualified worker under the law of 29 August 2008 on immigration and the free movement of persons¹⁷⁸. This regulation set the minimum pay threshold for a highly qualified worker at one and a half times the average annual gross salary ($44,376 \times 1.5 = 66,564$ euros in 2012), except for professions in groups 1¹⁷⁹ and 2¹⁸⁰ of the International Standard Classification of Occupations (ISCO-08)¹⁸¹, where a special need for third country nationals has been identified by the Government. In these cases, the minimum threshold is 1.2 times the average annual gross salary¹⁸² ($44,376 \times 1.2 = 53,251.20$ euros in 2012). As of 31 December 2012, the Government had not made the assessment mentioned in article 1 of the Grand-Ducal regulation of 25 January 2012¹⁸³ to identify the jobs which need highly qualified workers.

Thus, another two Grand-Ducal regulations were amended: the amended Grand-Ducal regulation of 5 September 2008 adopting certain provisions on the administrative formalities specified in the law on immigration and free movement of persons and the Grand-Ducal regulation of 5 September 2008 defining the resources and accommodation criteria specified in the law¹⁸⁴.

The main changes brought about by the law of 8 December 2011 are:

1. The grant of a residence permit to carry out a highly qualified job is subject to the following conditions: the applicant must possess a valid employment contract for a highly

to a condition on their duration of residence. Document 6306/04, p 3, www.chd.lu; Policy report on migration and asylum 2011, www.emnluxembourg.lu

¹⁷⁸ Memorial A No19 of 3 February 2012. <http://www.legilux.public.lu/leg/a/archives/2012/0019/a019.pdf>

¹⁷⁹ Managers (Chief executives, senior officials and legislators, administrative and commercial managers, production and specialized service managers, hospitality, retail and other service managers.)

¹⁸⁰ Professionals (science and engineering professionals, health professionals, teaching professionals, business and administration professionals, information and communications technology professionals, legal, social and cultural professionals.

¹⁸¹ <http://unstats.un.org/unsd/statcom/doc08/BG-ISCO-08-F.pdf>

¹⁸² Memorial A No 33 of 27 February 2012, p. 372,

<http://www.legilux.public.lu/leg/a/archives/2012/0033/a033.pdf>

¹⁸³ Memorial A No 19 of 3 February 2012. <http://www.legilux.public.lu/leg/a/archives/2012/0019/a019.pdf>

¹⁸⁴ Memorial A No 19 of 3 February 2012. <http://www.legilux.public.lu/leg/a/archives/2012/0019/a019.pdf>

qualified position, submit a document proving his/her relevant advanced-level professional qualifications and be receiving a salary which is at least equal to one and a half times the average annual gross salary applied in Luxembourg to highly qualified workers.

For jobs in groups 1 and 2 of the ISCO¹⁸⁵ where a special need for third country nationals has been identified by the Government, the minimum pay threshold is set at 1.2 times the average annual gross salary¹⁸⁶, but until now there has not been a study in this sense.

2. The labour market test does not apply.

3. After the first two years, an EU Blue Card holder receives equal treatment with nationals in terms of access to all highly qualified employment (apart from jobs that are connected with the exercise of official authority and positions which involve safeguarding the general interest of the State).

4. Family members of a third country national holding an EU Blue Card may accompany him/her at his/her entry into the country or join him/her afterwards (article 71). These family members' residence permits are identical in duration to the residence permit issued to the EU Blue Card holder (article 74(1)).

For family members, the calculation of the five-year residence period required to apply for a separate residence permit includes periods of residence in different Member States (article 76(2)).

5. An EU Blue Card holder may add together residence periods in different Member States in order to satisfy the requirement on duration of residence for obtaining a long-term residence permit. To do this, he/she must prove: 5 years of legal, continuous residence, 5 years as a Blue Card holder on EU territory and 2 years' legal, uninterrupted residence in the country concerned as an EU Blue Card holder.¹⁸⁷

¹⁸⁵ Group 1 of CITP: directors, executives and managers; Group 2: intellectual and scientific professions.

¹⁸⁶ Ministerial regulation of 15 February 2012.

¹⁸⁷ Sole article, point 24° of the amended law of 8 December 2011 amending the Law on Immigration, Memorial A No 19 of 3 February 2012.

Table n° 6: Residence permits “EU Blue card”¹⁸⁸ (2009 – 2012)

	2009	2010	2011	2012
European Blue Card				183 ¹⁸⁹
Highly qualified worker	195	128	186	45
Others	7916	6817	8059	9474
Total	8111	6945	8245	9702

Note: The 45 “highly qualified” residence permits are the residence permits that were issued before the entry into force of the Law of 8 December 2011 or that were in the last stages of the approval procedure before the law entered into force.

Source: Directorate of Immigration, 2013

The number of « highly qualified » worker residence permits in 2012 increased 22,6% (228) in comparison with the number of permits issued in 2011 (186). However, only 204 (89,5%) were first issuances.

Table n° 7: Highly qualified residence permits by first issuance and renewal – 2012

	First issuances	Renewals	Total
European Blue Card	183	0	183
Highly qualified Worker	21	24	45
Total	204	24	228

Source: Directorate of Immigration, 2013

¹⁸⁸ First issue.

¹⁸⁹ All initial issues of “European Blue Card” residence permits are taken into account, thus also the residence permits issued to persons who previously held a residence permit from another category (for example highly qualified workers)

3.1.2.5. Access to the job market for Croatian nationals

Answering a parliamentary question on the opening of the job market to Croatian nationals after accession to the EU in 2013¹⁹⁰, the Minister for Immigration stated that it was likely that, with regard to Croatian nationals' access to the job market, the Government would apply the interim provisions of the Treaty of Accession¹⁹¹, at least for an initial period of two years. However, the Government does not envisage concluding a bilateral agreement to that effect. The Minister for Immigration stated that article 6 (3) of the amended law of 29 August 2008 on immigration and the free movement of persons is the legal basis required to create a restricted opening of access to the job market.¹⁹²

The decision to extend this restricted opening beyond the interim two years will depend on the development of the job market during this period and the influx of Croatian labour, which is difficult to predict at present.

¹⁹⁰ Parliamentary question N° 2360 of 12 October 2012 by Deputy Fernand Kartheiser, http://www.chd.lu/wps/PA_Archive/FTSShowAttachment?mime=application%2fpdf&id=1161070&fn=1161070.pdf, Answer by the Minister for Labour, Employment and Immigration, http://www.chd.lu/wps/PA_Archive/FTSShowAttachment?mime=application%2fpdf&id=1161071&fn=1161071.pdf

¹⁹¹ The Treaty was approved by the Chamber of Deputies on 9 October 2012. Europaforum.lu, "The Chamber of Deputies approves the Treaty of Accession of Croatia to the European Union", 10 October 2012, <http://www.europaforum.public.lu/fr/actualites/2012/10/chd-croatie/index.html>

¹⁹² Europaforum.lu, "The Government will 'probably' decide to apply the interim provisions specified in the Treaty of Accession with regard to Croatian nationals' access to the job market, says Nicolas Schmit in reply to Fernand Kartheiser", 16 November 2012.

3.2. Family reunification

3.2.1 The general context before 2012

Family reunification for third country nationals is regulated by the Law on Immigration and the amended Grand-Ducal regulation of 5 September 2008 defining criteria of resources and accommodation as provided by the law.¹⁹³ Article 73 (6) of the law provides a maximum of 9 months to decide on a request for family reunification.¹⁹⁴

3.2.2 National developments in 2012

3.2.2.1. Access to the job market for family members

Holders of a “family member” residence permit may register as jobseekers with ADEM.¹⁹⁵

In order to access the job market, third country nationals coming to Luxembourg as family members must obtain a residence permit to be register at the ADEM.¹⁹⁶ The labour market test only applies to third country nationals arriving in Luxembourg within the framework of a family reunification during their first year of residence. After one year of residence, the market test is no longer carried out.

In contrast to the family members of a third country national holding a “salaried worker” residence permit, who must wait one year before being able to join the family unit, family members of a third country national holding an EU Blue Card residence permit may accompany him/her when he/she enters the country or join him/her later (article 71). Their residence permit is valid for exactly the same length of time as the residence permit issued to the EU Blue Card holder (article 74).¹⁹⁷

¹⁹³ Memorial A n°80, of 26 April 2012, corresponding document : <http://www.legilux.public.lu/leg/a/archives/2012/0080/a080.pdf>

¹⁹⁴ The maximum time limit for third country nationals is 9 months (for those who are not classified as highly qualified workers) and for those who meet the conditions as indicated by the law (one year of residence, demonstrate to have the means to provide for family member(s) and having an insurance). In the case where the applicant is a Luxembourgish national or an EU member, the maximum comprises 3 months.

¹⁹⁵ Article L. 622-5(1), law of 18 January 2012 creating the Employment Development Agency, Memorial A No 11 of 26 January 2012, <http://www.legilux.public.lu/leg/a/archives/2012/0011/a011.pdf#page=2>

¹⁹⁶ <http://www.adem.public.lu/demandeur/permis/>

¹⁹⁷ “Salaried worker” residence permits are valid for one year only and are renewable annually. Law of 8 December 2011 amending the Law on Immigration, Memorial A No 19 of 3 February 2012,

3.2.2.2. Family members who have signed the Reception and Integration Contract

Of the 972 CAI signatories in 2012, 38 were family members (10 were members of a Luxemburgish family, 21 were members of an EEA or Swiss family and 7 were members of a third country family).¹⁹⁸

3.2.2.3. Files on family unit processed by the Mediator and the Ombuds-Comité fir d'Rechter vum Kand (ORK)

The Mediator of the Grand-Duchy of Luxembourg has examined different cases relating to the family unit of third country nationals, naming:

- 1) A mixed marriage Serbo-Romanian couple had been obliged to leave the territory and return to their country of origin.¹⁹⁹ The Mediator intervened with the Minister of Immigration in order to request a suspension of the decision while the Romanian national's work permit was pending to be issued.
- 2) The Mediator was confronted by the case of a sick, elderly woman, whose son, a resident of the Grand-Duchy, requested family reunification, and which was denied as the documents provided did not prove that the mother depended on the care of the son. The Mediator intervened with the Minister of immigration in order to obtain a postponement of the removal.²⁰⁰

On 13December 2012, Mr. René Schlechter became the new president of the Luxembourgish Committee for the Rights of the Child (ORK). In its 2012 report to the Government and to the Chamber of Deputies, the ORK mentions several cases dealing with the family life of third country nationals. The ORK urges the authorities in charge of the case to always inquire into the best interests of the child.

The ORK describes the case of an applicant for international protection originating from a country where homosexuality is considered a mental illness and where it is also punishable by law. His application was rejected by the Administrative Court and so he married a female national from the same country, but who is a Luxembourg resident in the hope of receiving a

<http://www.legilux.public.lu/leg/a/archives/2012/0019/a019.pdf>

¹⁹⁸ MIFA, OLAI, internal document.

¹⁹⁹ Progress report 2011 – 2012, Ombudsman : La Médiature du Grand-Duché de Luxembourg, p. 28, http://www.ombudsman.lu/doc/doc_downloads_49.pdf

²⁰⁰ Progress report 2011 – 2012, Ombudsman : La Médiature du Grand-Duché de Luxembourg, p. 31, http://www.ombudsman.lu/doc/doc_downloads_49.pdf

residence permit. The residence permit was denied. However, his wife became pregnant and the ORK believes that, in the current situation, family reunification should be granted.²⁰¹

Another issue raised by the ORK concerns an attempt of family reunification and the possibility of reunification given to family members living in several countries.²⁰²

Table n° 8: Number of first residence permits issued to family members 2012 (overall figures)

Residence permits issued to family members (EU citizen)	1274
Permanent residence permits issued to family members (EU citizen)	638
Residence permits issued to family members (third country nationals)	1018
Residence permit issued on grounds related to their private lives (family or personal relationships)	119

Source: Directorate of Immigration, 2013

²⁰¹ ORK, rapport 2012 to the Government and the Chamber of Deputies, p. 47.
<http://www.ork.lu/PDFs/Rapport2012.pdf>

²⁰² A Congolese citizen who requested international protection in Luxembourg, while his wife and daughter filed a request in the Netherlands. They do not own any identity documents and find themselves, in a clandestine manner, at the Belgian-Dutch border. Meanwhile, they conceived two children. Ibid, p.48.

Table n° 9: Residence permits issued to family members of EU citizens in 2012²⁰³

	Total	%
Brazil	148	11.6%
Cape Verde	140	11.0%
USA	63	4.9%
Montenegro	63	4.9%
Morocco	58	4.6%
Bosnia-Herzegovina	53	4.2%
Russia	50	3.9%
China	47	3.7%
Serbia	46	3.6%
Cameroon	38	3.0%
Others	568	44.6%
Total	1274	100.0%

Source: Directorate of Immigration, 2013

The largest group is comprised by the Brazilians (11,6%), followed by the Cape Verdeans (11%), and the Americans (4,9%). These three groups comprise 27,5% of the total of residence permits issued, whereas the first ten nationalities comprise 63,4%.

²⁰³ First issue: broken down into the ten main nationalities.

Table n° 10: Residence permits issued to family members of third country nationals in 2012²⁰⁴

	Total	%
Montenegro	176	17.3%
USA	146	14.3%
China	103	10.1%
India	87	8.5%
Serbia	79	7.8%
Kosovo	43	4.2%
Cape Verde	40	3.9%
Bosnia-Herzegovina	39	3.8%
Brazil	28	2.8%
Russia	22	2.2%
Others	255	25.0%
Total	1018	100.0%

Source: Directorate of Immigration, 2013

The largest group is comprised by the Montenegrins (17,3%), followed by the Americans (14,3%) and the Chinese (10,1%). These three groups comprise 41,7% of the total of residence permits issued, whereas the first ten nationalities comprise 75% of the total.

3.2.3 European developments

3.2.3.1. Transposition of the “Single Permit” Directive

Draft Law No°6507²⁰⁵ amending the amended law of 5 May 2006 on the right to asylum and complementary forms of protection and the amended law of 29 August 2008 on immigration

²⁰⁴ First issue.

²⁰⁵ Submitted to the Chamber of Deputies on 30 November 2012. Chamber of Deputies, parl. doc. No 6507, www.chd.lu

and the free movement of persons transposes into national law Directive 2011/98/EU of 13 December 2011.²⁰⁶ The Draft Law includes several new definitions introduced by the Directive. The most substantial of these consists of the extension of the concept of the “family member”, which, according to article 19 of the Directive, must take into account the “different individual situations of dependency and the special attention to be given to the best interests of the child”.²⁰⁷

Furthermore, the transposition of the Single Permit Directive will have a direct impact on the family members of all third country nationals with a permit to reside in Luxembourg. The certification of the person’s right to work here must be included on the “family member” residence permit, whereas previously the family members had to request a separate work permit (article 40(3)).

3.2.3.2. Preliminary ruling from the European Court of Justice

A question requiring a preliminary ruling was raised by the decision of the Administrative Court before the ECJ on 16 February 2012²⁰⁸ regarding the right of a Luxemburgish minor to request the family reunification of his parents and brothers. The preliminary ruling request was worded as follows: *“To what extent does the fact of being a citizen of the Union and the related right to reside in the country of which a Union citizen is a national, as provided for by Article 20 of the TFEU, along with the rights, guarantees and obligations laid down in the Charter of Fundamental Rights and in particular and insofar as is relevant, in Articles 20, 21, 24, 33 and 34, confer a right to family reunification upon a sponsor who is a citizen of the Union and wishes to bring about, in the country in which he resides and of which he holds the nationality, the reunification with himself of his mother and father and two of his brothers, all of whom are third-country nationals, where he has not exercised his right to free movement and has not resided in a Member State other than that of which he holds the nationality?”*

The preliminary ruling request was addressed by the European Court of Justice in the case C-87/12.

²⁰⁶ 2011/98/EU of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

²⁰⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:343:0001:0009:FR:PDF>

²⁰⁸ <http://www.ja.etat.lu/28952C.doc>

3.3. Students and researchers

3.3.1 National developments in 2012

3.3.1.1. The University of Luxembourg

The Ministry of Higher Education and Research supports the University of Luxembourg in its international strategy, based on attracting international students, the mobility of students, teachers and researchers and multilingualism.²⁰⁹ Notwithstanding its independence in managing its educational, scientific, administrative and financial affairs,²¹⁰ the management of the University of Luxembourg cooperates closely with the authorities, especially the Directorate for Immigration, in procedural matters regarding the mobility of international students, e.g. in the procedures for the issue and renewal of residence permits.²¹¹

In 2012, 10.4% of University of Luxembourg students were third country nationals.

The higher the level of study, the more important internationalisation becomes. Although students from third countries represent only 6.4% of undergraduates, this ratio increases considerably to 25.1% for Masters courses and to 18.7% for PhD students.²¹²

The goal to attract international students to the University of Luxembourg is pursued through international agreements targeting universities in third countries and partnerships with universities in the EU. The UL has signed several framework agreements²¹³ involving non-ERASMUS partnerships and covering student exchanges, research exchanges and research projects. There are currently framework agreements with the following third countries: Canada, Cape Verde, the USA, China, India, Japan, Mali, Russia, Thailand and Uruguay.²¹⁴

There were several decisions made by administrative courts concerning international students in 2012.²¹⁵ The Administrative Tribunal²¹⁶, in its decision of 20 June 2012, ruled that there are

²⁰⁹ http://wwwfr.uni.lu/universite/presentation/5_bonnes_raisons

²¹⁰ EMN NCP LU, Immigration of International Students to Luxembourg, 2012, 2.1. www.emnluxembourg.lu

²¹¹ EMN NCP LU, Immigration of International Students to Luxembourg, 2012, 3.5.2. et 3.7.4. www.emnluxembourg.lu

²¹² Luxemburgish students: 47%; students from EU 27 (excluding Luxembourg): 42.3%; students from the EEA/Switzerland: 0.3%, European Migration Network, Immigration of International Students to Luxembourg, 2012, www.emnluxembourg.lu

²¹³ http://wwwfr.uni.lu/international/accords_interuniversitaires

²¹⁴ These agreements are prior to 2012.

²¹⁵ See the administrative jurisprudence database of the Grand Duchy of Luxembourg on immigration and international protection: <http://www.emn.lu/>

²¹⁶ Judgment No 29538 of 20 June 2012, Administrative Tribunal, 3rd chamber.

not sufficient grounds to grant a residence permit and avoid an expulsion order by a third country who claims a residence permit on the sole grounds of being a holder of a residence permit from another member state and being registered in a higher education institution during the academic year.²¹⁷ A further judgment by the Administrative Tribunal²¹⁸ of 2 July 2012 addressed the situation of a third country national who was applying for a new student residence permit after spending over seven years studying in Luxembourg without obtaining any qualification and after applying for Luxembourgish nationality. The court noted the provisional, precarious nature of the student permit, highlighting that *“the issue of this permit cannot be used as a pretext for allowing a more lasting kind of immigration”*. It shared the Minister’s opinion that *“the length of his residence cannot be considered long enough to justify not refusing residence.”*²¹⁹

The court also stated that, in general, an international student must return to his/her country of origin after completing his/her studies.²²⁰

3.3.1.2. Developing research

The Government, aiming to achieve European objectives set by the “Europe 2020” strategy²²¹, wants to develop the research sector in Luxembourg by continuing its policy of boosting research, development and innovation (RDI). The State budget for RDI increased from 253.4 million euros in 2011 to 280 million euros in 2012.²²² Between 2009 and 2012 the State expenditure intended for research amounted to 1245 million euros.²²³ This funding aims

²¹⁷ <http://www.ja.etat.lu/29538.doc>. The court said: “It must be noted that, pursuant to the decision, the Minister has stated that , on the one hand, the application for a residence permit as a student has become redundant, since the academic year for which the permit had been applied has expired and, on the other hand, the applicant no longer meets the conditions of article 34 of the Law on Immigration, since she has remained in Luxembourg beyond the authorised three-month duration of the permit without being in possession of a permit valid for a period of over three months; thus, her residence is illegal.”

²¹⁸ Judgment No 28941 of 2 July 2012, Administrative Tribunal, 1st chamber.

²¹⁹ <http://www.ja.etat.lu/28941.doc>

²²⁰ The court said: “(...) the fact that a student has to leave the acquaintances he has made in that country and return to his country of origin is not at all unusual but is the general rule for foreign students in Luxembourg, as well as for Luxembourgish students abroad.”

²²¹ Luxembourg 2020 - national plan for intelligent, sustainable and inclusive growth, Competitiveness and statistics, <http://www.innovation.public.lu/fr/publications/rdi-luxembourg/competitivite-statistiques/pnr-2012-luxembourg-2020/index.html>

²²² Luxembourg 2020 - national plan for intelligent, sustainable and inclusive growth, Competitiveness and statistics, <http://www.innovation.public.lu/fr/publications/rdi-luxembourg/competitivite-statistiques/pnr-2012-luxembourg-2020/index.html>

²²³ Jean-Claude Junker, State of the nation speech, 10 April 2013.
http://www.gouvernement.lu/salle_presse/actualite/2013/04-avril/10-etat-nation/index.html#res

to develop a coherent raft of actions to improve recruitment, training and researchers' career prospects.

3.3.1.3. The National Research Fund (FNR)

On 3 April 2012, the Minister for Higher Education and Research submitted a Draft Law to amend the amended law of 31 May 1999 creating a National Research Fund.²²⁴

The Draft Law reformulates the tasks of the FNR by highlighting its importance as the major instrument for implementing government policy on research and the contribution of its activities²²⁵ to the socioeconomic development of the country. In order to maximise the economic, social or cultural activities of research, priority in future years must be given to creating value from the results of public research.

Furthermore, the Draft Law aims to widen the field of institutions eligible for funding and support by the FNR to include associations and not-for-profit organisations carrying out research in relevant fields, provided they are approved by the Ministry.²²⁶

The ATTRACT programme

The ATTRACT programme aims to strengthen research excellence by attracting to Luxembourg promising young researchers with professional experience of 2 to 8 years in their research field after obtaining their doctorate. The ATTRACT programme offers these researchers, if they are not already working in Luxembourg, the chance to be part of an independent research team in a public research institution in Luxembourg.

The selected projects receive financial support for five years amounting to a maximum of 1.5 million euros. In 2012, one project was selected.

²²⁴ Draft Law amending the amended law of 31 May 1999 creating a national research fund in the public sector; amending the amended law of 12 August 2003 creating the University of Luxembourg, Parl. doc No 6420 of 19 April 2012, www.chd.lu

²²⁵ Among others, activities supporting research and researchers.

²²⁶ At present, the eligible institutions are the University, the centres for public research and public establishments. The terms for granting approval of research bodies specified in article 65(4) of the Law on Immigration persons (implemented on the basis of the Grand-Ducal regulation of 14 November 2008) also apply to granting approval of eligibility for the FNR and, therefore, this approval both provides eligibility for the FNR and also permits institutions to host third country nationals as students and researchers.

The PEARL programme

The aim of the PEARL programme is to provide a flexible tool, which assists institutions in attracting internationally recognised experienced researchers to work there. The main aim is to develop research institutions' capacities in order to meet their strategic priorities. As part of the PEARL programme, the FNR is providing substantial funding (3 to 5 million euros) to research institutions in order to attract internationally renowned researchers.

The INTER programme

The aim of the INTER programme is to promote international scientific cooperation, create synergies between Luxembourg research centres and those abroad, achieve a critical mass in certain fields, offer a better approach to resolving certain cross-border issues and, finally, to enhance the visibility and competitiveness of Luxembourgish research. The INTER programme focuses on participation in international programmes to be developed with other funds or foreign research councils or in programmes that already exist at the international level.

