



2011

Policy report on migration and asylum

European Migration Network
National Contact Point Luxembourg

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The objective of the European Migration Network, created by Decision N° 2008/381/CE of the Council, dated 14 May 2008, is to provide up-to-date, objective, reliable and comparable information on immigration and asylum to Community institutions, the authorities and institutions of the Member States, and the general public, to foster the development of policies and facilitate the decision-making process within the European Union.

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Luxembourg

FOREWORD

The opinions and interpretations expressed in this report belong exclusively to their authors.

They do not necessarily reflect the positions of the *Ministère de la Famille et de l'Intégration* (Ministry of Family and Integration), nor of the *Ministère des Affaires étrangères* (Ministry of Foreign Affairs).

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This version is a translation from the original report written in French. Only the French version shall prevail.

Contents

FOREWORD.....	3
SYNTHESIS	6
1. INTRODUCTION.....	11
1.1. Methodology	11
1.2. Terminology and definitions	12
1.3. List of used abbreviations:	12
1.4. European Directives:	16
2. GENERAL STRUCTURE OF THE LEGISLATIVE AND POLITICAL FRAMEWORK IN LUXEMBOURG	17
2.1. General structure of the political system and institutional context	17
2.2. Legal Framework concerning Immigration, Asylum and Integration.....	19
3. GENERAL DEVELOPMENTS RELEVANT TO ASYLUM AND MIGRATION.....	24
3.1. General political developments in 2011	24
3.2. The main developments regarding immigration, asylum and integration	26
3.3. Institutional developments concerning immigration, asylum and integration in 2011	29
4. REGULAR IMMIGRATION AND INTEGRATION	33
4.1. Economic migration	33
4.1.1. Specific context before 2011	33
4.1.2. Developments within the national perspective 2011	33
4.1.3. Developments from the EU perspective.....	48
4.2. Family reunification	52
4.2.1. Specific context before 2011	52
4.2.2. Developments within the national perspective 2011	53
4.2.3. Developments from the EU perspective.....	56
4.3. Other legal migrations.....	58
4.3.1. Specific context before 2011	58
4.3.2. Developments within the national perspective 2011	58
4.3.3. Developments from the EU perspective.....	62
4.4. Integration	63
4.4.1. Specific context before 2011	63
4.4.2. Developments within the national perspective 2011	63
4.4.3. Developments from the EU perspective.....	81

4.5. Citizenship and naturalisation	83
4.5.1. Specific context before 2011	83
4.5.2. Developments within the national perspective 2011	84
4.5.3. Developments from the EU perspective.....	87
5. IRREGULAR IMMIGRATION AND RETURN.....	88
5.1. Irregular immigration	88
5.1.1. Specific context before 2011	88
5.1.2. Developments within the national perspective 2011	88
5.1.3. Developments from the EU perspective.....	97
5.2. Return migrations.....	98
5.2.1. Specific context before 2011	98
5.2.2. Developments within the national perspective 2011	99
5.2.3. Developments from the EU perspective.....	103
5.3. Measures taken against human trafficking	106
5.3.1. Specific context before 2011	106
5.3.2. Developments within the national perspective 2011	106
5.3.3. Developments from the EU perspective.....	108
6. BORDER CONTROL	109
6.1. Immigration control and monitoring at the border.....	109
6.1.1. Specific context before 2011	109
6.1.2. Developments within the national perspective 2011	111
6.1.3. Developments from the EU perspective.....	111
6.2. Cooperation in border control	114
6.2.1. Specific context before 2011	114
6.2.2. Developments within the national perspective 2011	114
6.2.3. Developments from the EU perspective.....	114
7. INTERNATIONAL PROTECTION.....	115
7.1. Specific context before 2011	115
7.2. Developments within the national perspective 2011	115
7.3. Developments from the EU perspective.....	130
8. UNACCOMPANIED MINORS (AND OTHER VULNERABLE GROUPS)	133
8.1. Specific context before 2011	133
8.2. Developments within the national perspective 2011	133
8.3. Developments from the EU perspective.....	133

9. FOREIGN RELATIONS AND THE GLOBAL APPROACH	135
9.1. Specific context before 2011	135
9.2. Developments within the national perspective 2011	135
9.3. Developments from the EU perspective.....	135
10. TRANSPOSITION OF THE EUROPEAN LEGISLATION INTO NATIONAL LAW	137
10.1. Transposition of European legislation in 2011.....	137
10.2. Experiences and debates concerning the (non-) transposition of European legislation	144
11. BIBLIOGRAPHY.....	151

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 2011, when the issue of migration was the subject of a few important political debates, whether related to legislative changes or to concrete issues and situations.

The year 2011 saw several legislative changes concerning migration, asylum and integration, whether or not they also led to public or political debate. Foremost is the adoption of the Law of 1 July on free movement (modifying the Law of 05 May 2006 and the Law of 26 August 2008), which transposed Directive 2008/115/CE, the so-called "Returns" directive", into national law. While it was being adopted, the projected directive was strenuously challenged by human-rights NGO's, who regularly brought it to the attention of both public and political opinion. Their concerns resulted from the fact that the project would hinder the free movement of people who are not nationals of one of the European Union's Member States. Two major points were particularly criticised: the extension of the holding term and the prohibition against entry into the territory. These criticisms regarding the holding of and treatment reserved for people in an irregular situation were all the more relevant just before the August 2011 inauguration of the Detention Centre, an enclosed structure intended to receive and provide shelter to people subject of a placement measure.

Meanwhile, the Law of 8 December 2011, modifying the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People, transposed Directive 2009/50/CE, the so-called "European Blue Card" Directive, into national law. Contrary to the transposition of the "Returns" Directive, the debate was restricted to those opinions expressed during the legislative process. To guarantee Luxembourg's future competitiveness, the Council of State and the professional Chambers (Chamber of Commerce and Chamber of Salaried Workers) lobbied for a wide-ranging transposition of the Directive, particularly as regards the conditions for obtaining the Blue Card, its maximum term of validity, and the minimum remuneration threshold, in order to give greater flexibility to the companies and people concerned, and for an assessment tailored to real hiring needs of highly-qualified third-country nationals.

Several important institutional evolutions in 2011 bear mentioning, most of which consisted in launching the instruments and agencies called for in the Law of 16 December 2008 on the Reception and Integration of Foreigners. On the one hand, the 2010-2014 National Action Plan on Integration and the Fight against Discrimination was officially presented; also, the Reception and Integration Contract was launched. Consultative agencies were renewed both at the communal level (Communal Consultative Commissions on Integration, or CCI) and nationally (National Council for Foreigners).

As regards political participation at the communal level, the changes in the electoral law, brought about by the Law of 13 February 2011, opened both the passive electorate and the functions of mayor and alderman to third-country nationals. Therefore, the participation of foreigners in the communal elections of 09 October 2011 and the pre-election awareness-raising efforts of the civil society and the Government regarding registration onto the electoral lists were extensively debated in Luxembourg. Although the bottom line on the participation of foreign nationals to the communal elections revealed a significant net increase in registered people compared to the October 2005 communal elections, the obstacles and challenges to the electoral participation of foreigners, such as the question of the political parties' integration of foreigners, the current residency clause and the non-automatic registration onto electoral lists, have been repeatedly noted by various players.

While the refugee issue was not the subject of a major debate in 2010, 2011 was especially marked by the debate on international protection. The arrival of a significant number of asylum seekers in 2011 (2,164 applicants, compared to 786 in 2010) would have repercussions throughout the year on the politics and the debate concerning the request evaluation procedure, the reception of applicants, and the return policy. Both politically and publicly, the considerable increase in the number of international protection requests put significant pressure on the structures in charge of international protection, whether the applicant-reception and -lodging structures or the structures tasked with evaluating the international protection requests.

The Government and legislators reacted swiftly to this situation through different legislative measures, which were severely criticised by NGO's: the Republic of Serbia, the main point of origin for Roma asylum seekers, was added to the list of "safe

countries of origin”, through an amendment to the Law of 5 May 2006 on the Right of Asylum and to Complementary Forms of Protection, the authorities reintroduced the fast-track processing of international protection requests. Finally, the Refugee Division of the Directorate of Immigration increased its personnel to manage the processing of requests. Throughout 2011, the Luxembourgish authorities have sought contact with their Serbian counterparts in order to find solutions with regard to the important arrival of DPI from Serbia.

The debate on international protection has raised several questions and fundamental issues such as the attitude of Luxembourg’s residents to the reception of refugees and shared responsibility taking between national and local authorities with regard to receiving and lodging DPIs. In 2011, the Ministry of Family and Integration declared its intention to introduce a quota system with regard to lodging international protection seekers, in order to allocate the reception of DPIs across the different communes.

The debate surrounding the rights and place of cross-border workers in national society, already apparent in 2010, continued in 2011.

On the one hand, the economic contribution of cross-border workers to Luxembourg was mentioned repeatedly. As part of the “Luxembourg 2020” strategy and the objectives on employment rates, the pool of non-resident workforce was seen to be crucial if these objectives were to be reached. On the other hand, several studies on cross-border workers were presented and given significant media exposure. The study that generated most interest, *“L’Intégration au Luxembourg, Focus sur les Réseaux Sociaux, la Confiance et les Stéréotypes sur les frontaliers”* (Integration in Luxembourg, Focus on Social Networks, Confidence and Stereotypes regarding Border Residents), considered the perception of cross-border workers by the resident population and revealed two perception models of border residents, showing the residents’ persistent distrust of this population.

Related to the issue of border residents, the question of State financial assistance for higher studies persisted in 2011. Since 1 October 2010, family allowances in Luxembourg have been eliminated for young adults over 18 and replaced by a State financial assistance for higher studies accessible only to residents. Therefore, children of cross-border workers no longer receive financial assistance from the Government of

Luxembourg. Over 600 appeals have been filed with the Administrative Tribunal following refusals to grant their border members any financial assistance for higher studies. With several complaints having been filed with the European Commission, the Government awaits the European Commission's answer.

1. INTRODUCTION

1.1. Methodology

The first two chapters concern, on the one hand, the general evolution of the political and legal systems in Luxembourg and, on the other hand, the political and institutional developments concerning asylum and migration. While we highlight the evolutions which took place in 2011, we refer to the legal framework and to several legal provisions adopted prior to 2011.

For each topic, we begin by reviewing, under “Specific context before 2011”, any general information deemed important to understand the various recent developments and current framework. Next, we describe national evolutions in 2011, under “Developments within the national perspective”. Finally, evolutions relating to European policies, legislative amendments related to the European Pact on Immigration and Asylum, just as related debates on the national level are covered under “Developments from the EU perspective”.

A number of criteria were considered in defining significant events or debates:

- mediatisation of the debate;
- impact of the debate on the political discussions accompanying the legislative process;
- number and type of players (NGO’s, unions, political parties, deputies, parliamentary groups, media, members of the Government, etc.) intervening or involved in the debate.

Reference documents, such as studies and reports on migration and asylum which were used during the debate on migratory policies in Luxembourg, have also been taken into consideration.

The main sources of information used were:

- information provided by national experts, whether governmental or non-governmental;
- the systematic monitoring of debates and parliamentary questions;

- the systematic consultation of all news articles written in Luxembourg's main daily and weekly newspapers;
- the detection of reference documents (studies, activity reports of various players, etc.);
- contacts with NGO's active in the field of migration and asylum;
- the consultation of NGO's positions;
- the systematic consultation of websites of Ministries, NGO's, etc..

1.2. Terminology and definitions

As regards terminology, we referred to the terms used in the Glossary of the European Migration Network.¹

The word "foreigner" is the one corresponding to the definition of Article 3a) of the Law on Immigration and the Free Movement of People² of 29 August 2008, which states that a foreigner is "any person who does not possess the Luxembourgish nationality, whether because he possess another nationality exclusively, or because he does not possess any".

1.3. List of used abbreviations:

ACAT	<i>Action des Chrétiens pour l'Abolition de la Torture Ensemble</i> (Action by Christians for the Abolition of Torture)
ACT	<i>Autorité pour les Conditions du Travail</i> (Working Conditions Authority)
ADEM	<i>Administration de l'Emploi</i> (Employment Administration)
ADR	<i>Alternativ Demokratesch Reformpartei</i>
AFR	<i>Aides à la formation-recherche</i> (Research-training assistance)
ALEBA	<i>Association Luxembourgeoise des Employés de Banque et Assurance</i> (Luxembourger Association of Bank and Insurance Employees)
APL	<i>Amitié Portugal-Luxembourg</i> (Portugal-Luxembourg Friendship)
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

¹ Glossary EMN 2.0 on asylum and migration is available at: <http://www.emn.europa.eu>.

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

	Voluntary Return and Reintegration)
BLLD	<i>Bureau de liaison luxembourgeois en matière de détachement et travail illégal</i> (Luxembourger Liaison Office for Secondment and Undeclared Work)
CAI	<i>Contrat d'accueil et d'intégration</i> (Reception and Integration Contract)
CASNA	<i>Cellule d'accueil scolaire pour élèves nouveaux arrivants</i> (School Reception Cell for Newcomer Pupils)
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)
CCPL	<i>Confédération de la Communauté Portugaise au Luxembourg</i> (Confederation of the Portuguese Community in Luxembourg)
CEFIS	<i>Centre d'étude et de formation interculturelles et sociales</i> (Centre for Intercultural and Social Studies and Training)
CIALTI	<i>Cellule inter administrative de lutte contre le travail illégal</i> (Inter-administrative Cell for the Fight against Undeclared Work)
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)
CPJPO	<i>Comité pour une Paix Juste au Proche Orient</i> (Committee for a Just Peace in the Near East)
CSL	<i>Chambre des Salariés Luxembourg</i> (Luxembourg Chamber of Salaried Workers)
CSJ	<i>Chrëschtlech Sozial Jugend</i>
CSV	<i>Parti Chrétien Social</i> (Social Christian Party)
DG	<i>Déi Gréng</i>
DIRECCTE	<i>Direction régionale des entreprises, de la concurrence, de la consommation, du travail et de l'emploi</i> (Regional Department of

	Enterprise, Competition, Consumer Affairs, Labour and Employment)
DJG	<i>Déi Jonk Gréng</i>
DP	<i>Parti démocratique</i> (Democratic Party)
DPI	<i>Demandeurs de protection internationale</i> (international protection applicants, a.k.a. asylum seekers)
DL	<i>Déi Lénk</i>
E2C	<i>École de la 2^{ième} chance</i> (2 nd -Chance School)
EEE	<i>Espace Economique Européen</i> (European Economic Area)
EMN	<i>European Migration Network</i>
EMN NCP LU	<i>European Migration Network- National Contact Point Luxembourg</i>
FACVL	<i>Fédération des Associations Capverdiennes au Luxembourg</i> (Federation of Cape Verdian Associations in Luxembourg)
FAEL	<i>Fédération des Associations d'Espagnols du Luxembourg</i> (Federation of Associations of Spaniards in Luxembourg)
FEI	<i>Fonds européen d'intégration</i> (European Integration Fund)
FER	<i>Fonds européen pour les réfugiés</i> (European Refugee Fund)
FFE	<i>Fonds pour les frontières extérieures</i> (External Borders Fund)
FNCTTFEL	<i>Organisme de la Fédération Nationale des Cheminots, Travailleurs du Transport, Fonctionnaires et Employés, Luxembourg</i> (Agency of the National Federation of Railroad Workers, Transportation Workers, Civil Servants and Employees, Luxembourg)
FNEL	<i>Fédération Nationale des Eclaireurs et Eclaireuses du Luxembourg</i> (National Federation of Luxembourg Scouts)
FNR	<i>Fonds National de la Recherche</i> (National Research Fund)
GAT	<i>General Aviation Terminal</i>
GEIEFEL	<i>Groupement d'intérêt des Frontaliers Européens au Luxembourg</i> (Interest Grouping of Border Europeans in Luxembourg)
JCL	<i>Jeunesse communiste luxembourgeoise</i> (Luxembourger Communist Youth)
JDL	<i>Jeunesse démocrate et libérale</i> (Democratic and Liberal Youth)
JSL	<i>Jeunesses Socialistes Luxembourgeoises</i> (Luxembourger Socialist Youth)

INAP	<i>Institut national d'administration publique</i> (National Public Administration Institute)
ITM	<i>Inspection du Travail et des Mines</i> (Labour and Mining Inspectorate)
KPL	<i>Parti Communiste Luxembourgeois</i> (Luxembourger Communist Party)
LaF	<i>Lëtzebuergesch als Friemsprooch</i>
LCGB	<i>Lëtzebuenger Chrëschtleche Gewerkschaftsbond</i>
LFR	<i>Collectif Réfugiés – Lëtzebuenger Flüchtlingsrot</i> (Refugee Collective)
LSAP	<i>Parti ouvrier socialiste luxembourgeois</i> (Luxembourger Socialist Labour Party)
MAE	<i>Ministère des affaires étrangères</i> (Ministry of Foreign Affairs)
MENFP	<i>Ministère de l'Éducation nationale et de la Formation professionnelle</i> (Ministry of National Education and Professional Training)
MIPEX	<i>Migrant Integration Policy Index</i>
MYO	<i>Migrer les Yeux Ouverts</i> (Migrating with Open Eyes)
OACI	<i>Organisation de l'aviation civile internationale</i> (International Civil Aviation Organisation)
OGBL	<i>Onofhängege Gewerkschaftsbond Lëtzebuerg</i>
OIM	<i>Organisation internationale pour les migrations</i> (International Organisation for Migration)
OLAI	<i>Office luxembourgeois de l'accueil et de l'intégration</i> (Luxembourger Reception and Integration Agency)
CBP	Common Basic Principles
PCS	<i>Parti Chrétien Social</i> (Social Christian Party)
PDTI	<i>Pôle détachement et travail illégal</i> (Secondment and Undeclared Work Pole)
PKD	<i>Public Key Directory</i>
RETEL	<i>Réseau d'étude sur le marché du travail et de l'emploi</i> (Study Network on the Labour and Employment Market)
RCP	<i>Répertoire des clés publiques</i> (Public Key Directory)
RLS	<i>Régime linguistique spécifique</i> (Specific Linguistic Regime)
SDTI	<i>Service Détachement et Travail Illégal</i> (Secondment and Undeclared

	Work Department)
SIS	<i>Schengen Information System</i>
SMI	<i>Service Médical de l'Immigration</i> (Immigration Medical Department)
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)
SYPROLUX	<i>Syndicat Professionnel des Cheminots Luxembourgeois</i> (Professional Union of Luxembourg Railway Workers)
SYVICOL	<i>Syndicat des Villes et Communes Luxembourgeoises</i> (Union of Luxembourg Cities and Communes)
UEL	<i>Union des Entreprises Luxembourgeoises</i> (Union of Luxembourg Enterprises)
VAE	<i>Validation des acquis de l'expérience</i> (Accreditation of Prior Learning)
VIS	<i>Visa Information System</i>

1.4. European Directives:

Directive 2008/115/CE of the European Parliament and the Council of 16 December 2008 on common standards and procedures in Member States for returning irregularly staying third-country nationals – “Returns” Directive.

Directive 2009/50/CE of the Council of 25 May 2009 establishing entry and stay conditions for third-country nationals for highly-qualified employment – “European Blue Card” Directive.

Directive 2009/52/CE of the European Parliament and the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals – “Sanctions” Directive.

2. GENERAL STRUCTURE OF THE LEGISLATIVE AND POLITICAL FRAMEWORK IN LUXEMBOURG

2.1. General structure of the political system and institutional context

The structure of the political system and Luxembourg's institutional context were described in detail in the policy reports on migration and asylum for the years 2008, 2009 and 2010.³

Global Constitutional Reform Process

The modification of the Constitution by the Law of 12 March 2009⁴ reinitiated the debate on a systematic revision of the Constitution and, on 21 April 2009, a proposal to review the Constitution was introduced in the Lower House.⁵

The Government issued a policy statement on 21 July 2011 on the review proposal,⁶ which affects 145 Articles. In its statement, the Government generally respected the major orientations of the proposed revision. The most substantial modifications concern the provisions regarding the executive branch and notably the powers of the Grand Duke. In legislative matters, the proposal calls for removing his last attributions: the initiative power (introduction of bills), the right of enactment/publication of laws, and the right to open and adjourn parliamentary sessions.

The proposal of revision does not affect those articles concerning non-Luxembourgers except Article 111 of the current Constitution, which states: "Any foreigner within the territory of the Grand Duchy enjoys the protection granted to people and goods, barring the exceptions established by law". The proposed review of this Article would read as

³ European Migration Network – National Contact Point – Luxembourg. *Rapport politique sur les migrations et l'asile, 2008, 2009, 2010* (Political report on migration and asylum, 2008, 2009, 2010), ch. 1.1, published in 2010, <https://www.emnluxembourg.lu/PUBLICATIONS/policy-reports>.

⁴ The Law of 12 March 2009 to review Article 34 of the Constitution abolished the Grand Duke's right to sanction laws, following his refusal to sign the law on euthanasia and according to the Sovereign's express will, and reduced the Grand Duke's prerogatives to the enactment of laws so that they may take effect, *Mémorial* (Official Gazette of the Grand Duchy of Luxembourg) A N° 43, 12 March 2009; <http://www.legilux.public.lu/leg/a/archives/2009/0043/2009A0586A.html>.

⁵ Review proposal to modify and reorganise the Constitution, Parliamentary Document 6030/00, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6030> ; See also European Migration Network – National Contact Point Luxembourg – 2010 Political Report on migration and asylum, <http://www.emnluxembourg.lu/PUBLICATIONS/policy-reports>.

⁶ Review proposal to modify and reorganise the Constitution, Parliamentary Document 6030/5, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6030>.

follows: “Any person within the territory of the Grand Duchy enjoys the protection granted to people and goods in accordance with the Constitution and the laws”.