The purpose of the Luxembourg portal for innovation and research is to offer single, centralised access to information in the field of research, development and innovation (RDI) in Luxembourg.²²⁷

On 23 May 2012, the Ministry for Higher Education and Research launched the Luxembourg guide for foreign researchers.²²⁸ This guide helps researchers and their families from anywhere on the entire globe (third countries or EU countries) to settle in Luxembourg. It gives an overview of employment law, entry conditions, visa issue procedures, tax affairs, social security and health, as well as information on accommodation and social life.

Grants for Research Training (AFR)

The AFR supports projects to provide training in research to doctorate and post-doctorate students in Luxembourg and abroad. The main aim of the AFR is to improve young researchers' working conditions and career prospects by facilitating their access to work

²²⁷ <http://www.innovation.public.lu/fr/index.html>

²²⁸ In collaboration with EURAXESS, MAE, MENFP, the Ministry of Sustainable Development and Infrastructure – Transport Department, CNS, ADEM, CNAP, CNPF, SNCT. Foreign Researcher's Guide to Luxembourg, <http://www.innovation.public.lu/fr/publications/programmes-europeens/mobilite/foreign-researcher-guide/index.html>; <http://www.innovation.public.lu/fr/actualites/2012/05/foreign-researcher/index.html>

contracts and offering them the chance of getting additional training in research. The AFR funding system is aligned with the principles recommended in the European Charter for Researchers and the Code of Conduct for the recruitment of researchers. Furthermore, the AFR regime encourages public/private partnerships by allocating financial aid for research projects carried out in collaboration with the private sector.

In 2011, of the 897 project proposals submitted and evaluated, the FNR funded 47 projects as part of the CORE (28), INTER (16), ATTRACT (1) and PEARL (2) programmes, as well as 101 doctorate candidates and 40 postdoc candidates as part of the AFR system.²²⁹

3.3.2. “Researcher” residence permits for third country nationals

Since the entry into force of the Law on Immigration, the number of residence permits (first issues and renewals) has almost quadrupled (from 15 in 2009 to 58 in 2012).

The Directorate for Immigration has issued 38 “researcher” residence permits to third country nationals.²³⁰ This comprises 65,5% of the total number of “researcher” residence permits issued by the Directorate for Immigration in 2012.

²²⁹ 340 persons in accompanying measures. FNR, Annual Report 2011, <http://www.fnr.lu/fr/Publications/Annual-Reports>, <http://www.fnr.lu/en/Publications/Annual-Reports>.

The figures for 2012 will be available in May 2013.

²³⁰ Source: Directorate of Immigration, 2012.

Table n° 11: “Researcher” residence permits issued in 2012 (First issuance), by nationality

	Total	%
China	6	15.8%
Canada	4	10.5%
USA	3	7.9%
Brazil	3	7.9%
India	3	7.9%
Ukraine	3	7.9%
Iran	2	5.3%
Pakistan	2	5.3%
Russia	2	5.3%
Tunisia	2	5.3%
Others	8	21.1%
Total	38	100.0%

Directorate of Immigration, 2013

The BRIC countries (Brazil, Russia, India and China) comprise 36,9%, whereas the first ten nationalities comprise 79,9% of the total number of new researchers.

3.4. Other forms of legal migration

3.4.1 The general context before 2012

The bill on hosting young au pairs was submitted on 14 September 2011 to the Chamber of Deputies.²³¹ The aim of this bill, which responds to the Government program 2009 to 2014, is to provide a legal framework for hosting au pairs in Luxembourg.²³² The text accurately describes the reception of au pairs, the young people's type of stay and work in this context, together with the obligations for the host family and the young au pair himself/herself. According to the text, the au pair activities must not have an adverse effect on potential or existing paid employment or be seen as a substitute for it. It will not imply an employer-employee relationship between the au pair and the host family and the Labour Code does not apply. In 2011, the bill has been the subject of a notice of both the Chamber of Employees (CS) and the Chamber of Commerce (CC).

3.4.2 National developments in 2012

3.4.2.1. Bill on hosting of young au pairs

The bill has been amended by the Government on two occasions.²³³

At the request of the MIFA, the Government introduced a provision for young au pairs to be insured under the statutory health insurance scheme, rather than to resort to private insurance. A second set of amendments corresponds in part to the opinion of the Council of State. It does not follow the Council's opinion in its proposal to abandon the approval procedure for young au pairs. According to the Council of State, the “extremely demanding and complicated administrative process”,²³⁴ much stricter than the one foreseen under the European

²³¹ Bill n° 6328 on hosting young au pairs. Parliamentary document n° 6328/00
http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServingServletImpl/?path=/export/exped/sexpdata/Mag/131/06/1/103600.pdf

²³² Ibid.

²³³ Parliamentary document n° 6328/03 of 27 March 2012; Parliamentary document n° 6328/07 of 12 September 2012.

²³⁴ Parliamentary document n° 6328/06 of 10 July 2012. Containing a) a request of acceptance to the Minister responsible for Youth Services to be filed by the host family, b) the application for approval to the Minister in charge of youth to be filed by the au pair, c) the application for a residence permit to the Minister of Labour, Employment and Immigration.

Agreement on au pair placement, is likely to dissuade the host families as well as the young au pair.

In their supplementary opinion, the Chamber of Commerce ²³⁵ and the Chamber of Employees, support most of the governmental amendments. The Chamber of Employees proposes that the amount of pocket-money for the au pair corresponds to a minimal amount rather than a fixed amount equivalent to one fourth the minimum wage. The Chamber of Commerce believes that the amended plan provides for greater flexibility for the reception of au pairs and welcomes the amendments regarding the basic linguistic knowledge criterion as a requirement in order to qualify for au pair placement.

On 11 December 2012, the Commission for Families, Young People and Equal Opportunities gave a favourable report on the project. ²³⁶

The draft project was passed into law on 18 February 2013. ²³⁷

3.4.2.2. Sources of information on settling in Luxembourg

The MAE and the Directorate for Immigration's websites were modified in 2012. The information sheets on conditions for entry, residence and work, as well as the administrative steps required, have been updated. ²³⁸

The “guichet.lu” and “geoportail.lu” sites will provide preliminary information to third country nationals about required authorisations. Each procedure will be subject to a time limit. ²³⁹

3.4.3 European developments

At the European level, the LU EMN NCP is responsible for updating the EU Immigration Portal, ²⁴⁰ which gives information on the administrative procedures for immigration to Luxembourg.

²³⁵ See Parliamentary documents 6328/04 of 8 March 2012 and 6328/08 of 14 September 2012.

²³⁶ Parliamentary document 6328/11 of 3 January 2013.

²³⁷ Memorial A No 44 of 11 March 2013,
http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServingServletImpl/?path=/export/exped/sexpdata/Mag/103/206/120025.pdf

²³⁸ <http://www.mae.lu/Site-MAE/VISAS-Immigration>

²³⁹ http://www.gouvernement.lu/salle_presse/actualite/2013/04-avril/10-etat-nation/index.html

²⁴⁰ [http://ec.europa.eu/immigration/tabHome.do?language=9\\$fr](http://ec.europa.eu/immigration/tabHome.do?language=9$fr)

As part of the “*Itinéraires pour l'emploi*” project funded by the EIF, a system of information and guidance on how to enter the job market has been drawn up for third country nationals.²⁴¹

On 8 February 2012, LU EMN NCP uploaded a database on the administrative jurisprudence regarding immigration and international protection.²⁴² This database has been included for consultation on the website of the Ministry of Justice of the Grand Duchy of Luxembourg, under the “juridictions administratives” and “jurisprudence” headings.²⁴³

²⁴¹ <http://www.clae.lu/html/m1sm4ssm1.html>; http://www.olai.public.lu/fr/publications/programmes-planactions-campagnes/programme_fei/liste-fei.pdf

²⁴² The database can be consulted at: www.emn.lu and www.emnluxembourg.lu

²⁴³ <http://www.justice.public.lu/fr/jurisprudence/index.html>

3.5. Integration

3.5.1 The general context before 2012

The OLAI, which is attached to the MIFA, is responsible for the policy regarding reception and integration of foreigners in the Grand-Duchy of Luxembourg. The integration policy in Luxembourg applies to all foreigners, EU citizens and third country nationals.

The principal instruments for integration are 1. the National Action Plan for Integration and Against Discrimination 2010-2014 and 2. the CAI.

The National Action Plan for Integration and Against Discrimination 2010-2014²⁴⁴ was officially presented on 9th February 2011, although it had already been implemented in 2010. Established by the OLAI in cooperation with the Inter-ministerial Committee on Integration and after consulting civil society, this action plan foresees a set of measures designed to promote a harmonious integration and to insure full participation of foreigners within the Luxembourgish society.

Guided by two innovative principles, reciprocity and shared responsibility, this instrument for integration policy co-ordination takes legal and political commitments made by Luxembourg on a national, a European and an international level, into account.²⁴⁵

3.5.2 National developments in 2012

3.5.2.1. The National Action Plan for Integration and Against Discrimination 2010-2014

The action plan is designed to cover five years and is based on the 11 main guidelines of from European policy. However, instead of diluting its efforts and rolling out various resources from the Common Basic Principles (CBP), the Government chose to concentrate initially on implementing certain CBPs in particular.

²⁴⁴ National Action Plan for Integration and Against Discrimination 2010-2014,
http://www.olai.public.lu/fr/publications/programmes-planactions-campagnes/plan/olai_plan_daction_fr.pdf

²⁴⁵ National Action Plan for Integration and Against Discrimination 2010-2014,
http://www.olai.public.lu/fr/publications/programmes-planactions-campagnes/plan/olai_plan_daction_fr.pdf
For more information see LU EMN NCP Policy Report on Migration and Asylum 2010, 4.4.2 et 4.4.4,
<http://www.emnluxembourg.lu/type-documentation/rapport-politique-2010>

As in 2011, the Government is focusing in 2012 on certain “CBP”s, three of which were regarded as priorities in 2011:

- CBP 1: two-way process
- CBP 4: basic knowledge of the host society’s language, history and institutions
- CBP 5: education
- CBP 7: intercultural dialogue

CBP 1: Two-way process

This priority starts from the idea that the integration process involves the adaptation of the host society as well as of immigrants. This approach involves bringing together immigrants and nationals while ensuring that the rights and responsibilities of both are clearly set out, as well as involving all actors at various levels. As part of this two-way process approach, on-going training in, for example inter-culturalism, diversity and intercultural skills, is organised and focused on the actors concerned.

CBP 4: Basic knowledge of the host society’s language, history and institutions

As laid down in the Law on Integration, a basic knowledge of the languages, history and institutions of Luxembourg are regarded as a priority for 2012 and will be enabled using the CAI, which specifies language training, civic instruction and an orientation day for all signatories.

Organised for the third consecutive year by the MENFP and OLAI, the “De l’école à la communauté” project took place from 5 to 7 December 2012. This project was directed at students starting their secondary education, with the aim of giving new young arrivals the chance of knowing more about Luxembourg and developing some social skills to help them integrate in Luxembourg, especially through the organisation of a workshop entitled “Integration in the host country.”

CBP 5: Education

The education of foreign nationals of all ages is an essential part of the action plan. To that end, access to education and training for foreign nationals is a priority.

CBP 7: Intercultural dialogue

Actions and practices that encourage meetings between foreigners and nationals are planned in order to promote intercultural dialogue, especially through awareness-raising actions.

The study “Réfugiés reconnus au Luxembourg: Quelle intégration?” (Recognised refugees in Luxembourg – what kind of integration?), carried out through the ERF, is the first study on recognised refugees in Luxembourg. It investigates the integration process for persons who obtained the status of refugee in Luxembourg from 2000-2009. The aim is to analyse the current socioeconomic situation of these recognised refugees and identify the factors behind their integration into Luxembourg society, as well as any barriers encountered.

3.5.2.2. The Reception and Integration Contract (CAI)

Launched on 29 September 2011, the CAI is a mutual, optional agreement made between the State and a foreign national aged over 16 who is residing legally in Luxembourg and intends to remain here for a long period. The contract lasts a maximum of two years and applies both to EU citizens and third country nationals, to new arrivals and persons settled in Luxembourg for many years.²⁴⁶

The services offered include training in the three official languages, citizenship courses and an orientation day, the first of which took place on 3 March 2012.²⁴⁷

As of 31 December 2012, 972 candidates of 96 different nationalities had signed the contract. 40% of the signatories were third country nationals and 60% were EU citizens²⁴⁸. Portuguese

²⁴⁶ 2011 Policy Report on Migration and Asylum, Points 3.3. and 4.4.2, www.emnluxembourg.lu

²⁴⁷ The “Reception and Integration Contract”,
http://www.olai.public.lu/fr/accueil-integration/mesures/contrat-accueil/pps_cai.pdf

²⁴⁸ Including Swiss and Icelandic nationals.

people were by far the largest proportion of signatories with 36% of the total, followed by Italians (4.32%), French (4.01%), Spaniards (4.01%) and Cape Verdeans (3.60%)²⁴⁹

In terms of the signatories' economic situation, 53.80% were active (including on parental leave or sickness leave), 24.17% were unemployed and looking for work, 1.85% were students and 1.13% were retired.²⁵⁰

Of the 597 signatories registered for language training, 363 (60.8%) are taking French courses, 192 (32.1%) are taking Luxemburgish courses and 42 (7%) are taking German courses.²⁵¹

As part of the implementation of the CAI, and, more specifically, for the citizenship courses, OLAI is training potential trainers in the methodological approach and content to be used, especially the key moments in the political history of the Grand Duchy, migration, citizens' rights and duties, Luxembourg's values, languages and traditions, as well as communication in an intercultural society.²⁵²

3.5.2.3. Local integration

Local integration strategy

The OLAI in partnership with the Ministry of the Interior and the Greater Region and the SYVICOL, carried out a study on the arrangements for implementing actions and/or projects developed locally, with a view to developing a guideline on local integration strategy.²⁵³

This study produced four strategic directions²⁵⁴:

- a) Awareness of the importance of the cross-cutting, sustainable and mutual nature of local integration;
- b) Creation of partnerships and a network of actors (national and local partners);
- c) Support and/or assist local actors in all the stages of implementation of their integration policy,

²⁴⁹ MIFA, OLAI, General statistics from 01.01.12 to 31.12.12, internal document.

²⁵⁰ 5.86% were registered unemployed, 9.56% were home-makers (housewives) and 2.98% were inactive (RMG, etc.), with 0.61% failing to provide information.

²⁵¹ MIFA, OLAI, General statistics from 01.01.12 to 31.12.12, internal document.

²⁵² Call for training: <http://www.olai.public.lu/fr/actualites/2012/12/appel-formation-cai/index.html>

²⁵³ http://www.olai.public.lu/fr/publications/etude/etude_pr_strategie_integration_locale.pdf

²⁵⁴ http://www.olai.public.lu/fr/publications/etude/strategie_integration_locale.pdf

d) Consider the relevance of and opportunity for establishing communal integration plans,

The OLAI, via the budget item²⁵⁵ “Subsidies to communal administrations to start and support projects to integrate foreign nationals”, encourages communes to start actions to promote integration. The OLAI launched two calls to communal administrations via circular²⁵⁶ for candidates to make an application for subsidies. In order to benefit from co-financing, which may not exceed 50% of the total cost of the project, actions must be aligned with the National Action Plan for Integration and Against Discrimination 2010-2014 and comply with some of the plan’s 11 basic CBPs.

A self-assessment guide for commune officers who want to carry out integration actions and projects was developed.

In parallel, OLAI has provided material assistance in carrying out these projects, by financially supporting ASTI (*Immigrant Workers Support Association*), which put its experience in the field of integration at the disposal of candidate communes.²⁵⁷

Integration pacts, which go beyond the scope of individual actions, have been signed with the LEADER region Réding-Wiltz²⁵⁸ and the communes of Bettembourg²⁵⁹, Esch-sur-Alzette²⁶⁰ and Luxembourg²⁶¹. Negotiations with other communes are in progress.

At the end of 2012, OLAI supported SYVICOL in its project to produce a guide to drafting an integration plan for communes. This guide, which will be finalised in 2013, will help communes to consider the implementation of a concerted plan of actions to create better integration of immigrants into Luxembourg society.

²⁵⁵ In accordance with the second call for candidates issued by OLAI by circular on 20 July 2012, the communal administrations could make an application by 1 November 2012 for a subsidy to OLAI to carry out actions to promote integration,

http://www.olai.public.lu/fr/rerelations-nationales/organismes_consultation/commission-consultative/index.html

²⁵⁶ Circular No 3016, 20 July 2012,

http://www.olai.public.lu/fr/publications/programmes-planactions-campagnes/plan/circulaire_3016.pdf;

Circular No 2992 of 28 March 2012.

²⁵⁷ <http://www.agence-interculturelle.lu/pint.html>

²⁵⁸ <http://rw.leader.lu/>

²⁵⁹ <http://www.bettembourg.lu/actualite/actualite>

²⁶⁰ <http://www.esch.lu/Pages/default.aspx>

²⁶¹ <http://www.vdl.lu/>

Training for commune officials

The Department of Immigration organises regular meetings with the commune officials responsible for recording the status of foreign nationals in the population offices in order to inform them on legislative changes, especially of provisions affecting the administrative formalities in the matter of immigration and the free movement of persons.

In 2012, three training sessions for commune employees, especially aimed at officials dealing with immigration issues, were supported by the INAP one of which was called “Training in the intercultural approach”.

The administrative and procedural aspects of immigration have also been addressed through the on-going training of commune staff via a course entitled “Everyday working practices of State officials”.²⁶²

Six training modules²⁶³ are currently offered to members of the CCI.

Assises de l'Intégration (Integration Conference)

The city administration of Esch-sur-Alzette organised on 23 and 24 October 2012 the first edition of the *Assises de l'Intégration*²⁶⁴ on the theme of “The role of local associations in integration policy at the local level.”

The *Miselerland* region also organised its own *Assises de l'Intégration* on 14 and 15 December 2012, taking special note of the history and politics of migration and the Reception and Integration Contract (CAI).²⁶⁵

In 2013, OLAI will support the organisation of the first national “*Assises nationales de l'intégration au niveau local*” to be run by SYVICOL and ASTI.

²⁶² Joint reply by the Minister of the Interior and the Greater Region and the Minister of Labour, Employment and Immigration to parliamentary question No 2007 of 14 March 2012, 13/03/2012, www.chd.lu

²⁶³ They are offered by the CLAE and CEFIS.

²⁶⁴ <http://www.esch.lu/actualites/Pages/AssisesdeInt%C3%A9gration.aspx>

²⁶⁵ <http://www.olai.public.lu/fr/actualites/2012/11/assises-integration/index.html>

3.5.2.4. Political participation by foreign nationals²⁶⁶

Elections of members of the National Council for Foreigners (CNE)

The CNE is an advisory body responsible for studying, on its own initiative or at the Government's request, problems involving foreign nationals and their integration. It is responsible for submitting an annual report to the Government on the integration of foreign nationals in Luxembourg.

The constituent assembly of the new CNE took place on 13 September 2012. The CNE is made up of 34 representatives, of which 7 are third country nationals²⁶⁷ and 30 are substitutes. Members of the CNE also include representatives of refugees, SYVICOL, five employer organisations (*Confédération luxembourgeoise du commerce*, *Fédération des artisans*, *Horesca*, *Fédil* and *ABBL*), three unions (OGBL, LCGB, CGFP) and two civil society representatives.²⁶⁸

Advisory committees on integration (CCI)

The Grand Ducal regulation of 15 November 2011 on the organisation and operation of advisory committees on integration²⁶⁹ obliges every commune to create a CCI. This committee is responsible for ensuring that all residents of the commune cohabit peacefully and especially looks after the interests of residents with a foreign nationality.

The establishment of these committees was scheduled to take place within three months of the entry into office of the commune council elected in October 2011. As of 6 August 2012, 18 of the 106 communes had not yet set up a CCI.

The Grand Ducal regulation mentioned above has strengthened the political role of the CCIs. One of its missions is to suggest to the commune authorities adequate solutions to specific problems faced by foreign residents and their families as a result of their integration into the

²⁶⁶ CEFIS, press release, http://www.cefis.lu/files/confe0301rence-presse-2011_mise-en-page.pdf; Ministry of the Interior and the Greater Region and MIFA / OLAI, press release: First results of registrations of foreign residents on the electoral roll for the commune elections, 26/07/2011, <http://www.olai.public.lu/en/actualites/2011/07/elections/index.html>

²⁶⁷ 4 substitute members are required for the European Union countries not featured among the 7 nationalities most represented in Luxembourg.

http://www.olai.public.lu/fr/relations-nationales/organismes_consultation/conseil-nat-etrangers/Liste-des-membres-effectifs-et-suppléants-du-Conseil-national-pour-etrangers.pdf

²⁶⁸ Reply by the Minister of Family Affairs and Integration to parliamentary question No 2166 of 26 June 2012 on the establishment of the CNE, www.chd.lu. 'New CNE operational at last,' *Le Quotidien*, 14/09/2012, <http://www.lequotidien.lu/politique-et-societe/38037.html>

²⁶⁹ Memorial A No 237 of 22 November 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0237/a237.pdf>

local population. The commune council requests the CCI's opinion on measures for reception and integration into the commune, on raising foreign nationals' awareness on their participation in commune elections and on the regulations concerning the use of the commune's sporting and cultural infrastructure (article 1).

OLAI supports the training courses aimed at improving the running of the CCIs. Various training modules²⁷⁰ have been established for CCI members. A quantitative and qualitative analysis of foreign nationals' participation as voters and candidates in the most recent commune elections in 2011, as well as of the awareness-raising actions undertaken, has been published²⁷¹. Furthermore, a practical guide to raise awareness of electoral registration has been drafted.

Participation in elections by foreign nationals

Some communes are raising, on an everyday basis, awareness of EU citizens and third country nationals on how to register on the electoral rolls for commune elections.

In this respect, the Minister of the Interior and the Greater Region has referred to circular No 2908 of 29 March 2011 on the registration of foreign nationals on Luxembourg electoral rolls, in which he invites the commune authorities *“to encourage new residents of foreign nationality to register on the electoral rolls by instructing the commune services to inform all foreign nationals systematically of the conditions applicable to their right to vote when they have entered in the population register.”*²⁷²

The debate on foreign nationals' political participation

Although political participation was not the subject of any reforms in 2012, it was the subject of opinions, which did not pass unnoticed. During a press conference, the Young Socialists and the LSAP proposed remedying the serious democratic deficit: *“foreign nationals must be*

²⁷⁰ <http://www.olai.public.lu/fr/actualites/2012/05/ci/index.html> The course is made up of six modules: 'History and politics of migration', 'Citizenship and participation', 'The commune and the communal advisory committee on integration', 'Integration in question', 'Constructing a project' and 'Participation in elections'.

²⁷¹ Sylvain Besch, Nénad Dubajic, Altay Manço, Monika Schmidt, "The commune elections of October 2011", RED No 17, CEFIS, Luxembourg 2013.

²⁷² Reply by the Minister of the Interior and the Greater Region to parliamentary question No 2108 of 15 May 2012, www.chd.lu

*given the right to vote if we still want the notion of representative democracy to have any meaning*²⁷³.”

Thus the LSAP echoed the CC, which, observed that *“the linguistic and political realities of the country are becoming out of kilter with the economic context”*. Discussing the growth in population, employees in the job market and GDP since 1984, the Chamber noted that the stupendous rise in the country’s standard of living would not have been possible without immigration and cross-border workers. *“Although socioeconomic developments have been good for us, political and linguistic developments have remained relatively static, even stagnant*²⁷⁴.”

The CC, with figures to support its opinion, then raises the issue of the lack of representativeness of the Luxembourg electorate and the democratic deficit that has been created over time²⁷⁵. *“The Luxembourg electorate is ageing and thus becoming increasingly less representative of the realities -economic and linguistic - of the country, in the sense that it is now mainly made up of inactive persons and civil servants, i.e. two segments that in the main are distant from the new climate, both economic and linguistic, but who have a significant, even disproportionate, influence on political choices*²⁷⁶.”

The CC fears that the country's collective decisions *“are not taking enough account of the concerns and demands of an open economy faced with international competition.”* It sees the risk of *“a gap between the perception of current issues and those connected with the country's sustainable development”* and even *“a denial of the risks and dangers faced by Luxembourg*²⁷⁷.”

The current model, where the economy and the job market are fundamentally dependent on foreign labour and capital and where Luxembourg nationals monopolise the civil service and the public debate, cannot go on forever²⁷⁸.

²⁷³ “Bridging the democratic gap”, in *Le Quotidien*, 16 March 2012, p. 6.

²⁷⁴ CC, “Le rayonnement transfrontalier de l’économie luxembourgeoise : la diversité règne, l’intégration piétine”, in *Actualité&tendances*, No 12, March 2012, p. 119.

²⁷⁵ Voters active in the market economy, which creates the economic wealth administered by the authorities and redistributed by political decision-makers, only represented about 29% of the votes in 2009. In other words, only about 1 inhabitant in 2, 1 employee in 3 and 1 company founder in 4 has the right to vote. Cf: CC, p. 120.

²⁷⁶ *Ibid.*, page 119.

²⁷⁷ *Ibid.*, page 120.

²⁷⁸ *Ibid.*, page 128.

Foreign nationals' participation in commune elections was the subject of a seminar organised by the LU EMN NCP²⁷⁹. Beginning with a retrospective analysis of foreign nationals' participation in elections in Luxembourg, the aim was to crystallise the issues involved, for the purposes of the commune elections in 2017. Several obstacles to electoral participation were identified by the participants: lack of interest and general mistrust of politics (this applied to native populations as well as foreign ones), problems of linguistic communication, belated awareness-raising campaigns and difficulties with registering on the electoral roll. In order to improve electoral participation, potential foreign voters must be better informed and registration on the electoral roll could be made easier.

3.5.2.5. Learning Luxembourgish

The Ministry of Justice published an evaluation report on the law of 23 October 2008 on Luxembourgish nationality²⁸⁰ in September 2012. The report was an interim assessment, three years after the law's entry into force, of the impact of this new legislation, listing the difficulties encountered in applying the law, examining whether the stated objectives have been achieved and creating pathways for future changes to be made to the law on nationality. As part of this initiative, public consultations and discussions have been launched to include Luxembourg citizens and foreign nationals in a new Draft Law.²⁸¹

Subsidy to enhance integration of foreign nationals through learning Luxembourgish

The Government provides financial support to initiatives to integrate foreign nationals through learning Luxembourgish. Subsidies are given to companies, which make an application for a subsidy for their employees to learn Luxembourgish. In 2011, 33 applications were approved; the percentage of reimbursement amounted to 51%. The target group, i.e. just over 400 persons, was made up mainly of women holding French or Belgian nationality.

²⁷⁹ Minutes of the Workshop: "Integration through political participation? Participation as a doorway to integration? Retrospective analysis of the participation of foreign nationals in elections in Luxembourg and projections for 2017", 07/02/2012, <https://www.emnluxembourg.lu/type-agenda/atelier-int%C3%A9gration-par-la-participation-politique>

²⁸⁰ http://www.mj.public.lu/nationalite/reforme/Rapport_evaluation_nat_2012.pdf

²⁸¹ <http://www.mj.public.lu/nationalite/reforme/>;
<https://www.emnluxembourg.lu/type-agenda/conf%C3%A9rence-la-r%C3%A9forme-de-la-loi-sur-la-nationalit%C3%A9-luxembourgeoise-dans-une-perspective->;
<http://rotondes.lu/agenda/details/event/devenir-luxembourgeois-nationalite-citoyennete-droit-de-vote/>

The companies concerned are mainly in the following sectors: social and healthcare, commerce, industry, banking, insurance, law and construction.²⁸²

“Language leave”

The introduction of “language leave” by the law of 17 February 2009²⁸³ is part of the ongoing Government policy to strengthen vocational training. In essence, it is a special, additional leave enabling employees of all nationalities and persons carrying out freelance work to learn Luxemburgish or improve their existing knowledge in order to facilitate their integration into Luxemburgish society through the job market, on condition they have been working in for the same employer in Luxembourg for 6 months.

Since its introduction in 2009, 1541 applications for language leave have been approved.²⁸⁴ In total, 90 applications for language leave have been rejected (87 of these by the Ministry of Labour and Employment). Most of these refusals were due to the fact that the courses did not take place when the applicants were in employment and therefore they did not have the right to special leave. 3 applications received a negative recommendation from the employer.

In order to give the maximum number of persons the chance to benefit from the language leave, the Government has expressed its intention to launch a new information campaign on this topic, possibly as part of a wider effort to promote continuous vocational training.

The data show statistical unevenness according to employment sector. While employees in the health sector often use this facility (791), this is almost never the case for the catering and construction, even though these sectors are made up almost exclusively of foreign nationals.²⁸⁵

Although the nationality of the beneficiaries of language leave in Luxembourg is unknown, they are predominantly cross-border workers living in France (694), followed by Luxembourg residents (533), cross-border workers living in Belgium (265) and Germany (46).

It should also be noted that women make greater use of language leave (994) than men (547); this is explained by the fact that there are more women in the health sector than men.

²⁸² Ministry of Labour and Employment, internal document, 2012.

²⁸³ Law of 17 February 2009 on: 1.introduction of language leave; 2.amendment of the Labour Code; 3.amendment of the law of 19 August 2008 on grants for research training,
<http://www.legilux.public.lu/leg/a/archives/2009/0033/a033.pdf>

²⁸⁴ Ministry of Labour, Employment and Immigration, internal document, 28 March 2013.

²⁸⁵ Care (791), Service (379), Commerce (171), Other (90), Freelance (44), Insurance (26), Banking (25), Culture (16), Commune (8).

3.5.2.6. Education and the reform of the education system²⁸⁶

Education and the heterogeneity of the school population

For the school year 2011/2012²⁸⁷, the proportion of children who are foreign nationals in each level of education is:

- 47.5% in the 1st cycle of primary education²⁸⁸
- 49.4% in the 2nd to the 4th cycles of primary education²⁸⁹
- 19.1% in classic secondary education
- 49.4% in technical secondary education
- 89.4% in the cross-border grammar school and the other private schools (which do not follow the official curricula) and the international schools.

17% of pupils in stages 1 to 4 of primary education were born abroad, a figure, which has remained relatively constant since 2001-2002 (15.1%)²⁹⁰. In contrast, the proportion of pupils in primary education speaking a first language other than Luxemburgish at home has risen to 58.5% in 2011-2012 (as against 42.2% in 2004-2005 and 54.2% in 2009-2010)²⁹¹.

In cycle 1 (children aged 4 and 5), 35.4% of pupils do not speak any of the country's three official languages, neither as their first nor their second language (27.1% in 2004-2005).

For the education of pupils recently arrived in Luxembourg, courses or classes to prepare pupils for primary education are in place, as well as classes to prepare pupils for the initial stages of post-primary education²⁹². During the 2011-2012 school year, the education of

²⁸⁶ For more details on the measures proposed with regard to the education of children who are foreign nationals, see the policy report on migration and asylum 2011,

<https://www.emnluxembourg.lu/type-documentation/rapport-politique-sur-les-migrations-et-lasile-2011>

²⁸⁷ Most recent figures available in: Luxembourg education in figures for the 2011-2012 school year, MENFP, January 2013. http://www.men.public.lu/publications/etudes_statistiques/chiffres_cles/

²⁸⁸ Cycle 1 corresponds to pre-school education. It is spread over three years and is directed towards children aged 3 to 5 years.

²⁸⁹ Cycles 2 to 4 correspond to primary education. Cycle 2 is directed towards children aged 6 to 7. Cycle 3 is directed towards children aged 8 to 9. Cycle 4 is directed towards children aged 10 to 11.

²⁹⁰ http://www.men.public.lu/publications/etudes_statistiques/statistiques_primaire/130227_prim_11_12/130227_brochure_fonda_1112.pdf

²⁹¹ http://www.men.public.lu/publications/etudes_statistiques/chiffres_cles/130123_fr_depliant_chiffres11_12/13_0123_dpl_chiffres_fr.pdf

²⁹² The reception courses in primary education are intensive courses in German or French which prepare pupils who have recently moved to Luxembourg to join a regular class as soon as possible. Pupils take part in a regular class for non-linguistic subjects (“*classe d’attache*”). The specialised reception classes (“*classes étatiques*”) for primary education are classes specially created by the State. They are intended for children recently moved to Luxembourg whose needs fall outside the commune’s framework. Pupils study all the subjects on the curriculum in the specialised reception class. The reception classes for post-primary education are intended for the initial stages of secondary education. They are for pupils who have been educated abroad and who arrived in

newly-arrived children reached a hitherto unknown peak: 2081 newly-arrived pupils were registered²⁹³, i.e. pupils who had arrived in Luxembourg during the previous year, of which 1444 went into primary education (and 458 of which were the children of people requesting international protection), 637 into secondary education and secondary technical education (of which 112 are children of applicants for international protection). As far as new arrivals to primary education are concerned, over 36% of them were born in Portugal and 14.6% in the countries of former Yugoslavia.²⁹⁴ In 2012, the Ministry updated the Guide for teachers receiving a child newly arrived in the country²⁹⁵.

In order to respond to the increasing heterogeneity of the school population, the Government has carried out a huge process of reform to adapt teaching to a range of learners and establish education based on core skills. In reforming the national education system, the Government is attempting to i) optimise educational success, ii) adapt teaching to the needs of students, iii) reduce school drop-out rates²⁹⁶ and iv) increase the number of young people entering university education. Any intervention in the education system must take into account the heterogeneity of the school population in Luxembourg.²⁹⁷

The reform has been implemented gradually. Since 2009, primary education has been organised into learning stages based on acquiring core skills. By the beginning of the 2012/2013 school year, the final stage of primary education had been adapted to the reform.

The full implementation of the provisions of the reform of vocational training was initially scheduled for the 2010/2011 school year but has been postponed until the 2012/2013 school year, since the new system needed a long preparation phase²⁹⁸. The main points of the reform consist of the organisation of learning into modules rather than in sets of subjects and the

Luxembourg at the age of 12 or under. Pupils in these classes learn French intensively as well as Luxemburgish. Pupils study all the subjects on the curriculum in this reception class.

²⁹³ Most recent data available, see: Press dossier. Rentrée scolaire 2012-2013. Zesumme fir eis Schüler, MENF, 13 September 2012, p. 24, <http://www.men.public.lu/actualites/2012/09/>

²⁹⁴ http://www.men.public.lu/publications/etudes_statistiques/statistiques_primaire/130227_prim_11_12/130227_brochure_fonda_1112.pdf

²⁹⁵ Reception and integration. Guide for teachers welcoming a child who has recently arrived in the country. MENFP. Service de scolarisation des enfants étrangers, November 2012.

²⁹⁶ Created by the law of 12 May 2009, the “École de la 2^{ième} chance” [Second-chance school], the aim of which is to reintegrate young school drop-outs into education, was launched on 14 March 2011. From the 2012-2013 school year onwards, the scope of the E2C has been extended; E2C has around 150 students.

²⁹⁷ In the Government statement on the economic, social and financial situation of the country in 2011, the Prime Minister took up the challenge of reforming the education system, given the fact that Luxembourg’s schools now contain a large cohort of foreign students who have not learned Luxemburgish or have difficulties with the multilingual system: News article, Government statement on the economic, social and financial situation of the country in 2011, 06/04/2011, <http://www.gouvernement.lu/gouvernement/etat-nation/index.html>

²⁹⁸ Vocational training in the Grand Duchy of Luxembourg is rooted in teaching that essentially uses the German language. Reply by Madame Mady Delvaux-Stehres, Minister of National Education and Vocational Training, to parliamentary question No 1345, 07/04/2011, www.chd.lu

establishment of training courses which combine the modules organised at school and those organised in a work environment.

A staggered schedule for the implementation of the reform has been established. Although 19 flagship training courses were organised in accordance with the new provisions in 2010/2011, for the 2012-2013 school year, all training courses were comprehended in the reform²⁹⁹.

The reform of post-primary education, also based on the introduction of core skills and planned for 2012, has had to be postponed to 2013, due to the large number of protests (see section 2.1.4)

Since the selectivity of the trilingual education system is regarded as a major handicap for those who do not achieve the required level and since students who are foreign nationals run a greater risk of dropping out than Luxemburgish students³⁰⁰, one of the reforms planned by the Government concerns language teaching.³⁰¹

With particular regard to the education of foreign children, various measures were taken in 2012:

The adoption of the Grand Ducal regulation of 10 May 2012 specifying the terms of recruitment, classification and remuneration of “intercultural mediators” by the national education department³⁰². The regulation specifies intercultural mediators’ tasks and working framework. This legislation enables us to respond more effectively to the increase in applications for intercultural mediation, which is due to the continued growth in the number of foreign students. The intercultural mediators help parents, teachers and the school authorities; their work facilitates foreign students’ integration into school and the dialogue between school and family³⁰³. Apart from the common languages spoken in Luxembourg, they

²⁹⁹ http://www.men.public.lu/priorites/formation_professionnelle/index.html

³⁰⁰ Luxembourg education in figures, causes of dropping out for the 2008/2009 school year, Luxembourg 2011, http://www.men.public.lu/publications/etudes_statistiques/etudes_nationales/110203_decrochage08_09/110207_decrocheurs_08_09.pdf

³⁰¹ Measurement instruments: national study of dropping out of education, in the Observatoire de la Compétitivité, Luxembourg 2020 Grand Duchy’s national reform programme under the Europe 2020 strategy, European semester April 2011, p 38/39, http://www.odc.public.lu/actualites/2010/11/PNR_Luxembourg_2020/Projet_Luxembourg_2020.pdf

³⁰² Memorial A No 98 of 16. May 2012.

³⁰³ Article 6 of the Grand Ducal regulation: the role of the intercultural mediator is to intervene at the request of the persons concerned in order to:

- a) facilitate the pupil’s integration into school and reassure him/her on his/her first contact with the school;
- b) provide parents with information about the Luxembourg school system and extracurricular activities;
- c) help to draw up an evaluation report on the pupils and provide the school staff at primary and secondary level with information on the school systems in the pupils’ countries of origin;

speak Albanian, Cape Verdean Creole, Chinese, Italian, Iranian, Portuguese, Serbo-Croat and Russian. The work of the 27 mediators is coordinated by the Ministry of National Education and Vocational Training, which also trains them.

From the beginning of the 2012-2013 school year, a pilot project on teaching in Portuguese has been under way in reception classes in two primary schools: one in Esch-sur-Alzette and one in Luxembourg-Bonnevoie.

The project falls under the cultural agreement made in 2008 between Luxembourg and Portugal, which plans to explore new ways to develop Portuguese as a mother tongue, especially through integrated courses (courses in Portuguese held during normal school hours). One priority is also to encourage the integration of integrated course teachers into primary school staff.

The project will last 2 years and is run by the Ministry in cooperation with the Portuguese Embassy³⁰⁴.

The debate on the school education of the children of migrants

The key figures for education bear witness, as noted by the press, to the inequalities in the education system, since 81.3% of Luxembourg nationals enter the conventional secondary system as opposed to 18.7% of foreign students.

The press has also pointed out the lack of bilingual vocational training, especially in French, although the Ministry intends to develop this training.

104 opinions have been received by the Ministry on the proposal for a law on secondary education. 71 were issued by the teaching profession by way of the national curriculum committees, secondary schools and unions, 15 were issued by student groups, 16 by parent associations and 7 by external organisations such as the professional chambers. Although all

d) translate orally or in writing information addressed to the pupils' parents or to teachers, especially at parents meetings;

e) help to find solutions to disagreements;

f) work in partnership and assist the pupil where necessary;

g) organise, outside school hours, cultural and sporting activities and community engagement activities for the pupils and accompany them there.

³⁰⁴ MENFP, press dossier. Rentrée scolaire 2012-2013. Zesumme fir eis Schüler, 13 September 2012, p. 25, <http://www.men.public.lu/actualites/2012/09/>

the respondents agreed on the need for reform, they differed over the proposed measures and their implementation. Furthermore, many had doubts over their practical feasibility. The teaching profession expressed the most resistant opinion on the proposal. It raised the issue of whether an increase in the number of secondary school qualifications would entail their devaluation. The students and parents highlighted the need for more relevant guidance and placed a strong emphasis on the importance of languages.

The CC agreed with most of the measures proposed while insisting on the need to adapt language teaching to the demographic reality of the country from primary school level upwards. The Chamber believes that the rigid teaching of languages leads too often to educational failures. It proposes giving students, from primary level onwards, the choice of a main language (German or French) and a secondary language (dependent on the previous choice), above all emphasising oral skills. It also urges the teaching of English at an earlier age.

In general, the DP's response was the proposal for a bilingual French-German school from primary level upwards. On 12 June 2012, Deputy André Bauler submitted a resolution for the Committee for National Education, Vocational Training and Sport to explore the possibility of establishing a pilot project for a bilingual primary school offering literacy in French and German. The *Chamber of Deputies* adopted this resolution and thus commissioned the Committee to explore the possibility of establishing this pilot project. The project was supported by the Greens (Déi Gréng) but the ADR stated its opposition to the project at a press conference. The party is afraid that the separation of students into two different linguistic streams (German/French) will lead to a lowering in the standard of the other languages taught in Luxembourg. According to the ADR, the solution is to introduce Luxemburgish support courses in order to enable the students to access a sufficient level to be able to follow other courses.

3.5.2.7. Vocational training in specific language configurations

Through the introduction of the vocational training reform, the Ministry aims to improve the vocational training courses on offer in specific language regime (RLS - *régime linguistique spécifique*) in order to respond to the difficulties that a growing number of students are having

with classes taught in German. In these RLS classes, all the lessons – with the exception of the language lessons – are taught in French.

Specific language regime classes (RLS classes)

In order to facilitate the integration of foreign students in Luxembourg, several secondary schools offer classes taught in French. These classes have been in existence since 2003. As of the beginning of the 2012/2013 school year, 560 students were in RLS classes. In addition, a number of French-speaking students were in a bilingual class. RLS classes are offered for vocational training in a variety of professional areas³⁰⁵.

Measures proposed by NGOs: the “bridging class”

As part of the “Form’actif” project, Caritas provides “bridging classes” for applicants for international protection and migrants who cannot be integrated into the Luxembourg education system. On offer are courses in French, Luxemburgish, civics, IT, music and sports education, as well as refresher courses and specialized courses (e.g. literacy). The class consists of two five months modules, with 30 hours’ tuition per week. Since their creation in 2001 until mid-2012, over 600 young people have taken part in the courses. On 13 July 2012, 53 young Luxembourg residents of 20 different nationalities were awarded their certificates for passing the courses.³⁰⁶

3.5.2.8. Intercultural projects

Several actions and projects aimed at strengthening intercultural contact were carried out in 2012 and supported or initiated by the public authorities.

³⁰⁵ RLS classes are run in several secondary schools in a variety of areas (general technical department, administrative and commercial department, health and social professions department) and professions (administrative and commercial, electro-technical, catering and tourism). RLS classes are offered for the DAP (*Diplôme d’aptitude professionnelle*) as: care-giver, administrative and commercial staff, hairdresser, sales consultant, fashion professional, chef, electrician, logistics manager, hotelier-restaurateur, plumber, automobile mechanic, restaurateur, cuisine/service option, locksmith, waiter; and for the CCP (*Certificat de capacité professionnelle*) as: butcher, baker, sales clerk, chef, hairdresser, electrician, plumber, automobile mechanic, waiter. “Success school, a chance for all.” Leaflet on RLS classes, MENFP, May 2012, http://www.men.public.lu/publications/enfants_etrangers/pub_francais/
http://www.men.public.lu/publications/periodiques/rapports_activites/rapport_activite_2012/130220_rapport_2012_internet.pdf

³⁰⁶ Caritas, Form’actif – award of certificates at the end of courses, 22/07/2011, <http://www.caritas.lu/actualites/formactif-remise-de-certificats/0>

The agreement with the ASTI regarding the “IKL interkulturelles” Documentation and Activity Centre was continued in 2012.

480 students, mainly from “preparatory stream” classes in 19 secondary schools, took part in 19 cultural workshops offered by the *Agence Interculturelle* of ASTM (*Action Solidarité Tiers Monde*) and ASTI³⁰⁷.

3.5.2.9. Against racism and xenophobia – for social cohesion

The ECRI report issued on 21 February 2012 points out the progress to be made in fighting racism and xenophobia³⁰⁸. While the ECRI welcomes the positive developments since the publication of its third report in 2006, it also notes a number of concerns³⁰⁹:

- the spoken language test in Luxemburgish for naturalisation candidates may be too much of an obstacle for the acquisition of Luxemburgish nationality;
- possible victims of discrimination should be given more information on the anti-discrimination law of 28 November 2006;
- the lack of resources for the CET;
- inequality between Luxemburgish and foreign students in terms of access to various types of education (traditional v technical);
- difference in unemployment rate between EU nationals and third country nationals;
- media highlighting of ethnic origin of persons arrested;
- the problems connected with prejudices towards, and stereotyping of, Muslims.

The ECRI addresses 23 recommendations to Luxembourg0’s authorities regarding the various domains of society. According to the ECRI, three recommendations should be prioritised by the Luxemburgish authorities, one of which is that “the Luxembourg authorities strengthen the Centre for Equal Treatment by enabling it to take part in legal proceedings, by giving it the necessary human and financial resources and by ensuring that the persons or bodies to which it addresses itself are obliged to reply.”

³⁰⁷ http://www.men.public.lu/publications/periodiques/rapports_activites/rapport_activite_2012/130220_rapport_2012_internet.pdf

³⁰⁸ ECRI, Report on Luxembourg, (fourth monitoring cycle), adopted on 8 December 2011, published on 21 February 2012, CRI(2012)4
www.coe.int/t/dghl/.../ecri/.../luxembourg/LUX-CbC-IV-2012-004-FRE.pdf

³⁰⁹ The report covers the situation up to 23 June 2011.

In its report for 2011, the CET makes several recommendations³¹⁰. Given that, since the introduction of the law on equality of treatment of 28 November 2006, there has been practically no case-law, the CET invited the Government to look into the reasons for this situation. Regarding the sanctions for infringements of equality of treatment under the Labour Code, the CET asked for all the grounds for discrimination to be collected in one chapter also specifying sanctions for inequality of treatment other than that on the grounds of gender. The CET deplored the fact that the Labour Code makes the equality delegate only responsible for defending equality of treatment between male and female employees, leaving aside the other grounds for discrimination. “Each ground for discrimination should have a delegate or at least a contact person responsible for this ground in the workplace.” In the view of the CET, we must “harmonise the ways of collecting data on discrimination and develop a classification of different data”.³¹¹

2012 was also marked by the sentencing, widely covered in the press, on 10 May 2012 of a person to 30 months’ suspended imprisonment for inciting racial hatred³¹² and by hostile demonstrations against applicants for international protection (see section 2.2.5). The same person was condemned a second time to a six-month prison sentence for hate speech on 6 March 2013³¹³.

The expulsion of two members of the ADR for expressing xenophobic and islamophobic opinions did not pass unnoticed³¹⁴.

On two occasions, the President of the *Chamber of Deputies* had to express his concern about the growing xenophobia³¹⁵. At the New Year’s celebrations, he warned against underestimating xenophobic tendencies, especially since they might be accentuated by the crisis.

The same concern was at the root of a round table discussion organised at the *Festival des Migrations, des Cultures et de la Citoyenneté*³¹⁶ and also at a huge media awareness-raising

³¹⁰ CET, 2011 Annual Report, pp. 49-53, <http://cet.lu/category/publications/>

³¹¹ CET, Ibid., p.51.