Indeed, to avoid having the text interpreted in such a manner as that any person, including foreigners living in the territory in an irregular situation would enjoy the same rights as Luxembourgers with regards to the protection of their person and their goods (as such rights are expressed in the Constitution) and would limit the law merely to specifying these rights without restricting them, the Administrative Tribunal and the Government suggest the proposed text be made more specific, highlighting the fact that that the laws may restrict these rights in given circumstances: “Any person legally within the territory of the Grand Duchy enjoys the protection granted to people and goods, barring those restrictions established by the Constitution and the laws”.⁷

Territorial reorganisation – Merger of Communes and Communal Elections of October 2011

The discussions around the territorial reorganisation and the merger of communes continued in 2011.

Until 2017, the Minister for the Interior hopes to reduce considerably the number of communes in Luxembourg, from 116 to 71.

Over the last three years, seven referenda have been organised locally. In six cases, the local population approved the merger project. Sixteen communes have merged into six new communal administrations, which began to operate after the communal elections of October 2011, on 1 January 2012.

The merger of communes had certain repercussions on the communal elections of October 2011, when some of these communes switched from majority voting⁸ to proportional voting.⁹

7

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

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

⁸ In a majority vote, the voter has as many votes as there are advisers to be elected. Unlike in a proportional vote, candidates do not appear on a party or movement list. Indeed, some are independent, while others do not officially display their political allegiance. Their election campaign is therefore, perforce, conducted on a very local level, without reference to a party’s general programme.

2.2. Legal Framework concerning Immigration, Asylum and Integration

A brief overview of the current legal framework concerning immigration, asylum and integration in Luxembourg:

A) Immigration

- Law of 1 July 2011, modifying the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People;¹⁰
- Grand-Ducal Regulation of 19 May 2011 modifying the Grand-Ducal Regulation of 26 September 2008 on the creation of data processing of a personal nature;¹¹
- Grand-Ducal Regulation of 3 February 2009 on medical exams for foreigners;¹²
- Grand-Ducal Regulation of 26 September 2008, as amended, establishing good-conduct rules to be followed by agents tasked with the execution of a repatriation measure and modifying the Grand-Ducal Regulation of 21 December 2006 on the transposition of Directive 2003/110/CE of the Council of 25 November 2003, concerning transportation assistance in the case of repatriation measures executed by aircraft;¹³
- Grand-Ducal Regulation of 26 September 2008 defining the minimum level of remuneration for a highly-qualified worker in application of the Law of 29 August 2008 on Immigration and the Free Movement of People;
- Grand-Ducal Regulation of 5 September 2008, as amended, to enforce certain provisions related to the administrative formalities set forth in the Law of 29 August 2008 on Immigration and the Free Movement of People;¹⁴
- Grand-Ducal Regulation of 5 September 2008 on foreigner case-management attestation;¹⁵

⁹ This system is applied in all communes with a population in excess of 3,000. The affected voter may choose between voting for a list (of a party or a citizens' initiative) or "picking and choosing", *i.e.* voting for several candidates from distinct lists (as in legislative elections). He has as many votes as there are councillors to be elected (read elsewhere) and he may give two votes to several candidates, so long as he does not exceed the total number of votes available to him.

¹⁰ *Mémorial* A N° 151, 25 July 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0151/a151.pdf>.

¹¹ *Mémorial* A N° 102, 20 May 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0102/a102.pdf>.

¹² *Mémorial* N° 16, 10 February 2009, <http://www.legilux.public.lu/leg/a/archives/2009/0016/a016.pdf>.

¹³ *Mémorial* A N° 180, 22 August 2011,

<http://www.legilux.public.lu/leg/a/archives/2011/0180/index.html>.

¹⁴ *Mémorial* A N° 102, 20 May 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0102/index.html>.

¹⁵ *Mémorial* A N° 138, 10 September 2008,

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

- Grand-Ducal Regulation of 5 September 2008 on the exercise of a paid activity by a student, as set forth in the law;¹⁶
- Grand-Ducal Regulation of 5 September 2008 on the makeup and operation of the Consultative Commission on Foreigners, the Consultative Commission on Salaried Workers, the Consultative Commission on Independent Workers.¹⁷
- Coordinated text of the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People¹⁸ and the Grand-Ducal Regulations;
- Law of 18 May 2009 on the creation and organisation of the Detention Centre;¹⁹
- Law of 19 August 2008 on research-training assistance;²⁰
- Grand-Ducal Regulation of 17 August 2011 defining the general terms and conditions of the detention system;²¹

B) Asylum

- Law of 19 May 2011 modifying the Law of 5 May 2006, as amended, on the Right of Asylum and to Complementary Forms of Protection;²²
- Coordinated text of the Law of 5 May 2006, as amended, on the Right of Asylum and to Complementary Forms of Protection;²³
- Grand-Ducal Regulation of 1 April 2011 modifying the Grand-Ducal Regulation of 21 December 2007 defining a list of safe home countries as understood by the Law of 5 May 2006, as amended, on the Right of Asylum and to Complementary Forms of Protection;²⁴
- Grand-Ducal Regulation of 1 September 2006 defining the terms and conditions for granting social assistance to asylum seekers;²⁵

¹⁶ *Mémorial A N° 138*, 10 September 2008,
<http://www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf#page=2>.

¹⁷ *Mémorial A N° 138*, 10 September 2008,
<http://www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf#page=2>.

¹⁸ *Mémorial A N° 151*, 25 July 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0151/a151.pdf>.

¹⁹ Law of 18 May 2009, *Mémorial A N° 119*, 29 May 2009,
<http://www.legilux.public.lu/leg/a/archives/2009/0119/2009A1708A.html>.

²⁰ *Mémorial A N° 136*, 08 September 2011,
<http://www.legilux.public.lu/leg/a/archives/2008/0136/a136.pdf>.

²¹ *Mémorial A N° 180*, 22 August 2011,
<http://www.legilux.public.lu/leg/a/archives/2011/0180/index.html>.

²² Law of 19 May 2011, *Mémorial A N° 102*, 20 May 2011,
<http://www.legilux.public.lu/leg/a/archives/2011/0102/index.html>.

²³ The coordinated text of this law was published in *Mémorial A N° 151*, 25 July 2011,
<http://www.legilux.public.lu/leg/a/archives/2011/0151/2011A2180A.html>.

²⁴ *Mémorial A N° 67*, 11 April 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0067/a067.pdf>.

²⁵ *Mémorial A N° 171*, 22 September 2006,
<http://www.legilux.public.lu/leg/a/archives/2006/0171/a171.pdf>.

- Grand-Ducal Regulation of 21 July 2006 defining the conditions under which asylum seekers have access to the training called for under Article 14 of the Law of 5 May 2006 on the Right of Asylum and to Complementary Forms of Protection.²⁶

C) Integration

- Law of 16 December 2008 on the Reception and Integration of Foreigners in the Grand Duchy of Luxembourg;²⁷
- Grand-Ducal Regulation of 2 September 2011 defining the application conditions and the modes of execution of the Reception and Integration Contract.²⁸
- Grand-Ducal Regulation of 15 November 2011 on the organisation and operation of the Consultative Commissions on Integration;²⁹
- Grand-Ducal Regulation of 15 November 2011 defining the modes of appointment of foreigners' representatives on the National Council for Foreigners, as well as their distribution by nationality;³⁰

Other laws and regulations which must be mentioned regarding the integration of foreigners:

- Law of 23 October 2008 on the Luxembourgish nationality, and its Grand-Ducal Regulations.³¹
- Law of 28 November 2006 on the equality of treatment;³²
- Law of 13 February 2011 modifying Article 457-3 of the Criminal Code;³³
- Law of 17 February 2009 on the introduction of the language leave;³⁴

²⁶ *Mémorial A* N° 131, 31 January 2006,

<http://www.legilux.public.lu/leg/a/archives/2006/0131/a131.pdf#page=3>.

²⁷ Law of 16 December 2008, *Mémorial A* N° 209, 24 December 2008,

<http://www.legilux.public.lu/leg/a/archives/2008/0209/index.html>.

²⁸ *Mémorial A* N° 197, 20 September 2011,

<http://www.legilux.public.lu/leg/a/archives/2011/0197/2011A3584A.html>.

²⁹ *Mémorial A* N° 237, 22 November 2011,

<http://www.legilux.public.lu/leg/a/archives/2011/0237/2011A4006A.html>.

³⁰ *Mémorial A* N° 236, 22 November 2011,

<http://www.legilux.public.lu/leg/a/archives/2011/0236/a236.pdf>.

³¹ Law of 23 October 2008, *Mémorial A* N° 158, 27 October 2008,

<http://www.legilux.public.lu/leg/a/archives/2008/0158/2008A2222A.html>.

³² Law of November 28, 2006, *Mémorial A* N° 207, 06 December 2006,

<http://www.legilux.public.lu/leg/a/archives/2006/0207/index.html>.

³³ Law of 13 February 2011, *Mémorial A* N° 33, 21 February 2011,

<http://www.legilux.public.lu/leg/a/archives/2011/0033/2011A0354A.html>.

- Law of 13 February 2011 modifying (1) the Communal Law of 13 December 1988, as amended, and (2) the Electoral Law of 18 February 2003, as amended;³⁵
- Law of 18 December 2009 on access to the civil service,³⁶ effective 01 January 2010, and its Grand-Ducal Regulations;³⁷
- Law of 19 December 2008 modifying the Electoral Law of 18 February 2003, as amended and the Law of 04 February 2005 on national referenda;³⁸

Other legislative and regulatory **projects** in the field of migratory policies must also be mentioned:

- Grand-Ducal Regulation proposal modifying the Grand-Ducal Regulation of 26 September 2008 defining the minimum level of remuneration for a highly-qualified worker, in application of the Law of 29 August 2008 on Immigration and the Free Movement of People;³⁹
- Bill on the Reception of young au pairs modifying (1) the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People and (2) the Law of 4 July 2008 on youth;⁴⁰
- Bill intended to fight forced or convenience marriages and partnerships.⁴¹

³⁴ Law of 17 February 2009, *Mémorial A* N° 33, 26 February 2009, <http://www.legilux.public.lu/leg/a/archives/2009/0033/>.

³⁵ Law of 13 February 2011, *Mémorial A* N° 29, 16 February 2011 <http://www.legilux.public.lu/leg/a/archives/2011/0029/2011A0240A.html>.

³⁶ Law of 18 December 2009 modifying and complementing (a) the Law of 16 April 1979, as amended, defining the general status of the State's civil servants; (b) the Law of 27 January 1972, as amended, defining the salaries of State employees; (c) the Law of 24 December 1985, as amended, defining the general status of communal civil servants; and (d) the Law of 15 June 1999, as amended, on the organisation of the National Public Administration Institute (*Institut national d'administration publique*), *Mémorial*, 22 December 2009, <http://www.legilux.public.lu/leg/a/archives/2009/0248/a248.pdf>.

³⁷ *Mémorial A* N° 78, 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> (*sic*)

³⁸ Law of 19 December 2008, *Mémorial A* N° 210, 24 December 2008, <http://www.legilux.public.lu/leg/a/archives/2008/0210/2008A3162A.html>.

³⁹ *Mémorial A* N° 145, 29 September 2008, <http://www.legilux.public.lu/leg/a/archives/2008/0145/a145.pdf>.

⁴⁰ Bill on the Reception of young au pairs, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6328>.

⁴¹ Bill 5908, intended to fight against forced or convenience marriages and partnerships, and to modify and complement certain provisions: – of the Civil Code, – of the Revised Code of Civil Proceedings, – of the Criminal Code, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=5908#>.

Legislative modifications in 2011

Particularly noteworthy are:⁴²

- The adoption of the Law of 1 July on free movement (modifying the Law of 05 May 2006, and the Law of 26 August 2008) that transposed into national law Directive 2008/115/CE, the so-called “Returns” Directive. This law modified the Law on Immigration and the Law on Asylum;
- The adoption of the Law of 8 December 2011, modifying the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People, that transposed into national law Directive 2009/50/CE, the so-called “European Blue Card” Directive⁴³, adopted in 2011, but published in 2012;
- The adoption of the Grand-Ducal Regulation of 17 August 2011 defining the general terms and conditions of the Holding Centre’s holding system;⁴⁴
- The modification of the Electoral Law by the Law of 13 February 2011⁴⁵
- Grand-Ducal Regulation of 2 September 2011 defining the application conditions and the modes of execution of the Reception and Integration Contract.
- The adoption of the Grand-Ducal Regulation of 15 November 2011 on the organisation and operation of the Communal Consultative Commissions on Integration;⁴⁶
- The adoption of the Grand-Ducal Regulation of 15 November 2011 defining the modes of appointment of foreigners’ representatives on the National Council for Foreigners, as well as their distribution by nationality;⁴⁷

⁴² The legislative modifications and political and public proceedings relative thereto are described in great detail under Points 10.1 and 10.2.

⁴³ The legislative modifications and political and public proceedings relative thereto are described in great detail under Points 10.1 and 10.2.

⁴⁴ *Mémorial* A N° 180, 22 August 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0180/a180.pdf>.

⁴⁵ *Mémorial* A N° 29, 16 February 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0029/a029.pdf>.

⁴⁶ *Mémorial* A N° 237, 22 November 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0237/a237.pdf>.

⁴⁷ *Mémorial* A N° 236, 22 November 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0236/a236.pdf#page=2>.

- The adoption of the Grand-Ducal Regulation of Detention² September 2011 defining the application conditions and the modes of execution of the Reception and Integration Contract.⁴⁸

3. GENERAL DEVELOPMENTS RELEVANT TO ASYLUM AND MIGRATION

3.1. General political developments in 2011

Communal elections

Communal elections were held on 9 October 2011. Each commune in Luxembourg (106 communes and 107 electoral districts) has a communal council from which comes the college of burgomasters and aldermen. Communal councillors are elected directly by the inhabitants of the commune.

While voting is mandatory for all Luxembourgers, the electoral law allows non-Luxembourgers who have resided for at least 5 years in Luxembourg at the time of the registration onto electoral lists, to vote in communal elections. The elections of 9 October 2011 were the first held after the modification to the Electoral Law,⁴⁹ which extended the passive right to vote in communal elections, previously reserved to Community nationals, to non-Community nationals. Furthermore, the law abolished the prohibition against non-Luxembourgers being elected to the positions of burgomaster or alderman.

While Luxembourgers automatically appear on all electoral lists at the age of 18, potential foreign voters had to register onto the electoral lists on or before 14 July 2011. In order to encourage voting participation among third-country nationals, the OLAI was tasked by the Government with implementing an information and awareness-raising campaign for foreigners called “I can vote” (*“Je peux voter”*).

⁴⁸ *Mémorial A N° 197*, 20 September 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0197/a197.pdf>.

⁴⁹ Law of 13 February 2011 modifying (1) the Communal Law of 13 December 1988, as amended, and (2) the Electoral Law of 18 February 2003, as amended, *Mémorial A N° 29*, 16 February 2011. To be a candidate in communal elections, one must document a term of residency of 5 years at the time the candidacy is filed.

ADEM reform

The Employment Administration (*Administration de l'emploi*, or ADEM) was reformed. As part of this reform, the Bill to create the Employment Development Agency was adopted by the Lower House on 15 December 2011.⁵⁰ The objective of the reform⁵¹ is to switch from a simple unemployment-management approach to a proactive approach of promoting and developing employment, thus ensuring a more personalised follow-up for job seekers, and the matching of job offers and demands. Two new regional agencies of the ADEM opened in Dudelange (11 March) and Wasserbillig (27 May) in 2011, and the number of agents rose. At the time the Minister of Labour and Employment took stock of the ADEM reform on 30 June 2011. The fight against youth unemployment was pointed out as a priority, as was the implementation of policies in favour of the unemployed elderly.⁵² (Cf. also Point 4.1.2).

Pension reform

After discussing the guidelines⁵³ of the reform with all partners involved, the Government Council adopted, on 16 December 2011, the major axes of the bill to reform pension insurance.⁵⁴ The full bill had yet to be approved by the Government Council in 2011.

The currently favourable financial position of Luxembourg' pension system results mainly from continuous growth in the labour market over the past few decades, due to sustained migration and to the contribution of a considerable non-resident workforce. In addition, faced with an ageing population and an increased life expectancy which currently is not translated into an extension of the professional career, the system will face medium-term sustainability problems in terms of the adequacy of benefits and the

⁵⁰ Bill (1) to create the Agency for Employment Development, Dispensation of second constitutional vote on 19 December 2011, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6232>.

⁵¹ The Bill to create the Employment Development Agency, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=6232>; The reform of Employment Administration (*Administration de l'emploi*, or ADEM), http://www.gouvernement.lu/dossiers/social_emploi/reforme-adem/index.html.

⁵² News article, Nicolas Schmit: “*Regagner l’initiative sur le marché de l’emploi*” (“Regaining the initiative in the job market”), 30 June 2011, http://www.gouvernement.lu/salle_presse/actualite/2011/06-juin/30-adem/index.html.

⁵³ Presented on 17 March 2011, http://www.gouvernement.lu/salle_presse/actualite/2011/03-mars/17-frieden-bartolomeo/index.html.

⁵⁴ http://www.gouvernement.lu/dossiers/social_emploi/reforme-systeme-pension/index.html.

required financial resources.⁵⁵ The challenge consists in ensuring a balanced and viable pension system (financial, social and political viability) that takes into consideration demographic evolutions and extended retirement periods while guaranteeing that future recipients will receive a level of pension comparable to that of current recipients.

While the reform affects neither retirement conditions, the rights of pension recipients nor access to early retirement, future recipients will be faced with the choice of enjoying retirement benefits comparable to current ones, conditioned to an extended active career, or of receiving lower benefits as a consequence of earlier retirement.⁵⁶ This “choice” to extend one’s professional life was decried as utopian by various players (LCGB, OGBL, ALEBA⁵⁷), who point out the difficulties in professional reinsertion for the elderly, which the job market already currently reveals.

3.2. The main developments regarding immigration, asylum and integration

Luxembourg and immigration

The Grand Duchy’s population increased by 9,774 inhabitants in 2010, crossing the 500,000 inhabitant threshold for the first time. Also, for the first time since the Second World War, the proportion of foreigners in the total population had decreased. This phenomenon was linked to the explosion in the number of naturalisations following the coming into effect of the new law on nationality.⁵⁸

The number of births rose sharply, by 42%, going from 5,638 in 2009 to 5,874 in 2010. This rise was due exclusively to a growth in “Luxembourger” births (+12.8%), while “foreign” births dropped significantly, by some 7%. For the first time since early 2000, Luxembourger births were more numerous than foreign births, their relative share rising to 51.6%. On the other hand, the strong growth in native births and the fall in foreign

⁵⁵ *Réforme du système de pension: enjeux et objectifs* (Reform of the pension system: stakes and objectives), http://www.gouvernement.lu/dossiers/social_emploi/reforme-systeme-pension/index.html.

⁵⁶ *Réforme du système de pension: enjeux et objectifs* (Reform of the pension system: stakes and objectives), http://www.gouvernement.lu/dossiers/social_emploi/reforme-systeme-pension/index.html.

⁵⁷ ALEBA Info, *NON à cette réforme des pensions!* (NO to this pension reform!), July 2011, <http://www.aleba.lu/management/documents/fichiers/888f1b5601ac1bd2733118e1a8109af1.pdf>; LCGB, Spotlight, <http://lrgb.lu/uploads/spotlights/35b56ec045ab10187b1495b7f57a943777930a0a.pdf>; Tageblatt, *Länger leben, länger arbeiten*, 30 November 2011, <http://www.tageblatt.lu/nachrichten/luxemburg/story/12367092>.

⁵⁸ Germaine Thill-Ditsch, *Regards sur la population par nationalités* (Outlook on population by nationality), Regards 6-2010, STATEC, July 2010.

births are not due to a reversal in the respective fertility rates of Luxembourg and foreign women, but rather to the new law on Luxembourg nationality.

As of 1 January 2011, 511,840 people resided in Luxembourg. A natural balance (births minus death) of 2,114 and a positive migratory balance (arrivals minus departures) of 7,660 people increased the resident population by 9,774, 43.2% of whom are not Luxembourg citizens.⁵⁹

However, the overwhelming majority of foreign residents in Luxembourg consist of citizens of a Member State of the European Union (85.9%), mostly from Portugal (36.7% of the foreign population), France (14%) and Italy (8%). Third-country nationals account for only 14.1% of the foreign population.⁶⁰ This makes Luxembourg the EU country with the highest proportion of Community foreign residents and the lowest share of third-country residents.

The transposition of the “Returns” Directive

While the Law of 1 July 2011,⁶¹ transposing the “Returns” Directive into national law, was being adopted, the directive proposal was strenuously challenged by NGO’s. (Cf. Points 10.1 and 10.2 for details).

International protection

The year 2011 was particularly notable because of the discussions concerning international protection, probably related to the exceptional inflow of asylum seekers the country had experienced since late 2010. The significant upsurge in requests received in 2011 put strong pressure on the structures in charge of processing and managing requests. As a consequence the issue would generate great debates, both political and public.

⁵⁹ Statec, Statnews, N° 14/2011, 03 May 2011,

<http://www.statistiques.public.lu/fr/actualites/population/population/2011/05/20110503/20110503.pdf>.

⁶⁰ Statec, N° 112 Cahier Économique, *Rapport travail et cohésion sociale* (Relation between work and social cohesion), 04 October 2011, p 10, <http://www.statistiques.public.lu/fr/publications/series/cahiers-economiques/2011/112-cohesion-sociale/index.html>.

⁶¹ Law of 01 July 2011, modifying the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People and the Law of 05 May 2006, as amended, on the Right of Asylum and to Complementary Forms of Protection, *Mémorial A* N° 151, 25 July 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0151/2011A2180A.html?highlight=>.