³¹² L’essentiel, Peters condamné à trente mois avec sursis, 10 May 2012, <http://www.lesessentiel.lu/fr/news/luxembourg/story/14175584>

³¹³ L’essentiel, Peters écope de six mois de prison ferme, 6 March 2013, <http://www.lesessentiel.lu/fr/news/story/23688248>

³¹⁴ Woxx, “Nuit des longs couteaux chez l’ADR,” 14/6/2012, http://www.woxx.lu/id_article/5683;http://www.lesessentiel.lu/news/luxembourg/story/28299241

³¹⁵ At the 2012 New Year’s celebrations, cf. *L’essentiel*, 6 January 2012.

³¹⁶ “The reappearance of suspicion”, discussion on xenophobia at the *Festival des Migrations, des Cultures et de la Citoyenneté*, in: Journal of 20/3/12, p. 4.

campaign called “Making Luxembourg”³¹⁷ launched by ASTI to which a vast range of partners from the worlds of non-profit organisations, economics and the media adhered.

Platform for local integration

OLAI has established the Platform for local integration, a group made up of ministerial representatives, as well as representatives of communes and non-profit organisations, responsible for integration. The aim of the Platform is to network and exchange best practice.

Following a request from the members of the Platform, OLAI has begun to establish a national portal of local integration. The website has been designed as a multi-purpose tool for the actors involved in local integration, enabling actors on the ground to network and share experiences and best practice, while also giving them access to a raft of operational resources to assist in implementing local integration actions and projects.

Furthermore, OLAI has launched a consultation of civil society as part of the National Action Plan for Integration and Against Discrimination 2010-2014. Opinions expressed by civil society have been taken into account in drafting the annual priorities for 2014 and have acted as a basis for analysing the impact of the national action plan.

3.5.3 European developments

3.5.3.1. Projects and research as part of the European Refugee Fund and the European Fund for the Integration of third country nationals

In trying to improve the effectiveness of the integration of vulnerable groups of third country nationals, the EIF’s 2012 annual programme supports research examining the access to public and/or private services by groups or communities of third country nationals with specific needs.

Finally, two studies have been financed as part of the EIF, the first concerning the socio-economic integration of third country nationals and entitled “The integration of non-EU

³¹⁷ Initiative bringing together a multitude of partners from civil society who are united by the idea that Luxembourg is held together by residents of all nationalities and the cross-border workers. “Nous tous faisons le 100% Lëtzebuerg” (We all make up 100% of Luxembourg). Instead of looking for what could divide us, we are looking for what unites us in building Luxembourg’s economic, cultural, social and political landscape, see: <http://www.makingluxembourg.lu/>

citizens in the workforce” and the second entitled “The structural and social integration of third country nationals and other immigrants to Luxembourg.”³¹⁸

Furthermore, a project entitled “Partnerships for intercultural integration: information is integration”³¹⁹, which proposes various actions, such as i) awareness-raising campaigns, ii) targeted information on the law on immigration and the steps to take when moving to Luxembourg or iii) establishing intercultural interpreters in hospitals.

³¹⁸ http://www.olai.public.lu/fr/publications/programmes-planactions-campagnes/programme_fei/liste-fei.pdf

³¹⁹ http://www.olai.public.lu/fr/publications/programmes-planactions-campagnes/programme_fei/liste-fei.pdf
<http://www.asti.lu/wp-content/uploads/2012/07/Pre%CC%81sentPresseBrochureLusophone.pdf>

3.6. Citizenship and naturalisation

3.6.1 General context before 2012

The Law of 23 October 2008 on the Luxembourg nationality introduced the principle of pluri-nationality, which means that an applicant for naturalisation is no longer obliged to renounce his or her nationality of origin. All applicants must have resided in Luxembourg for at least 7 consecutive years immediately preceding the submission of his or her request and demonstrate that he or she has sufficiently integrated into Luxembourgish society, which means:

- to demonstrate an active and passive knowledge of at least one of the languages as indicated in the Law of 24 February 1984 on language policy, and to pass an evaluation test in the Luxembourg language (level A2 of the Common European Framework of Reference for Languages for speaking; level B1 for listening)
- to follow at least three compulsory citizenship courses on Luxembourg institutions and a course on fundamental rights

3.6.2 National developments in 2012

3.6.2.1. A broad discussion on the reform of the Law on nationality

As had been announced in the month of July 2012, the Justice Minister initiated a national debate on the reform of the Law of 23 October 2008 on the Luxembourg nationality, in September 2012: The debate involved both the Members of the Chamber of Deputies and civil society. The goal is to reach a consensus within society that would be as broad as possible on this law reform³²⁰. The assessment report of the Justice Ministry, three years after the law became effective, was used as a starting point in the debate. The report was to present a summary of the impact and effectiveness of the law and of the difficulties that had been met

³²⁰ François Biltgen will im Herbst eine breite Debatte über das Nationalitätsgesetz anregen, in: Luxemburger Wort dated 7 July 2012, page 21.

as the law was implemented, all in an effort to “draw out insights for future adjustments to the law on nationality.”³²¹

The assessment report³²² shows that acquisitions (following the procedure³²³) of the Luxembourg nationality were on a sharp increase since the Law came into force on 1 January 2009: from 1,129 in 2008, it went to 4,022 in 2009³²⁴, 4,311 in 2010 and 3,405 in 2011. During the 2009-2011 period, the majority of naturalisations (3,678) involved nationals of Portugal (31.3%) followed by nationals of the 3 neighbouring countries of Luxembourg (23.2%)³²⁵, the 7 Republics of ex-Yugoslavia (17.1%) and Italy (12.5%). The percentage of third-country nationals who took on the Luxembourg nationality decreased from 36.4% (2006-2008-period) to 27% (2009-2011-period).

In addition to these 11,738 individuals who acquired the Luxembourg nationality by naturalisation or re-acquisition, 2,491 minor children automatically became Luxembourg nationals as a result of the acquisition of nationality by one of their parents. Moreover, in application of the principle of double *Jus soli*, 635 children born in Luxembourg to at least one foreign parent born in Luxembourg became Luxembourg nationals between 2010 and 2011. This provision was made retroactive for all minor children by the law at the time of coming into effect, meaning that 4,209 individuals acquired the Luxembourg nationality as of right, on 1 January 2009³²⁶.

Since the new Law on nationality came into effect, only 1,618 individuals³²⁷ (15.9%) have been required to take the Luxembourg language test. 8,541 individuals were granted an exemption: 3,840 (37.8%) because they were residents of Luxembourg before 1985 and have remained as such since, and 4,701 (46.3%) because they pursued at least 7 years of schooling in the State education system of Luxembourg³²⁸. In 2011, of the 871 individuals who took the Luxembourg language test, 590 (67.7%) passed while 281 (32.3%) failed.

³²¹ Assessment Report of the Justice Ministry, Law of 23 October 2008 on the Luxembourg nationality, 09.2012, http://www.mj.public.lu/nationalite/reforme/Rapport_evaluation_nat_2012.pdf

³²² For details, see the Political Report EMN 2008, p. 41-42.

³²³ By naturalisation procedure or by re-acquisition procedure.

³²⁴ This figure includes individuals who became Luxembourg nationals on the basis of the old Law.

³²⁵ Germany: 7,4%, Belgium: 7,9%, France: 7,9%.

³²⁶ Assessment Report of the Justice Ministry, Law of 23 October 2008 on the Luxembourg nationality, 09.2012, http://www.mj.public.lu/nationalite/reforme/Rapport_evaluation_nat_2012.pdf, page 17.

³²⁷ Estimate in 2009, see Assessment Report, page 13.

³²⁸ Assessment Report of the Justice Ministry, Law of 23 October 2008 on the Luxembourg nationality, 09.2012, http://www.mj.public.lu/nationalite/reforme/Rapport_evaluation_nat_2012.pdf page 13.

The assessment report also raises 7 questions on the future adjustments to the Law:

- a) The condition of residence and of residence permit³²⁹
- b) The Luxembourgish language test³³⁰
- c) Exemptions to the language test and to citizenship-training courses³³¹
- d) Honourability of candidates to Luxembourg nationality³³²
- e) Re-acquisition on the basis of article 29 of the Law on nationality³³³
- f) European Convention on Nationality³³⁴
- g) *Jus soli*³³⁵

In November 2012, the Justice Minister also sent a questionnaire to the Chamber of Deputies on the matter of the proposed reform, relating to qualifications for naturalisation, the condition of residence, special cases such as individuals married to a Luxembourg national, knowledge of the Luxembourg language, citizenship-training courses, conditions of honourability, re-acquisition of the Luxembourg nationality, *jus soli*. An orientation debate is planned by the Chamber of Deputies in 2013.

The debate on nationality is fuelled by civil society and the academic world.

Just prior to initiating the debate on nationality, a reference work on the Luxembourg nationality³³⁶ was published. This work is of interest in the scope of the debate on nationality in that it helps determine the evolution of the law on nationality within the social and economic framework of the history of the country. Hence, whether naturalisation procedures were handled in a more or less open or strict way has depended on the period. The author describes the Law of 2008 on the Luxembourg nationality and the double nationality as “*a cultural revolution with reservations*” while, “*significant concessions are made to traditional*

³²⁹ Several possible adjustments to the Law are mentioned, such as, not requiring evidence of continuous legal residence for 7 years prior to the naturalisation application or, lowering the residence period.

³³⁰ Concerning the language test, two possible adjustments are considered, including possibly compensating a moderate failure in one of the language tests with good results obtained in another.

³³¹ One possible solution under consideration involves replacing the condition relative to the start of the compulsory residence period set at prior to 31 December 1984, with a residence period defined in number of years (20 or 25 years) with no mention of a set date.

³³² The question for a lowering of the required level of honourability is raised, which is currently set as follows: one condemnation to a criminal sentence or to imprisonment without suspension for a duration of one year or more.

³³³ The question is raised as to whether the provision of re-acquisition of the Luxembourg nationality should be made permanent since it is currently a transitory provision with a deadline for the re-acquisition application set at not later than 31 December 2008.

³³⁴ In order to make the Luxembourg legislation compliant with the European Convention on Nationality, a possible adjustment to the Law could involve lowering the residence period for various categories of individuals such as, for instance, spouses of Luxembourg nationals, individuals born in Luxembourg, refugees and stateless persons, etc.

³³⁵ One of the questions raised asks whether the acquisition of the Luxembourg nationality *jus soli* should be extended to the first generation born in the Grand-Duchy of Luxembourg.

³³⁶ Denis Scuto, *La nationalité luxembourgeoise (XIX-XXI siècles)*, Editions de l'Université de Bruxelles.

supporters of ius sanguinis. The right of option of the spouse has been abolished, while the requirement of prior residence increases from 5 to 7 years. However, especially the language barrier pose serious problems. In a trilingual country, the applicant must pass an evaluation test in the spoken Luxembourgish language without taking into account the level of education of foreigners (according to the 2001 census, 35% of the applicants had only received primary school education while the level of difficulty of the test requires secondary education). Herein, the language test raises a constitutional problem in terms of equality before the law.” Thus the author indicates that the transitional provision contained in article 29,³³⁷ concerning the re-acquirement of the Luxembourgish citizenship, valid until 2009, “re-ethnicises the right of nationality by introducing the possibility to re-acquire the Luxembourgish nationality if one had a grandparent who possessed it.”³³⁸

This provision has generated numerous requests from persons of Luxembourgish descendance living not only in the Greater Region but also in the United States and in South America.

The debate is also fuelled by various public conferences and round tables, in which the Minister of Justice³³⁹ took part. In the course of one of these debates, the Minister of Justice makes it known that, in his opinion, the debate on the reform of the Law on Nationality is actually a debate on strengthening social cohesion and not on the “issue of governance” of Luxembourg.

³³⁷ Article 29 : The descendent of a Luxembourgish grandparent, even when foreign-born, in a direct paternal or maternal line on the date of 1 January 1900 of who one of the descendents respectively lost the Luxembourgish nationality on the basis of former legal provisions, can re-acquire the Luxembourgish nationality by a declaration to be signed by the applicant within the 10 years following the entry into force of the present law.

³³⁸ Denis Scuto, *La nationalité luxembourgeoise (XIX-XXI siècles)*, Editions de l’Université de Bruxelles. <http://eudo-citizenship.eu/docs/Extract%20Scuto.pdf> According to Scuto, this article of the law is discriminatory: on one hand, the law imposes heavy requirements upon third-country nationals with long-term residence, but on the other hand, persons with no connection whatsoever to the country do not have to fulfil any requirements except to provide a proof of blood line.

³³⁹ Public forum initiated a debate “Becoming a Luxembourg national: nationality, citizenship, right of vote”. 5 November 2012 with the participation of the Minister of Justice, Migration and Asylum – Justice, freedom, security and immigration. Law on nationality “with a European perspective”: a conference provides reflexion insights for a more open legislation,

<http://www.europaforum.public.lu/fr/actualites/2012/11/emn-naturalisations/index.html>.

LU EMN NCP, “Reform of the Law on Luxembourg nationality with a European perspective” Conference, <https://www.emnluxembourg.lu/type-agenda/conf%C3%A9rence-la-r%C3%A9forme-de-la-loi-sur-la-nationalit%C3%A9-luxembourgeoise-dans-une-perspective->

See also: Luc Caregari, *Nationality. Corrections*, in: Woxx of 8 November 2012.

The intermediate summary of the study “*Access to nationality and its impact on integration*”³⁴⁰ allows determining where the Luxembourgish nationality scheme stands by comparison with the other Member States of the European Union. Hence, relatively to political indicators, Luxembourg is actually below the European average with regards to language requirements. Naturalisation based on family relations (e.g. transfer or facilitation of nationality transfer by marriage to a Luxembourg national) reaches a level that is lower than the European average, whereas, on the other hand, Luxembourg legislation contains an inclusive provision with regards to adopted children.

The study also analyses administrative indicators³⁴¹. By comparison with the other EU-15 States, Luxembourg authorities are seen to offer foreigners more encouragement to apply for naturalisation (e.g. procedure is free of charge, information on the procedure). While it would seem that a candidate in Luxembourg might find it harder to prove he complies with legal requirements (e.g. gathering all the documentation from the third-country such as the police clearance certificate, no exemptions for vulnerable individuals), authorities are, on the other hand, limited in their acting capacities in interpreting the legal conditions.

The Minister for Justice received some 200 written contributions³⁴², originating from citizens, institutions, associations and from the academic world. The results of this consultation were presented at a press conference held by the Justice Minister on 24 January 2013.

The permanent council of the Luxembourg language insists on the importance of verifying knowledge of the Luxembourg language in the process of acquisition of the Luxembourgish nationality and rejects measures proposed in the assessment report of the Justice Ministry³⁴³. It is the recommendation of OLAI³⁴⁴ to include in the reflexion the “*direct link to be established between obtaining the Luxembourg nationality and the Reception and Integration Contract*” with the particular aim of making the CAI more attractive as a first step in integration. The

³⁴⁰ Thomas Huddleston, Migration Policy Group, Access to nationality and impact on integration (ACIT), Law, measures and results in Luxembourg – intermediate summary, 6 November 2012, presented during the LU EMN NCP “Reform on the Law on the Luxembourg nationality with a European perspective” Conference.

³⁴¹ 38 indicators compare the formal aspects of the regular naturalisation procedure. Indicators cover all stages: from public encouragements to apply to the options candidates have in case their naturalisation application is rejected.

³⁴² Various comments forwarded to the Justice Ministry, Reform of the Law of 23 October 2008 on the Luxembourg nationality, December 2012.

³⁴³ Opinion of 12 November, in: Comments.

³⁴⁴ opinion of 5 November 2012, In: Comments.

non-profit organisation (*a.s.b.l.*) *Libertés*³⁴⁵ is pleading for the re-introduction of lighter requirements for certain special cases (individuals married to a Luxembourg national, children born abroad but schooled in Luxembourg), a lowering of the residence period and of language requirements. The OGBL³⁴⁶ is in favour of a reduction of the residence period. It pleads in favour of exempting from the Luxembourg language test, persons who have been residents of the country for more than 20 years. ASTI³⁴⁷ wishes to see the residence period reduced to 5 years, to adjust the level of language requirements for oral comprehension to the A2 level of the Common European Framework of Reference for Languages and to reduce the residence period for special cases.

The UNHCR³⁴⁸ wishes in particular, to facilitate the naturalisation of refugees and of those entitled to subsidiary protection. In imitation of the UNHCR, LFR³⁴⁹ requests a favourable treatment of those entitled to international protection by reducing their residence period to three years. The residence period should be counted from the date the application is submitted. Also in line with the UNHCR, it pleads for a reduction in case of stateless individuals. For the purpose of calculating the residence period, LFR supports the proposal according to which, the period between the date the asylum seeker application was submitted and the date of regularisation, should be assimilated to legal residence in Luxembourg. It calls for an exemption of Luxembourg language tests for certain groups of vulnerable individuals among those entitled to international protection.

The CCI of the city of Luxembourg³⁵⁰ proposes to change the residence period to 5 years, to adjust the test levels from B1 to A2, to provide for the possibility of compensation and of an exemption from the test for those who have resided in Luxembourg for no less than 20 years. It wishes to reduce the residence period to three years for certain specific categories and to grant the Luxembourg nationality at the time of birth in Luxembourg.

The CC³⁵¹ defends a modern outlook of the nation, featuring a wide cultural and linguistic heterogeneity and based on the will of individuals to live together in one single country and to

³⁴⁵ Opinion of 30 October 2012.

³⁴⁶ Le Quotidien, OGBL: To improved integration, 15 May 2012. <http://www.lequotidien.lu/politique-et-societe/34667.html>

³⁴⁷ Opinion of 26 November 2012, In: Comments.

³⁴⁸ Opinion of 20 November 2012, In: Comments.

³⁴⁹ Opinion of 20 December 2012, In: Comments.

³⁵⁰ Opinion of 11 January 2013, In: Comments.

³⁵¹ See Le jeudi.lu, Citizenship and nationality: A series of happy incidents? 31 January 2013 and Chamber of Commerce, Diversity reigns, integration stalls: the chamber of commerce analyses the social and economic input of foreigners and pleads in favour of improved political integration, *Actualité et tendances*, No 12, 27 March 2012.

share in a common society project³⁵². It also reiterates its position on the Law of 23 October 2008, as previously expressed: residence period of 5 years, provide, as prior to the Law of 2008, for easier access to nationality for various categories of individuals and in particular, spouses or partners of a Luxembourg nationals.

The CLAE is in support of various proposals³⁵³ that appear on the assessment report, such as the possibility of reducing the total residence period or of the required level of oral comprehension. It wishes an exemption from the language test on the basis of a 10-15-year residence period rather than the 20-25-year proposal made in the assessment document. The CLAE also reminds of “the proposals voted by its members at the Convention of associations in November 2011: that the most favourable provisions contained in the old Law – in particular:

- the reduction of residence period for individuals married to a Luxembourg national
- as well as for recognised refugees be re-introduced
- implementation of simple *jus soli*: children born in Luxembourg to parents who are permanently settled, are to receive the Luxembourg nationality.

2012 data

The 4,680 acquisitions of the Luxembourg nationality in 2012 feature a substantial increase of re-acquisitions³⁵⁴ of the Luxembourg nationality that involve mainly Belgian nationals (1,418 re-acquisitions) and French nationals (234) who do not necessarily reside in Luxembourg. By subtracting the 1,689 re-acquisitions of the Luxembourg nationality and the 10 acquisitions on the basis of the old Law, the figure is 2,919 new acquisitions of the Luxembourgish nationality.

The percentage of third-country nationals in these acquisitions of Luxembourg nationality continues to decrease.

³⁵² CC, The cross-border radiation of the Luxembourg economy: diversity reigns, integration stalls: in *Actualité & tendances*, No 12, March 2012, page 121.

³⁵³ CLAE, *Law on the Luxembourg nationality: a proactive reform*, in *Horizon* No 115, November 2012.

³⁵⁴ Re-acquisitions based on article 29 of the Law on Nationality allow individuals who had a Luxembourg ancestor on 1 January 1900, and who are in their direct paternal or maternal descent, to become Luxembourg nationals.

Table n°12: Acquisition of the Luxembourgish nationality in 2012

	Acquisitions (including re-acquisitions)	%	Naturalisations based on the 2008 Law	%
EU citizens	4052	86.60%	2359	80.80%
Third-country nationals	628	13.40%	560	19.20%
Total	4680	100%	2919	100%

Source: STATEC, Ministry of Justice © CEFIS

Newly naturalised third-country³⁵⁵ individuals originate first from Montenegro (126), then from Bosnia-Herzegovina (74), Serbia (68), the United States (42), Cape-Verde (41), the Ukraine (35) and Kosovo (33).

³⁵⁵ Almost all acquisitions of Luxembourg nationality were carried out on the basis of the naturalisation procedure, with the exception of the United States nationals, of whom, 29 individuals became Luxembourg nationals on the basis of re-acquisition.

3.7 Managing migration and mobility

3.7.1 Visa policy

3.7.1.1. The European Visa Information System (VIS)

The specific goals of the Visa Information System include simplifying procedures involved with visas, increasing security of the visa application procedure and facilitating controls at the outside borders of the Schengen area³⁵⁶.

The new VIS went into effect on 11 October 2011. The use of biometric information (finger prints and digital facial imaging), which will assist with identifying visa holders and contribute to preventing identity theft, will allow for a faster processing of visa applications for countries in the Schengen area. The first consular representations³⁵⁷ that connected to the system are located in Northern Africa (Algeria, Egypt, Libya, Mauritania, Morocco and Tunisia) where Luxembourg is represented by Belgium. Since 2 October 2012, the Luxembourg Embassy to Abu Dhabi has integrated applications on VIS.

In all Schengen States, authorities in charge of visas will be able to check data saved on the VIS, for instance, when an individual who submitted an application for a visa in the past submits a new one. VIS will contain all Schengen visa applications as well as all decisions made on these applications by competent authorities. Applicants will therefore be able to obtain their new visas more easily and rapidly, since authorities will be able to check that applicants are reliable and whether they have indeed abided by the rules of the framework of their previous applications.

³⁵⁶ Europaforum.lu, VIS implementation, a more effective and safe system for visas to countries of the Schengen area, 11.10.2011, <http://www.europaforum.public.lu/fr/actualites/2011/10/comm-VIS/index.html>

³⁵⁷ VIS will not be operational immediately in all consulates of Schengen countries around the world. It will be phased in by region. MAE, Report on the European policy of the Luxembourg government 2011-2012, September 2012, <http://www.europaforum.public.lu/fr/actualites/2012/10/rapport-politique-europeenne/rapport-politique-europeenne-2012.pdf>

Table n°13: Visas issued in 2012

Schengen visas	National visas ³⁵⁸
11833	6271

Source: Passport Office, MAE, 2013

3.7.2 The Schengen governance

In 2012, the Interior Minister and the Immigration Minister participated in the JHA (Justice and Home Affairs) Councils of April, June and October where the amendment to legislative proposals relating to Schengen on the possible re-introduction of internal border controls in the event of uncontrollable migratory pressure was discussed.

The Immigration Minister emphasised the practical and symbolic importance of Schengen *acquis* for the EU, which, in his opinion, could be improved without jeopardising the free movement of persons³⁵⁹. The Minister was opposed to a “re-nationalisation of Schengen” and pleaded in favour of a decision to be taken on the re-introduction of temporary national border controls at community level³⁶⁰.

3.7.3 Monitoring borders

The Automated Border Crossing System³⁶¹ as well as the EU Registered Traveller Programme³⁶² are not planned for in Luxembourg. In view of the limited air traffic at the

³⁵⁸ Residence permits. Including residence permits for EU nationals – relatives of EU nationals: 1,274; permanent residence permits and residence permits as a relative of an EU national: 638.

³⁵⁹ The JAI Council passes a general orientation on the re-introduction of internal border controls within the Schengen area, which generates strong opposition on the part of the European Parliament, 07.06.2012.

³⁶⁰ JAI Council – “Schengen is not the problem, it is the solution”, says Nicolas Schmit, the Minister for Labour, Employment and Immigration in his opposition to the “Schengen re-nationalisation” as requested by Germany and France, 26.04.2012.

³⁶¹ Automated Border Crossing (ABC) System, FRONTEX, BIOPASS II Automated biometric border crossing Systems based on electronic passports and facial recognition: RAPID and SmartGate, 2010, p. 18, http://www.fronTEX.europa.eu/assets/Publications/Research/Biopass_Study_II.pdf

³⁶² EU Registered Traveller Programme, http://ec.europa.eu/dgs/home-affairs/doc_centre/borders/docs/1_en_act_part1_v14.pdf

Luxembourg Airport and of the waiting periods for short trips, the added value of an automated border system is questionable³⁶³.

Luxembourg is not yet equipped with an automated EU entrance / exit system. The installation of such a system depends on developments at European Union level (community standards, Directives).

Luxembourg successfully passed all of the scheduled tests and will be ready for the installation of the Schengen Information System (SIS II). The SIS has assisted the Luxembourg Police in pinpointing:

Table n°14: Individuals traced due to the SIS II system - 2012

Individuals wanted for arrest	18
Non-Community nationals identified as Persona non grata	4
Individuals identified as missing	492
Individuals wanted by judicial authorities	41
Individuals identified by virtue of article 99.2 (discreet surveillance)	16
Vehicles identified by virtue of article 99.2 (discreet surveillance)	7
Vehicles identified as stolen	189
Stolen identity documents	158

Source: Grand Ducal Police Report, 2012

³⁶³ Luxembourg Police, European Fund for external borders, Annual Programme 2011, 10.05.2011, http://www.police.public.lu/PoliceGrandDucal/mission_organigramme/description/services-centraux/UCPA/Fonds_europ_front_ext/index.html

Verifications are carried out at the Luxembourg Airport by members of the Airport Control Service (*Service de Contrôle à l'Aéroport, SCA*) at border crossings to ascertain that travellers are permitted to enter or to leave the territory of the Grand Duchy of Luxembourg.

In 2012, the Airport Control Service equipment was strengthened with the introduction of *Docucenter* “NIRVIS” of the PROJECTINA brand, in replacement of *Docucenter* 3000.

The automatic control of the “INTERPOL” database is carried out using passport readers at arrival and departure counters.

Automatic access using passport readers at the “arrival and departure” counters on the Visa Information System (VIS) database currently lacks the thumbprint.

The new system for the issuance of Visa stickers in connection with the “VIS” database was installed at the Airport Police premises but is not yet operational at this time.

3.7.4 FRONTEX

Luxembourg contributes to the external border controls as part of the European Union community effort by its strong involvement in European solidarity through its repeated share in operations conducted by the FRONTEX, at land, sea and air borders. Thus, in 2012, Luxembourg was involved by using Police personnel in FRONTEX operations conducted at air and land borders³⁶⁴.

Luxembourg deployed a surveillance aircraft in the framework of the following joint operations:

- POSEIDON (Greek and Turkish sea borders)³⁶⁵
- INDALO (Spanish territorial waters)³⁶⁶
- HERA (Senegalese and Mauritanian territorial waters)

³⁶⁴ 2012 Activity report of the Grand-ducal Police, p. 33,

http://www.police.public.lu/actualites/statistique/rapport_stat_2012/rapport-statistique-2012.pdf

³⁶⁵ PACE Calls for Urgent Measures to Assist Greece and Turkey With Mounting Migratory Tensions in the Eastern Mediterranean, 29 January 2013, <http://migrantsatsea.wordpress.com/>

³⁶⁶ This operation, conducted with the participation of forces of Slovakia, Italy, Island, Luxembourg, Belgium, France and Portugal led to the interception of 169 boats and to the arrest of 2,245 individuals described by the Spanish Interior Ministry in a press release as “victims of networks dedicated to illegal immigration”. According to the same source, the “2012 Indalo” operation, which was initiated in May and ended in October, and which was conducted in the waters of Almeria, Grenada, Murcia, Malaga and Algeciras also assisted in actions for the fight against drug trafficking, sea pollution and cross-border crime. See Spain/FRONTEX: arrest of 35 human traffickers and interception of 2,245 illegal migrants since last May (police), menara.ma, 3 November 2012.

- AENEAS (Italian territorial waters)

Luxembourg deployed a surveillance aircraft in the framework of the joint POSEIDON operation from 1 to 30 April 2012 and from 15 September to 15 October 2012, and also shared in the 2012 Indalo operation between May and October 2012.

The Luxembourg Police shared in several seminars and conferences organised by FRONTEX on the fields of biometrics and of new developments in border controls.

Luxembourg is currently committed to providing FRONTEX with technical equipment used in checking travel documents as the need arises³⁶⁷.

³⁶⁷ Grand-ducal Police, Activity Report 2012, p. 33,
http://www.police.public.lu/actualites/statistique/rapport_stat_2012/rapport-statistique-2012.pdf

4. IRREGULAR MIGRATION AND RETURNS

4.1. *Irregular migration*

4.1.1. General context before 2012

Luxembourg does not practise general regularisation, but rather, regularisations on a case-by-case basis. Prior to 2012, regularisations were possible in extremely exceptional cases, linked to very serious humanitarian circumstances or to the family situation of individuals involved.³⁶⁸

The law of 29 August 2008 on free movement of persons and immigration foresees granting a residence permit for private reasons based on humanitarian motives of exceptional gravity to a third country national who is an illegal resident in the territory (articles 78, 79). Article 89 of the law of 29 August 2008 foresees the possibility that the Minister in charge of immigration of granting an authorisation of stay on an exceptional basis to illegal residents in Luxembourg if they fulfil certain conditions well defined. Candidates to regularisation must prove continuous residence and a regular professional occupation in Luxembourg since at least eight years.

4.1.2 National developments in 2012

4.1.2.1. Approval of various international agreements

Several laws were passed on the approval of re-admission agreements:

The Law of 16 May 2012 approves the agreement between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands (States of the Benelux) and the Republic of Kosovo relating to the readmission of individuals residing without authorisation (re-admission agreement) and the Protocol of application relative thereto.³⁶⁹

³⁶⁸ Law of 1 July 2011 amending the Law on Immigration and the Law on Asylum, <http://www.legilux.public.lu/leg/a/archives/2011/0151/2011A2180A.html>

³⁶⁹ <http://www.legilux.public.lu/leg/a/archives/2012/0104/2012A1360A.html?highlight=>

The Law of 26 December 2012 approves the Protocol of application between the Government of the Grand Duchy of Luxembourg and the Government of the Russian Federation relating to the implementation of the re-admission agreement between the European Community and the Russian Federation.³⁷⁰

Moreover, on 3 October 2012, a Bill was submitted by the government to the Chamber of Deputies for the approval of the Protocol signed in Brussels on 4 July 2012 between the Benelux States and the Republic of Montenegro on the application of the agreement between the European Community and the Republic of Montenegro relating to re-admission of individuals residing without authorisation.³⁷¹

Relatively to the fight against illegal immigration, the Law of 21 July 2012 should also be mentioned as it approves the Protocol against the illegal trafficking of migrants by land, sea or air, signed in Palermo on 12 December 2000³⁷². This Law abrogates article 143 of the Law of 29 August 2008 on the free movement of persons and immigration relating to penalties for assisting in entering and residing without authorisation in the country. This article is inserted in its amended version into the Criminal Code under a new Chapter entitled “on the illegal trafficking of migrants”. The criminal sanctions were modified: the maximum penalty was increased.³⁷³ More serious criminal penalties are foreseen in cases of aggravated circumstances occurred as listed by the Law.³⁷⁴

³⁷⁰ Memorial A No 283 of 31 December 2012, <http://www.legilux.public.lu/leg/a/archives/2012/0283/a283.pdf>

³⁷¹ Parl. Doc nr 6481 of 16 October 2012, www.chd.lu

³⁷² Memorial A No 153 of 27 July 2012, <http://www.legilux.public.lu/leg/a/archives/2012/0153/2012A1868A.html>

³⁷³ According to article 382-4 of the Penal Code : Any person who, by means of direct or indirect aid, has knowingly facilitated or attempted to facilitate the irregular entry, the irregular movement or, for profit, the irregular stay of a third-country national on or via the Luxembourgish territory, the territory of an EU Member State or a State party to the Schengen Convention signed 19 June 1990, or a State party to the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organised Crime, signed in Palermo, 12 December 2000, is liable to a penalty of imprisonment of three to five years and /or a fine of 10.000 to 50.000 Euros.

³⁷⁴ Art. 382-5.

The offence set out in article 382-4 is punishable by imprisonment of five to ten years and a fine of 50.000 to 10.000 Euros in the following cases :

- 1° when the offence is committed by any person having authority over the victim, or any person who abuses his authority or the facilities deriving from his function;
- 2° when the offence is committed by an official or public officer, any person with public authority or member of the law enforcement agencies acting within the scope of their employment;
- 3° when the offence is committed towards a minor;
- 4° when the offence is committed by abusing the particularly vulnerable position in which a person is placed as a result of illegal or precarious administrative status, precarious social situation, pregnancy, illness, disability or poor physical or mental condition in such a way that the person concerned has no real or reasonable possibility of avoiding such abuse;
- 5° when the offence is committed by making direct or indirect use of fraud, violence, threats or any form of coercion;

4.1.2.2. Use of counterfeit ID intended for municipality registration as EU national

Since the entry into force of the law on immigration, the Directorate of Immigration has become aware of various isolated cases where third country nationals have used counterfeit IDs in order to register themselves in local municipalities as European Union nationals. These cases were identified when copies of the documents were controlled by the Directorate of Immigration in cooperation with consular authorities of the concerned Member States. The Grand-ducal Judicial Police Service was thereafter entrusted with an investigation of the files under consideration. It should be noted that the registration certificate is the only document issued by local municipalities. The Directorate of Immigration carries out non-systematic controls of registration certificates issued by local municipalities in compliance with Directive 2004/38/CE.³⁷⁵

4.1.2.3. Announcement of a measure for the regularisation of illegal workers

Parallel to the enactment of the Bill transposing the “Sanctions” Directive into national law, the Minister of Immigration announced a regularisation³⁷⁶ measure that will be implemented from 2 January to 28 February 2013. The intent of this action is to allow individuals residing without authorisation in Luxembourg to apply for a residence permit as salaried workers, thereby regularising their administrative status. However, this action is limited to individuals who meet the following cumulative requirements:

6° when the offence has deliberately or by gross negligence endangered the life of the victim;

7° when the offence has caused an illness which appears incurable or a permanent physical or psychological disability, the loss of, or the permanent loss of the use of an organ, or severe mutilation;

8° when the activity in question constitutes a business activity;

9° when the activity in question constitutes an act of participation in the main or incidental activity of an association, whether or not the culprit in question is in charge of the activity.

³⁷⁵ Response of Mr Jean-Marie Halsdorf, Minister of the Interior and of the Greater Region and of Mr Nicolas Schmit, Minister of Labour, Employment and of Immigration to the Parliamentary question No 2176 of the right honourable Deputy Mrs Claudia Dall'Agnol, 4 July 2012, www.chd.lu

³⁷⁶ RTL, 5 minutes, Schmit: Regularisation of illegal individuals early 2013, 18 December 2012, <http://5minutes.rtl.lu/fr/actualite/luxembourg/365515.html>

1. Holding a valid passport, currently valid
2. Residing without authorisation for no less than 9 months and having work for no less than 9 months³⁷⁷ for an employer in Luxembourg and able to submit a permanent work contract³⁷⁸ with the employer³⁷⁹
3. Not constitute a danger to public order.

Individuals whose international protection procedure has been rejected for no less than 9 months³⁸⁰ are also concerned by this regularisation measure as long as they meet the above-stated requirements.

Conversely, this measure is not applicable to individuals who were granted a postponement/suspension of actual removal or to cross-border workers. Since the regularisation measure is intended for individual persons, no application for family reunification will be accepted.³⁸¹

This regularisation measure offers the opportunity, not only to individuals involved in illegal work to regularise their residence status, but is also intended for employers who hire individuals illegally, to legalise their³⁸².

During the Parliamentary Debate on the transposition of the “Sanctions” Directive, the Immigration Minister mentioned that *“the Directive 2009/52/CE is a consequence of the agreement on immigration and asylum within the EU based on the solidarity between Member States to bring an end to the expansion of illegal immigration”*³⁸³. For the correct

³⁷⁷ For a period of 9 successive months, that is, no less than 9 of the 12 months of the year 2012. If the applicant have not yet worked for a period of no less than 9 months with his employer at the time of application but can submit a permanent contract with the current employer and the 9-month period is complete by 28 February 2013.

³⁷⁸ Permanent contracts with wages equivalent to the minimum social salary for a weekly work period of 40 hours.

³⁷⁹ According to the Immigration Minister, this is irrespective of whether they are registered with the Social Security organisation or not.

Europaforum.lu, The Chamber of Deputies passes unanimously the transposition of a European Directive for the penalising of employers of third country nationals, 18 December 2012.

³⁸⁰ Starting point: the date when the individual’ asylum application is permanently rejected.

³⁸¹ MAE, Immigration Service, Residence Permits for third country nationals residing without authorisation, for public information, 03.01.2013, <http://www.mae.lu/Site-MAE/VISAS-Immigration/Titre-de-sejour-pour-ressortissants-de-pays-tiers-en-sejour-irregulier>

³⁸² Nicolas Schmit: Eemoleg Regularisatiouns-Mesure virgestallt, 03.01.2013, <http://news.rtl.lu/news/national/372323.html>, Europaforum.lu, La Chambre des Députés transpose à l’unanimité une directive européenne qui sanctionne les employeurs de ressortissants de pays tiers en séjour irrégulier, 18 décembre 2012.

³⁸³ Europaforum.lu, The Chamber of Deputies passes unanimously the transposition of a European Directive for the penalising of employers of third country nationals, 18 December 2012.

implementation of the Directive, which is an instrument for the fight against illegal immigration and social dumping, 5 new posts were created at the ITM.

The government regularisation action was commended by civil society, and particularly as a result of the reduction in residence and work period to 9 months³⁸⁴. However, some reservations were expressed on the period open for the submittal of regularisation applications, from the 3 January to 28 February, period considered too short, and also on the fact that the regularisation measure does not rest on a legal basis, it is merely based on a service note of the Minister³⁸⁵. Another source of concern involved the requirement for applicants to submit a permanent contract, since the majority of individuals qualifying for regularisation work in the construction and restaurant industries, where work conditions are unsettled and permanent contracts are rare³⁸⁶.

According to the first estimates presented by NGOs (ASTI, CLAE and Caritas³⁸⁷) on 7 March 2013, it appears that, within the short period granted by authorities, a limited number of individuals were able to submit their applications.

The associations founded difficulties in convincing employers to provide the required evidence. They considered that the lack of *“solid legal basis for the regularisation procedure, without any non-sanction guarantee deemed credible by most employers, removed a significant number of individuals from the procedure.”*³⁸⁸ On the other hand, individuals residing without authorisation chose to remain in that situation out of fear of being listed and expelled. The last problem that the associations observed was the fact that the documents from the country of origin required as part of the procedure were almost impossible to obtain within the short period of time given.

³⁸⁴ The Law on Immigration currently in force provides, under its article 89, that “a residence permit for exceptional circumstances” be granted to an “individual who can submit any evidence whatsoever of his residing continuously on the territory and of his habitual working for a period of no less than 8 years.

³⁸⁵ Tageblatt, ASTI kritisiert zu kurze Frist, 09/01/2013.

³⁸⁶ ASTI rejoices at the announcement of a regularisation scheme planned for the beginning of 2013, 19/12/2012, http://www.asti.lu/wp-content/uploads/2012/12/communiqu%C3%A9_presse_regularisation_20131.pdf

³⁸⁷ NGOs mandated by the Ministry of Labour, Employment and Immigration to assist undocumented individuals with their regularisation procedure. 205 members of various NGOs have offered support to employers and to undocumented employees with the steps to constitute a file.

³⁸⁸ ASTI, CLAE, Caritas Luxembourg, Regularisation: the dices are cast, the game continues, 7 March 2013, http://www.asti.lu/wp-content/uploads/2013/03/communiqu%C3%A9_regularisation_asti_caritas_clae_final.pdf

According to the first estimates of 14 March 2013, 652 regularisation applications were submitted. 217 individuals obtained a temporary residence permit and 150 are still going through the process. 180 individuals had their application rejected and are required to leave the Grand Duchy of Luxembourg within 30 days.³⁸⁹

The majority of individuals who submitted a regularisation application work in the restaurant industry. They are followed by those working as household helpers, in the crafts, industry and in construction.

4.1.2.4. Information sheet on marriage and family reunification in Luxembourg

ASTI drafted an information sheet³⁹⁰ intended for couples made up of one EU citizen and one third country national who wish to get married in the country of origin of the third party national and then return to settle together in Luxembourg.

The sheet offers specific instructions and information on the administrative measures to take and also shows all the relevant addresses for this purpose.

In 2012, administrative jurisdictions were faced with the case of a third country national residing without authorisation who was the mother of two minor children, both French nationals. She applied for a residence permit on the grounds of family reunification. The administrative Court chose for this case, to put a preliminary question to the European Court of justice.

A question put to the Court was as follows: *“Is Article 20 TFEU - if necessary, read in conjunction with Articles 20, 21, 24, 33 and 34 of the Charter of Fundamental Rights, or with one or more of those provisions read separately or in conjunction - to be interpreted as precluding a Member State from refusing a third-country national, with sole responsibility for his or her infants who are citizens of the European Union, residence in the Member State of residence of the children, where they have been living with that person since birth, without having that nationality, while refusing the third-country national a residence permit, or even a work permit?”*

³⁸⁹ L’Essentiel, 180 illegal workers are to leave the country, 14 March 2013, <http://www.lessentiel.lu/fr/news/luxembourg/story/11064465>

³⁹⁰ Available in French, English and Portuguese, <http://www.asti.lu/2012/09/07/nouvelle-fiche-pratique-sur-le-mariage/>

Are such decisions to be regarded as being in the nature of decisions depriving those children, in their country of residence, in which they have lived since birth, of effective enjoyment of the substance of the rights attaching to the status of citizen of the European Union also in the situation where their other direct ascendant, with whom they have never shared family life, is resident in another Member State of the European Union, of which that person is a national?

This preliminary question was handled by the European Court of Justice as part of the C-86/12 case. The audition was held before the Court in February 2013 and the conclusions³⁹¹ of the lawyer were rendered on 21 March 2013.

³⁹¹ The Advocate-General had concluded the following: “Young children, citizens of the Union, under the responsibility of a direct ascendant, non-dependant, who has custody, are likely to be entitled to the benefits of provisions of Directive 2004/38/CE of the European Parliament and of the Council of 29 April 2004, relating to the rights of Union citizens and their relatives to movement and to reside freely on the territory of Member States, in order to allow the said ascendant, a third country national, to enjoy the derived right of residence on the territory of the Member State of which, those children are not nationals. It is the responsibility of the removal jurisdiction to ascertain whether conditions set out under article 7, paragraph 1, b), of the said Directive are met, taking into consideration the personal situation of the Union nationals concerned and including, as may arise, the future or potential resources originating from an employment offer made to the said direct ascendant, such as those under consideration in the current dispute, in view of the limits imposed by the national procedural rules and by the requirements relating to the principals of equivalence and efficiency.” He adds: “A decision to leave the territory cannot be considered as being of a nature to oblige these citizens to abandon the whole territory of the Union by depriving them of the effective enjoyment of the essential rights conferred upon them by reason of their status, since these citizens hold an unconditional right to enter and to reside on the territory of the Member State of which they are nationals, a right which, for it to maintain its useful nature, requires that a derived right of residence in this Member State be granted to the said direct ascendant as the sole individual responsible for their effective custody and with whom they have maintained a common family life since their birth.” <http://curia.europa.eu/juris/document/document.jsf?text=&docid=135472&pageIndex=0&doclang=fr&mode=req&dir=&occ=first&part=1&cid=534921>

4.1.3. European developments

4.1.3.1. Transposition of the ‘sanctions’ directive

The Law of 21 December 2012 transposes the “Sanctions”³⁹² Directive into national law, introducing significant modifications in the Labour code, the Law on immigration, the law on the profession of lawyer and the Criminal code.

A new article is included in the Labour code according to which the employer of a third country national is compelled to verify that the worker has an authorisation of stay or a residence permit, keep a copy of it in file and to notify the Ministry of Immigration when the employee starts in its post.

Articles 144 to 146 of the Law of 29 August 2008 on free movement of persons and immigration which impose criminal sanctions to any employer who had hired a foreign worker who does not have an authorisation of stay were abrogated. These articles are to be found in the Labour code in the context of a new chapter entitled: “Prohibition of the employment of irregular-staying third country nationals”.

The article which deals with criminal sanctions was modified. From now on, it distinguishes between administrative sanctions and criminal sanctions.

The employer who had hired one or several irregular-staying third country nationals is liable to an administrative fine of 2 500 euros per person.

If the employer hires irregular-staying third country nationals in one of the aggravated circumstances³⁹³ foreseen by the law, he/she is liable to be sentenced to 8 days up to one year in prison and to an administrative fine of 2 501 up to 20 000 euros, or only one of these sanctions.

As it was already foreseen by the law on immigration, he/she can also be liable to the following accessory penal sanctions: prohibition for a maximum period of three years to

³⁹² Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimal standards relating to penalties and measures against employers of third country nationals residing without authorisation.

Law of 21 December 2012, Memorial A No 296 of 31 December 2012,
<http://www.legilux.public.lu/leg/a/archives/2012/0296/index.html>

³⁹³ 1. The infringement of recurring to irregular-staying workforce is repeated in a persistent manner ;
2. the infringement is linked to the simultaneous hiring of a significant number of irregular-staying third-country nationals;
3. The infringement is accompanied of working conditions particularly abusive ;
4. the infringement is made by an employer who uses the work or services of an irregular-staying third-country national knowing that this person is a human trafficking victim ;
5. The infringement is linked to the illegal employment of an irregular-staying third country national minor.

practice his/her professional activity or the temporary closing for a maximum period of five years or the definitive closing of the enterprise. In addition, he/she must pay the worker its salary and to pay all unpaid social security contributions and taxes.

Also the entrepreneur who is sub-contracting with an employer of an irregular-staying third country national can be jointly or solely liable of any of the financial sanctions and of all unpaid social security contributions and/or taxes.

The Labour code integrates a new disposition, namely the obligation of information, before the execution of a return decision of irregular-staying third country nationals illegally employed on their rights and possibility of access to free legal aid.

From now on, the employer must also take responsibility of the third country national return expenses while until now, these expenses were supported either by the third country national or the State.

The employer who had committed an infringement against the prohibition of hiring irregular-staying third country nationals and condemned at least twice for this infringement in a 2 years period before the judgement are excluded from the benefits of certain laws.³⁹⁴

The cessation of illegal works is also foreseen when using irregular-staying third country nationals.

The relevant paragraph of article 89 of the law on immigration dealing with the possibility of a permanent regularisation of persons staying irregularly in Luxembourg since at least 8 years and who have regularly worked was suppressed because this disposition was considered contradictory to the spirit of the “sanctions” directive which intends to punish the employer of irregular-staying third country nationals. The legislator maintains the possibility of a permanent regularisation of third country nationals who prove that they have accomplished at least 6 years of schooling in Luxembourg. It also establishes the possibility of a regularisation based on exceptional gravity motives.

The law of December 21, 2012 also includes a new Article 98bis to the amended law of 29 August 2008 on the free movement of persons and immigration. This transposes Article 13 § 4 of Directive 2009/52/EC, which requires that Member States define the conditions under which they may issue temporary residence permits (limited in time) in terms comparable to those that apply to victims of human trafficking. Article 98bis only covers third-country

³⁹⁴ Amended Law of 27 July 1993 on 1. The development and the economic diversification; 2. The amelioration of the general structure and the regional balance of the economy; amended law of 30 June 2004 on the creation of the general framework of the aids in favor of middle and small enterprises; law of 15 July 2008 on regional economic development; law of 5 June 2009 on the promotion of the research, development and the innovation; law of 18 February 2010 on the aid regime for the protection of the environment and the rational use of natural resources.

nationals staying illegally who have been employed particularly in abusive conditions or who are minors.