During his 6 April 2011 State of the Nation speech,⁶² the Prime Minister mentioned international protection. In light of the increase in the number of asylum seekers in Luxembourg since late 2010, he spoke in favour of swifter procedures, particularly for nationals from “safe countries”. He mentioned the need to reinforce the various reception and lodging services, to build temporary and modular lodging infrastructures, and to distribute them throughout the country. The debate on the political responses and the reception which should be offered in light of the inflow of asylum seekers repeatedly came to the forefront during the year 2011. (Cf. Point 7.2. for details)

2011 report on asylum issues

On 1 February 2011, the Minister of Labour, Employment and Immigration summarised the main evolutions concerning asylum and immigration in 2010. He noted “an inflow of requests for asylum from Serbian nationals, mainly of Roma origin and members of the albanophone minorities” to Luxembourg. This was attributed to the elimination of the visa requirement for Serbia and Macedonia in December 2009. Analysing the figures for the years 2010 and early 2011, he concluded that the upsurge in international protection requests, which began in 2010, would continue in 2011.⁶³

A full balance of the year 2011 regarding asylum and immigration was prepared on 31 January 2012. Requests have trebled in 2011 compared to 2010, from 786 to 2,164. Over 78% of DPI come from western Balkan countries.⁶⁴

Whereas Serbia ranked second in 2010 among the main home countries of applicants (148 requests), behind Kosovo (162 requests), it rose to the top in 2011, with 947 people, *i.e.* 43.76% of the total of requests received, followed by Macedonia (20.61%), Kosovo (7.02%), and Montenegro (4.76%).⁶⁵

⁶² News article, *Déclaration du gouvernement sur la situation économique, sociale et financière du pays 2011* (Declaration of the Government on the economic, social and financial situation of the country in 2011), 06 April 2011, <http://www.gouvernement.lu/gouvernement/etat-nation/index.html>.

⁶³ News article, *Bilan 2010 en matière d’asile et d’immigration: “Afflux de demandes d’asile émanant de ressortissants de la Serbie”* (2010 Balance on asylum and immigration issues: “Inflow of requests for asylum from Serbian nationals”), 01 February 2011, http://www.gouvernement.lu/salle_presse/actualite/2011/02-fevrier/01-schmit/index.html.

⁶⁴ MAE (Ministry of Foreign Affairs), Immigration Department, Press conference, 2011 Balance, http://www.gouvernement.lu/salle_presse/actualite/2012/01-janvier/31-schmit/bilan.pdf.

⁶⁵ MAE, Refugee Division, *Statistiques concernant les demandes de protection internationale au Grand-Duché de Luxembourg jusqu’au mois de décembre 2011* (Statistics on international protection requests to the Grand Duchy of Luxembourg up to the month of December 2011), 13 January 2012.

3.3. Institutional developments concerning immigration, asylum and integration in 2011

The year 2011 saw significant institutional developments. Most of these consisted in launching the instruments and agencies called for by the Law of 16 December 2008 on the Reception and Integration of Foreigners.

2010-2014 National Action Plan on Integration and the Fight against Discrimination

Through a press release dated 9 February 2011, the Minister for the Family and Integration, Marie-Josée Jacob, presented the 2010-2014 National Action Plan on Integration and the Fight against Discrimination (*Plan d'action national d'intégration et de lutte contre les discriminations 2010-2014*).⁶⁶

The action plan is an instrument for the strategic and operational coordination of cross-cutting integration policies. (Cf. Point 4.4.2)

Reception and Integration Contract (Contrat d'accueil et d'intégration, or CAI)

Instituted by the Law of 16 December 2008 on the Reception and Integration of Foreigners in the Grand Duchy of Luxembourg,⁶⁷ the CAI was officially launched on 29 September 2011.⁶⁸

Implementation of the CAI, defined by the Grand-Ducal Regulation of 2 September 2011, is the responsibility of the Luxembourg Reception and Integration Agency (*Office luxembourgeois de l'accueil et de l'intégration*, or OLAI) of the Ministry of Family and Integration.

The CAI is an optional, mutual commitment between the State and the foreigner over 16 years of age, legally installed in Luxembourg and wishing to settle there. It is intended both for nationals of the European Union and for third-country nationals, newcomers and people who have lived in Luxembourg for years. (Cf. Point 4.4.2).

⁶⁶ *Plan d'action national d'intégration et de lutte contre les discriminations 2010-2014* (National Action Plan on Integration and the Fight against Discrimination (2010 -2014)), http://www.olai.public.lu/fr/publications/programmes-planactions-campagnes/plan/olai_plan_daction_fr.pdf.

⁶⁷ Law of 16 December 2008 on the Reception and Integration of Foreigners in the Grand Duchy of Luxembourg, [http://www.legilux.public.lu/leg/a/archives/2008/0209/2008A3156A.html?highlight=.](http://www.legilux.public.lu/leg/a/archives/2008/0209/2008A3156A.html?highlight=)

⁶⁸ Grand-Ducal Regulation of 02 September 2011 defining the application conditions and the modes of execution of the Reception and Integration Contract, <http://www.legilux.public.lu/leg/a/archives/2011/0197/2011A3584A.html>.

Renewal of national and communal consultative agencies

The Communal Consultative Commissions on Integration (*Commissions consultatives communales d'intégration*, or CCI)

The Grand-Ducal Regulation of 15 November 2011 on the organisation and operation of the Consultative Commissions on Integration abrogated the Grand-Ducal Regulation of 5 August 1989, which defined the organisation and operation of the Consultative Commissions on Foreigners.⁶⁹ Under Article 23 of the Law of 16 December 2008 on the Reception and Integration of Foreigners in the Grand Duchy of Luxembourg, a commission of this type must be constituted in every commune, whereas it was previously mandatory only in those communes with at least 20% of foreigners. Among its foreign members, there must be at least one citizen from a third country, unless no third-country national has put forth his candidacy (Article 2(2)). The launching of calls for nominations in the various communes and the subsequent installation of CCI's in the various communes is planned for early 2012.

The National Council for Foreigners (*Conseil national pour étrangers*, or CNE)

The CNE is a consultative agency tasked with studying, on its own initiative or at the Government's request, problems concerning foreigners and their integration.

On 17 June 2011, the members of the National Council for Foreigners (CNE) drew up a balance of their mandate (2007-2010), which was extended in 2011. Until 2011, the CNE consisted of 30 members, 15 of whom were representatives of Luxembourgish society while the other 15 were foreign representatives. The Law of 16 December 2008 on the Reception and Integration of Foreigners in the Grand Duchy of Luxembourg modified the composition of the CNE. The future CNE will consist of 34 members (representatives of foreigners, refugees, the SYVICOL, employers' organisations, the most representative union organisations, and civil society), while the number of representatives of foreigners will rise from 15 to 22, seven of whom must be third-country representatives. The members of the CNE will now be elected for a term of five years, whereas before the coming into effect of the Law of 16 December 2008, their mandate ended after 3 years. An individual mandate ends as soon as the foreign

⁶⁹ *Mémorial A* N° 237, 22 November 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0237/2011A4006A.html>.

representative acquires the Luxembourgish nationality or as soon as he transfers his residency outside of the country.

The Grand-Ducal Regulation defining the modes of appointment of foreigners' representatives on the National Council for Foreigners, as well as their distribution by nationality was approved on 15 November 2011.⁷⁰

Modification of the Electoral Law

The Law of 13 February 2011 modifying (1) the Communal Law of 13 December 1988, as amended, and (2) the Electoral Law of 18 February 2003, as amended⁷¹ opens the passive electorate to third-country nationals. To be a candidate in communal elections, the foreign national must document a 5-year residency on the day the candidacy is filed (and 6 months of usual residency within the commune), and be 18 years of age on the day of the elections. Third-country nationals can access the positions of burgomaster and alderman. The law confirms Luxembourgish as the working language to be used during sessions of the communal council. Council members may also express themselves in either of the other official national languages (German or French), but may not ask for an interpretation of the spoken language or a translation of written documents.

Bolstering of the staff of the Ministry's Refugee Division

To deal with the exceptional inflow of asylum seekers, notably from Serbia, the Government Council of 14 September 2011 approved the hiring of six additional temporary employees in the Refugee Division of the Directorate of Immigration, which is responsible for the registration and processing of international protection requests in Luxembourg. These employees joined the Service in January 2012.⁷²

⁷⁰ *Mémorial A* N° 236, 22 November 2011, [http://www.legilux.public.lu/leg/a/archives/2011/0236/2011A4000A.html?highlight=.](http://www.legilux.public.lu/leg/a/archives/2011/0236/2011A4000A.html?highlight=)

⁷¹ *Mémorial A* N° 29, 16 February 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0029/2011A0240A.html>.

⁷² MAE, Immigration Department, Press conference, 2011 Balance, 31 January 2012, www.mae.lu.

Opening of the Holding Centre

The Detention Centre started operating on 22 August 2011.

It is an enclosed structure; its mission is to receive and provide shelter to people who are the subject of a placement measure, in application of Article 120 of the Law of 29 August 2008 on Immigration and the Free Movement of People or of Article 10 of the Law of 05 May 2006, as amended, on the Right of Asylum and to Complementary Forms of Protection and, if applicable, to prepare them for repatriation to their home countries or their countries of origin by providing them, if needs be and depending on the circumstances, with individual psychosocial counselling by Centre staff members who have been trained specifically for this purpose. The Centre is located within the grounds of the Luxembourg airport and is placed under the authority of the Minister of Labour, Employment and Immigration. The Centre's internal security is the responsibility of the Centre's agents. Its external security is provided by Grand-Ducal Police. However, the new Detention Centre includes plans for separate sections for families and for women, and can receive up to 88 people.⁷³

⁷³ MAE, Immigration Department, Press conference, 2011 Balance, 31 January 2012.

4. REGULAR IMMIGRATION AND INTEGRATION

4.1. Economic migration

4.1.1. Specific context before 2011

In order to adapt immigration to the needs of the Luxembourg economy, the Government created an inter-ministerial think tank tasked with drafting directives and recommendations for a proactive, coherent immigration policy.

4.1.2. Developments within the national perspective 2011

Foreigners in the job market

Luxembourg's job market is a Greater Region market. It is defined by massive recourse to foreign manpower, most of which consists of multilingual non-residents.

The economic contribution of cross-border workers in Luxembourg was repeatedly debated. The fact that Luxembourg has the highest GDP per capita and greatly outdistances other European Union countries is due, in no small measure, to the contribution of border workers, which is not accounted for in this calculation, whereas GDP is calculated on the basis of the resident population.⁷⁴

Furthermore, the “employment” objective⁷⁵ of the National Reform Programme of the Grand Duchy of Luxembourg as part of the “Luxembourg 2020” strategy underlines the importance of the non-resident workforce (mostly from the Greater Region) in the job market.⁷⁶ The pool of available labour in adjacent countries – the cross-border workers – will have a non-negligible impact on the likelihood of Luxembourg achieving its objectives in employment rates.⁷⁷

⁷⁴ Statec, http://www.portrait.public.lu/fr/évolution_economie/croissance/richeesse/index.html; Le Quotidien, 21/06/2011, <http://www.lequotidien.lu/l-economie/24730.html>.

⁷⁵ European objective: “to commit to raise the employment rate of women and men aged 20 to 64 to 75%, notably through greater participation of young people, older workers, and unskilled workers, as well as through better integration of legal migrants”; *Observatoire de la Compétitivité* (Competitiveness Observatory) *Luxembourg 2020: Programme national de réforme du Grand-Duché de Luxembourg dans le cadre de la stratégie Europe 2020* (Luxembourg 2020 National Reform Programme of the Grand Duchy of Luxembourg as part of the Europe 2020 strategy), European Semester April 2011, p 21, http://www.odc.public.lu/actualites/2010/11/PNR_Luxembourg_2020/Projet_Luxembourg_2020.pdf.

⁷⁶ As of 31 March 2011, the 153,157 cross-border workers accounted for 43.8% of salaried workers.

⁷⁷ Luxembourg's employment rate objective for 2020 is finally set at 73%; Luxembourg 2020, p 14.

Over half of the country's manpower consists of immigrant workers or border workers residing in one of the adjacent countries.⁷⁸

In December 2011, there were 153,925 foreign border workers (representing 41% of total internal employment).⁷⁹ In this context, it bears stressing the differentiation between “internal employment”, which includes the employment of all people working in Luxembourg without consideration of their place of residency, and “national employment”, which only encompasses the employment of Luxembourg residents.⁸⁰

Cross-border workers in the job market: a recurrent issue

A number of studies on cross-border workers were presented in 2011 and given great resonance in the media.

A first study focused on the characteristics and determining factors of the professional mobility of Greater Region border residents.⁸¹ Several demographic and economic features were identified as influencing professional mobility within the Greater Region:

- training/educational level: positive interrelationship between higher training and the willingness to move away from one's domicile to go to work;
- sex: female cross-border workers are fewer than males;
- age: cross-border workers are, on average, younger than active residents.

⁷⁸ European Migration Network – National Contact Point Luxembourg, Satisfying Labour Demand through Migration/ *La force de l'emploi intérieur et la politique migratoire* (Domestic labour force and migratory policy), 2.1. Graph 1,2,4, <http://www.emnluxembourg.lu/type-documentation/la-force-de-1%E2%80%99emploi-int%C3%A9rieur-et-la-politique-migratoire>.

⁷⁹ Statec, *Emploi et chômage par mois 2000 – 2011* (Employment and unemployment per month 2000-2011), http://www.statistiques.public.lu/stat/TableViewer/tableView.aspx?ReportId=1146&IF_Language=fra&MainTheme=2&FldrName=3&RFPPath=92; Adem, *Bulletin luxembourgeois de l'emploi* (Luxembourger Employment Bulletin), N° 12, December 2011, p2, <http://www.statistiques.public.lu/fr/actualites/population/travail/2012/01/20120126/Bulletin-Adem-December-2011.pdf>. There are also over 10,000 international agents and civil servants.

⁸⁰ Internal employment includes foreign border residents, but not border Luxembourgers, civil servants, or agents of international institutions deemed extraterritorial. National employment includes civil servants and agents of international institutions, as well as cross-border workers who commute daily to an adjacent country.

⁸¹ Statistiques Grande Région/Statistik Grossregion, “*Qui sont les travailleurs frontaliers de la Grande Région? Caractéristiques et déterminants de la mobilité professionnelle*” (“Who are the Greater Region border workers? Characteristics and determinant features of professional mobility”), Statec Press release, 15 December 2011, <http://www.statistiques.public.lu/fr/actualites/population/travail/2011/12/20111215/index.html>.

Another study⁸² focuses on the transportation used by cross-border workers to go to work. The car remains the overwhelmingly dominant means of transportation (86%), with significant variations depending on the country of residency (90% in Germany, 88% in Belgium and 83% in France), even though the use of public transportation has seen significant growth over the last few years (from 2% to 5% for the bus and 7% to 9% for the train between 2007 and 2011), particularly with cross-border workers working in the Centre of Luxembourg.

A third study⁸³ looks into the perception of cross-border workers by the resident population. This study revealed two perception models of border residents. The first model, the “border resident threat” model, is shared by 26% of the resident population and rejected by 54% of the population; the second model, that of the “indifferent border resident”, is shared by 54% of the population and rejected by 14% of the population.

Financial assistance for higher studies and cross-border workers

Since 1 October 2010, family allowances in Luxembourg have been eliminated for young adults over 18 and replaced by a State financial assistance for higher studies accessible only to residents. Therefore, children of cross-border workers no longer receive financial assistance from the Government of Luxembourg.⁸⁴

Over 600 appeals, including all unions (ALEBA, LCGB, OGBL) and border-resident associations, have been filed with the Administrative Tribunal following refusals to grant their border members any financial assistance for higher studies.

After the complaints filed by the OGBL and LCGB,⁸⁵ the European Economic Interest Grouping “Border Europeans in Luxembourg” (*Groupement Européen d’Intérêt Economique “Frontaliers Européens au Luxembourg”* or GEIE FEL) in turn filed a

⁸² CEPS/INSTEAD, *Voiture ou transports en commun ? Comment les frontaliers se rendent-ils au travail en 2010?* (Car or public transportation? How do cross-border workers go to work in 2010?), N° 78, December 2011, p1, <http://www.ceps.lu/pdf/3/art1743.pdf>.

⁸³ Cefis, *L’Intégration au Luxembourg, Focus sur les Réseaux Sociaux, la Confiance et les Stéréotypes sur les frontaliers* (Integration in Luxembourg, Focus on Social Networks, Confidence and Stereotypes regarding Border Residents), Red N° 15, <http://www.cefis.lu/files/95d32e192389ea26c4328d1298675610-15.html>.

⁸⁴ This governmental decision was the subject of heated debate. See the 2010 Political Report on Migration and Asylum, 4.1.2, Financial Assistance from the State for higher studies, Law of 26 July 2010 modifying: (1) the Law of 22 June 2000, as amended, on financial assistance from the State for higher studies, *Mémorial A* N° 118 of 27 July 2010.

⁸⁵ <http://blog.lcgb.lu/fr/suppression-des-allocations-familiales-a-partir-de-18-ans/>;
<http://www.europaforum.public.lu/fr/actualites/2010/09/plainte-ogbl/index.html>.

complaint with the European Commission on 23 September 2010.⁸⁶ It asked the Commission to question the Grand Duchy of Luxembourg regarding the legislation in question, *i.e.* the Law of 26 July 2010 on Financial Assistance to Students, to foster a swift settlement of the dispute.

After the creation of the non-profit organisation *Solidarité Frontaliers Européens* (European Border-Residents Solidarity) on 2 September 2010 and the registration of the bylaws of the GEIE, consisting of the non-profit organisation SFE (*Solidarité Frontaliers Européens*) and the *Association des Frontaliers Au Luxembourg* (Association of Cross-Border in Luxembourg, or AFAL), on 17 September 2010, the third step in the process began.⁸⁷

The complaint, filed by the AFAL and the non-profit organisation SFE through the GEIE FEL, was introduced on 23 September 2010 at the European Commission in Brussels. A fast-track procedure, known as “pre-258 letter”, was used wherein lies the originality of their approach according to its initiators.

The president of the GEIE, Georges Gondon, stated he understood that restrictive measures were necessary because of the crisis, but he also deemed unacceptable “to opt for savings that go against European Community laws, insofar as they establish discrimination between resident and non-resident salaried workers”. In a press release of the GEIE, he explained, “We want the Law of 26 July to be confronted with European law through ad hoc proceedings. Those are the elements behind the complaint we filed with the European Commission”.⁸⁸

Unemployment rate

By late 2010, the unemployment rate of nationals had risen to 2.8%, against 5.4% for foreigners from another European Union country and 13.3% for third-country foreigners.⁸⁹ According to the ADEM, this relatively low unemployment rate among

⁸⁶ <http://www.europaforum.public.lu/fr/actualites/2010/09/plainte-geie-fel/index.html>.

⁸⁷ <http://www.europaforum.public.lu/fr/actualites/2010/09/plainte-geie-fel/index.html>.

⁸⁸ <http://www.europaforum.public.lu/fr/actualites/2010/09/plainte-geie-fel/index.html>.

⁸⁹ Cahier économique N° 112, *Rapport travail et cohésion sociale 2011* (Relation between work and social cohesion, 2011), 14 October 2011, <http://www.statistiques.public.lu/fr/publications/series/cahiers-economiques/2011/112-cohesion-sociale/index.html>.

nationals can be explained by the fact that a large proportion of nationals is occupied in sectors which are less subject to circumstantial fluctuations, such as the public and semi-public – or “protected” – sectors.⁹⁰

As of 31 August 2011, 13% (1,841) of job seekers registered with the ADEM (total: 14,141) were third-country nationals.⁹¹

Job market and ADEM reform

The Employment Administration (ADEM) was reformed. As part of this reform, the Bill to Create the Employment Development Agency was adopted by the Lower House on 15 December 2011.

The reform⁹² seeks to increase the effectiveness and quality of services through a more personalised follow-up for job seekers, and the matching of job offers and demands.

To know the job market's situation and evolution, the Employment Development Agency, in collaboration with the Central Department for Statistics and Economic Studies (*Service central de la statistique et d'études économiques*) or other competent agencies, compiles statistics on labour market fluctuations and gathers information on the free movement of workers and on work. In this same context, a Job Market Observatory was launched in November 2011; this will permit a greater understanding of the job market (*Cf.* also Point 1(a)).⁹³

⁹⁰ Cahier économique N° 112, *Rapport travail et cohésion sociale 2011* (Relation between work and social cohesion, 2011), 14 October 2011, p. 51, <http://www.statistiques.public.lu/fr/publications/series/cahiers-economiques/2011/112-cohesion-sociale/index.html>. The economic and financial crisis did not go unnoticed in Luxembourg. It resulted in a deterioration of the job market, despite the fact that Luxembourg is part of the group of European countries which, by late 2009, posted more jobs than two years before. In Luxembourg, the economic crisis did not mean, in 2009, a drop in internal employment, but rather a marked deceleration in employment growth, which only grew at about 1%. However, the various economic sectors showed significant disparities, with some of them featuring a decrease in the workforce. See details in: European Migration Network-National Contact Point Luxembourg, 2010 Political Report on Migration and Asylum 3.1, <http://www.emnluxembourg.lu/PUBLICATIONS/policy-reports>.

⁹¹ ADEM, 27 December 2011, Internal Document.

⁹² The Bill to Create the Agency for Employment Development, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=6232>.

⁹³ News article, Nicolas Schmit “*Regagner l’initiative sur le marché de l’emploi*” (“Regaining the initiative in the job market”), 30 June 2011, http://www.gouvernement.lu/salle_presse/actualite/2011/06-juin/30-adem/index.html.