The advice of the advisory committee for the self-employed workers will not be required any longer in the case of renewal applications for the sake of simplicity and efficiency of the renewal process.

The article on the advisory committee of foreigners who have been responsible for giving a compulsory advice prior to any decision by the Minister on the withdrawal or refusal of non-renewal of a residence permit is revoked. This deletion is justified in terms of simplification and increased effectiveness of the procedures of the amended law of 29 August 2008 on the free movement of persons and immigration.³⁹⁵

Moreover, the legislator considers that the existence of internal appeal and a second instance before the administrative courts ensure sufficient rights of the persons concerned. Article 137 of the Law on Immigration is modified. This article entrusted exclusively the ITM functions of the Judicial Police (Foreigners Service). The ITM was acting as a supervisory body that controls the legal residence status of employees who depend of the Directorate of Immigration. This was considered contrary to international obligations. The ILO had repeatedly criticized the involvement of labor inspectors in police operations against illegal employment as contrary to the principles of the protection of the employees. However, this does not prevent the ITM to participate in the fight against illegal work and stay of third country nationals in the measure it respects illegal residence in accordance with the organic law.

In order to carry out its missions, the Inspectorate of Labour and Mines had benefit of an increase in its staff. Inspectors are recruited according to risk sectors (catering, trade, construction and completion, agriculture).

Some elements of the debate during the lawmaking process:

The CS³⁹⁶, while welcoming the bill, is critical in relation to the proposed institutional changes by the legislature. It examines the reasons for the removal of the consultation of the Advisory Committee for self-employed workers in the renewal of residence permits for self-employed workers. It does not share the argument that the consultation of the Advisory Committee for foreign nationals of non-renewal or withdrawal of residence permits impedes the effectiveness of procedures and would become redundant since the introduction of the two

³⁹⁵ Modification introduced to article VI of Bill n° 6404. See parliamentary document, n° 6404/00 p. 13.

³⁹⁶ Parliamentary document n° 6404/01 of 17 April 2012.

instance appeal procedure, arguing that all commissions involved in the non-contentious administrative procedure should have to be repealed.

The CC³⁹⁷ criticised the creation of an additional administrative burden on employers while the bill imposes employers to notify the Ministry of Immigration the beginning of the period of employment of third-country nationals. It opposes to stricter criminal sanctions than those laid down in the directive, defending the principle "all the Directive, only the directive". The Chamber regretted that the bill establishes sanctions only for employers while no criminal sanction is foreseen against illegal workers.

The Council of State³⁹⁸ issued four formal oppositions with regard to the bill, including three for incorrect transposition of the Directive: The State Council asks, as required by the Directive, to establish a system of administrative penalties for less serious offenses. It also notes an imperfect implementation of the Directive, noting that the bill does not establish "mechanisms to ensure that third-country nationals illegally employed may appeal or to enforce a judgment against the employer for any unpaid wages." The Migration and Integration Platform expressed the same concern.³⁹⁹

The bill also fails to transpose article 6 (1c) of the Directive requires Member States to charge the errant employers all the expenses for sending the unpaid wages to the country where the third country national returned.

The Chambre de Metiers⁴⁰⁰ criticised the increase of the administrative burden on employers and significant severity of sanctions against them. It deplores, as the CC did, that no sanction is foreseen for the worker.

The Commission of Labour and Employment⁴⁰¹ follows several observations of the State Council. Thus, the Commission proposes to introduce the system of administrative sanctions outside the cases referred in Article 9 of the Directive for which a criminal penalty is provided. It also follows the State Council proposal to introduce a mechanism for third-country nationals illegally employed to bring an action for extending the benefit of legal assistance to them for the recovery of payments due in accordance with the Labour Code. In addition, the errant employer shall bear all costs arising from sending unpaid remunerations in

³⁹⁷ Parliamentary document n° 6404/02 of 19 April 2012.

³⁹⁸ Parliamentary document n° 6404/05 of 26 June 2012.

³⁹⁹ <http://www.asti.lu/migrations/plate-forme-migrations-et-integration/>

⁴⁰⁰ Parliamentary document n° 6404/06 of 9 October 2012.

⁴⁰¹ Parliamentary document n° 6404/07 of 6 November 2012.

the country in which the person is returned. The errant employer can also incur in accessory criminal sanctions such as the ones foreseen by the Directive.

4.2. Return migrations

4.2.1. General context before 2012

4.2.1.1. Promoting voluntary returns

The 2009-2014 Government programme specifies that the credible fight against illegal immigration is to be based on a consistent policy for the return of individuals residing illegally. The Government wishes to further encourage the voluntary return of individuals residing without authorisation in order to safeguard the human dignity of these individuals, by allowing the irregular migrant the possibility to comply voluntarily with the obligation upon him to leave the territory in 30 days and by granting the possibility for these individuals to benefit of an assisted return scheme.⁴⁰² Emphasising the common approach to promoting voluntary return, the Government cooperates with IOM (International Organisation for Migrations).⁴⁰³

In 2011, the number of persons removed from the territory was of 582. 524 (90%) of repatriations were “voluntary” and 58% were forced returns. 99 returns were made with the assistance of IOM.

4.2.2 National developments in 2012

A scheme for the assistance of voluntary returns and of reintegration is made available by means of the Assisted Voluntary Return and Reintegration from Luxembourg Programme (AVRR L).

⁴⁰² See also Point II (f). The first cooperation project relating to the assistance of voluntary returns of foreign nationals and of their reintegration into their country of origin between the Government and OIM was signed on 5 August 2008. The first project covering the period of 1 August 2008 to 15 March 2009 was limited to rejected international protection applicants originating from the Kosovo who no longer enjoyed the tolerance measure. 16 individuals from the Kosovo were concerned by this programme. The second programme, covering the period of 1 August 2009 to 31 December 2009, removed the geographic limit and the reference to a group of beneficiaries. Aside from applicants for international protection who had been rejected, it was intended for individuals residing without authorisation, who were third country nationals. 38 individuals took advantage of the OIM programme. Support and assistance for the return was previously described in quite some detail in the 2009 report. LU EMN NCP, Policy report on migration and asylum, 2009, ch.3.11, p. 53-55, published in 2010, http://www.emnluxembourg.lu/sites/default/files/2009_RapportPolitique_EMN-NCP-LU.pdf

⁴⁰³ MAE, European Fund for Returns, Multi-annual Programme 2008-2013, <http://www.mae.lu/en/content/view/full/25548>

Following a call for project launched by the Directorate of Immigration for the 2011 to 2013 period, the agreement between MAE and IOM was pursued in the framework of the European Return Fund.⁴⁰⁴

The Law of 1 July 2011 amending the Law on Immigration as well as the Law on Asylum⁴⁰⁵ transposed Directive 2008/115/EC⁴⁰⁶, known as “Return Directive”, into national Law. The Law⁴⁰⁷ sets the period for voluntary return at thirty days counting from notification of the return decision.⁴⁰⁸

Rejected international protection applicants whose country of origin is considered “safe” do not benefit from any assistance for voluntary return in the framework of the AVVR programme (Assisted Voluntary Return and Reintegration).⁴⁰⁹ Nationals of Serbia, Macedonia, Montenegro who submitted their application for international protection after 31 December 2009 and nationals of Bosnia-Herzegovina and Albania who submitted their application after 31 December 2010 (date when the visa liberalisation scheme went into effect) are therefore excluded from the scheme. The Government does however pay for the return transportation expenses.

In 2012, there were 1705 returns from Luxembourg, an increase of 293% compare with 2011. There were 1563 voluntary returns (92%) and 8% of forced returns.

⁴⁰⁴ IOM, Support for the Voluntary Return from the Grand Duchy of Luxembourg 2011, Information Session, Luxembourg Red Cross (*Croix-rouge-Luxembourg*), 13.09.2011;

⁴⁰⁵ Memorial A No 151, 25.07.2011, <http://www.legilux.public.lu/leg/a/archives/2011/0151/2011A2180A.html>

⁴⁰⁶ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 relating to common standards and procedures applicable within Member States for the return of residing third country nationals, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:FR:PDF>

⁴⁰⁷ Article 111(2) <http://www.legilux.public.lu/leg/a/archives/2011/0151/a151.pdf>

⁴⁰⁸ Article 22(1) provides for a period for the voluntary return longer than thirty days under exceptional circumstances.

⁴⁰⁹ A scheme for the assistance of voluntary returns and of reintegration is part of the Assisted Voluntary Return and Reintegration from Luxembourg (AVRR L). This assistance includes particularly travel expenses of individuals planning a voluntary return as well as organisation expenses for voluntary returns (e.g. costs linked with the acquisition of travel documents), as well as pocket money granted to individuals returning voluntarily. In addition, this assistance includes a financial contribution towards initial expenses following the return, of which, as may arise, transport expenses within the country of return or expenses for temporary housing. Nationals of Serbia, Macedonia, Montenegro who submitted their application for international protection after 31.12.2009 and nationals of Bosnia-Herzegovina and Albania who submitted their application after 31.12.2010 (Visa liberalisation) are not included in the scheme.

1671 returns (96%) involved individuals from the Balkans countries⁴¹⁰ (against 88% in 2011): 784 Serbian nationals (46%⁴¹¹) 325 Macedonians⁴¹² (19%), 201 Albanians (12%) and 178 Montenegrin nationals (10%).

⁴¹⁰ Albania, Bosnia-Herzegovina, Croatia, Kosovo, Macedonia, Montenegro and Serbia

⁴¹¹ 60% of the returns in 2011.

⁴¹² 11% of returns in 2011.

Table n° 15: Returned third country nationals⁴¹³

	Nationality	Total	Forced	Voluntary	Voluntary returns with the assistance of IOM
Balkans	Albania	201	13	188	0
	Bosnia-Herzegovina	72	1	71	0
	Croatia	2	2	0	0
	Kosovo	79	15	64	57
	ARYM (Macedonia)	325	15	310	0
	Montenegro	178	26	152	0
	Serbia	784	52	732	1
Africa	Algeria	1	0	1	1
	Cameroon	1	1	0	0
	Cape Verde	3	1	2	1
	Guinea (Conakry)	4	3	1	1
	Kenya	1	1	0	0
	Morocco	2	1	1	1
	Nigeria	3	3	0	0
	Senegal	1	0	1	1
	Sudan	1	0	1	1
	Togo	1	0	1	1
	Tunisia	1	1	0	0
America	Brazil	12	2	10	4
	Colombia	1	1	0	0
	USA	1	0	1	1
Rest of Europe	Belarus	6	1	5	4
	Georgia	1	0	1	1
	Moldavia	1	0	1	1
	Russia	4	1	3	3
	Turkey	3	0	3	2
	Ukraine	2	2	0	0
Asia	China	2	0	2	2
	Nepal	1	0	1	1
Middle East	Iraq	6	0	6	6
	Iran	2	0	2	1
	Jordan	1	0	1	1
	Kazakhstan	1	0	1	1
	Kirghizstan	1	0	1	1
Total		1705	142	1563	94

Source: Directorate of Immigration, 2012

⁴¹³ Irregular migrants and rejected international protection applicants.

There is a very significant increase in the number of third country nationals who have opted for voluntary return.⁴¹⁴ The vast majority of these people were applicants for international protection from the Balkans (1453).⁴¹⁵ Many of these people have left the country without waiting for the end of their procedure of international protection.

There is an increase in forced returns between 2011 and 2012 of 144.8%.⁴¹⁶ The vast majority were returned by commercial flight with the exception of 33 that were returned by joint flights organized by FRONTEX to Nigeria and Serbia and 8 in a charter flight to Kosovo.⁴¹⁷

4.2.3. European developments

Aside from approval procedures of readmission agreements (see 2.1 I.2) in the framework of the European Fund for Return (*FER*), Luxembourg has listed the areas “Organisation of Voluntary Returns” and “Assistance to reintegration” as relevant. Luxembourg is therefore planning to encourage exchanges of experiences and good practices on the management of returns with other Member States and other European States⁴¹⁸ by means of study visits. Also it is important to mention that the relationships with consular authorities (not represented in Luxembourg) of countries of origin of irregular migrants in Luxembourg in order to agree on good cooperation rules in matters of establishing identities and issuing travel documents for the return of irregular migrants have improved.⁴¹⁹

Luxembourg works in close cooperation with Germany/*Bundesamt für Migration und Flüchtlinge* (BAMF) in the framework of language tests carried out for the purpose of determining the country of origin of IPAs and/or rejected IPAs who do not hold any identity documents.⁴²⁰

⁴¹⁴ In 2011 there were 524 individuals who accepted a voluntary return. This represents an increase of 198,2%.

⁴¹⁵ Press conference of Mr. Nicolas Schmit, Ministry of Labour, Employment and Immigration, Balance Sheet 2012, 14 March 2013.

⁴¹⁶ This represents an increase from 58 individuals in 2011 to 142 in 2012. 109 individuals came from the West Balkans countries, that is 76,8% of all forced returns.

⁴¹⁷ Press conference of Mr. Nicolas Schmit, Ministry of Labour, Employment and Immigration, Balance Sheet 2012, 14 March 2013

⁴¹⁸ Countries that are particularly included are those that have a recognised experience on the matter of returns or that are faced with challenges comparable to those faced by Luxembourg, e.g. Switzerland, Austria and Scandinavian countries.

⁴¹⁹ By courtesy visits. MAE. Immigration Department, Annual Programme Grand Duchy of Luxembourg, European Fund for Returns, 2012, p. 8-12, <http://www.mae.lu/Site-MAE/Bienvenue-au-Ministere-des-Affaires-etrangees/Organisation/Direction-de-l-Immigration/Fonds-europeen-pour-le-retour>

⁴²⁰ FER, Annual Programme 2012, http://www.olai.public.lu/fr/publications/programmes-planactions-campagnes/programme_fer/prog-2012-fer.pdf

Moreover, Luxembourg works in cooperation with other Member States in the area of returns and participates in joint flights organised by FRONTEX. In 2012, joint flights were organised to Serbia and Nigeria.

On voluntary returns, the Government works in cooperation with the International Organisation for Migrations (OIM). Since 1 July 2011 and following a call for projects initiated by the Directorate of Immigration for the 2011 to 2013 period, the agreement between MAE and OIM has been pursued in the framework of FER.⁴²¹

⁴²¹ MAE. Immigration Department, Annual Programme Grand Duchy of Luxembourg, European Fund for Returns, 2012, p. 2,
<http://www.mae.lu/Site-MAE/Bienvenue-au-Ministere-des-Affaires-etrangees/Organisation/Direction-de-l-Immigration/Fonds-europeen-pour-le-retour>; Policy Report on migration and asylum 2011, 5.2.2.
<https://www.emnluxembourg.lu/type-documentation/rapport-politique-sur-les-migrations-et-lasile-2011>

5. INTERNATIONAL PROTECTION

5.1 General context before 2012

In 2011, the Directorate for Immigration recorded 2,170 applications for international protection (individuals) against 786 in 2010. Over 78% of IPAs originate from countries of the Western Balkans, particularly Serbia (43.76% of the total of applications submitted), Macedonia (20.61%), Kosovo (7.02%) and Montenegro (4.76%).⁴²²

This significant influx of applicants for international protection has resulted in increased pressure on the structures responsible for international protection, a) whether on OLAI, attached to the MIFA, whose competence includes receiving and housing IPAs or b) on the Directorate for Immigration attached to the MAE, responsible for examination procedures of international protection applications. All year long, it has also affected policies and debates relating to the examination procedures of applications, receiving IPAs and return procedures.

In 2011, Luxembourg took measures to hasten the handling of international protection applications originating from Serbia. Hence, since the Grand-Ducal Regulation of 11 April 2011, Serbia has been included on the list of safe countries of origin⁴²³. Moreover, the “Asylum Law” was amended to allow authorities to resort once again to the accelerated procedure for the examination of international protection applications⁴²⁴.

⁴²² MAE, Directorate for Immigration, Press Conference, Summary 2011, 31.01.2012,

⁴²³ Memorial A No 67 of 11 April 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0067/a067.pdf>

⁴²⁴ Memorial A No 102 of 20 May 2011. For further details, see Policy Report on migrations and asylum 2011, 7.2. <https://www.emnluxembourg.lu/PUBLICATIONS/policy-reports>

5.2 National developments in 2012

In 2012, Luxembourg has continued to be confronted with an influx of international protection applicants⁴²⁵, even though a slight decrease was noted in comparison with 2011. Hence, 2,056 IPAs were registered against 2,170 in 2011⁴²⁶. 1,341 originate from one of the 5 countries of former Yugoslavia (Serbia, Montenegro, Bosnia-Herzegovina, Kosovo, Macedonia), that is, 65.2% of all of the IPAs. Serbia takes first position with 357 IPAs, followed by Albania (302), Montenegro (298), Bosnia-Herzegovina (286), Kosovo (232) and the Republic of Macedonia (168). Including IPAs originating from Albania, the total number is 1,643 IPAs, that is, 79.9% of all IPAs.

As in 2011, this situation has had consequences on the policy and debates relating to the asylum issue.

5.2.1. A new Grand-Ducal Regulation on social aid for international protection applicants

The Grand Duchy Regulation of 8 June 2012, setting the terms and conditions governing the grant of social aid⁴²⁷ to IPAs, repeals the Grand-Ducal Regulation of 1 September 2006⁴²⁸.

The main amendments are as follows:

Any individual benefiting from a commitment to cover all expenses made by a Luxembourg national or a person entitled to reside on the territory for a period of no less than one year according to the terms of Article 4 of the Amended Law of 29 August 2008 on the free movement of people and immigration is not included in this provision.

There is a substantial decrease in monthly cash amounts of social aid for adult individuals, households and children. The amounts may be complemented with assistance in kind or purchase vouchers. The amounts are set as follows:

⁴²⁵ MAE, Directorate for Immigration, Statistics on international protection in Luxembourg. March 2013, <http://www.mae.lu/Site-MAE/Bienvenue-au-Ministere-des-Affaires-etrangees/Organisation/Direction-de-l-Immigration/Chiffres-cles-en-matiere-d-asile>

⁴²⁶ Ibid.

⁴²⁷ Social assistance includes among others, accommodation, monthly allowance; basic medical care, contributions for voluntary insurance as provided for under Article 2 of the Code of Social Insurances are covered; public transport on the Grand Duchy of Luxembourg network; social guidance; supervision of unaccompanied minors; psychological care and assistance of individuals requiring this, particularly those who were victims of trauma; counselling on sexual and procreation matters; temporary assistance as needs arise.

⁴²⁸ Memorial A No 123 of 20 June 2012, <http://www.legilux.public.lu/leg/a/archives/2012/0123/a123.pdf>

1) In case of full-board accommodation or accommodation where meals or food are supplied, social aid beneficiaries will receive a monthly cash allowance of:

- € 25 per adult individual
- € 12.50 per minor child
- € 25 per unaccompanied minor 16 to 18 years of age.

2) As an exception to point 1: and where meal supplies are not possible, beneficiaries of social aid will receive a monthly allowance of:

- € 225 per adult individual
- € 300 per two-person household
- € 200 per additional adult
- € 173 per teenager 12 to 18 years of age.
- € 140 per child under 12 years of age
- € 225 per unaccompanied minor 16 to 18 years of age.

The above-mentioned amounts correspond to the figure 737.83 of the adjusted index of the cost of living as at 1 October 2010 and are weighted on the scheme applicable to the salaries and pensions of civil servants⁴²⁹.

5.2.2. Efforts to prevent an increase of unfounded international protection applications

Various measures have been taken by authorities in an effort to prevent the increase of unfounded international protections applications as a direct consequence of the introduction of visa exemption regimes with certain Balkan countries.⁴³⁰

Along with France, Germany, Belgium, the Netherlands and Sweden, and in preparation of the JHA Council of 25 October 2012, Luxembourg sent a common letter to the European Commission in order to introduce of a safeguard clause allowing the temporary reintroduction of visa obligations for third country nationals, residents of which are normally allowed to travel in the EU without a visa. The main reason for the proposed amendment is the actual

⁴²⁹ Memorial A No 123 of 20 June 2012, <http://www.legilux.public.lu/leg/a/archives/2012/0123/a123.pdf>

⁴³⁰ Europaforum.lu, Le flux de demandeurs d'asile en provenance des Balkans occidentaux, notamment de pays à facilités de visas, a conduit six Etats membres, dont le Luxembourg, à demander à ce que l'affaire soit traitée au prochain Conseil JAI : La réintroduction de l'obligation de visa n'est plus un tabou, 15 octobre 2012, <http://www.europaforum.public.lu/fr/actualites/2012/10/comm-lettre-em-visas-serbie-arym/index.html?highlight=exemption%22de%22visa>

situation described in certain Member States that are struggling to manage the considerable migratory influx of individuals originating from the Western Balkan countries⁴³¹. The six signatory Member States⁴³² of this letter are concerned about the scale of the phenomenon that is becoming a real challenge for both the administrative and judicial capacities of the various competent services in the EU.

The 6 countries also pleaded in favour of an improved cooperation between Member States on the one hand, and between Member States and FRONTEX on the other, regarding the protection of external borders of the EU and of the Schengen area⁴³³.

On 12 November 2012, the Ministers of Immigration, Nicolas Schmit, and of Integration, Marie-Josée Jacobs, along with the Parliamentary Commission on Foreign Affairs shared their views on the 3rd European follow-up report⁴³⁴ on the visa liberalisation scheme for Western Balkan countries. The ministers mentioned that the sole safeguard clause, which is to be passed by vote of the Council during the first semester of 2013, is not an ideal solution. Putting an end to the influx of Western Balkan nationals applying for protection as refugees cannot, according to the government, merely involve “a temporary reintroduction of compulsory visas. Living conditions in their countries of origin need to be improved”, states the release on the Chamber of Deputies website following the meeting of the Parliamentary Commission⁴³⁵.

The Government, in cooperation with NGOs, is committed to improving living conditions and access to education for citizens in their home country, including individuals originating from minorities such as the Roma.⁴³⁶

⁴³¹ Serbia and Macedonia: Both countries enjoy a liberalised visa regime and are EU accession candidates. An influx from other Western Balkan countries, such as Bosnia-Herzegovina was also observed in Luxembourg.

⁴³² Aside from Luxembourg, the countries most affected by this migration are Germany, Belgium and Sweden. Consultations were established between these countries, in a similar manner to the many exchanges that occur with authorities of the countries of origin of these asylum seekers, including Serbia.

JHA Council: a mechanism of European civil protection to face disasters and a safeguard clause in order to face asylum applications of Western Balkan nationals, 25 October 2012.