Luxembourg nationals and nationals of another Member State,⁹⁴ as well as family members as defined in Article 12 of the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People,⁹⁵ can register as job seekers with the Employment Development Agency. Third-country nationals who hold the status of long-term residents or have a valid residency permit may also register.⁹⁶

Article 42 of the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People specifies the conditions a third-country national must meet to obtain a residency permit to exercise a paid activity.⁹⁷ This Article calls for the systematic consultation of the ADEM and the Consultative Commission for Salaried Workers (*Commission consultative pour travailleurs salariés*, or CCTS) to verify whether the listed conditions (1 to 4) are met. This Commission is heard before any decision is made to issue or renew a residency permit for salaried worker, or to issue a work permit, save in those cases where the Law stipulates otherwise.⁹⁸

The Bill to create the Employment Development Agency introduces a new procedure concerning the verification of the market test and the Community hiring priority. It does away with the referral to the ADEM and the systematic consultation of the CCTS. Only

⁹⁴ Or of another State party to the Agreement on the European Economic Area or of the Swiss Confederation.

⁹⁵ *Mémorial A* N° 138, 10 September 2008, <http://www.legilux.public.lu/leg/a/archives/2008/0138/index.html>.

⁹⁶ Art. Art. L. 622-5. (1), N°3232(10) Commission Report(s): Labour and Employment Commission, 09 December 2011, p 7, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6232#>.

⁹⁷ “(1) Residency – and the work permit, where the latter is required – are granted by the Minister to the third-country national to exercise a paid activity, as defined in Article 3, after having verified whether, in addition to the conditions set forth in Article 34, the following conditions are met:

1. the hiring priority enjoyed by certain workers according to European or national provisions is not affected;
2. the exercise of the activity in question serves the country’ economic interests;
3. he has the professional qualifications required to exercise the activity in question.
4. he has a signed work contract for a position which was registered as vacant with the Agency for Employment Development in the manner and under the conditions set forth in the relevant legislation in effect.”

⁹⁸ Article 150(1): As per Article 42, Paragraph (2), a Consultative Commission for Salaried Workers is hereby created, the opinion of which shall be considered prior to any decision to grant or renew the residency or work permit of a salaried worker, except in those cases deemed exceptional under this Law. Article 150(2): The commission may also issue opinions of a general scope for the Minister’s consideration on topics related to the use of foreign labour in the Grand Duchy of Luxembourg and its impact on the labour market.

(3) The makeup and operation of the Commission are defined by Grand-Ducal Regulation.

in those cases where the Minister estimates that the listed conditions (1 to 4) have not been met does he refer it to the CCTS.⁹⁹

In the interest of maintaining full employment and of analysing the job market, and in light of the decisions on hiring foreign salaried workers, every position must inevitably be declared to the Employment Development Agency.¹⁰⁰ If, within a term of three weeks (from the declaration), the Employment Development Agency has referred no candidate to the employer who satisfies the profile requirements of the declared position, the employer may ask for an attestation certifying his right to hire, for this position, the person of his choice, without prejudice to the provisions of the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People.¹⁰¹

On 10 February 2011, the Government Council adopted the Grand-Ducal Regulation proposal seeking to effect various adjustments to the Grand-Ducal Regulation of 5 September 2008 defining the terms and conditions under which a residency permit may be issued to a salaried worker who is a third-country national. These adjustments became necessary to bring the Grand-Ducal Regulation in line with the Law of 18 January 2012 to create the Employment Development Agency, as the latter introduced a new procedure for employers' declarations of vacant positions and eliminated the systematic recourse to the Consultative Commission for Salaried Workers called for under Article 42 of the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People.

Through the ADEM reform,¹⁰² a Job Market Observatory, permitting a greater understanding of how the job market operates and with up to 50% of co-financing from

⁹⁹ Article 42(2), Bill to Create the Agency for Employment Development, 6232/10, 09 December 2011, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=6232#>, pending Law of 18 January 2012, *Mémorial A N° 11*, 16 January 2012, <http://www.legilux.public.lu/leg/a/archives/2012/0011/2012A0168A.html?highlight=>.

¹⁰⁰ Article L. 622-4.(1), Commission Report(s): Labour and Employment Commission, 09 December 2011, p 6, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6232#>.

¹⁰¹ Article L. 622-4.(4), Commission Report(s): Labour and Employment Commission, 09 December 2011, p 7, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6232#>.

¹⁰² The ADEM reform was adopted by the Lower House on 15 December 2011. The reform seeks to increase service effectiveness and quality through a more personalised follow-up for job seekers.

the European Social Fund, was launched in November 2011.¹⁰³ The main objectives of this Observatory are to analyse the job market; develop forecasts; conduct longitudinal studies and studies on the impact of immigration; and establish job-market indicators that will permit a follow-up of pro-employment measures¹⁰⁴ (Cf. Point 1(d)). The first conference of the Job Market Observatory – RETEL (*Réseau d'étude sur le marché du travail et de l'emploi*, or Network of Labour Market and Employment Studies) – took place on 22-24 November 2011.¹⁰⁵

Fit4job

The “fit4job” project, launched in 2010, illustrates the Government’s active employment policy. Based on a collaborative effort between the public and private sectors, the project seeks to assist those who have lost their jobs while taking into consideration the hiring needs of the economy’s various sectors. The point here is to draw up a diagnosis of job seekers registered with the ADEM, which diagnosis breaks down in three sections:

- a diagnosis of the technical skills (defined jointly with the employers of the various business segments);
- a psychogramme;
- an evaluation and feedback interview.

The “fit4job fit4GénieCivil” programme was launched in 2011.¹⁰⁶ This latest project was tailored specifically for unskilled job seekers. Over the coming years, plans call for this same concept to be adapted to the trade and health sectors.¹⁰⁷

¹⁰³ News article, Nicolas Schmit, “*Regagner l’initiative sur le marché de l’emploi*” (“Regaining the initiative in the job market”), 30 June 2011, http://www.gouvernement.lu/salle_presse/actualite/2011/06-juin/30-adem/index.html.

¹⁰⁴ *Observatoire de la Compétitivité* (Competitiveness Observatory), *Luxembourg 2020: Programme national de réforme du Grand-Duché de Luxembourg dans le cadre de la stratégie Europe 2020* (Luxembourg 2020 National Reform Programme of the Grand Duchy of Luxembourg as part of the Europe 2020 strategy), European Semester April 2011, p 21, http://www.odc.public.lu/actualites/2010/11/PNR_Luxembourg_2020/Projet_Luxembourg_2020.pdf.

¹⁰⁵ News article, *Première conférence de l’Observatoire de l’emploi: Mieux connaître le marché de l’emploi luxembourgeois* (First conference of the Employment Observatory: Knowing Luxembourg’s job market better), 22-24 November 2011, http://www.gouvernement.lu/salle_presse/actualite/2011/11-novembre/22-conference-emploi/index.html.

¹⁰⁶ The programme comes on the heels of the “fit4financial markets” pilot project, restricted to the financial sector, and the “fit4job 45+” project, seeking to provide assistance to people aged 45 or more who had lost their jobs and were at risk of entering long-term unemployment, <http://www.fse.public.lu/projets/Operations20072013/2011-2013/index.html>.

This same concern for developing skills to ensure greater adequacy between labour supply and demand has led the Government to bolster professional training. Thus it is that the Government had already signed, in 2010, an agreement with the UEL (*Union des Entreprises Luxembourgeoises*, or Union of Luxembourg Enterprises) entailing an increased State subsidy rate.¹⁰⁸ (Cf. also Point 4I(g)).

All of these programmes and projects are intended for residents, EU nationals and third-country salaried workers.

*Law on Income for Handicapped Workers*¹⁰⁹

The “handicapped worker” classification may be applied to Luxembourg-EU- and third-country nationals¹¹⁰ “who work for an enterprise legally established on Luxembourgish territory or who have been granted the right to stay in the territory of the Grand Duchy of Luxembourg; who are domiciled therein; who effectively reside therein; and who, while they are available for employment, meet the conditions for exercising a professional activity within the Grand Duchy” (Article 1(a)). The requirement to register as a job seeker with the ADEM’s placement office has been eliminated. The

¹⁰⁷ *Observatoire de la Compétitivité* (Competitiveness Observatory), *Luxembourg 2020: Programme national de réforme du Grand-Duché de Luxembourg dans le cadre de la stratégie Europe 2020* (Luxembourg 2020 National Reform Programme of the Grand Duchy of Luxembourg as part of the Europe 2020 strategy), European Semester April 2011, p 23, http://www.odc.public.lu/actualites/2010/11/PNR_Luxembourg_2020/Projet_Luxembourg_2020.pdf. Response of The Hon. Nicolas Schmit to Parliamentary Question N° 1298 of 04 March 2011, 04 April 2011, www.chd.lu; The second cycle of the “fit4financial markets” project, which took place during the months of January to March 2011, covered 31 people who are currently going through their interviews and participating in feedback sessions on their personality tests.

As for the “fit4job 45+” project, 31 people participated in the second cycle held during the months of January to March 2011. At that time, 10 of the 37 people registered in the first training session (in 2010) were able to re-enter the job market.

¹⁰⁸ *Observatoire de la Compétitivité* (Competitiveness Observatory), *Luxembourg 2020: Programme national de réforme du Grand-Duché de Luxembourg dans le cadre de la stratégie Europe 2020* (Luxembourg 2020 National Reform Programme of the Grand Duchy of Luxembourg as part of the Europe 2020 strategy), European Semester April 2011, p 7. http://www.odc.public.lu/publications/pnr/2011_PNR_Luxembourg_2020_avril_2011.pdf; News article, *Accord entre le Gouvernement et l’UEL* (Agreement between the Government and the UEL), 15 December 2010, An agreement was signed on 15 December 2010 between the Government and the employers’ organisation seeking to improve the competitiveness of Luxembourg’s economy and preserve the high level of job creation in Luxembourg.

¹⁰⁹ Law of 16 December 2011 modifying (1) the Law of 12 September 2003, as amended, regarding handicapped people; (2) the Labour Code; and (3) the Law of 31 July 2006, as amended, introducing a Labour Code, *Mémorial A* N° 272 of 27 December 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0272/a272.pdf>.

¹¹⁰ As well as to nationals of a Member State of the EEE and of the Swiss Confederation, to people recognised as stateless on the basis of the Convention Relating to the Status of Stateless Persons signed in New York on 28 September 1954, and to refugees in the sense of the Convention Relating to the Status of Refugees signed in Geneva on 28 July 1951.

requirement of at least five years' residency over the previous twenty years (Article 1(c)) applies only to third-country nationals¹¹¹ who are not family members of a Luxembourgish national, an EU national, or a national of another Member State of the EEE or of the Swiss Confederation.

Recognition of Qualifications and Accreditation of Prior Learning (VAE)

The issue of the recognition of qualifications and diplomas obtained abroad continues to be cause for concern.

The resort to foreign labour or to labour from Luxembourg's neighbouring countries constitutes a structural dimension of the job market. As an example, the health sector bears mentioning: fewer than 40% of paramedical professionals in Luxembourg are Luxembourg nationals.¹¹² The shortage of staff trained in Luxembourg shows the need to recognise qualifications and diplomas acquired abroad.

The Accreditation of Prior Learning procedure (VAE)¹¹³ has been in operation since the spring of 2010. As of 13 September 2011, 455 admissibility dossiers – the first step in the procedure – had been introduced; 428 were deemed receivable. 108 contents-validation dossiers (the second step in the procedure) were analysed by the relevant commissions; 21 candidates received full validation; 37, partial validation; and 50 were rejected. Full and partial validations involved:

- 22 technical and professional aptitude certificates;
- 19 technical high school diplomas;
- 7 proficiency certificates;
- 10 technician's diplomas.

¹¹¹ People who are neither stateless nor refugees.

¹¹² Considering the low number of graduates leaving the Technical High School for Health-Care Professionals (*Lycée technique pour professions de santé*, or LTPS), www.anil.lu.

¹¹³ The Accreditation of Prior Learning (*Validation des acquis de l'expérience*, or VAE) was introduced with the professional training reform: it allows professional or extraprofessional experience to be valued by certifying it. Each individual with at least three years' practice in the activity may henceforth file a request with the MENFP. If he meets the conditions, he may obtain full or partial credit for a technical and professional initiation certificate (*certificat d'initiation technique et professionnel*, or CITP); a manual ability certificate (*certificat de capacité manuelle*, or CCM); a technical and professional aptitude certificate (*certificat d'aptitude technique et professionnelle*, or CATP); a proficiency certificate (*brevet de maîtrise*); a technician's diploma (*diplôme de technicien*, or DT); or a diploma.

*Reform of the right of domicile*¹¹⁴

The Law of 2 September 2011 regulating access to the professions of craftsman, tradesman, industrialist, and to certain liberal professions¹¹⁵ facilitates access to a series of independent activities by taking professional experience into greater consideration. Thus, should he fail to meet qualification requirements (diplomas, certificates), a job seeker may still have his three years' professional experience recognised in lieu thereof, allowing him access to the desired profession. In business, the Law of 2 September 2011 revalorises, on the one hand, CATP/DAP basic training, which is sufficient for access to the profession, and on the other hand, professional experience (3 years' worth), whatever the nature of this occupation might be. In crafts, while the requirement of a proficiency certificate for "A-list" activities/main professions is maintained, new equivalency options are created, particularly through the recognition of professional experiences. Access to secondary "B-list" activities/professions is made easier for people lacking a DAP/CATP: 3 years' professional experience in the related branch no longer is the essential requirement it previously was in managerial functions.¹¹⁶

Attracting Highly-qualified persons

a) Debates surrounding the introduction of the "European Blue Card"

The Law of 8 December 2011, modifying the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People¹¹⁷ transposed Directive 2009/50/CE,¹¹⁸

¹¹⁴ Law of 02 September 2011 regulating access to the professions of craftsman, tradesman, industrialist, and to certain liberal professions,

<http://www.legilux.public.lu/leg/a/archives/2011/0198/2011A3602A.html>.

¹¹⁵ *Mémorial A* N° 198, 22 September 2011,

<http://www.legilux.public.lu/leg/a/archives/2011/0198/2011A3602A.html>.

¹¹⁶ Article 12 (3): As regards crafts, obtainment of a proficiency certificate for A-type activities (main professions) shall be maintained. However, new equivalencies are considered: – for holders of a DAP/CATP who have worked for at least 6 years in managerial functions in the A-list crafts activity for which the authorisation is requested, or in an essential part thereof; – for craftsmen who hold a permit to take up permanent residency for the exercise of an activity requiring a proficiency certificate, if they have worked in an essential part of a related crafts activity for 3 years.

Access to B-type activities (secondary professions) for people without a DAP or CATP is made easier: 3 years' professional experience is no longer a mandatory requisite.

In the absence of a DAP covering the activity in question, the professional qualifications to access a B-list profession (secondary professions) are recognised for those applicants who can document 3 years' professional practice + knowledge in company management.

¹¹⁷ *Mémorial A* N° 19, 03 February 2012.

¹¹⁸ Directive 2009/50/CE of the Council, 25 May 2009 establishing entry and stay conditions for third-country nationals for highly-qualified employment.

the so-called “European Blue Card” directive, into national law. (Cf. Points 10.1 and 10.2).

Adoption of this law did not generate debate outside of the legislative process.

The main points of concerns formulated during the legislative process are:

The Council of State¹¹⁹ is mostly concerned with Luxembourg’s attractiveness to highly-qualified people. The question arises as to whether the European Blue Card can compete against the USA’s green card, when the United States impose no remuneration threshold and grants full and immediate mobility throughout their territory, which is not the case for the Blue Card. Specifically, it fears that limiting mobility to the issuing state for the first 18 months following its issuance hampers Luxembourg, which suffers from a greater shortage of highly-qualified labour than other European countries.

The Council of State applauds the legislators’ choice to grant, at the end of the two-year period, access to all highly-qualified jobs rather than maintaining the restriction to those professional activities for which the applicant was admitted. On the other hand, it regrets that Luxembourg should have adopted a fixed two-year validity period for the permit, when the Directive sets the card’s validity at between one and four years. In a competitive situation, it would have been more appropriate to set the term to 3 years.

The Chamber of Commerce¹²⁰ shares this last concern and asks for a Blue Card with a four-year validity.

The Chamber of Salaried Workers¹²¹, unlike the Chamber of Commerce, does not support the current project. It calls for a prior circumstanced evaluation throughout the Member States of the European Union to document the need to resort to third-country nationals.

¹¹⁹ *Avis du Conseil d’État* (Opinion of the Council of State), 11 October 2011, 6306/02, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6306>.

¹²⁰ *Avis de la Chambre de Commerce* (Opinion of the Chamber of Commerce), 22 August 2011, 6306/01, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6306>.

¹²¹ *Avis de la Chambre des Salariés* (Opinion of the Chamber of Salaried Workers), 11 October 2011, 6306/03, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6306>.

b) Impact of the Tax Authorities' instructions on tax incentives for the highly qualified

In order to increase the attractiveness of Luxembourg, the Tax Authorities implemented, on 31 December 2010, a specific tax regime for highly-qualified expatriates.¹²² As of 1 January 2011, the new tax provisions apply to certain expenses borne by the employer as part of the hiring or expatriation, and so long as they do not exceed a reasonable amount (hence the non-recurrent charges related to the move to Luxembourg, lodging expenses during the residency in Luxembourg, and schooling expenses for children, as well as compensation for the difference in tax burdens between Luxembourg and the country of origin).¹²³ Between 1 January and 3 October 2011, 49 requests were filed with the Tax Authorities; 23 requests have received a favourable decision.¹²⁴

c) "E-book for Expatriates Luxembourg 2011" ¹²⁵

This electronic book is intended for expatriates currently establishing themselves or recently established in Luxembourg, and provides an overview of Luxembourg's fiscal system and information on tax planning opportunities.

d) Access to certain restricted professions

d1) The notarial profession

The Bill modifying the Law of 9 December 1976, as amended, on the organisation of the notarial profession was introduced in the Lower House on 27 September 2011. The law was adopted on 15 December 2011.¹²⁶

Following the 24 May 2011 decision of the Court of Justice of the European Union, which held that by "imposing a nationality requirement for access to the notarial

¹²² The bill applies to (1) highly-qualified salaried workers who, while they normally work abroad, are assigned to the Luxembourg territory by an international group to temporarily exercise a paid activity in an entity belonging to the same group, and (2) highly-qualified salaried workers recruited abroad by a Luxembourg enterprise to temporarily exercise a paid activity in Luxembourg. SGG Newsletter, February 2011, *Nouvelles mesures fiscales pour le Luxembourg en 2011* (New fiscal measures for Luxembourg in 2011), http://www.sgg.lu/sites/default/files/SGG_Newsletter_%20201102_FR_0.pdf.

¹²³ *Régime fiscal des salariés hautement qualifiés et spécialisés* (Tax regime of highly-qualified and specialised salaried workers), 11 April 2011, Joël de Marneffe, Elisabeth Conrad, SD Worx S.A., <http://www.lesfrontaliers.lu/edito-6538-regime-fiscal-des-salaries-hautement-qualifies-et-specialises.html>.

¹²⁴ Answer by The Hon. Luc Frieden, Minister of Finance, to Parliamentary Question N° 1698 on the fiscal advantages in favour of highly-qualified salaried workers, www.chd.lu.

¹²⁵ <http://www.gtflux.lu/index.php?id=19>.

¹²⁶ *Mémorial A* N° 274, 27 December 2011.

profession, the Grand Duchy of Luxembourg has failed to comply with the obligations that are incumbent upon it under Article 43 EC”,¹²⁷ the bill eliminates the Luxembourgish nationality requirement for access to the notarial profession, which is now open to nationals of the EU Member States. At the same time, the bill introduces a linguistic condition for the appointment of a notary by demanding that each notary and notary candidate adequate knowledge of the country’s three administrative and judicial languages (German, French, Luxembourgish), in accordance with the Law of 24 February 1984 on the language regime.¹²⁸ It was adopted on 15 December 2011.

D2) Legal profession

The Law of 16 December 2011 on the exercise of the legal profession as a moral person¹²⁹ allows lawyers to associate under any form of partnership,¹³⁰ including the sole proprietorship corporation. On the one hand, this modification allows lawyers exercising as a partnership in their country of origin to establish themselves in Luxembourg without having to abandon or modify the legal form under which they exercised in their home countries¹³¹. On the other hand, lawyers established in Luxembourg as moral persons may exercise in another Member State under the same form so long as this Member State allows lawyers to associate under the form of a moral person. Luxembourgish attorneys may also associate themselves to a moral person incorporated under foreign law.

¹²⁷ Court of Justice of the European Union, Press release N° 50/11, Judgments in cases C-47/08, C-50/08, C-51/08, C-53/08, C-54/08, C-61/08 and C-52/08, 24 May 2011,

<http://curia.europa.eu/jcms/upload/docs/application/pdf/2011-05/cp110050fr.pdf>.

¹²⁸ Bill modifying the Law of 09 December 1976, as amended, on the organisation of the notarial profession,

<http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6333#>.

¹²⁹ Law of 16 December 2011 on the exercise of the legal profession as a moral person, *Mémorial A* N° 278, 30 December 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0278/a278.pdf>.

¹³⁰ As set forth in Article 2 of the Law of 10 August 1915 concerning commercial partnerships, *Mémorial A* N° 90, 30 October 1915, <http://www.legilux.public.lu/leg/a/archives/1915/0090/1915A0925A.html>.

¹³¹ At the communal level, Directive 98/5/CE, intended to facilitate the permanent exercise of the legal profession in a Member State other than that in which the qualification was acquired, also makes allowance for lawyers to practise their profession as a law firm; therefore, adapting our laws to this reality is in the interest of freedom of establishment (Article 8), <http://eur-lex.europa.eu/LexUriServ/site/fr/consleg/1998/L/01998L0005-20070101-fr.pdf>.