⁴³³ <http://www.europaforum.public.lu/fr/actualites/2012/10/conseil-jai/index.html>

⁴³⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0472:FIN:FR:PDF>

⁴³⁵ On the road to a revision of the visa regime? 12/11/2012,

http://www.chd.lu/wps/portal/public/!ut/p/c0/04_SB8K8xLLM9MSSzPy8xBz9CP0os3gXI5ewIE8TIwN380AT_AyMvVy_z0GA_YwsXM_2CbEdFAM6dnkU!/?WCM_PORTLET=PC_7_D2DVR1420GLI702F0OBK1Q00G_1_WCM&WCM_GLOBAL_CONTEXT=/wps/wcm/connect/Contents.public.chd.lu/st-www.chd.lu/sa-actualites/sa-communiquedescommission/affaires+etrangeres+20121112

⁴³⁶ Europaforum.lu, Liberalisation of the visa regime for the Western Balkans : according to the Luxembourg Government a safeguard clause is not enough, 12 November 2012, <http://www.europaforum.public.lu/fr/actualites/2012/11/gouv-visas-balkans/index.html>

Within the framework of micro-projects in the fields of education and employment, a work group was set up by the MIFA with Serbian representatives to work on the causes of this migration in areas from which a significant number of individuals immigrate to Luxembourg.⁴³⁷

From 23 to 26 April 2012, the Minister for Family, Integration, Cooperation and Humanitarian Action, Marie-Josée Jacobs, made a work visit to Serbia, Montenegro and Kosovo. In the course of discussions with her respective ministerial discussion partners, the Minister approached the subject of the influx of IPAs originating from the Balkans and cooperation projects in the fields of agriculture, education and health. She also visited a Roma neighbourhood, named “New Riverside”, in Kosovo.⁴³⁸

This visit was the follow-up to a meeting held on 22 December 2011⁴³⁹ in Serbia on the occasion of which, the constitution of a working group made up of Serbian and Luxembourg experts was decided. This group was given the responsibility to monitor the proposed practical and structural measures and the exchange of information for the purpose of a better management of migratory flows originating from Serbia.⁴⁴⁰

To face this continuous influx of IPAs, the Services for Refugees and Returns of the Directorate for Immigration had a staff increase in 2012.

⁴³⁷ Nicolas Schmit draws the summary of the year 2011, which saw a massive influx of IPAs originating from the Balkans and the arrival of large numbers of precarious workers originating from EU Member States, 31 January 2012,

<http://www.europaforum.public.lu/fr/actualites/2012/01/schmit-immigration-bilan-2011/index.html>

⁴³⁸ Work visit of Marie-Josée Jacobs in Serbia, Montenegro and Kosovo, 27.04.2012, <http://cooperation.mae.lu/en/Actualites-Cooperation/Visite-de-travail-de-Marie-Josée-Jacobs-en-Serbie-au-Montenegro-et-au-Kosovo>

⁴³⁹ Between the Luxembourg Minister of Labour, Employment and Immigration, Nicolas Schmit and the Foreign Affairs Minister of the Republic of Serbia, Vuk Jeremic.

⁴⁴⁰ Among these measures: strengthening the cooperation with Hungarian authorities, increasing controls at the Serbian-Hungarian border, penalising bus companies that organise non-regular trips to Luxembourg, increasing investments in underprivileged regions. Common response of the Foreign Affairs Minister and of the Minister of Labour, Employment and Immigration to the Parliamentary Question No 1846 of 9 January 2012, 31.01.2012, www.chd.lu

5.2.3. The 2012 debates

5.2.3.1 The Reception and accommodation of international protection applicants

In 2011, the Minister for Family and Integration mentioned her intention to introduce a quota scheme for accommodating IPAs, which would have involved the law making process. This idea was abandoned in early 2012, when 76 of the 106 communes had declared their willingness to receive IPAs as a result of a call for solidarity made by the Minister and SYVICOL.⁴⁴¹ The Minister announced that a total of 285 spaces would soon be available. The idea of quotas was therefore replaced by an individual agreement scheme with each of the communes under consideration, and which sets accommodation details for each case as well as the expenses thus generated to be covered by the communes.⁴⁴²

Eventually, 127 additional sleeping spaces were made available in 2012 out of a total of 2,379 spaces.⁴⁴³

Children of IPAs are not always integrated into the regular schooling system although this was the wish of the National Education Minister⁴⁴⁴: only 75 children enjoy this provision since the beginning of the school year 2011/2012. The significant increase of IPAs requires the creation of specific receiving classes. 15 such classes, distributed throughout the country, are operating in the vicinity of IPA accommodation centres.

While demonstrations of the local population were organised in Bollendorff and Pétange⁴⁴⁵ in 2011, it was the commune of Junglinster that saw such reactions in 2012. As the local authority had indeed come to an unanimous decision on 17 February to receive IPAs on the territory of the commune, following repeated calls from the Minister of Family and Integration, a couple of parents initiated a petition and collected some 300 signatures. Parents of school children opposed the decision to accommodate 30 refugees near the school in the commune. In an open letter sent by two parents to the press, the Minister for Family and

⁴⁴¹ Current Affairs Article, IPAs: accommodation facilities and conditions for the granting of social aid, 14.03.2012, http://www.gouvernement.lu/salle_presse/actualite/2012/03-mars/14-jacobs/index.html

⁴⁴² IPAs: accommodation facilities and conditions for the granting of social aid, http://www.gouvernement.lu/salle_presse/actualite/2012/03-mars/14-jacobs/index.html. Elected Officials show improved Solidarity (*Des élus plus solidaires*), in: *Quotidien* of 15 March 2012, page 5. Refugees. Disposal of Quotas (*Les quotas à la poubelle*), *Woxx* of 16 March 2012 page 6.

⁴⁴³ Luxemburger Wort, Keine Angst vor der Kälte, 25/12/2012.

⁴⁴⁴ Response of the Minister of National Education and Vocational Training to Parliamentary Question n°2011 of 13 March 2011.

⁴⁴⁵ See Policy report 2011.

Integration as well as to the Ombudsman on 22 August 2012, signatories opposed the installation of a container for asylum seekers. Based on Police statistics, they stated that receiving IPAs increases social issues in neighbourhoods (rise in violent crime, drug trafficking etc.). A spokesman for the Police later denied these allegations. Several organisations as well as private individuals also reacted to these statements⁴⁴⁶. Through the voice of its Vice-President, Amnesty International expressed concerns over the fact that, in an attempt to protect their children, parents were spreading prejudices against IPAs⁴⁴⁷. He added as a reminder, that similar concerns had been voiced a year earlier as IPAs were received in Pétange, and that they have remained unfounded.

Lëtzebuenger Patrioten, a non-profit association, also submitted its observations in an open letter to Ministers, political parties and to other institutions. According to this association, the rise in crime is attributed to the presence of asylum seekers, which, in turn, caused a reaction on the part of various individuals and institutions such as the National Museum of Resistance. While supporting the idea that all measures should be taken to reduce crime, the Museum criticises attributing the cause exclusively to foreigners and asylum seekers. It is, in its own opinion, the Museum's duty to react to this kind of populism.⁴⁴⁸

5.2.3.2. A decrease in social aid deemed shameful

The project to decrease social aid for international protection applicants generated rapid reactions from the press, institutions and associations.

The Information and Press Service release on the Government Council Meeting held on 6 January 2012 provided official notification of the approval of the new Grand-Ducal Regulation proposal intended to set the terms and conditions for the granting of social aid to IPAs⁴⁴⁹. The following appear among the main points:

⁴⁴⁶ Einschlägig bekannt, dass Vorurteile schädlich sind !, in: Journal Är Meenung of 1 September 2012, p. 5. Asylanten: ASTI übt Kritik, Autor des Briefes reagiert, in: Luxemburger Wort of 1 September 2012, p. 32. Über Vorurteile und ihre Auswirkungen, in: Luxemburger Wort, Briefe an die Redaktion, of 15 September 2012, p. 21.

⁴⁴⁷ *L'éditorial*. Serious unease (*Gros malaise*), in *Jeudi* of 30 August 2012, p. 3. Teaching realities to refugees, in: *Quotidien* of 30 August 2012, page 3.

⁴⁴⁸ Frank Schroeder, Als Reaktioun op en oppene Bréif vun der Asbl « Lëtzebuenger Patrioten ». Open letter on the topic asylum.

⁴⁴⁹ Government Council. Summary of Works of 6 January 2012, http://www.gouvernement.lu/salle_presse/conseils_de_gouvernement/2012/01-janvier/06-conseil/index.html#2

1. Decrease of the monthly financial allowance: in particular, it will drop from 107.9 to 25 Euros for an adult IPA whose accommodation and food is provided by OLAI and from 133.5 to 12.5 Euros for children below two years of age. Where meals cannot be provided, the allowance is to drop from 294 to 225 Euros.
2. The possibility for OLAI to offer remunerated community services to social aid beneficiaries in accommodation facilities.
3. Several new grounds for limiting or cancelling social aid are the refusal to:
 - Follow language or literacy classes;
 - Perform daily cleaning tasks in an accommodation facility managed by OLAI;
 - Enrol children at a primary school as soon as they have reached compulsory schooling age;
 - Follow recommendations and preventive or curative treatments for public health.

According to the explanatory statement, the new Regulation proposal is intended to encourage “awareness and responsibility on the part of international protection applicants”.

The press was first to criticise this reform project⁴⁵⁰, in particular, on the grounds that social aid was being used as a means to make Luxembourg less attractive to IPAs⁴⁵¹.

This considerable decrease was strongly criticised by various entities that expressed serious concerns about the living conditions of the individuals concerned and the means made available to meet minimum personal hygiene, clothing and specific needs as well as to cover the fees for medical consultations and transportation linked to proceedings and activities.⁴⁵²

By means of a press release⁴⁵³, the LFR expresses astonishment at the measure to reduce the monthly assistance, wondering how those concerned by this measure will now meet their vital

⁴⁵⁰ Josef und Maria heute, Leitartikel, Luxemburger Wort of 10 January 2012, page 3. Luc Caregari, Asylum seekers. Overkill in Woxx of 13 January 2012, page 2. Josée Hansen, Asylum and social allowances. Soap but no money, in Lëtzebuurger Land of 20 January 2012, page 5.

⁴⁵¹ The LFR pointed to the fact that the Draft Regulation was submitted during a period of considerable influx of IPAs to Luxembourg and of discussions deeming it necessary to curb this flow. Opinion of the LFR on the Grand-Ducal Regulation Bill setting terms and conditions for granting social aid to international protection applicants, p. 7, 01.02.2012, <http://www.caritas.lu/Files/LFR-010212AvisAideSociale.pdf>

⁴⁵² Ibid.

⁴⁵³ LFR, Reduction of social aid for international protection applicants: Stigmatising the weaker ones? Press release of 13 January 2012, www.asti.lu

and/or daily needs. While the possibility of working for remuneration is welcomed, the question as to the legal basis of this measure remains unclear. Furthermore, it strongly criticises several of the grounds given as a justification to cancel social aid. In its opinion on the Grand-Ducal Regulation proposal, the LFR covers these points and expresses surprise at the absence of motivation behind the decrease in social aid⁴⁵⁴. Its incompatibility with the “Reception” Directive is also highlighted. The LFR is also concerned about the link established in the explanatory statement between the right to social aid and the “benevolent, cooperative and constructive attitude of the applicant”, which reflects a feeling of suspicion towards international protection applicants⁴⁵⁵. It points out that an individual held in the Detention Centre receives a daily allowance that is above the amount planned for IPAs in the Grand-Ducal Regulation proposal. It also questions the simplistic alignment to the situation of the neighbouring countries. Finally, it expresses doubts as to the feasibility and operation of community services. On two occasions during the year, the LFR⁴⁵⁶ has initiated the idea of holding a consultation meeting with the three ministries, immigration, integration and education and associations with the purpose of discussing issues such as reception, accommodation, social assistance, the asylum procedure and child education.

In the opinion of LFR, this decrease in cash monthly allowance, even with the addition of vouchers and assistance in kind, will not deter individuals from coming, but will increase the precarious situation that international protection applicants already experience in Luxembourg⁴⁵⁷.

⁴⁵⁴ LFR scandalised by new the regulation on social aid for asylum seekers. “A clear dissuasive measure”, in: *Journal* of 2 February 2012, page 4. “Making the country less attractive”, in: *Le Quotidien* of 2 February 2012, page 4.

⁴⁵⁵ Opinion of the LFR on the Draft Regulation setting terms and conditions for granting social aide to international protection applicants, p. 11, 01.02.2012, <http://www.caritas.lu/Files/LFR-010212AvisAideSociale.pdf>

⁴⁵⁶ LFR release, 20 June: World Refugee Day, LFR call on solidarity. 15 June 2012. Asylum applications. LFR calls for a round table, in: *Le Quotidien* of 16 June 2012, page 5.

⁴⁵⁷ Reaction of the Luxembourg Refugee Group (LFR) to the publication of the Grand Ducal Regulation of 8 June 2012 setting the terms and conditions for granting social aid to international protection applicants 22.06.2012.

The CCDH⁴⁵⁸ calls upon the Government to respect human dignity in particular, as well as the best interests of children. It considers that “only a small proportion of the IPAs will be in a position to offer such services in the hope of increasing their limited monthly resources⁴⁵⁹”.

On the occasion of a Parliamentary Commission meeting⁴⁶⁰ the Minister for Family and Integration states that the monthly allowance is to be completed by vouchers, in particular for the purchase of hygiene products, children milk and medical visits and pleads in favour of “a separate schooling for children of parents seeking asylum as early as the next school year...”, which the LFR⁴⁶¹ does not miss in its comments.

As a reminder, the Council of State⁴⁶² states that under international law, Luxembourg is under the obligation to provide assistance to IPAs and that this assistance is to be sufficient as to meet the basic needs of each individual concerned and in respect of human dignity. It criticises this drastic decrease, the motivation of which was not explained in the explanatory statement. Inasmuch as the allowance is not sufficient to meet the vital needs, they are to be completed with assistance in kind or purchase vouchers.

The Council of State was also critical of the broadening of situations that would result in a limitation or cancellation of social aid on the grounds that the principle behind such penalties is not provided for by the Law that is the foundation of the Grand-Ducal Regulation in question. It is also opposed to the specific occupation scheme in the framework of which, OLAI could offer remunerated occupation to IPAs, for lack of a legal basis.

⁴⁵⁸ CCDH release on the Draft Regulation setting the terms and conditions for granting social aid to international protection applicants, 8 February 2012, http://www.ccdh.public.lu/fr/actualites/2012/02/communiqu%C3%A9_demandeurs_de_protection_internationale/index.html

⁴⁵⁹ Among the other organisations that should be critical towards the Regulation Bill, there are Caritas and the Useldange Priest’s team, authors of a letter to the Chairman of the Chamber of Deputies, the Council of State, the Government and the Parliamentary Commission.

⁴⁶⁰ Commission for Family, Youth and Equal Opportunities, Minutes of 14 February 2012, www.chd.lu

⁴⁶¹ The LFR reacts to the expressions of Minister Jacobs, in: *Zeitung* of 18 February 2012, p. 7. Social Assistance for asylum seekers. LFR: a constructive dialogue is needed, in: *Journal* of 18 February 2012, p. 4. See also: David Wagner, Asylum seekers. Firmness and shambles, in: *Woxx* of 24 February 2012, p. 6-7.

⁴⁶² Opinion of the Council of State, No 49.607, 8 May 2012, <http://www.conseil-etat.public.lu/fr/avis/index.html>

In its published version, the Grand-Ducal Regulation shows the new monthly cash allowance amounts as they appeared on the initial bill, with the added detail that these amounts can be complemented with assistance in kind or purchase vouchers.

The grounds for limiting or cancelling social assistance are not extended. The final version does not include the possibility given to OLAI to offer remunerated services to social aid beneficiaries within the accommodation facilities.

5.3 European developments

Relatively to measures taken for the purpose of the development of a common European asylum scheme, it is observed that a Bill for the amendment of the Law on the right of asylum and of the Law on immigration was submitted to the Chamber of Deputies on 30 November 2012.

The Bill is intended for the transposition of three European Directives⁴⁶³ into national Law, including Directive 2011/51/EU of the European Parliament and Council of 11 May 2011 amending Directive 2003/109/EC to extend the scope of application to beneficiaries of international protection. The Bill foresees that beneficiaries of international protection (recognised refugees on the terms of the Geneva Convention of 1951 and beneficiaries of the subsidiary protection status) will, in the future, be entitled to the status of long-term resident.

It is also intended to transpose the new Directive 2011/95/EU⁴⁶⁴ (hereunder referred to as “Qualification” Directive) adding several significant amendments to the Law on the right of asylum:

- a) The Bill specifies that protection parties in the country of origin are not only to be willing to offer protection (State, Parties, organisations,...), but also be in a position to do so. Moreover, such protection is to be effective and non-temporary.
- b) Article 30 of the Law on asylum concerning the possibility of internal escape is also to be amended to transpose article 8 of the new “Qualification” Directive. According to the new article, in order to reject applications on the grounds of this provision, IPAs are to have access in that part of the country of origin to protection that is effective and non-temporary on the part of authorities and are

⁴⁶³ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 establishing a procedure of single application for the issuance of single permits authorising third-country nationals to reside and work on the territory of a Member State and establishing a common set of rights for workers originating from third countries, who reside legally in a Member State.

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees and/or for persons eligible for subsidiary protection and for the content of this protection.

⁴⁶⁴ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of this protection, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:fr:PDF>

to be able to “travel to that part of the country of origin in complete security and legality and be authorised to enter. Moreover, they would reasonably have to be expected to settle”. Additionally, when ruling on applications, the Minister is to obtain specific and up-to-date information on the situation with relevant sources such as UNHCR and EASO.

- c) Authorities go beyond provisions of the Directive as they offer to grant a single validity period to residence permits of beneficiaries of international protection, whether recognised refugees or beneficiaries of subsidiary protection. The government also intends to deal with beneficiaries of the status of refugee and beneficiaries of a status granted them as a result of subsidiary protection on equal rights, including matters relating to family reunification.

Luxembourg called upon EASO in 2012. Facing the growing number of international protection applications, Luxembourg recruited additional staff to process these applications. For the training of staff on Community *acquis* in matters of asylum, the Minister of Immigration requested that EASO provides support teams. An agreement for the deployment of support teams in matters of asylum was signed by Nicolas Schmit and the Executive Officer of EASO⁴⁶⁵ on the occasion of the JAI Council of 26 January 2012. Emergency training sessions provided by the EASO support teams were based on the “European Asylum Curriculum” (EAC), a training scheme intended for state servants responsible for asylum issues in Europe and focused on preparation, decision-making and on interview techniques.

In 2012, Luxembourg did not take part in activities or programmes for the relocation of refugees⁴⁶⁶ (originating from other European Union Member States) or for the re-settlement of refugees⁴⁶⁷ (originating from Third countries).

Temporary agents were hired and trained by EASO to ensure the processing of international protection files.⁴⁶⁸

⁴⁶⁵ Agreement signed by the Minister of Labour, Employment and Immigration, Nicolas Schmit, and EASO, 26/01/2012,

http://www.gouvernement.lu/salle_presse/communiqués/2012/01-janvier/26-schmit/index.html

⁴⁶⁶ Not since 2010.

⁴⁶⁷ Not since 2009.

⁴⁶⁸ Press Conference of Nicolas Schmit, Minister of Labour, Employment and Immigration, Balance Sheet 2012, 14 March 2013.

5.4. International Protection data

In total, 2,172 decisions were made, thereof to 56 the status of refugee was granted and to 7 the status of subsidiary protection.⁴⁶⁹ 1,705 individuals were refused⁴⁷⁰ and 169 files⁴⁷¹ were transferred to another Member State in compliance with Articles of the “Dublin II” regulation.

Table n° 16: Individuals who obtained the status of refugee in 2012

Country	Number of persons
Iraq	23 ⁴⁷²
Iran	14
Serbia	5
Kosovo	4
Syria	2
Afghanistan	1
Armenia	1
Bhutan	1
Belarus	1
Guinea (Conakry)	1
Lebanon	1
Russia	1
Somalia	1
Total	56

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⁴⁶⁹ Press Conference of Nicolas Schmit, Minister of Labour, Employment and Immigration, Balance Sheet 2012, 14 March 2013.

⁴⁷⁰ 1563 voluntary returns and 142 forced returns.

⁴⁷¹ Press Conference of Nicolas Schmit, Minister of Labour, Employment and Immigration, Balance Sheet 2012, 14 March 2013, p.10.

⁴⁷² This number includes 6 people coming from Greece, but with Iraqi nationality.

Table n° 17: Persons having acquired the status granted by subsidiary protection in 2012

Country	Number of persons
Afghanistan	3
Burkina Faso	1
Iraq	1 ⁴⁷³
Somalia	1
Togo	1
Total	7

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Table n° 18: Persons subject to a refusal of their application for international protection in 2012 (normal procedure)

Country	Number of persons
Serbia	253
Kosovo	239
Macedonia	106
Montenegro	59
Bosnia-Herzegovina	48
Belarus	1
Ethiopia	1
Gambia	1
Lebanon	1
Liberia	1
Libya	1
Mauritania	1
Turkey	1
Zimbabwe	1
Total	823

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⁴⁷³ Individual coming from Greece.

Table n°19: Persons subject to a refusal of their application for international protection after the handling of the request within an accelerated procedure in 2012

Country	Number of persons
Serbia	332
Montenegro	230
Bosnia-Herzegovina	183
Albania	115
Kosovo	37
Eritrea	1
Gambia	1
Undetermined (Palestine)	1
Israel	1
Tunisia	1
Zimbabwe	1
Total	1052

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Table n° 20: Native country of the persons requesting international protection in 2012

Country	Number of persons	% compared to the total number of applications in 2011
Serbia	357	17,36 %
Albania	302	14,69 %
Montenegro	298	14,49 %
Bosnia-Herzegovina	286	13,91 %
Kosovo	232	11,28 %
Macedonia	168	8,17 %
Tunisia	46	2,24 %
Algeria	33	1,61 %
Iraq	31	1,51 %
Iran	30	1,46 %
Others	273	13,28 %
Total	2056	100 %

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6. UNACCOMPANIED MINORS (AND OTHER VULNERABLE GROUPS)

6.1 *Unaccompanied minors*

6.1.1 General context before 2011

Under the amended Law dated 5 May 2006 on the right to asylum and to complementary forms of protection, are considered as unaccompanied minors, third-country nationals or stateless persons aged less than eighteen years reaching the territory without being accompanied by an adult responsible for them, by law or custom, and if they are not effectively in the care of such person; this term covers minors abandoned after reaching the territory.

The Law of 1 July 2011 transposing the Directive 2008/115/EC referred to as “return” Directive, reinforced the rights of unaccompanied minors.

6.1.2 European developments

The Bill⁴⁷⁴ with the aim of transposing the new Directive “qualification”⁴⁷⁵ provides the obligation to take into consideration the specific situation of some vulnerable groups (Article 20 (3) of the Directive). The Article 42 of the amended Law of 5 May 2006 is completed by two paragraphs relating to vulnerable persons (Article 42 (3) and (4)).⁴⁷⁶ Luxembourg did not formally transpose this Article in 2006.

⁴⁷⁴ Parliamentary Document n° 6507/00.

⁴⁷⁵ Directive 2011/95/EC of 13 December 2011.

⁴⁷⁶ Luxembourg has not formerly transposed this Article. The text proposed is the following:

“(3) For the purposes of this section, account should be taken of the specific situation of vulnerable persons, such as minors, non-accompanied minors, disabled persons, elderly persons, pregnant women, single parents with minor children, victims of human trafficking, persons with mental disorders, and victims of torture, rape, or other serious acts of psychological, physical, or sexual violence. The best interest of the child constitutes a primary consideration.

(4) The section (3) applies only to specific needs of persons, which are determined after an individual assessment of their situation.”

Chamber of Deputies, Parliamentary Document n° 6507, 30/11/2012,

<http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=6507&backto=/wps/portal/public/Abonnement#>

The bill aims to complete Article 125 of the amended Law of 29 August 2008 on the free movement of persons and immigration dealing with the postponement of removal. This Article, which has been inserted into the Law at the transposition of the “return” Directive, did not indicate elderly persons among vulnerable persons.

Table n° 21: Non-accompanied minors in 2012

Total	Non-accompanied minors not requesting international protection	Non-accompanied minors requesting international protection
16⁴⁷⁷	/	16 (15 males, 1 female)

Source: Directorate of Immigration, 2012

En 2012, 16 non-accompanied minors have introduced a request for international protection, against 22 in 2011.

⁴⁷⁷ On 13 January 2013, 4 out of 16 non-accompanied minor IPAs are in Luxembourg, 3 have been transferred in another Member State liable for processing the request of international protection and the situation of 9 minors is unknown to the authorities. Statistics on non-accompanied minor IPAs 2012, MAE, internal documents.