Finally, lawyers organised as moral persons under the laws of a third country may also exercise in Luxembourg, as long as they can prove being authorised to practise the legal profession in their country of origin.¹³²

Attracting researchers

The “ATTRACT” and “PEARL” programmes – research-financing programmes implemented by the National Research Fund (*Fonds National de la Recherche*, or FNR) – seek to attract foreign researchers (third-country and EU nationals) to Luxembourg, particularly by offering possibilities to promising researchers in the early stages of their careers. The FNR plans to invest 13.7 million Euros for the 2011-2013 period.¹³³

The total planned investment for AFR projects (research-training assistance programme) for the 2011-2013 period stands at 55 million Euros. Nationally, the AFR remains the main instrument to support the training of young researchers at the doctoral and postdoctoral levels. The granting of assistance in this context is contingent on the existence of a work contract between the researcher being trained and the hosting entity.¹³⁴

Concurrently with these programmes, the Government wishes to develop a growth-promoting environment for research that would promote researchers’ career and mobility outlooks (both international and cross-industry). To this end, the Government intends to develop, after consulting public research institutions, a series of coherent measures targeting the recruitment, training, skills and career outlooks of researchers (third-country and Community nationals).¹³⁵

¹³² Bill concerning the exercise of the legal profession as a moral person, Document 5660B/11, http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=5660B&backto=/wps/portal/public/!ut/p/c/0/04_SB8K8xLLM9MSSzPy8xBz9CP0os3gXI5ewIE8TIwN302BXA6Og0CDPIF8TY3cfY_2CbEdFAFroNn8!/#.

¹³³ 3.8 million for the 2008-2011 period.

¹³⁴ <http://www.fnr.lu/en/AFR-Grants/AFR-in-Brief>. During the 2008-2010 period, the FNR has supported some 600 projects totalling 6.4 million Euros.

¹³⁵ *Observatoire de la Compétitivité* (Competitiveness Observatory), *Luxembourg 2020: Programme national de réforme du Grand-Duché de Luxembourg dans le cadre de la stratégie Europe 2020* (Luxembourg 2020 National Reform Programme of the Grand Duchy of Luxembourg as part of the Europe 2020 strategy), European Semester April 2011, p 29, http://www.odc.public.lu/actualites/2010/11/PNR_Luxembourg_2020/Projet_Luxembourg_2020.pdf.

“Researcher” residency permits for third-country nationals
(1st issuance, 23 May to 31 December 2011)¹³⁶

Researcher				
Nationality	Total	3-6 months	6-12 months	> 12 months
Total	22	0	4	18
Egyptian	1	0	0	1
American	1	0	0	1
Belarussian	1	0	0	1
Canadian	2	0	0	2
Chinese	4	0	2	2
Indian	3	0	0	3
Japanese	2	0	1	1
Russian	2	0	0	2
Serbian	1	0	0	1
Turkish	1	0	1	0
Ukrainian	2	0	0	2
Vietnamese	2	0	0	2
Delivered permits (Jan to May)	Delivered permits (May to Dec)		Total 2011	
7	22		29	

Directorate of Immigration, 2012

4.1.3. Developments from the EU perspective

Transposition of the “European Blue Card” Directive into national law

The Law of 8 December 2011, modifying the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People¹³⁷ transposed Directive 2009/50/CE¹³⁸ into national law. The law was adopted on 17 November 2011.¹³⁹

While the Law of 29 August 2008 on Immigration and the Free Movement of People already permitted the recruitment of highly-qualified workers without subjecting them to the usual practice applicable to salaried workers, notably as regards verification of the Community hiring priority and the review by the Consultative Commission for Salaried

¹³⁶ Only those residency permits issued during the period between 23 May and 31 December are broken down by nationality.

¹³⁷ *Mémorial A N° 19*, 03 February 2012.

¹³⁸ Directive 2009/50/CE of the Council, 25 May 2009, establishing entry and stay conditions for third-country nationals for highly-qualified employment.

¹³⁹ Dispensation of the second constitutional vote by the Council of State on 24 November 2011, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6306>.

Workers, the Law of 8 December 2011 implemented certain modifications. It brings new modifications to the mechanism concerning the entry and stay conditions for third-country nationals for the purpose of highly-qualified employment. It creates a residency permit known as the “European Blue Card”, which will be valid for a period of 2 years, *i.e.* for the term of the work contract, plus three months if the term of the contract is less than two years.

Applicants who meet the conditions are granted immediate access to the job market, as Luxembourg did not make use of the option granted by Article 8(2) of the Directive to “verify whether the vacant position might not be filled by domestic or Community labour, by a third-country national already in possession of a valid residency permit in the Member State in question and already a member of the labour market of this Member State under Community or domestic laws, or by a long-term resident – EC”.

After 18 months’ legal residence in a first Member State, third-country nationals with a “Blue Card” may travel to another Member State for a highly-qualified position there.

To do so, they must file a request for a European Blue Card in the new Member State. The modification to the law makes it necessary to adapt two Grand-Ducal Regulations. The Government Council of 2 December 2011¹⁴⁰ approved the Grand-Ducal Regulation proposal modifying the Grand-Ducal Regulation of 26 September 2008 defining the minimum level of remuneration for a highly-qualified worker and the Grand-Ducal Regulation of 5 September 2008, as amended, defining the resource and lodging criteria set forth in the Law of 29 August 2008 on Immigration and the Free Movement of People.

The first Grand-Ducal Regulation proposal calls for adapting the minimum remuneration level of highly-qualified workers.¹⁴¹ This amount corresponded until now to thrice the amount of the minimum social wage for unskilled workers. In the future, this threshold will be set at one-and-a-half times the gross average yearly salary, except for certain cases. Indeed, as regards employment in professions belonging to main

¹⁴⁰ http://www.gouvernement.lu/salle_presse/conseils_de_gouvernement/2011/12-decembre/02-conseil/index.html#5.

¹⁴¹ According to Article 45 of the Law of 29 August 2008 on Immigration and the Free Movement of People, this level must be set by Grand-Ducal Regulation.

groups 1 and 2 of the CTP (International Standard Classification of Occupations),¹⁴² the remuneration threshold is set by derogation to the general principle of 1.2 times the gross average yearly salary. The text proposed to the Government Council then specifies how the resources of the European Blue Card holder are evaluated.¹⁴³

“Highly-Qualified Worker” residency permits¹⁴⁴
(1st issuance, 23 May to 31 December 2011)

Nationality	Total	for: 3-6 months	for: 6-12 months	for >12 months
US	19	0	0	19
Armenian	1	0	0	1
Australian	1	0	0	1
Brazilian	4	0	0	4
Chinese	1	0	0	1
Indian	11	0	1	10
Jamaican	1	0	0	1
Japanese	6	0	0	6
Lebanese	1	0	0	1
Mexican	2	0	0	2
Russian	5	0	0	5
South Korean	1	0	0	1
Turkish	1	0	0	1
Ukrainian	1	0	0	1
Venezuelan	1	0	0	1
Total	56	0	1	55

Directorate of Immigration, 2012

“Highly-Qualified Worker” residency permits

Delivered permits (Jan to May)	Delivered permits (May to Dec)	Totals 2011
46	56	102

Directorate of Immigration, 2012

¹⁴² ILO, Resolution on the update of the International Standard Classification of Occupations, p3, <http://www.ilo.org/public/french/bureau/stat/isco/docs/resol08.pdf>.

¹⁴³ Commission Report(s): Commission for Foreign and European Affairs, Defence, Cooperation and Immigration (10.11.2011), p 3-5, http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletImpl/?path=/exp ort/exped/sexpdata/Mag/151/039/105308.pdf.

¹⁴⁴ Total of “highly-qualified worker” residency permits issued (first issuance + renewal) in 2011: 186.

Access of Bulgarian and Romanian citizens to the labour market

The Government Council of 09 December 2011¹⁴⁵ decided to extend until 1 January 2014 its earlier decision seeking to impose on Bulgarian and Romanian workers the obligation to obtain a permit to access the job market. Its decision is based on the allowed derogation to the principles of free movement for workers in the act of accession of Bulgaria and Romania. The Government also decided not to apply the restriction to the job market for highly-qualified workers, researchers and trainees.¹⁴⁶

Work authorisations for Bulgarian and Romanian nationals (01 January to 31 December 2011)

Nationality	Number
Bulgarian	14
Romanian	134
Total	148

Directorate of Immigration, 2012

Research

The “MOC Luxembourg” project instituting a Mobility Centre in Luxembourg was carried out from 1 May 2008 to 3 October 2011. Generally speaking, this project seeks to help foreign researchers coming to Luxembourg to organise their stay by providing complete information on every aspect of the research stay through a web portal linked to the portal on European researcher mobility. The MOC Luxembourg project clearly identified the main problems for researchers who wish to come to Luxembourg: among the problems reported by researchers, the issuance of visas and residency permits should be mentioned, as well as the lack of lodging.¹⁴⁷ Furthermore, the project has trained people to answer researchers’ questions.

¹⁴⁵ Decision of the Government in Council, 09 December 2011, on access to Luxembourg’s labour market for Bulgarian and Rumanian citizens, *Mémorial A* N° 275, p 4921.

¹⁴⁶ These categories are in addition to two other categories that are not subject to derogation to the principles of free movement, to wit,

- those Bulgarian and Rumanian salaried workers who are family members of a EU citizen who, in turn, is not subject to this authorisation have the right to access the job market without having to obtain a permit;
- Bulgarian and Rumanian students whose main activity is studying in a certified public or private teaching establishment in Luxembourg are allowed to exercise, on a part-time basis, a paid activity without having to obtain a work permit.

¹⁴⁷ European Commission, Cordis,
http://cordis.europa.eu/fetch?CALLER=MSS_LU_OFFR_FR&ACTION=D&DOC=2&CAT=OFFR&QUERY=013412279296:5e91:234210ac&RCN=6508.

Residency permits for workers
(1st issuance in 2011)

Residence permit	Total	Jan to Dec 2011	May to Dec 2011
Seconded worker	17	6	11
Highly-qualified worker	102	46	56
Independent worker	23	9	14
Salaried worker	241	74	167
Transferred worker	137	50	87
Retired worker	0	0	0

Directorate of Immigration, 2012

Residency permits for workers
(1st issuance + renewal in 2011)

Residence permit	Number
Seconded worker	21
Highly-qualified worker	186
Independent worker	53
Salaried worker	1556
Transferred worker	282
Retired worker	72

Directorate of Immigration, 2012

4.2. Family reunification

4.2.1. Specific context before 2011

The family reunification of third-country nationals is governed by the law of 29 August 2008 on Immigration and the Free Movement of People and by the Grand-Ducal Regulation of 5 September 2008 defining the resource and lodging criteria set forth in the law.¹⁴⁸ Article 72(6) of the Law calls for a maximum term of 9 months within which a decision on a family-reunification request must be made.¹⁴⁹

¹⁴⁸ *Mémorial A* N° 138, 10 September 2008,

<http://www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf#page=36>.

¹⁴⁹ The term is 9 months for third-country nationals who are not highly-qualified salaried workers and who meet the conditions set out by the law (one year's residency, document their ability to support the member(s) of their family, have insurance coverage). Where the applicant is a Luxembourg national or a member of the European Union, the term is three months.

4.2.2. Developments within the national perspective 2011

Expressed preoccupations with regard to the enlargement of the circle of family members to unmarried partners

The Law of 8 December 2011 contains legislative modifications that are unrelated to the transposition into national law of the “European Blue Card” Directive.

Given the provision that seeks to include unmarried partners to the circle of family members of the Union provided they can prove a lasting relationship, the Council of State expressed the following concern: “it is nevertheless hoped that expanding the circle of “family members” in the interpretation as given by the European Commission, will not be the source of abuse that could thwart the clear will of controlled immigration” and that “the review of the sustainability of a relationship, its intensity, its age and its stability will create a significant administrative workload significant be an often random exercise”¹⁵⁰. (See under point 4.2.3)

Access to the job market

As regards access to the job market, third-country nationals who come to Luxembourg as family member of a third-country national are required to obtain a work permit. The job-market test applies to the third-country national arriving in Luxembourg through a family reunification, but only for the first year of his stay, after which the market test is no longer performed.

Under the Bill to create the Employment Development Agency, third-country nationals with a valid residency permit offering them the perspective of a long-term stay may register with the ADEM.¹⁵¹ Therefore, family members holding a family-member residency permit may also benefit from this provision.

¹⁵⁰ *Avis du Conseil d’État, projet de loi n°6306/02* (Opinion of the Council of State, Bill N° 6306/02) of 11 October 2011, p. 3, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6306>.

¹⁵¹ Bill: (1) to create the Agency for Employment Development; (2) to modify the Labour Code; the Law of 22 June 1963, as amended, defining the salary system of the State’s civil servants; the Law of 30 June 1976, as amended, (1) creating an employment fund, and (2) regulating the grant of full unemployment benefits; the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People; and (3) to abrogate the Law of 21 February 1976, as amended, on the organisation and operation of the

Integration

The Law of 16 December 2008 on the Reception and Integration of Foreigners in the Grand Duchy of Luxembourg¹⁵² makes no distinction between different “categories” of immigrants; rather it applies equally to all foreigners legally residing within Luxembourg territory. Thus, all foreigners may have access to the integration measures, including specifically those defined under the National Action Plan on Integration and the Fight against Discrimination 2010-2014 and the Reception and Integration Contract (CAI).¹⁵³ Like any other foreigner, reunited family members may therefore benefit from the services offered by the action plan and the CAI (*Cf.* Point 4I(g)).

As of 2 January 2012, of the 183 signatories to the CAI, 19 people enjoy a family-member status (4 for a Luxembourg sponsor; 13 for an EEE, CH sponsor; and 2 for a third-country sponsor).¹⁵⁴

Mediator's dossiers on family reunification

A number of dossiers on family reunification were referred to the mediator. In general terms, the slowness with which requests are processed and the lack of information regarding the status of the dossiers was questioned.¹⁵⁵

One case involved a family-reunification application by a third-country national who was suffering from advanced cancer and therefore hoped for an answer as soon as possible, to be at peace regarding his undocumented situation in the territory. Finally, the person in question was granted a residency permit for private reasons after a declaration of assumption of responsibility was filed by a family member.

Another case involved a Ukrainian woman who, having married a Luxembourg national in 2003, had been granted an authorisation as a family member until 2007, when the

Employment Administration and create a National Employment Commission,
<http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=6232>.

¹⁵² Law of 16 December 2008 on the Reception and Integration of Foreigners,
<http://www.legilux.public.lu/leg/a/archives/2008/0209/a209.pdf>.

¹⁵³ The CAI was officially launched on 29 September 2011.

¹⁵⁴ OLAI, 02 January 2012, Internal Document.

¹⁵⁵ Activity report from 01 October 2010 to 30 September 2011, pp 21-23,
http://www.ombudsman.lu/rapports_annuels.html.

couple moved to Germany. After separating from her spouse and filing for divorce in Germany, the woman went back to Luxembourg, asking for a residency permit as a family member. This request was turned down, as her husband was still residing in Germany. However, the woman had filed for divorce so that she could marry and join her new partner, a Luxembourg resident. Finally, after her partner filed a declaration stating he would assume responsibility for supporting her, the woman obtained a temporary residency permit for private reasons.

Another dossier involved a Luxembourgish woman's claim regarding the slow processing of a family-reunification visa application for her husband, an Algerian. After a classification error and the resulting failure to forward the dossier to the Luxembourgish authorities, the application was processed with all due diligence. In another case, the mediator was informed of a Bosnian woman who had come to Luxembourg in 2004 to join her husband, a Macedonian, and was accompanied by their two children. Refused refugee status in 2005 and 2006, the couple had signed a document agreeing to a voluntary return in 2007. However, there was no follow-up by the national authorities regarding the expected repatriation. The mediator was quite aware that the couple (who were then living in a home for asylum seekers and working occasionally to provide for their needs) had no right to be in the territory, but he could not remain indifferent to the family's anguish in the expectation of their repatriation while the children had integrated well in the country; his intervention resulted in a residency permit being granted to this family (under quite exceptional circumstances), provided that the persons in question should meet the requirements to exercise a paid activity within six months.

“Family member” residency permits

(1st issuance from 23 May to 31 December 2011)¹⁵⁶

Nationality/Country of origin	Total	3-6 months	6-12 months	> 12 months
United States	58	1	48	9
Bosnia and Herzegovina	23	1	7	15
Brazil	17	0	13	4
Cameroon	5	0	4	1
Cape Verde	26	0	17	9
China	34	3	24	7
Congo	8	0	2	6
Croatia	7	0	2	5
India	35	1	31	3
Iran	7	0	4	3
Japan	25	0	24	1
Kosovo	51	0	20	31
Macedonia	5	0	3	2
Montenegro	63	0	9	54
Nigeria	5	0	4	1
Russia	17	1	14	2
Serbia	32	0	7	25
Montenegro	8	0	2	6
South Africa	9	0	7	2
Tunisia	6	0	6	0
Ukraine	7	0	5	2
...
Total (May to Dec)	505	7	288	210
Total (in 2011)	721			

Immigration Department, 2012

4.2.3. Developments from the EU perspective

The Law of 8 December 2011, modifying the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People, transposed into national law Directive 2009/50/CE of the Council of 25 May 2009 establishing entry and stay conditions for third-country nationals for highly-qualified employment, the so-called “European Blue Card” Directive. The bill was introduced in the Lower House on 18 July 2011 and adopted on 17 November 2011. As regards family reunification, he calls for certain modifications regarding the Law of 29 August 2008. These are provisions which are more favourable than those contained in Directive 2003/86/CE on family reunification.

¹⁵⁶ Total of residency permits issued in 2011 (1st issuance + renewal: 3021); Residency permits issued from January to May 2011: 216; Residency permits issued from May to December 2011: 505.

The residency permit of family members of a Blue Card holder is granted no later than six months following the date on which the application was filed, if the conditions for a family reunification are met (Article 73(6)). The term of validity of the residency permit for family members is identical to that of the residency permit issued to the holder of the European Blue Card (Article 74(1)),¹⁵⁷ whereas it is usually issued for one year, renewable upon request.

Article 76 specifies that the autonomous residency permit granted to the spouse, non-married partner, or adult child of the sponsor, or to people covered by Article 70(5), after no more than five years of residency or after the cohabitation is terminated (*e.g.* sponsor's death, divorce or breakup of the partnership at least three years after the issuance of the residency permit within the territory as part of a family reunification, or separation due to particularly serious situations – domestic violence), is valid “regardless of that of the sponsor”.

Calculation of the five years' residency when applying for an autonomous residency permit takes into consideration the accrued periods of stay by family members in various Member States (rules set out in Article 80) (Article 76(2)).

Article 45(4) stipulates that the holder of a European Blue Card and his family members may go to another Member State for purposes of highly-qualified employment after having stayed legally in the Member State that first issued the Blue Card for at least 18 months.

The Law of 8 December 2011 then offers to include unmarried partners to the circle of Union family members so long as they can prove a lasting relationship.¹⁵⁸ This modification puts an end to the administrative practice which consisted in:

- issuing to the EU partner of an EU citizen an attestation of registration as a non-working person, but not as a family member;
- granting the third-country national partner of an EU citizen an autonomous residency permit bearing the mention “private life”.

¹⁵⁷ Bill to modify the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=6306&backto=/wps/portal/public/Abonnement>.

¹⁵⁸ Art 12(2), <http://www.legilux.public.lu/leg/a/archives/2012/0019/index.html>.

Family reunification provisions (Articles 68 to 78(1)) were not modified by the Law of 1 July 2011 modifying the Law of 29 August 2009, as amended.¹⁵⁹

4.3. Other legal migrations

4.3.1. Specific context before 2011

Nothing to report.

4.3.2. Developments within the national perspective 2011

Students' health insurance

In order to receive an authorisation to stay, third-country national students need to have health insurance, complying with Article 56 of the amended law of 19 August 2008.

Up to 31 December 2010, the State's budget bore the burden health-insurance contributions for students (third-country students, basically) registered with the University of Luxembourg who are uninsured or do not enjoy the status of co-insured. As of 1 January 2011, following the health-system reform, students have had to pay this minimum contribution of 98.42 Euros to the National Health Fund (*Caisse nationale de santé*, or CNS). Initially, the University of Luxembourg had assumed this contribution.

The initial bill modifying the Law of 12 August 2003 to create the University of Luxembourg, introduced to the Lower House on 17 May 2011,¹⁶⁰ settled the question of students' social security as regards the required health-insurance affiliation by granting the university the possibility of negotiating policies designed for students with the insurance companies. During the Government Council session of 29 July 2011, the Minister for Higher Education and Research had suggested abandoning the option of private insurance to resort to a public-sector solution that would allow students to remain in the personal scope of the general health- and dependency-insurance system.

¹⁵⁹ Law of 01 July 2011, modifying the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People, and the Law of 05 May 2006, as amended, on the Right of Asylum and to Complementary Forms of Protection,

<http://www.legilux.public.lu/leg/a/archives/2011/0151/2011A2180A.html>.

¹⁶⁰ Bill modifying the Law of 12 August 2003 to create the University of Luxembourg; modify the Social Security Code; modify the Law of 25 July 2002, as amended, to create a public establishment for the realisation of State facilities at the Belval-Ouest site, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=6283>.

On 14 October 2011, the Government Council adopted governmental amendments to the Bill modifying the Law of 12 August 2003 to create the University of Luxembourg. The amendments presented to the Lower House on 16 November 2011¹⁶¹ called for the students to affiliate with a legal health-insurance system, as understood by the Social Security Code or under the laws of a State with which Luxembourg is bound by a bilateral or multilateral social-security instrument; the definition of the “student” status; the payment conditions of the student’s contributions; and the student’s entry and exit declarations to the Joint Social Security Centre (*Centre commun de la sécurité sociale*, or CCSS). As for the assessment basis, a derogation to the mandatory minimum contribution of 98.42 Euros is considered, through the creation of a “student” contribution of 33 €, to be borne by the student.