7. ACTIONS AGAINST HUMAN TRAFFICKING

7.1 General context before 2012

The competent ministries for human trafficking are the Ministry of Interior (police, identification and protection of the victims, coordination to follow up the victims), the Ministry of Justice (public prosecution and Criminal Code), the Ministry of Equal Opportunity (coordination of the measures of assistance, protection and security of the victims) and the MAE – Directorate of Immigration (Law on Immigration, reflection period, residence permit, return of victims from third countries).

These ministries are represented in an informal inter-ministerial Committee entitled “Trafficking” chaired by the Ministry of Justice which coordinates the activities and the prevention and control measures against human trafficking, the assessment of the human trafficking phenomenon, the follow-up and the analysis of the implementation of the relevant legislation. These measures are taken while the official establishment of the follow-up committee against human trafficking created by the Article 10 of the Law of 8 May 2009 on the care, protection and security of victims, which reports to the Ministry of Equal Opportunity (MEGA), is pending. The composition and operational procedures of the Committee are determined by the Grand-Ducal regulation. The follow-up Committee against human trafficking will include among its members representatives of the competent public authorities and approved care services, with regard to human trafficking according to Article 5 of the aforementioned law. A Draft Regulation is currently being drawn up to determine the applicable terms of the Committee and the procedures for obtaining the accreditation of the assistance services.

The Luxembourgish police and the assistance services cooperate in order to effectively protect victims of human trafficking, in particular from retaliation and intimidations. This collaboration is specified in Article 8 of the aforementioned Law dated 8 May 2009. The

police personnel attend training courses focused on the identification and protection of the victims.⁴⁷⁸

The Law on Immigration⁴⁷⁹ provides to victims of human trafficking, that are third-country nationals, a period of reflection of 90 days during which the victim cannot leave the Luxembourgish territory. The above-mentioned law stipulates the terms and conditions under which a resident permit can be granted upon expiry of this period (Articles 95 to 98).

The Law of 8 May 2009 on the assistance, protection and security of human trafficking victims⁴⁸⁰ has developed the protection and care framework for such victims. The Law provides assistance measures to promote the physical, psychological and social recovery of the victim. Such measures include a social, financial and legal assistance as well as a specific care for victims who are non-accompanied minors.

Four managers contracted with the Ministry of Equal Opportunity (MEGA), cooperating among themselves, provide assistance and accommodation services for girls and women in distress, including human trafficking victims. This Ministry works also with managers contracted with the MIFA which have services, including places of accommodation, for persons, namely children, young people in distress and victims of human trafficking.⁴⁸¹

7.1.1. Assure assistance and protection for child victims of human trafficking

Even in case of refusal to testify against the offender, the victims who are non-accompanied minors are being assigned to a guardian (often a juvenile judge or a NGO) and, whether accompanied or not, they benefit from an accommodation and a guidance in the child's best interest in conformity to the UN Convention on child rights. As a first step, the placement may be an emergency placement, but in accordance to the Directive 2011/36/EU dated 5 April 2011, it should subsequently become a medium or long-term placement, namely until their majority and until the expiry of the investigations and criminal proceedings. Two persons employed by the Foundation "Maison Porte Ouverte" and by "Femmes en détresse asbl"

⁴⁷⁸ Article 9 of the Law dated 8 May 2009 on the assistance, protection and security of victims of human trafficking.

⁴⁷⁹ Memorial A No 138 of 10 September 2008, <http://www.legilux.public.lu/leg/a/archives/2008/0138/index.html>

⁴⁸⁰ Memorial A No 129 of 9 June 2009, <http://www.legilux.public.lu/leg/a/archives/2009/0129/a129.pdf>

⁴⁸¹ Statistics in Luxembourg of 2009, 2010 and 2011 relating to human trafficking (documents with restricted access).

provide ambulatory healthcare services, within the assistance programme to victims of human trafficking, to minors.⁴⁸²

By following the international development, the legal definition of human trafficking has been extended in order to include sexual exploitation of victims and prostitution, forced labour or services, slavery or similar practices, servitude as well as the removal of organs or tissues.⁴⁸³

During the year 2010, a sole victim has been identified as having been subject to forced labour or services and in 2011 another victim has been subject to slavery or practices similar to slavery, while the number of victims sexually exploited amounted to 3 in 2009, to 6 in 2010 and to 6 in 2011⁴⁸⁴.

5 human trafficking victims received assistance in 2009, 4 in 2010 and 6 in 2011 including children, women and men. However 5 female victims have refused the proposed assistance. One single victim of human trafficking has been housed in Luxembourgish shelters in 2009, 4 in 2010 and 6 in 2011. In 2010, a reflection and recovery period was granted to 3 women, that were victims of human trafficking, and a residence permit was delivered to a woman during the same year for cooperating with the competent authorities.⁴⁸⁵

In 2010, 5 victims of human trafficking and in 2011 1 additional victim have obtained compensations. 4 victims of human trafficking have been repatriated to another county in 2010 and 2 in 2011.⁴⁸⁶

Victims of human trafficking identified until 2011 in Luxembourg are natives from Niger, Cameroon, Bulgaria, Estonia, Poland, Brazil, Portugal, Romania and China.⁴⁸⁷

The Law of 13 March 2009 on human trafficking has introduced a new chapter VI-I in the Luxembourgish Criminal Code on the infringement legated to human trafficking and measures relating to. Henceforth, the Articles 382-1 to 382-3 of the Criminal Code deal

⁴⁸² In addition, hotlines for children that are vulnerable or in distress are available. “Kanner Jugendtelefon” is accessible free of charge 24 hours a day under the European number 116111. Another service “Action Bobby” is organised by the Grand-Ducal police. Response of the Minister for the Family and Integration to the petition n°308 against the trafficking in minors for sexual purposes, 13/02/2012,

<http://www.chd.lu/wps/wcm/connect/6951548049c3c1c3a6a7fe41d8fa1b85/308++transmis+p%C3%A9titionnaire.pdf?MOD=AJPERES>; N°308: Petition against the trafficking in minors for sexual purposes, <http://www.chd.lu/wps/portal/public/ListesPetitions>

⁴⁸³ Article 382-1 of the Criminal Code.

⁴⁸⁴ Statistics in Luxembourg of 2009, 2010 and 2011 relating to human trafficking (documents with restricted access).

⁴⁸⁵ Statistics in Luxembourg of 2009, 2010 and 2011 relating to human trafficking (documents with restricted access).

⁴⁸⁶ Statistics in Luxembourg of 2009, 2010 and 2011 relating to human trafficking (documents with restricted access).

⁴⁸⁷ Statistics in Luxembourg of 2009, 2010 and 2011 relating to human trafficking (documents with restricted access).

specifically with this subject. The purpose of the legislator was clearly to distinguish the infringements on human trafficking and those related to illicit trafficking of migrants, where the coercion and/or exploitation elements may be missing. Nevertheless, since human trafficking and illicit trafficking of migrants are connected phenomena, Luxembourg has adopted a multidisciplinary approach to ensure an effective fight against these scourges.⁴⁸⁸

Criminal penalties related to human trafficking have a dissuasive purpose, even though the Luxembourgish legislator has as well ensured the fulfilment of the principle of efficiency and proportionality.⁴⁸⁹ Any offence relative to human trafficking is punished by a penalty of imprisonment of 3 to 5 years and a fine between 10 000 à 50 000 euros.⁴⁹⁰ Any attempt to commit an offence is punished by a penalty of imprisonment from one to three years and a fine between 5 000 to 10 000 euros.

The Article 382-2 of the Penal Code lists a number of aggravating circumstances related to either the status or behaviour of the offender, or the particularly vulnerable situation of the victim, punished by imprisonment of five to fifteen years and to a fine between 50 000 to 150 000 euros. Moreover, the offender cannot hide behind the argument that the victim had given his consent to avoid criminal responsibility according to Article 382-2 § 3 of the Penal Code.⁴⁹¹ On the other hand, the victim is protected; being not criminally liable for the offences defined under Articles 382-1 and 382-2 of the Penal Code, in the case of having been forced to such actions.⁴⁹²

Since the Law of 13 March 2009 related to human trafficking was enacted, Luxembourg agreed to extradite or judge the offender connected with human trafficking, which facilitates the international cooperation.⁴⁹³

⁴⁸⁸ Draft Law No 5860, ordinary session 2007-2008, Commentary on Articles, page 7 under the Commentary on Article 382-1 CP. See also the Law of 16 July 2011: 1. approving a) the Convention of the Council of Europe for the protection of children against exploitation and sexual abuses opened for signature in Lanzarote on 25-26 October 2007 b) optional Protocol to the United Nations Convention relating to the children rights regarding the sale, prostitution of children and child pornography 2. Amendment of specific Articles of the Penal Code and Code of Criminal Investigation, the Law of 21 July 2012: 1) approving the Protocol against the illicit traffic of migrants by land, air and sea signed in Palermo, on 12 December 2000, additional to the United Nations Convention against transnational crime organized on 15 November 2000 2) amendment of the Penal Code 3) amendment of the Code of Criminal Investigation 4) amendment of the Law on Immigration and the Law of 27 February 2012 adapting the national Law to the Rome Statute of the International Criminal Court.

⁴⁸⁹ Draft Law No 5860, ordinary session 2007-2008, Commentary on Articles, p. 9 under the Commentary on the Article 382-2 CP.

⁴⁹⁰ Art. 382-1 § 2 of the Penal Code.

⁴⁹¹ Draft Law No 5860, ordinary session 2007-2008, Commentary on Articles, p. 9 under the Commentary of the Article 382-2 CP.

⁴⁹² Article 71-2 of the Penal Code amended by the Law of 13 March 2009 on human trafficking.

⁴⁹³ See also Article 7 of the Law of 13 March 2009 relating to human trafficking setting out further measures of cooperation.

The Article 3-1 of the Code of Criminal Procedure stipulates that any association with legal personality and accredited by the Ministry of Justice may exercise its rights recognised by the civil parties regarding the facts constituting an offence under Articles 382-1 et 382-2 of the Criminal Code relating to human trafficking. This mechanism gives the opportunity to the victims to receive assistance with the formalities to achieve justice.

5 convictions for human trafficking in 2009 have been followed by custodial penalties of 2 to 4 years, and in 2010, such penalties extended between 15 months to 4 years. This number has increased to 8 convictions in 2011, also followed by custodial penalties between 12 months and 5 years.

Other possible measures provide for the temporary or definitive closure of establishment used to commit human trafficking and the prohibition for the offender to exercise whether temporarily or permanently.⁴⁹⁴

Moreover, between 2009 and 2012, 7 sentences have ordered a confiscation of goods and 4 sentences resulted in the closure of an establishment or company used to commit human trafficking.⁴⁹⁵

⁴⁹⁴ Articles 379 ter, 379 quater, 379 quinquies, 379 sexies and 379septies of the Penal Code applying by analogy.

⁴⁹⁵ Statistics in Luxembourg of 2009, 2010 and 2011 relating to human trafficking (documents with restricted access).

7.2. National developments in 2012

A draft amending Regulation, outlining the composition and the modalities of the functioning and the organisation of the follow-up Committee against human trafficking as well as the procedures to obtain and approve assistance services is being elaborated.

MEGA has organized a conference on prostitution on 28 June 2012 for discussing the difficulties on human trafficking.⁴⁹⁶

Although human trafficking could be national or international, the Luxembourg authorities are not in possession of elements that may lead to the belief of the existence of human trafficking victims between 2009 and 2012 in the Grand-Duchy of Luxembourg.⁴⁹⁷

In 2012, 2 sentences in relation to human trafficking have been rendered:

On 9 May 2012, the District Court of Luxembourg has rendered a sentence regarding 2 persons from Romania.⁴⁹⁸ As one person has been acquitted, the second was convicted for offences of aggravated procuring and human trafficking (Articles 382-1 and 382-2 and 379bis paragraph 5 of the Criminal Code) to a penalty of imprisonment of 54 months⁴⁹⁹ and to a fine of 10.000 euros. She has been convicted for having recruited, carried and organized the transport of two Romanians to Luxembourg for prostitution purposes, while controlling them from a distance and forcing them to transfer the money from the prostitution to her.

On 28 November 2012, the manager of a Cabaret was convicted for acts of arranging sexual traffic and for having “gratified the passions of others, having recruited, even with their consent, other persons for the purpose of prostitution and corruption, on the territory of the Grand-Duchy of Luxembourg» (Article 379bis of the Criminal Code), to a penalty of imprisonment of 3 years and a fine of 25.000 euros.⁵⁰⁰

⁴⁹⁶ http://www.mega.public.lu/actualites/actu_min/2012/06/prostitution/index.html, last accessed 10 December 2012.

⁴⁹⁷ Indeed, all identified cases for the above-mentioned period relate to victims of transnational trafficking. In 2009, only 3 victims of human trafficking have been identified on the basis of the criteria defined by the Convention of the Council on Europe relating to the fight against human trafficking, 7 victims have been identified in 2010 and 8 in 2011. Statistics in Luxembourg of 2009, 2010 and 2011 relating to human trafficking (documents with restricted access).

⁴⁹⁸ Sentence of the District Court of Luxembourg, Twelve Chamber, 9 May 2012, N° 1748/2012.

⁴⁹⁹ Stay of enforcement of one 1 year of this imprisonment sentence.

⁵⁰⁰ The Court has pronounced the separation of the criminal proceedings towards the owner of the Cabaret, being not able to understand such proceedings against him. Sentence of the District Court of Luxembourg, Twelve Chamber, 28 November 2012, N° 3651/2012.

7.3. European developments

7.3.1. International platform on prostitution and human trafficking

On 23 April 2012, The Luxembourg Minister of Equal Opportunity, Françoise Hetto-Gaasch, has visited the Belgian Minister of Equal Opportunity and Home Affairs, Joëlle Milquet, to discuss issues relating to prostitution. Both ministers have announced an increased cooperation, a regular exchange of information and a good practice within the international platform on prostitution and human trafficking among the Benelux countries, France and Germany.⁵⁰¹

On 13 December 2012, the members of the Parliament have exchanged views with representatives of “GRETA”, an expert group of the Council of Europe combating human trafficking, which is responsible for implementing the Council of Europe Convention against human trafficking. This interview took place within the drafting of the “GRETA” report on Luxembourg aiming at assessing the application of the aforementioned Convention in Luxembourg. The “GRETA” report is currently analysing the answers collected on the basis of a questionnaire. The final national report on Luxembourg is expected by the end of 2013.⁵⁰²

The Grand-Ducal police has participated in two large-scale operations at the European level, APHRODITE and BALDER, checking operations of human trafficking and illegal immigration⁵⁰³.

⁵⁰¹ Government press release, meeting held by the Minister of Equal Opportunity, Françoise Hetto-Gaasch, with the Belgian Minister of Equal Opportunity and of Home Affairs, Joëlle Milquet 24-04-2012, http://www.gouvernement.lu/salle_presse/communiqués/2012/04-avril/24-hetto/index.html

⁵⁰² Chamber of Deputies, A la Une, Against human trafficking: GRETA assesses, http://www.chd.lu/wps/portal/public/Actualites?WCM_GLOBAL_CONTEXT=/wps/wcm/connect/Contents.public.chd.lu/st-www.chd.lu/sa-actualites/sa-communiquésdecommission/juridique-famille-conseil+europe20121214

⁵⁰³ Report 2012 of the Grand-Ducal Police, p. 34, http://www.police.public.lu/actualites/statistique/rapport_stat_2012/rapport-statistique-2012.pdf

7.4 Statistical data

Table n° 22: Arrested persons suspected to practice human trafficking and convicted persons

	Arrested/otherwise involved in a criminal procedure	sentenced
Individual ⁵⁰⁴	4	2

Source: Ministry of Justice, 2013

⁵⁰⁴ EU citizens.

8. COHERENCE BETWEEN THE MIGRATION AND DEVELOPMENT POLICIES

8.1 National developments in 2012

8.1.1. Cape Verde

The project entitled « migrate with open eyes » is closed since 2010. The activities initiated by the project are taken over by the Ministry of Cap Verdean Communities.⁵⁰⁵

Within the development project of microfinance in Cape Verde implemented by the NGO named ADA, a line of intervention targets the mobilization of migrants' savings in order to finance microfinance institutions in Cape Verde.⁵⁰⁶

8.1.2. Serbia

The Luxembourgish cooperation to the development in Balkan countries (Serbia, Montenegro and Kosovo), began in 1999 and was justified, on one hand, by the Luxembourgish participation to the global effort of the international community for the stability in the region and for the development of the Balkan region, and on the other hand, by the Luxembourgish government policy aiming to facilitate the voluntary return and the socio-economical reinsertion of applicants for international protection of Luxembourg into their country of origin.

Meeting the recent rise of applicants for international protection from Southern Serbia (Vranje et Bujanovac), the Luxembourgish cooperation has initiated a development programme in this region at the end of 2012, to improve the living conditions and attempt to wipe out the heavy

⁵⁰⁵ Migrate with open eyes, LU EMN NCP Policy Report on migrations and asylum, 2010, 9.1.1., <https://www.emnluxembourg.lu/type-documentation/rapport-politique-sur-les-migrations-et-lasile-2010>

⁵⁰⁶ MAE, Directorate for Cooperation, internal document; Autonomous Development Aid <http://www.microfinance.lu/>

flow of applicants for international protection from this region. The project is focused on (i) the access to decent housing, (ii) preventing early school leaving (iii) income-generating activities in traditional economic areas (iv) improving access and quality to healthcare and (v) the community development.⁵⁰⁷

8.1.3. Change of student status to employee status

After completing a higher education diploma in Luxembourg, students, who are third-country nationals, have the possibility to apply for a residence permit as “employee” in order to gain a first professional experience in Luxembourg (Article 59). The remunerated activity must be related to the completed academic training and serves the economic interests of Luxembourg and the home country. The two-year time limit follows on from the debate on “brain drain” and encourages the return to the country of origin, so that the qualification gained in Luxembourg by third-country nationals will be applied in the country of origin.⁵⁰⁸

⁵⁰⁷ MAE, Directorate for Cooperation, internal document.

⁵⁰⁸ LU EMN NCOP - Immigration of International Students to Luxembourg, 2012, 2.3.1 and 3.6, www.emnluxembourg.lu; Doc parl. No 5802, www.chd.lu

8.2 European developments

Luxembourg participates in the project CAMPO⁵⁰⁹, which will continue to exist, through its Cooperation Office based in Praia.

⁵⁰⁹ <http://www.campo.com.cv/> and <http://www.africa-eu-partnership.org/successstories/campo-better-circulation-skills-between-cape-verde-and-eu>

9. TRANSPOSITION OF EU LEGISLATION INTO NATIONAL LAW

9.1 Transposition of EU legislation into national law

DIRECTIVE 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment – “European Blue Card Directive”

Deadline for transposition: 19 June 2011

Transposed by: Law of 8 December 2011⁵¹⁰

The principal legislative amendments made with the transposition of the directive into national law are described in Section 3.1.2.4.⁵¹¹

DIRECTIVE 2009/52/EC of the European parliament and of the council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals – « Sanctions Directive »

Deadline for transposition: 20 July 2011

Transposed by: Law of 21 December 2012⁵¹²

The principal legislative amendments made with the transposition of the directive into national law are described in Section 4.1.3.⁵¹³

DIRECTIVE 2011/51/EU of the European parliament and of the council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection

Deadline for transposition: 20 May 2013

⁵¹⁰ Memorial A-19 of 3 February 2012.

⁵¹¹ See p. 37.

⁵¹² Memorial A-296 of 31 December 2012.

<http://www.legilux.public.lu/leg/a/archives/2012/0296/a296.pdf#page=2>

⁵¹³ See p. 96.

Status of transposition: Bill n° 6507 presented to Parliament on 30 November 2012 voted on 15 May 2013.

DIRECTIVE 2011/95/EU of the European parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted

Deadline for transposition: 20 May 2013

Status of transposition: Bill n° 6507 presented to Parliament on 30 November 2012 voted on 15 May 2013.

DIRECTIVE 2011/98/EU of the European parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State

Deadline for transposition: 20 May 2013

Status of transposition: Bill n° 6507 presented to Parliament on 30 November 2012 voted on 15 May 2013.

9.2 Experiences, debates in the (non-) implementation of EU legislation

DIRECTIVE 2008/115/EC (Returns Directive)

For the debate on the transposition of the « Returns Directive », we rely on the Policy Report of 2011⁵¹⁴.

DIRECTIVE 2009/50/EC « Blue Card Directive » (debate on 2011)

The law of 8 December 2011 amending the Law of 29 August 2008 on the free movement of persons and immigration⁵¹⁵ has transposed Directive 2009/50/EC⁵¹⁶, Directive called "EU Blue Card".

The adoption of this law has not led to debates outside the lawmaking process.

The main points of concern expressed in the lawmaking process were:

The Council of State⁵¹⁷ was concerned especially about the attractiveness of Luxembourg for highly qualified people. This raises the question of whether the EU Blue Card can compete with the American green card – the United States do not impose a salary threshold and give a full and immediate mobility across the U.S. territory, while this is not the case for the EU Blue Card. The Council was particularly concerned that limiting mobility to the issuing Member State during the first 18 months of allotment will disadvantage Luxembourg, who suffers more than other European countries with a shortage of highly skilled workforce.

The Council of State welcomes Parliament's decision to give the high qualified worker at the end of the first two years access to all highly skilled jobs, rather than maintaining the restriction to professional activities for which the applicant was admitted. However, the Parliament regretted that Luxembourg has adopted a period of validity of two years for the

⁵¹⁴ LU EMN NCP, Policy Report on migration and asylum, 2011.

⁵¹⁵ Memorial A N°19 of 3 February 2012.

⁵¹⁶ Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.

⁵¹⁷ Opinion of the Council of State, 11/10/2011, Parliamentary document 6306/02, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6306>

Blue Card, while the Directive sets the validity between one and four years. In a competitive market, it would have been more appropriate to set the duration to 3 years.

This last concern is shared by the CC:⁵¹⁸ the Chamber demanded that the Blue Card will be valid for four years.

Unlike the CC, the CS⁵¹⁹ does not endorse the bill. It demands a detailed assessment of the actual needs of recruitment in the Member States of the European Union, which proves the validity and need to hire third-country nationals for the positions in question. The CS⁵²⁰ considers that in the absence of such an assessment, the recruitment of third country nationals would jeopardize the social gains in Luxembourg and the other Member States.

The Council of State would have wanted the government to set an annual quota for the admission of third-country nationals in the territory. The Council criticized that the legislature requires the applicant, as a condition for obtaining the blue card, to furnish proof of adequate housing, while the Directive only mentions the possibility for Member States to require a fixed address.

The CC makes the same critique, promoting the idea of a minimum wage equal to the minimum threshold set by the Directive, or 1.5 times the average wage in Luxembourg. The Chamber also argues for the acceptance of binding offers of employment, in the form of promises of jobs to be produced by the applicant for the blue card. This would “give more flexibility to both the company wishing to recruit third-country nationals for highly qualified employment, as well as the person concerned.”⁵²¹ The CC then suggests that the employer should also be able to submit an application for an EU Blue Card and believes that the legislature should have opted for the maximum period of validity prescribed by the Directive for the EU Blue Card, or 4 years.

⁵¹⁸ Opinion of the CC, 22/08/2011, Parliamentary document 6306/01,

<http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6306>

⁵¹⁹ Opinion of the CS, 11/10/2011, Parliamentary document 6306/03,

<http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6306>

⁵²⁰ Opinion of the CS, 11/10/2011, p 2,

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The European Migration Network, created by decision n°2008/381/CE of the Council dated 14 May 2008, has the objective of providing up-to-date, objective, reliable and comparable information on immigration and asylum to the Community institutions, to authorities and institutions of the State members and to the public with the view to supporting policy and decision-making in the EU.