Au-pair placement

The Bill on the Placement of Young Au Pairs modifying (1) the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People and (2) the Law of 04 July 2008 on Youth was introduced in the Lower House on 14 September 2011.¹⁶² The purpose of this bill is to provide a legal framework for the placement of au pairs in Luxembourg. According to the text, au-pair placement can be neither a detriment to nor a substitute for gainful employment. It may create no master-servant relationship between the young au pair and the hosting family, and the provisions of the Labour Code will not apply to au-pair placement.

Immigration Medical Service (Service médical de l’immigration, or SMI)

As a result of the enactment of the Law of 26 August 2008 on Immigration and the Free Movement of People, the Industrial Health division performs those tasks assigned it by the Law in question. The SMI organises the medical exam of foreigners in compliance with the legislation concerning foreigners’ entry and stay in the country.

¹⁶¹ <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=6283#>.

¹⁶² Since the denunciation of 23 September 2002, effective 24 March 2003, of the European Agreement on “au pair” Placement (an agreement of the Council of Europe signed in Strasbourg on 24 November 1969), Luxembourg has no specific legislation concerning “au pair” placement. <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6328>.

Since this date, young people received by a family must be hired through a work contract governed by the provisions of Title II of Volume One of the Labour Code. People who are not members of the European Union are subject to the laws governing foreign workers’ entry into and stay within the territory of the Grand Duchy of Luxembourg.

In 2011, 1,593 certificates were processed by the Immigration Medical Service. Applicants came from 88 different countries. United States nationals accounted for the greatest number of requests (396, or 25% of requests) followed by nationals of India (150; 9%), the former Yugoslavia (132; 8%), China (121; 8%), Japan (84; 5%), and Russia (72; 4.5%). In 2011, the SMI reported 3 foreigners to the Directorate of Immigration for refusing to submit to a medical exam (3 cases of tuberculosis).

Information tools on immigration

Domestically, the Luxembourg Government is preparing to improve and harmonise the information on immigration paths distributed over the State's websites. Thus, a cooperative effort was launched between the agencies in charge of immigration (Directorate of Immigration, Ministry of Foreign Affairs) and the one in charge of the Government's virtual one-stop window, the *Centre des technologies de l'information de l'État* (State Information Technology Centre, or CTIE)).

The Ministry of Foreign Affairs' site offering information on immigration is updated regularly.

The Serbian-language information booklet "*Dobrodošli u Luksemburg*" ("Welcome to Luxembourg"), published on 13 December 2011 by the ASTI, was financed by the Luxembourg Reception and Integration Agency (*Office luxembourgeois de l'accueil et de l'intégration*, or OLAI) and the FEI. This booklet, available on the "www.bienvenue.lu" site, is an information tool on the laws regarding residency in Luxembourg, the social system, the health and educational systems, and other topics related to integration issues.¹⁶³

¹⁶³ www.bienvenue.lu; <http://www.asti.lu/2011/12/14/presentation-brochure-dinformation-en-langue-serbe/>

“Long-Term Residency” permits¹⁶⁴

(1st issuance in 2011)

Nationality	Jan – May	May-Dec	Total
Montenegrin	/	203	203
Bosnian-Herzegovinian	/	81	81
Chinese	/	60	60
Serbian	/	59	59
Croatian	/	19	19
Cape Verdean	1	16	17
Kosovan	/	16	16
Albanian	/	9	9
Indian	/	8	8
Macedonian	/	8	8
US	/	5	5
Israeli	/	5	5
Russian	/	5	5
Malaysian	/	4	4
Mauritian	/	4	4
Nepalese	/	4	4
Venezuelan	/	4	4
Algerian	/	3	3
Brazilian	/	3	3
Croatian	3		3
Serbian/Montenegrin	/	3	3
Turkish	/	3	3
Canadian	/	2	2
Iranian	1	1	2
Japanese	/	2	2
Moroccan	/	2	2
Mexican	/	2	2
Argentinean	/	1	1
Bangladeshi	1		1
British Overseas Territories citizen	/	1	1
Congolese	/	1	1
Ivoirian	/	1	1
New Zealander	/	1	1
Nigerian		1	1
Sri Lankan		1	1
Thai		1	1
Total	6	539	545

Directorate of Immigration, 2012

¹⁶⁴ Total of “Long-Term Residency” permits issued in 2011 (1st issuance + renewal): 1,259.

4.3.3. Developments from the EU perspective

Biometric residency permits

In accordance with EC Regulation N° 380/2008 of the Council of 18 April 2008 modifying EC Regulation N° 1030/2002 of the Council of 13 June 2002 **laying down a uniform format for residence permits for third-country nationals**, Luxembourg introduced biometric residency permits for third-country nationals on 20 May 2011. The data concerning both the holder and the residency permit are printed on the card. The contactless chip incorporated into the residency permit contains a photograph and the picture of two fingerprints.¹⁶⁵

In this context, the Grand-Ducal Regulation of 19 May 2011¹⁶⁶ modified the Grand-Ducal Regulation of 5 September 2008, as amended, to enforce certain provisions related to the administrative formalities set forth in the Law of 29 August 2008 on Immigration and the Free Movement of People, and the Grand-Ducal Regulation of 26 September 2008 on the creation of data processing of a personal nature required to enforce the Law of 29 August 2008 on Immigration and the Free Movement of People. The main modification consists in defining a maximum term for the preservation of the biometric data. The data must be erased no more than 6 months after the permit was produced.

European Migration Network

Luxembourg actively participates in all European Migration Network activities through the National Contact Point Luxembourg.

¹⁶⁵ Directorate of Immigration, *Titre de séjour biométrique pour ressortissants de pays tiers* (Biometric residency permit for third-country nationals), FAQ, p 2, <http://www.guichet.public.lu/fr/citoyens/actualites/2011/05/17-titre-sejour-biometrique/index.html>

¹⁶⁶ *Mémorial A* N° 102, 20 May 2011, p. 1619, <http://www.legilux.public.lu/leg/a/archives/2011/0102/a102.pdf>.

4.4. Integration

4.4.1. Specific context before 2011

The Luxembourgish Reception and Integration Agency (OLAI), standing under the authority of the Ministry of Family and Integration, is tasked with implementing reception and integration policy in the Grand Duchy of Luxembourg. Luxembourg's policy on integration applies to all foreigners, whether European citizens or third-country nationals.

The main instruments of integration are (1) the 2010-2014 National Action Plan on Integration and the Fight against Discrimination and (2) the Reception and Integration Contract (CAI).

The general measures are complemented by specific integration measures for which other ministries are responsible and which apply to all residents, whatever their nationality.

4.4.2. Developments within the national perspective 2011

1. The National Action Plan on Integration and the Fight against Discrimination

The National Action Plan on Integration and the Fight against Discrimination¹⁶⁷ was officially presented on 9 February 2011, although it had already been implemented in 2010. Designed by the OLAI in conjunction with the inter-ministerial committee on integration and after consulting civil society, this action plan calls for a series of measures which seek to foster a harmonious integration and ensure the full participation of foreigners in Luxembourgish society.

This instrument for the coordination of the integration policy, the two innovative guiding principles of which are reciprocity and shared responsibility, takes into consideration Luxembourg's national, European and international commitments, both political and legislative.¹⁶⁸ (Cf. also Point 4.4.3.)

¹⁶⁷ *Plan d'action nationale d'intégration et de lutte contre les discriminations (2010-2014)* (National Action Plan on Integration and the Fight against Discrimination (2010-2014)), http://www.olai.public.lu/fr/publications/programmes-planactions-campagnes/plan/olai_plan_daction_fr.pdf.

¹⁶⁸ *Plan d'action nationale d'intégration et de lutte contre les discriminations (2010-2014)* (National Action Plan on Integration and the Fight against Discrimination (2010-2014)),

Consultation of the society prior to the development of the National Action Plan on Integration and the Fight against Discrimination 2009-2014

As part of the implementation of the action plan, the Government also consulted those players working to foster the integration and/or support foreigners regarding the priorities for 2012 and 2013. The objective of this consultation was to know their opinions regarding priorities for 2012 and their suggestions in identifying priorities for 2013.

The consultation was carried out through an online research questionnaire on the OLAI's website.¹⁶⁹ Information regarding the consultation was sent by mail to 900 involved structures, of which 104 participated, *i.e.* a response rate of 11.5%.

The consultation on 2012 priorities revealed the following **priorities**, always related to the Common Basic Principles (CBP's) of the European integration policy:

“CBP 1 – Two-way process”: integration is a dynamic process under construction, the objectives of “training” and “awareness raising”;¹⁷⁰

“CBP 3 – Employment”: the **recognition of professional and technical skills** acquired abroad, the **promotion of equality in employment**, and the **promotion of the principle of equal treatment** in companies;

“CBP 4 – Basic knowledge of the languages, history and institutions of the receiving society”: the **promotion of the Luxembourgish and French languages** and the implementation and **distribution of information, guidance and support tools** for foreigners “CBP 5 – Education”: guaranteeing **equal access to education** and **preventing academic failure**. This also includes setting up **diversity training courses** for teachers and training socio-educational staff in intercultural skills

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

For more information, Cf. European Migration Network – National Contact Point Luxembourg – 2010 Political Report on Migration and Asylum, 4.4.2 and 4.4.4, [http:// www.emnluxembourg.lu/type-documentation/rapport-politique-2010](http://www.emnluxembourg.lu/type-documentation/rapport-politique-2010)

¹⁶⁹ The questionnaire was accessible for one month, between February and March 2011, http://www.olai.public.lu/fr/publications/programmes-planactions-campagnes/plan/synthese_resultats_priorites_2012.pdf.

¹⁷⁰ Training in diversity and intercultural skills of key players; General public awareness to issues of integration and the fight against discrimination.

“CBP 7 – Intercultural dialogue”: intercultural dialogue appears as that CBP for which the distribution of answers seems least pronounced. Priority objectives which are mentioned mainly concern fields of action that **foster cultural interaction**. Points raised include **facilitating communication between natives and non-natives**, improving the knowledge of the receiving society, and **stimulating intercultural dialogue**.

2. The Reception and Integration Contract (CAI)

The CAI, which was set up by the Law of 16 December 2008 on the Reception and Integration of Foreigners in the Grand Duchy of Luxembourg,¹⁷¹ was officially launched on 29 September 2011. Implementation of the CAI, defined in the Grand-Ducal Regulation of 2 September 2011,¹⁷² is the responsibility of the OLAI.

The CAI is an optional, mutual commitment between the State and the foreigner over 16 years of age, legally installed in Luxembourg and wishing to settle there. In fact, it is intended both for nationals of the European Union and for third-country nationals, whether they are newcomers or have lived in Luxembourg for years. The maximum term of the contract is set to two years, during which the signing candidate commits to take language training, participate in civic instruction courses, and participate in a State-sponsored orientation day.

The optional nature of the contract stresses that signing is, first and foremost, a “symbolic act” through which the signing candidate and the Luxembourgish state attest their reciprocal will regarding integration.¹⁷³

People who have signed the CAI are exempted from one of the optional civic courses required to acquire the Luxembourgish nationality, and completion of the CAI is deemed proof of proper integration and will be favourably be taken into account when applying for the status of long-term resident.¹⁷⁴ However, insisting on the multi-dimensional aspect of integration, the *Plateforme Migration & Intégration* has

¹⁷¹ Law of 16 December 2008 on the Reception and Integration of Foreigners in the Grand Duchy of Luxembourg, <http://www.legilux.public.lu/leg/a/archives/2008/0209/2008A3156A.html?highlight=>.

¹⁷² Grand-Ducal Regulation of 02 September 2011 defining the application conditions and the modes of execution of the Reception and Integration Contract, <http://www.legilux.public.lu/leg/a/archives/2011/0197/2011A3584A.html>.

¹⁷³ OLAI 2011, http://www.olai.public.lu/fr/actualites/2011/09/lancement_cai/index.html.

¹⁷⁴ http://www.men.public.lu/sys_edu/form_vie/cours_soir/110728_instruction_civique.pdf.

expressed its concern to the effect that the CAI should constitute neither the most important element nor the sole element in appreciating the degree of a foreign national's integration during this procedure.¹⁷⁵

Civic training: Civic instruction and integration courses, taught in Luxembourgish, German, English, French and Portuguese by 14 teachers, consist in 4 modules: the socio-historic evolution of Luxembourg; the rights and duties of citizens; integration through culture; and the ways and means to build an intercultural society. While priority is given to CAI signatories, civic training is open to any interested person and will be organised in collaboration with the communes in the various regions of the country.¹⁷⁶ The civic instruction courses are offered free and last at least six hours.

Orientation days, held twice a year, over the weekend for half a day, are organised in collaboration with numerous partners; they are intended to allow the signing candidate to become familiar with the official processes and organisations of Luxembourg in a convivial setting.

Language training allows signatories to reach, at least, level A.1.1 of the Common European Framework of Reference for Languages in at least one of the three administrative languages of Luxembourg, *i.e.* Luxembourgish, French or German. However, neither the number of hours of State-offered language lessons nor the costs for signatories are specified anywhere.¹⁷⁷

Decrying in general terms “the modest ambitions” of the plan, many associations have deemed insufficient the number of 60 at 80 hours (mentioned without being specified).¹⁷⁸ They refer to the integration courses (*Integrationskurse*) offered in Germany, which call for 600 hours of training in German and a 45-hour orientation course on German society, or to the 400 hours required in France.¹⁷⁹

¹⁷⁵ Plate-forme: Migrations & Intégration, *Avis du projet de règlement grand-ducal fixant les conditions d'application et les modalités d'exécution relatives au contrat d'accueil et d'intégration adopté par le conseil de gouvernement le 12 novembre 2010* (Opinion on the Proposed Grand-Ducal Regulation defining the application conditions and the modes of execution of the Reception and Integration Contract adopted by the Government in Council on 12 November 2010), www.cefis.lu/p.8/page14/page14.html.

¹⁷⁶ http://www.men.public.lu/sys_edu/form_vie/cours_soir/110728_instruction_civique.pdf.

¹⁷⁷ Reduction in registration fees for language courses.

¹⁷⁸ According to the National Language Institute (*Institut National des Langues*, or INL), reaching level A.1.1 in a language requires, on average, from 60 to 80 hours of classes

¹⁷⁹ Plate-forme: Migrations & Intégration, *Le CAI – un contrat qui accueille et qui intègre ?* (The CAI. a contract that welcomes and integrates?), 24 November 2011, <http://www.asti.lu/wp-content/uploads/2011/10/Plate-forme-CoP-CAI241011.pdf>; Plate-forme: Migrations & Intégration, Plate-

During the period between 3 October 2011 and 27 December 2011, 173 people signed the CAI.

90 signatories (52%) are third-country nationals, representing 43 nationalities.¹⁸⁰

The most heavily represented nationality is Cape Verdean (10 signatories), followed by Cameroonians (7), Brazilians (5), Senegalese (5) and Ukrainians (5).

As regards signatories who are citizens of other Member States, Portuguese citizens come in first (18.49%), followed by French (7.51%), Belgian (3.46%), German (3.46%) and Spanish (3.46%) citizens.

128 (69.95%) of CAI signatories for the period between 1 October and 31 December 2011 chose language courses in Luxembourgish, followed by French and German courses.¹⁸¹

3. Integration at the local level

The Government's efforts to promote integration at the local level have continued in 2011, notably through a related budgetary item. Thus, a certain number of integration initiatives were supported, among which are:

- the "Integration and Equal Opportunities Department" of the commune of Strassen;¹⁸²
- the "Together" project¹⁸³ carried out by the city of Dudelange, in close collaboration with the Inter-actions association;
- the "Pacts for Integration"¹⁸⁴ of the LEADER Redange-Wiltz Local Action Group,¹⁸⁵ of the commune of Bettembourg¹⁸⁶ of the city of Luxembourg,¹⁸⁷ and of

forme: Migrations & Intégration, *Avis du projet de règlement grand-ducal fixant les conditions d'application et les modalités d'exécution relatives au contrat d'accueil et d'intégration adopté par le conseil de gouvernement le 12 novembre 2010* (Opinion on the Proposed Grand-Ducal Regulation defining the application conditions and the modes of execution of the Reception and Integration Contract adopted by the Government in Council on 12 November 2010), www.cefis.lu/p.8/page14/page14.html.

¹⁸⁰ 1 person of unascertained nationality could be added to this number. OLAI, 27 December 2011, Internal Document.

¹⁸¹ OLAI, 02 January 2011, Internal Document.

¹⁸² <http://www.strassen.lu/services-communaux/service-de-l-integration-et-de-l-egalite-des-chances>

¹⁸³ <http://www.dudelange.lu/la-ville-se-presente/services-communaux/projet-ensemble>

¹⁸⁴ <http://www.agence-interculturelle.lu/index.html>

¹⁸⁵ <http://www.rw.leader.lu/fr/le-pacte-integration-ouest-incite-au-vivre-ensemble-dans-notre-region>

the city of Esch-sur-Alzette¹⁸⁸. Each one of the pacts, signed by each commune, the ASTI's intercultural agency and the Ministry of Family and Integration/OLAI, includes a series of activities intended to foster the integration of the foreign population at the communal level.

4. The question of social cohesion and integration

While xenophobic demonstrations and speeches in Luxembourg have been largely absent or few in the past, an upsurge of comments and statements with xenophobic connotations, mainly through social networks and concerning the protection of the national identity, could be seen in 2011.¹⁸⁹

Studies on the question of integration

The study "Integration in Luxembourg, Focus on Social Networks, Confidence and Stereotypes regarding Border Residents"¹⁹⁰ has revealed the persisting distrust of residents towards cross-border workers.

As far as general trust in certain categories of foreigners (which has increased over the last ten years), the study concludes that three groups/categories of people inspire the most distrust: asylum seekers, Muslims and former Yugoslavs. The degree of trust varies in direct proportion to the socio-professional category: people whose educational, income or professional levels are lowest are more likely to have to deal with this distrust.

The study underlines the homogeneity of the social networks chosen, particularly as concerns nationality and linguistic practices, which however remains most pronounced

¹⁸⁶ <http://www.asti.lu/2010/03/02/signature-du-pacte-dintegration-commune-de-bettembourg-avec-lasti/>;
<http://www.bettembourg.lu/infos-utiles/egalite-des-chances>

¹⁸⁷

http://www.vdl.lu/Informations+r%C3%A9sidents/Affaires+ Sociales/Pacte+d_Int%C3%A9gration.html

¹⁸⁸

<http://www.esch.lu/citoyen/egalitedeschances/Documents/pacte%20d'int%C3%A9gration%20esch%209.03.2011.pdf>

¹⁸⁹ Le Quotidien, *Toujours plus de relents xénophobes* (Increasing xenophobic rumblings), 13 December 2011, <http://www.lequotidien.lu/politique-et-societe/30049.html>; <http://www.asti.lu/2011/06/21/les-etrangers-et-la-propagande-xenophobe-communiquede-lasti/> ; <http://bonjour.news352.lu/index.php?p=edito&id=78923>

¹⁹⁰ Cefis, *L'Intégration au Luxembourg, Focus sur les Réseaux Sociaux, la Confiance et les Stéréotypes sur les frontaliers* (Integration in Luxembourg, Focus on Social Networks, Confidence and Stereotypes regarding Border Residents), Red N° 15, <http://www.cefis.lu/files/95d32e192389ea26c4328d1298675610-15.html>.

among Luxembourgers. People tend to choose their relational networks in light of shared nationality and linguistic practices. To avoid amplifying the phenomenon of parallel societies in Luxembourg and to deal with the distrust that exists against certain categories of people, the study underlines the importance of fostering meeting spaces between people of different nationalities, cultures or origins in several spheres of everyday life (work, home, social life), in order to promote dialogue, knowledge and mutual recognition and to defeat distrust and the fear of otherness.

MIPEX III (Migrant Integration Policy Index) Report

MIPEX is a Europe-wide reference guide and interactive tool to measure, assess, compare and improve national integration policies.¹⁹¹

The fields under study cover mobility in the job market, long-term residency, education, citizenship and political participation, family reunification, access to nationality and to non-discrimination.

Luxembourg ranks 11th out of 31 countries, with 59 points out of 100. The 8-point gain over MIPEX I places Luxembourg in second place in terms of progress achieved (after Greece). This improvement is partially due to the new law on nationality of 23 October 2008,¹⁹² which introduced the principle of multi-nationality, and the legislation on family reunification. On the other hand, mobility in the job market, and particularly the limited access for third-country nationals and the lack of measures targeting this population, was pointed out as a future challenge. Furthermore, regarding non-discrimination, the lack of means made available to assist victims of discrimination was deplored.¹⁹³

¹⁹¹ MIPEX took place in the 27 Member States, as well as in Canada, the United States, Switzerland and Norway. Over 100 national and independent jurists anonymously respond to and analyse the policies adopted before 31 May 2010, <http://www.statistiques.public.lu/fr/actualites/conditionssociales/politique/2011/03/20110328/index.html>; <http://www.mipex.eu/luxembourg>.

¹⁹² Law of 23 October 2008 on the Luxembourg nationality, *Mémorial A* N° 158, 27 October 2008, <http://www.legilux.public.lu/leg/a/archives/2008/0158/2008A2222A.html?highlight=>.

¹⁹³ Europaforum.lu, *Migration et asile, Alors que les progrès sont lents dans l'ensemble des pays analysés, le Luxembourg parvient à gagner la 11^e place du classement global du MIPEX, l'indice des politiques d'intégration* (Migration and asylum, While progress is slow in most countries under review, Luxembourg manages to rank 11th in the MIPEX (the integration policies index) overall ranking), 28 March 2011, <http://www.europaforum.public.lu/fr/actualites/2011/03/mipex/index.html>.

5. Political participation of foreigners¹⁹⁴

“I can vote” awareness campaign

In order to promote the political players’ awareness of the issue of political participation, the OLAI was mandated by the Government to implement, in collaboration with the civil society, an information and awareness campaign intended for foreigners, encouraging them to register to electoral lists. As part of the “I can vote” campaign, 9 projects were financed in 2011.

2 inter-ministerial circulars signed by the Ministry of the Interior and to the Greater Region and by the Ministry of Family and Integration on the one hand, and by the SYVICOL on the other, were sent to Luxembourg’s communal authorities. The first circular, dated 29 March 2011,¹⁹⁵ calls on communal administrations to facilitate the registration of non-Luxembourger residents to the electoral lists by planning adjusted schedules for registration offices, by participating in the national registration day of 18 June 2011, or by using the information and awareness materials placed at the communes’ disposal as part of said campaign. The second circular, dated 22 June 2011,¹⁹⁶ invites communal administrations to answer a questionnaire on the activities implemented by the communes to facilitate registration onto electoral lists.

As part of the “I can vote”, 22 multiplying agents were trained to encourage foreigners to register to the electoral lists for the communal elections of 9 October 2011 during two days (29 March and 5 April 2011). This training – intended for associations and unions working in favour of the integration of foreigners – was provided by the OLAI, in collaboration with the Migration Policy Group (MPG) and the CEFIS.

¹⁹⁴ Cefis, Elections Press release, http://www.cefis.lu/files/confe0301rence-press-2011_mise-in-p..pdf; Ministry of the Interior and to the Greater Region and Ministry of Family and Integration/OLAI, Press release: *Premiers résultats globaux des inscriptions sur les listes électorales des résidents étrangers pour les élections communales* (First overall results of registrations of foreign residents to electoral lists for the communal elections), 26 July 2011, <http://www.olai.public.lu/en/actualites/2011/07/elections/index.html>.

¹⁹⁵ <http://www.jepeuxvoter.lu/pt/images/pdf/circulaire2908.pdf>

¹⁹⁶ <http://www.jepeuxvoter.lu/fr/images/pdf/circulaire2927.pdf>

Registration rate of foreigners to electoral lists

In the course of the adoption of the modification to the electoral law, the Lower House adopted a resolution stating it had decided, “upon the conclusion of the elections of 9 October 2011, to analyse the progress of these elections and re-discuss the provisions concerning the period of residency, in order to reduce it”.¹⁹⁷

The balance of the electoral participation of foreign nationals in the communal elections¹⁹⁸ reveals the following:¹⁹⁹

By 14 July 2011, the closing date of registration to communal electoral lists, 30,937 foreign individuals had been registered. This corresponds to a registration rate of 16.9%, compared to the 183,144 foreigners aged 18 or more as of 9 October 2011. This reflects a net increase of 29.1% in registered individuals (+6,980) compared to the communal elections of October 2005, when the number of registered persons was 23,957.²⁰⁰ However, this rate is calculated on the basis of foreign population aged 18 years or more, and does not consider the requirement of 5 years’ residency in the country. These data are not available at the communes’ level. In other words, the registration rate is underestimated.

After eliminating migratory movements and naturalisations, the actual number of new registrations to communal electoral lists between 1 January 2011 and 14 July 2011 stands at 8,403, which yields a growth rate of 35.1%.²⁰¹

The rate of registration is 18% for Community nationals (28,341 people).

¹⁹⁷ Cefis, Elections Press release, http://www.cefis.lu/files/confe0301rence-press-2011_mise-in-p..pdf; Ministry of the Interior and to the Greater Region and Ministry of Family and Integration/OLAI, Press release: *Premiers résultats globaux des inscriptions sur les listes électorales des résidents étrangers pour les élections communales* (First overall results of registrations of foreign residents to electoral lists for the communal elections), 26 July 2011 <http://www.olai.public.lu/en/actualites/2011/07/elections/index.html>.

¹⁹⁸ News article, *Bilan final de la campagne de sensibilisation «Je peux voter»* (Final Balance of the “I can vote” awareness campaign), 26 September 2011, http://www.gouvernement.lu/salle_presse/actualite/2011/09-septembre/26-vote/index.html.

¹⁹⁹ This balance provided a simultaneous overview of all actions implemented by communal administrations. 81 communes (70%) implemented 3 actions or more, and 79 (68%) participated in the national registration day.

²⁰⁰ This rate is based on the population of foreigners of 18 years old and older, and does not take into account the minimum residence period condition of 5 years. Only the communes have this latter information. In other terms, the inscription rate is underestimated.

²⁰¹ Cefis, Press conference, *Bilan des inscriptions sur les listes électorales communales* (Balance of registrations to communal electoral lists), 26 September 2011, http://www.cefis.lu/files/confe0301rence-press-2011_mise-en-page.pdf

The rate of registration is 12% for third-country nationals (2,596 people), whereas it was of 6% (1,251 people) in 2005.

Among the main non-Community nationalities, some rather significant registration rates, above the national average, are worth noting: Montenegrin nationals (25%), Bosnian (18%), and “Yugoslavs” (17%). The registration rate of Cape Verdean nationals has shown solid growth since the communal elections of 2005, rising from 8% to 13%.

A review of the practices implemented by communal administrations to facilitate the registration of non-Luxembourgers to the electoral lists was financed by the OLAI.²⁰²

Foreign candidates

Out of the 3.309 candidates in the communal elections of 09 October 2011, 236 candidates (7%) were foreign nationals. In 2005, there were 189 candidates of foreign origin (6% of all candidates).²⁰³ 65 communes had at least one candidate of foreign nationality.

Foreign candidates are, in decreasing order, Portuguese (69), Italians and Germans (39), French (24), Belgians (18), Netherlanders (13), and other Community nationalities (20). There are 11 registered candidacies of third-country nationals, who became eligible for the first time in 2011.

As regards the distribution of foreign candidates among political parties, Déi Gréng has registered the greatest number (60), followed by LSAP (42), DP (37), CSV (19), Déi Lénk and KPL (14) and ADR (6).

In the end, 17 foreign candidates were elected: 5 Germans, 3 French, 3 Netherlanders, 3 Portuguese, 1 Austrian, 1 Belgian and 1 Italian. 6 were elected in communes with proportional voting, and 11 in communes with majority voting.

No foreign candidate was elected to the position of alderman or burgomaster.

²⁰² CEFIS asbl, Press conference, *Bilan des inscriptions sur les listes électorales communales* (Balance of registrations to communal electoral lists), 26 September 2011, http://www.olai.public.lu/fr/actualites/2011/09/je_peux_voter/index.html.

²⁰³ These data do not take into consideration Luxembourgers of foreign origin, whether they are exclusively Luxembourger or they hold dual citizenship (including the Luxembourger nationality).

Obstacles to electoral participation

Various players (CLAE, ASTI, CEFIS)²⁰⁴ have noted obstacles to electoral participation:

A major challenge remains the question of foreigners' integration in political parties,²⁰⁵ as was shown by a roundtable organised around the theme, "the integration of foreigners in political parties", which included representatives of five of Luxembourg's political parties.²⁰⁶ The basic issue was whether parties have special structures for foreigners in their parties, and what place would members who spoke no Luxembourgish have in the parties' national and local structures. While governmental parties (CSV, LSAP) have set up special structures, opposition parties (Déi Gréng, Déi Lénk, DP) incorporate foreigners into their traditional structures.²⁰⁷

In 2011, most noteworthy is the action of the new permanent working group, "Socialist" for Integration and Citizenship", which deals with every aspect of the integration of foreigners and launched a financed project as part of the awareness campaign.

Another challenge remains guaranteeing identical voting and eligibility conditions for all Union citizens.²⁰⁸ While the opening of passive voting rights to third-country nationals was applauded by Luxembourg associations and the "Refresh democracy" initiative,²⁰⁹ they lobbied for a review of the existing residency clause²¹⁰ to abolish the

²⁰⁴ Clae, *À Citoyenneté Égale* (With Equal Citizenship), 06 November 2110, http://www.clae.lu/pdf/mouvements_associatifs/a_citoyennete_egale/compte-rendu_rencontre26.09.09.pdf

²⁰⁵ *Les partis politiques et les étrangers au Luxembourg* (Political parties and foreigners in Luxembourg), Red N° 13, <http://www.cefis.lu/page10/page10.html>; European Migration Network-National Contact Point Luxembourg – 2010 Political Report on Migration and Asylum 4.4.2. and 4.4.3, <http://www.emnluxembourg.lu/type-documentation/rapport-politique-2010>.

²⁰⁶ CSV, Déi Gréng, Déi Lénk, DP, LSAP; ADR and KPL abstained.

²⁰⁷ <http://www.journal.lu/2011/06/22/die-integration-der-auslander-in-den-parteien/>.

²⁰⁸ Article 8 of the Maastricht Treaty, Treaty on European Union, Official Gazette N° C 191, 29 July 1992, <http://eur-lex.europa.eu/fr/treaties/dat/11992M/htm/11992M.html>.

²⁰⁹ Europaforum.lu, *Dans une lettre ouverte adressée à Jean-Marie Halsdorf, le collectif "Refresh democracy" plaide pour une plus grande intégration politique des étrangers résidant au Luxembourg «Ce que nous demandons est, simplement, tout Maastricht»* (In an open letter to Jean-Marie Halsdorf, the "Refresh democracy" collective argues for greater political integration of foreigners residing in Luxembourg "What we're asking is simply all of Maastricht"), 29 July 2010, <http://www.europaforum.public.lu/fr/actualites/2010/07/refresh-democracy/index.html>; *Bonnes pratiques pour l'inscription sur les listes électorales* (Good practices for registration onto electoral lists), Press conference, 30 March 2011, <http://www.asti.lu/wp-content/uploads/2011/03/300311Refresh.pdf>.

²¹⁰ The active right to vote of foreign nationals is always subject to a condition of 5 years' residency in the Grand Duchy and 6 months in their commune.

disparity that persists between nationals and non-nationals.²¹¹ In the same line, in order to promote equal treatment, the automatic registration onto electoral lists for Community nationals and third-country nationals, was requested by several players.²¹²

Renewal of national and local consultative agencies

As explained under Point 3.3, a communal Consultative Commission on Integration is constituted in every commune of Luxembourg (before the Grand-Ducal Regulation of 15 November 2011 on the organisation and operation of the Consultative Commissions on Integration, this was only mandatory in communes with at least 20% of foreigners). Prior to the adoption of the Grand-Ducal Regulation, the *Plateforme Migration & Intégration* questioned the political dimension of the CCI. While they “are responsible for conviviality among all commune residents”, their role in providing advice on local political decisions is not sufficiently clear. On the other hand, the very structure of the CCI, lacking any means to take action, is incapable of providing political stimuli.²¹³

5. Language training in Luxembourgish

Subsidy for the improvement of foreigners’ integration through language training in Luxembourgish

The Government financially supports certain efforts regarding the integration of foreigners through language training in Luxembourgish. Thus, companies who file the appropriate request are given subsidies related to Luxembourgish language training for their salaried workers.²¹⁴ In 2011, 33 requests were accepted, and the reimbursement percentage is 51%. The target group, which involves slightly more than 400 people, is mostly female and mostly French and Belgian.

²¹¹ “Refresh democracy” Collective, <http://web.jonkdemokraten.lu/2011/01/30/refresh-democracy-une-victoire-pour-la-democratie-locale/>

²¹² ASTI, APL, CCPL, Caritas Luxembourg Foundation, FAAL, FACVL, FAEL, FNCTTFEL-Landesverband, LCGB, OGBL, Sesopi-CI, Syprolux, 08 June 2011, <http://www.ikl.lu/jepeuxvoter/inscription.pdf>; *Chances égales pour l’inscription sur les listes électorales ?* (Equal opportunities for registration onto electoral lists?), <http://www.caritas.lu/Files/270511CommuiquPlateformeRefresh.pdf>.

²¹³ *Avis de la Plate-forme Migration&Intégration, Projet de règlement grand-ducal relatif à l’organisation et au fonctionnement des commissions consultatives d’intégration* (Opinion of the Plate-forme Migrations & Intégration, proposed Grand-Ducal Regulation on the organisation and operation of the Consultative Commissions on Integration), 16 December 2010, <http://www.asti.lu/wp-content/uploads/2009/09/PlateformeavisCCI.pdf>.

²¹⁴ Coming from the following business segments: commerce, construction, food service/hotel industry, real estate, legal and/or accounting consultancy, banking, and industry.

The companies involved came mostly from the following business segments: social and health care sector, commerce, industrial sector, banking sector, insurances, law firms, and construction sector.²¹⁵

Assistance to Luxembourgish language courses

Candidates to nationality must present themselves for the “*Sproochentest Lëtzebuergesch*” at the National Language Institute (*Institut national des langues*, or INL). It should be noted that candidates need not have followed any prior course, whether with the INL or elsewhere. However, over the last few years, the INL has noted that people who wish to acquire the Luxembourgish nationality are presenting themselves ever earlier to the test, even though they lack the required skills.²¹⁶

In 2011, 871 people took the “*Sproochentest Lëtzebuergesch*” exam, with a success rate of 67.7% (590 people). Candidates included 435 nationals of the EU and 436 third-country nationals.²¹⁷ The respective success rates were 86.2% (EU nationals) and 49.1% (third-country nationals).²¹⁸

²¹⁵ Ministry of Labour and Employment, 2012 Internal Document.

²¹⁶ For example, a person registered with the INL in late February 2012 in a beginners’ course showed up for testing on 21 March 2012, despite not understanding a single sentence in Luxembourgish.

²¹⁷ Including 7 people of unknown nationalities.

²¹⁸ INL, 2012 Internal Document.

Sproochentest Lëtzebuergesch 2011

Third-country-national candidates

Nationality	Present	Admitted	% success
Montenegrin	48	20	41.7%
Serbian	46	23	50.0%
Ukrainian	38	33	86.8%
Russian	34	21	61.8%
Kosovar	31	8	25.8%
Bosnian	31	18	58.1%
Macedonian	16	2	12.5%
Moroccan	13	3	23.1%
Albanian	13	5	38.5%
Cape Verdean	13	2	15.4%
Byelorussian	12	11	91.7%
Iranian	12	6	50.0%
Cameroonian	11	6	54.5%
US	9	8	88.9%
Turkish	9	5	55.6%
Thai	9	2	22.2%
....			
Total	436	215	49.1%

INL, Internal Document 2012

Among EU nationals, the success rate stood between 86.2% and 100% for several nationalities (British, Bulgarian, Spaniard, Finnish, Irish, Maltese, Slovene, Swedish, Swiss).²¹⁹

Language leave

The introduction of the language leave, through the Law of 17 February 2009,²²⁰ is an **extension** of the Government's policy to bolster **professional training**. Indeed, this is an additional special leave intended to allow salaried workers of all nationalities, as well as people exercising an independent or liberal professional activity, to learn or perfect their knowledge in Luxembourgish, thus easing their integration in society through the

²¹⁹ INL, 2012 Internal Document.

²²⁰ Law of 17 February 2009 (1) introducing a language leave; (2) modifying the Labour Code; (3) modifying the Law of 19 August 2008 on research-training assistance, <http://www.legilux.public.lu/leg/a/archives/2009/0033/a033.pdf>.

job market, subject to the condition that they have been active on Luxembourg soil for 6 months with the same employer.

Since its introduction in 2009, 1,176 requests for language leave have been granted.²²¹

In all, 68 requests for language leave had to be rejected (67 of them by the Ministry of Labour and Employment). Most of these refusals were due to the fact that the courses did not take place during business hours and therefore did not require a special leave. Only one request received an adverse recommendation on the employer's part.²²²

To ensure that the greatest possible number of people may benefit from the language leave, the Government seized the opportunity to launch a new information campaign on the issue, within the more global setting of promoting ongoing professional training.

The data reveal a statistical inequality between the business segments. While salaried workers in the health sector often call upon this mechanism (597), those in the food-service industry and the construction sector, which consist almost exclusively of foreign nationals, rarely do.²²³

Whereas the nationality of language leave beneficiaries in Luxembourg is not known, they are mostly cross-border workers from France (518), followed by Luxembourg residents (419), and by cross-border workers from Belgium (213) and Germany (34).²²⁴

6. Education and the school-system reform

Education and heterogeneity of the school population

Through reforming the educational system, the Government seeks to reduce the youth drop-out rate and increase the rate of young students with access to university training.²²⁵ As the selectivity of the trilingual educational system is seen as a major handicap for those who do not reach the necessary level, and insofar as foreign pupils

²²¹ 1st request: 1,031; 2nd request: 124; 3rd request: 19; 4th request: 2.

²²² Ministry of Labour, Employment and Immigration, 2012 Internal Document.

²²³ Sector: Insurance (26), Other (76), Banking (19), Commerce (107), Commune (8), Culture (16), Independent (32), Health and Care (597), Services (305)

²²⁴ Ministry of Labour, Employment and Immigration, 2012 Internal Document.

²²⁵ The "2nd-Chance School" (*École de la 2^{ième} chance*, or E2C), which seeks to reintegrate young drop-outs to school, was launched on 14 March 2011. 36 learners were registered with the E2C when pilot classes started.

are at greater risk of dropping out than those with Luxembourgish nationality,²²⁶ one of the reforms sought by the Government concerns language teaching.²²⁷ Therefore, any intervention in the educational system must take into consideration the heterogeneity of Luxembourg's school population.²²⁸ The Convention of Immigration-derived Associations (*Congrès des associations issues de l'immigration*) decried the current school system as a breeding ground for social and cultural inequalities, requiring linguistic rebalancing if it is to promote Equal Opportunities.²²⁹

15.8% of pupils in Cycles 1 to 4 of basic education were born abroad, a relatively constant number since 2001-2002 (15.1%).

On the other hand, the proportion of pupils who speak a language other than Luxembourgish as a first language at home rose to 56.2% in 2010-2011 (from 42.2% in 2004-2005 and 54.2% in 2009 -2010).

In Cycle 1 (4- and 5-year old children), 34.3% of pupils speak none of the 3 official languages of the country, whether as their 1st or 2nd language spoken at home (27.1% in 2004 -2005).

The 2010-2011 school year showed 869 newly-arrived children, *i.e.* children who had entered Luxembourg during the previous year. Over 40% are born in Portugal and 8.7% in France.²³⁰

²²⁶ *L'Enseignement luxembourgeois en chiffres, Causes du décrochage année scolaire 2008/2009* (Luxembourger education in figures, Reasons for dropping out during 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.

²²⁷ *Instruments de mesure: étude nationale sur le décrochage scolaire* (Measuring tools: national study on dropping out), *Observatoire de la Compétitivité* (Competitiveness Observatory), *Luxembourg 2020: Programme national de réforme du Grand-Duché de Luxembourg dans le cadre de la stratégie Europe 2020* (Luxembourg 2020 National Reform Programme of the Grand Duchy of Luxembourg as part of 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.

²²⁸ In the Government's statement on the country's 2011 economic, social and financial situation, the Prime Minister singled out adapting the educational system as a challenge, since Luxembourger schools must deal with significant numbers of foreign students who do not master the Luxembourger language or who experience difficulties with the multilingual system, News article, *Déclaration du gouvernement sur la situation économique, sociale et financière du pays 2011* (Government's statement on the country's 2011 economic, social and financial situation), 06 April 2011, <http://www.gouvernement.lu/gouvernement/etat-nation/index.html>.

²²⁹ 7th Convention of Immigration-derived Associations, November 2011, <http://www.clae.lu/html/m4sm2.html>.

²³⁰ Ministry of National Education and Professional Training, *Les chiffres de l'enseignement fondamental : une population scolaire toujours plus multiculturelle, davantage encadré* (The figures behind basic teaching: an increasingly multicultural, better supervised school population), 16 January 2012,

Professional training reform

Initially planned for the 2010-2011 school year, the full entry into effect of the professional training reform was postponed to the 2012-2013 school year, as the new modular system required a long preparation phase.²³¹

19 key training programmes have already been organised in accordance with the new provisions in 2010-2011. The coming into effect of other training courses following the modular system will be implemented through Grand-Ducal Regulations.

With the introduction of the professional reform, the Government also wishes to increase the German-language RLS (*Régime linguistique spécifique*, or Specific Linguistic Regime) professional training offer.²³²

Professional training and Specific Linguistic Regime (RLS) classes

Specific-regime classes

To facilitate the insertion of foreign pupils in Luxembourg, several high schools offer classes with French as the vehicular language. During the 2010-2011 school year, 548 pupils took a Specific-Linguistic Regime class, to which must be added a certain number of French-speaking pupils who took a bilingual class. The following training courses were involved: healthcare aid, hairdresser, sales consultant, cook, electrician, communications electrician specialist, administrative and commercial employee (night school), heating-system installer, septic-system installer, autos and motorcycle mechanic, machining mechanic, construction locksmith, administrative and commercial technician, electrical-engineering technician (communications section), salesperson and salesperson-stockperson.

http://www.men.public.lu/actualites/2012/01/120116_chiffres_ef_2010_2011/index.html; *Chiffres clefs du système éducatif en 2010-2011* (Key figures of the educational system in 2010-2011), 06 January 2012,

http://www.men.public.lu/publications/etudes_statistiques/chiffres_cles/120105_fr_depliant_chiffres10_11/120105_depliant_fr.pdf.

²³¹ Professional training in the Grand Duchy of Luxembourg is based essentially on the German language. Response of The Hon. Mady Delvaux-Stehres, Minister for National Education and Professional Training, to Parliamentary Question N° 1345, 07 April 2011, www.chd.lu.

²³² Response of The Hon. Mady Delvaux-Stehres, Minister for National Education and Professional Training, to Parliamentary Question N° 1587, 25 August 2011, www.chd.lu.

Specific Linguistic Regime professional training

With the introduction of the professional reform,²³³ the Government seeks to increase the professional training offer, combining class time and practices in companies, under the specific linguistic regime (RLS), to respond to the difficulties an increasing number of pupils have with courses in the German language. All courses, except language courses, are provided exclusively with French as the vehicular language.

During the 2011-2012 school year, 110 training courses will be part of the reform.

After being launched in 2010-2011 for 10th-year classes in 19 training programmes (known as key training programmes), the reform was extended for 2011-2012 to the 11th-year classes of these same programmes. In turn, 91 other programmes adopt the new system for 10th-year classes. The remaining programmes, including administrative-technician training, will follow in 2012-2013. In 2011-2012, the reformed system affects some 3,000 pupils.²³⁴

Gateway class

As part of the “Form’actif” project, Caritas receives, in its “gateway” class, asylum seekers and migrants who cannot be integrated in the Luxembourgish school system. Courses offered included French, Luxembourgish, civic instruction, data processing, music and sports education, as well as refresher and specialised courses (*e.g.* literacy). The class breaks down into two five-month modules, with 30 hours a week. From its creation in 2001 to mid-2011, over 500 youngsters have participated in the courses. On 15 July 2011, 51 young residents in Luxembourg, representing 20 different nationalities, were handed their certificates of achievement.²³⁵

²³³ Planned initially for the 2010-2011 school year, the full implementation of the provisions of the professional training reform was postponed to the 2012-2013 school year, as the new modular system required a significant preparation phase. Professional training in the Grand Duchy of Luxembourg is based essentially on the German language. Response of The Hon. Mady Delvaux-Stehres, Minister for National Education and Professional Training, to Parliamentary Question N° 1345, 07 April 2011, www.chd.lu.

²³⁴ Response of The Hon. Mady Delvaux-Stehres, Minister for National Education and Professional Training, to Parliamentary Question N° 1587, 25/08/2011, www.chd.lu.

²³⁵ Caritas, *Form’actif – Remise de certificats à l’issue des cours et formations* (Form’actif - Certificates delivered at the end of courses and training), 22 July 2011, <http://www.caritas.lu/actualites/formactif-remise-de-certificats/0>.

7. Intercultural projects

Several actions and projects intended to bolster intercultural contact were carried out in 2011 and supported or launched by the authorities.

The “*Zesummen ass besser*” project, achieved with the collaboration of several players,²³⁶ is meant to sensitise children in the third and fourth Cycles to intercultural issues. As part of this initiative, workshops and theatre sessions dealing with interculturalism and prejudice have been held.²³⁷

Several communes and CCI have organised intercultural awareness raising activities. The multicultural festival of the city of Differdange was held in June 2011. Through music and gastronomy, this festival provides an opportunity to familiarise oneself with the diversity of cultures.²³⁸

4.4.3. Developments from the EU perspective

The National Action Plan on Integration and the Fight against Discrimination

The action plan is spread over five years and rests on the 11 guiding principles of European policy. However, instead of diluting efforts and deploying various means to cover all of the Common Basic Principles (CBP), the Government chose to concentrate initially on the efficient and lasting implementation of certain CBP in particular.

For the year 2011, the following CBP have been deemed priorities:²³⁹

CBP 1: Two-way process

The integration process implies an adaptation, not only by the foreigners but also by receiving society. The point is to take into consideration and associate both non-natives and natives, while ensuring that each one's rights and responsibilities are clearly defined.

²³⁶ Organised by the ASTI, in collaboration with the CCRN and with the support of the Ministry of National Education and Professional Training, the OLAI, the City of Luxembourg, CAPEL, and the European Fund for the Integration of Third-Country Nationals.

²³⁷ Le Journal, *Der kapverdianische Laden um die Ecke*, 17 November 2011.

²³⁸ Le Quotidien, *Un festival de couleurs* (A festival of colours), 06 June 2011.

²³⁹ *Priorités 2011, Plan d'action national d'intégration et de lutte contre les discriminations (2010-2014)* (Priorities 2011, National Action Plan on Integration and the Fight against Discrimination (2010-2014)), http://www.olai.public.lu/fr/publications/programmes-planactions-campagnes/plan/priorites_2011_fr.pdf.

As of 2010, training in intercultural skills (diversity and intercultural-skills training) are offered to key players in the administration and in the Luxembourgish and foreign community life. The training has been supported by the OLAI as part of the action plan on integration. Two training sessions, called “Introduction to the intercultural approach”²⁴⁰ were organised by the INAP in collaboration with CEFIS and intended for communal and state agents. Some thirty people have taken this training since 2010.

CBP 4: Basic knowledge of the languages, history and institutions of the receiving society

As reception is one of the four fields of action defined by the Law of 16 December 2008 on the integration of foreigners, basic knowledge of the languages, history and institutions of Luxembourgish society is deemed a priority for 2011 and is provided, among other means, through the CAI.²⁴¹

CBP 7: Intercultural dialogue

As CBP 7 puts it, “a mechanism for frequent interaction between immigrants and nationals of the Member States is essential to integration”. Luxembourg’s National Action Plan offers a wide range of measures, from facilitating communication between natives and non-natives to stimulating intercultural dialogue, and including training and coaching associations in the development and execution of projects on the subject. This CBP is one of the pillars of the Luxembourg plan and allows the concepts of reciprocity and responsibility – key concepts for Luxembourg integration policy – to be translated into action.

CBP 9: Political participation

One of the 2011 priorities of the National Action Plan on Integration and the Fight against Discrimination is the promotion of citizenship and the political/social participation of foreigners. This objective was strengthened by opening the “passive” right to vote to non-Community nationals during the 2011 communal elections and by

²⁴⁰ <http://www.fonction-publique.public.lu/fr/publications/brochures/catalogue-formation/brochure-INAP-ET.pdf>.

²⁴¹ Details further on.

the Law of 13 February 2011 abolishing the nationality requirement for the positions of burgomaster and alderman.²⁴²

To promote awareness to the issue of political participation among political players, the OLAI was tasked by the Government to implement an information and awareness campaign targeted at foreigners, to encourage them to register to the electoral lists. As part of the “I can vote” campaign, launched by the OLAI in collaboration with the civil society, 9 projects were financed in 2011.

4.5. Citizenship and naturalisation

4.5.1. Specific context before 2011

In 2010, there were 4,311 acquisitions of Luxembourgish nationality through naturalisation, which represents a 7.2% increase against the year 2009 (4,022 acquisitions²⁴³). Third-country nationals accounted for 24.4% (1,055) of new acquisitions of nationality, against 32.8% (1,320) some 2009.

The range of nationalities in 2010 shows that Portuguese nationals accounted for 31.3% (1,351) of transfers, Italians for 15.4% (665), the French for 7.9% (342), Germans for 7.7% (333) and Belgians for 5.9% (258). Among third-country nationals, Montenegrins (218), Bosnians (202) and Serbians (194) were the most numerous to be naturalised.

To the 4,311 nationality acquisitions through naturalisation must be added the number of 967 children who became Luxembourgish following the acquisition of the Luxembourg nationality by one of their parents.

Under Article 6(2) of the Law of 23 October 2008 on the Luxembourg nationality, people wishing to be naturalised must have had a residency permit in Luxembourg for

²⁴² *Mémorial A* N° 29, 16 February 2011, Law of 13 February 2011 modifying (1) the Communal Law of 13 December 1988, as amended, (2) the Electoral Law of 18 February 2003, as amended, <http://www.legilux.public.lu/leg/a/archives/2011/0029/2011A0240A.html>.

²⁴³ It should be noted that in 2009, alongside the 4022 acquisitions of Luxembourg nationality through procedural means, 4209 young adults earn automatic Luxembourg nationality through the application of the principle of double jus soli under Article 1 (5) of the Act of October 23, 2008 on Luxembourg nationality. This article states that the child born in in the Grand Duchy of Luxembourg to non-Luxembourgish parents, of whom one parent was born on the territory of the Grand Duchy of Luxembourg, is Luxembourgish’.

at least 7 consecutive years immediately prior to the request for naturalisation and must have resided there effectively during said period.

4.5.2. Developments within the national perspective 2011

The requirement of 7 consecutive years' residency immediately prior to the request for naturalisation²⁴⁴ was the theme of a parliamentary question in 2011. The high international mobility of the population of Luxembourg, which includes 44% of non-Luxembourgers, has certain repercussions on access to naturalisation. Under the current legislation, people who spend a large part of their life in Luxembourg but must travel abroad for a few years before returning to Luxembourg must wait another 7 years before they may file a request for naturalisation.²⁴⁵

Recovery of the Luxembourgish nationality and political participation

In early 2011, the provisions of Article 29 of the Law of 23 October 2008²⁴⁶ on the Luxembourgish nationality – which allows former Luxembourgers and their descendants to recover the Luxembourgish nationality while keeping the foreign nationality they have – caused great interest and were the subject of considerable mediatisation in the Belgian border region. Whereas, in 2009 and 2010, the number of requests presented on the basis of this Article was relatively low (22 requests and grants out of a total of 3,107 requests for naturalisation in 2009 and 80 requests and grants out of a total of 4,220 requests in 2010), the Luxembourgish authorities received numerous requests for information on the required steps²⁴⁷ in 2011.²⁴⁸

Over the period from 1 January to 30 September 2011, Luxembourgish authorities received 2,500 requests for “1900 recovery”, coming mostly from Belgian nationals. By

²⁴⁴ The 7-year split residency is not recognised.

²⁴⁵ Response of the Minister of Justice to Parliamentary Question N° 1576 on the acquisition of the Luxembourgish nationality of 14 July 2011, 16 September 2011, www.chd.lu.

²⁴⁶ Article 29 of the Law of 23 October 2008 on the Luxembourgish nationality states that “the direct lineal paternal or maternal descendant, even if born abroad, of a Luxembourgish ancestor as of the first of January of the year nineteen hundred, where the latter or one of his descendants lost the Luxembourgish nationality on the basis of the previous legal provisions, may regain the Luxembourgish nationality through a declaration which must be made within the 10 years following the coming into effect of this law”.

²⁴⁷ The burden of proof, entailing numerous administrative steps such as searches in the Registrar's archives and the provision of birth, marriage and death certificates, is assumed by the applicants, who must establish the quality of direct lineal paternal or maternal descendant of a Luxembourgish ancestor as of 01 January 1900. Contrary to naturalisation, no linguistic condition is required to recover the Luxembourgish nationality.

²⁴⁸ Response of The Hon. François Biltgen, Minister of Justice, to Parliamentary Question N° 1149 of 10 January 2011 on Recovery of the Luxembourgish nationality, 16 February 2011, www.chd.lu.

late 2011, 364 people had thus obtained the Luxembourgish nationality, representing 10,7% of the total acquisitions.²⁴⁹

Recoveries granted (01 January to 30 September 2011)

Home country/original nationality	Requests granted
Germany	1
Belgium	72
Brazil	1
Canada	1
United States of America	6
France	51
Italy	1
Switzerland	3
Total	136

Source: Parliamentary Question N° 1664 of September 21 2011

As regards the political participation of people who have recovered the Luxembourgish nationality, the Electoral Law of 18 February 2008, as amended, stipulates that Luxembourg residents domiciled abroad are allowed to participate in legislative elections through postal ballots (Article 1(4)). As for communal elections, the same Law imposes a residency requirement to Luxembourgish and foreign nationals alike (period of residency in Luxembourg for at least five years) (Article 2 (3 to 5)).²⁵⁰

Procedures for Luxembourgish nationality in 2011

All in all, 3,405 people acquired the Luxembourgish nationality in 2011. These numbers do not include 424 children having become Luxembourgish following the nationality acquisition of one of their parent.

²⁴⁹ *Ministère de la Justice, Chiffres clés : Statistiques en matière d'indigénat, Procédures de nationalité luxembourgeoise évacuées – Année 2011* (Key Figures: Statistics concerning Indigenous Population, Procedures of vacated Luxembourg nationality – Year 2011), http://www.mj.public.lu/chiffres_cles/index.html.

²⁵⁰ Response of The Hon. Jean-Marie Halsdorf, Minister for the Interior and to the Greater Region, and The Hon. François Biltgen, Minister of Justice, to Parliamentary Question N° 1664 of 21 September 2011 on Recovery of the Luxembourg nationality, 24 October 2011, www.chd.lu.

Foreign nationality	Total who acquired the Luxembourgish nationality
Portugal	1,085
Belgium	450
Italy	425
France	314
Germany	208
Montenegro	148
Bosnia and Herzegovina	114
Serbia	80
Cape Verde	60
United Kingdom	44
Kosovo	43
Netherlands	38
Spain	35
United States of America	32
Russia	30
Poland	27
Ukraine	23
Switzerland	20
China	15
Croatia	13
Macedonia	12
Romania	12
Greece	11
Iceland	9
Maurice	9
Albania	8
Finland	8
Hungary	7
Brazil	7
Canada	6
Ireland	6
Morocco	6
Cameroon	5
India	5
Czech Republic	5
Sweden	5
Iraq	4
Thailand	4
Belarus	3
Colombia	3
Iran	3
Nepal	3
Philippines	3
Stateless	3
Tunisia	3
Turkey	3

Australia	2
Austria	2
Chile	2
Ghana	2
Madagascar	2
Moldavia	2
Rwanda	2
Dominican Republic	2
Slovenia	2
Algeria	1
Angola	1
Argentina	1
Bulgaria	1
Burkina	1
Côte d'Ivoire	1
Denmark	1
Egypt	1
Estonia	1
Ethiopia	1
Georgia	1
Japan	1
Jordan	1
Kazakhstan	1
Kenya	1
Lebanon	1
Lithuania	1
Malta	1
Mexico	1
Uganda	1
Panama	1
Peru	1
Dem.Republic of the Congo	1
Senegal	1
Serbia and Montenegro	1
Singapore	1
Slovakia	1
British Overseas Territories	1
Togo	1
Turkmenistan	1
Total	3,405

Ministry of Justice, 2012

4.5.3. Developments from the EU perspective

Nothing noteworthy to report.

5. IRREGULAR IMMIGRATION AND RETURN

5.1. Irregular immigration

5.1.1. Specific context before 2011

Detention Centre

The legitimacy and conditions of the detention of foreign nationals in an irregular stay in Luxembourg within the penitentiary compound, have been repeatedly questioned over the last few years and were the subject of numerous debates within the civil society, culminating in a press release of the *Lëtzebuenger Flüchtlingsrot* – Luxembourg Refugee Collective (LFR) in 2010.²⁵¹

5.1.2. Developments within the national perspective 2011

Detention Centre

The work intended to set up a new Detention Centre continued and was concluded in 2011.

The Detention Centre has been operational since 22 August 2011.

It is an enclosed structure; its mission is to receive and provide shelter to people who are the subject of a placement measure, in application of Article 120 of the Law of 29 August 2008 on Immigration and the Free Movement of People or of Article 10 of the Law of 5 May 2006, as amended, on the Right of Asylum and to Complementary Forms of Protection and, if applicable, to prepare them for their repatriation to their home countries or their countries of origin by providing them, if needs be and depending on

²⁵¹ *Avis du LFR sur l'avant-projet de règlement grand-ducal fixant les conditions et les modalités générales du régime de rétention du Centre de rétention* (Opinion of the LFR on the Grand-Ducal Regulation draft defining the general terms and conditions of the Holding Centre's holding system), <http://www.caritas.lu/Files/AvisduLFR.pdf>. The ASTI launched Project FER 2011-2013, known as "*Jardin interculturel – Beieneen*" ("Intercultural Garden – Beieneen"). This gardening project seeks to foster the ties between the Marienthal commune's asylum seekers and the inhabitants of the Tuntange commune and, in a more general sense, the residents of Luxembourg, through gardening activities animated by a graduate in horticulture and a French-language teacher. For more details, please consult the *Rapport politique sur les migrations et l'asile 2010* (2010 Political Report on Migration and Asylum), Point 5.1.3. p 84 and 5.2.2. p 90/91, <http://www.emnluxembourg.lu/PUBLICATIONS/policy-reports>.

the circumstances, with individual psychosocial counselling by Centre staff members who have been trained specifically for this purpose. The Centre is located within the grounds of the Luxembourg airport and is placed under the authority of the Minister of Labour, Employment and Immigration. The Centre's internal security is the responsibility of the Centre's agents. Its external security is provided by Grand-Ducal Police. However, the new Detention Centre includes plans for separate sections for families and for women, and can receive 88 people.²⁵²

The Grand-Ducal Regulation of 17 August 2011 defining the general terms and conditions of the new Centre's detention system,²⁵³ particularly the rights and duties of individuals placed in statutory detention, abrogates the Grand-Ducal Regulation of 20 September 2002 on the creation of a temporary Detention Centre for irregular foreigners.

Persisting criticism of the Detention Centre

Although the various organisations had approved the construction of a Detention Centre set apart from the penitentiary compound and the fact that a law would define the detention system, as well as applauded the references made to the respect of human dignity and fundamental human rights,²⁵⁴ the debate around the transposition of the

²⁵² MAE, Immigration Department, Press conference, 2011 Balance, 31 January 2012.

²⁵³ Grand-Ducal Regulation of 17 August 2011 defining the general conditions and practical modalities of the holding system, *Mémorial A N° 180*, 22 August 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0180/2011A3222A.html>.

²⁵⁴ *Avis du LFR sur le Projet de loi portant création au Centre de rétention* (Opinion of the LFR on the Bill creating the Holding Centre), 19 March 2009, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=5947#>; *Avis sur le Projet de loi modifiant la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration et la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection du Conseil d'État, de la Chambre des Fonctionnaires et Employés Publics, de la CCDH* (Opinion on the Bill modifying the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People and the Law of 05 May 2006, as amended, on the Right of Asylum and to Complementary Forms of Protection of the Council of State, the Chamber of Civil Servants and Public Employees, the CCDH), <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6218#>.

The powers defined for the Director in the initial bill were reduced in the Law as adopted. It bears mentioning that the opinions of the Council of State and the CCDH take into consideration guidelines or proposed guidelines. Thus, the Council of State notes that Article 17 of the "Returns" Directive concerning the guarantees of family intimacy when planning lodgings should be taken into consideration in the Grand-Ducal Regulation defining the general terms and conditions of the holding system. As for the CCDH, on the basis of Article 11 of the proposed guideline to reform the Reception guideline, it demands the institution, prior to any holding measure, of a review mechanism of the individual situation of people whose physical, psychic and mental health would be harmed by holding,

“Returns” Directive and the visit by various agencies to the site of the future centre has caused a renewal of criticisms regarding the detention and treatment of people in an irregular situation in 2011. These criticisms focus on:

- the Detention Centre’s architecture and planning (sterile, need to pass through common rooms to reach the showers in the corridor, sink set above the toilet in the cells);²⁵⁵
- the increase to 6 months in the maximum term of statutory detention;²⁵⁶
- the insufficiency of alternative measures to detain an individual; legislators having considered only house arrest for detaining unaccompanied minors and families with children;²⁵⁷
- the definition of “flight risk”: the definition of flight risk appears far too wide in the LFR’s opinion,²⁵⁸ especially as it constitutes a condition for detaining an individual for his repatriation.

According to the LFR, in assuming a foreigner²⁵⁹ residing within the territory beyond the term of his visa represents a flight risk, legislators are actually equating the situation of a person in an irregular situation to that of a person presenting a flight risk. This wide definition, on top of the new centre’s significant detention capacity (with a maximum of 87 people), caused some apprehension among NGO’s that detaining should become the rule and house arrest should remain the exception in Luxembourg.

<http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=6218#> ; LFR, LDH, CCDH, les députés- <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=6218#> *Avis du LFR sur le Projet de loi du 3 novembre 2010 visant à transposer dans la législation luxembourgeoise la directive retour de l’union européenne* (Opinion of the LFR on the Bill of 03 November 2010 seeking to transpose into Luxembourg law the “Returns” Directive of the European Union, [http://www.caritas.lu/Files/AvisDirective% 20Retour.pdf](http://www.caritas.lu/Files/AvisDirective%20Retour.pdf).

²⁵⁵ *Le Quotidien, Le centre de rétention fortement critiqué* (Holding Centre is severely criticised), 24 May 2011, <http://www.lequotidien.lu/politique-et-societe/23716.html>.

²⁵⁶ *Avis de la Commission consultative des Droits de l’Homme du Grand-Duché de Luxembourg, Projet de loi 6218* (Opinion of the Consultative Commission on Human Rights of the Grand Duchy of Luxembourg, Bill 6218), p 9, 02/2011, http://www.ccdh.public.lu/fr/avis/2011/avis_PL6218_final.pdf.

²⁵⁷ *Avis de la Commission consultative des Droits de l’Homme du Grand-Duché de Luxembourg, Projet de loi 6218* (Opinion of the Consultative Commission on Human Rights of the Grand Duchy of Luxembourg, Bill 6218), p 10, 02/2011, http://www.ccdh.public.lu/fr/avis/2011/avis_PL6218_final.pdf; *La mise en place d’autres mesures moins contraignantes que la rétention comme réponse aux infractions aux règles de l’immigration et de l’asile a été revendiquée* (The implementation of other measures, less coercive than holding, as a response to violations of immigration and asylum rules is demanded), 7th Convention of Immigration-derived Associations, November 2011, November 2011, <http://www.clae.lu/html/m4sm2.html>.

²⁵⁸ *Commentaires du LFR concernant le projet de loi du 3 novembre 2010 portant modification de la loi sur l’immigration de 2008 et de la loi relative au droit d’asile de 2006* (Observations of the LFR concerning the Bill of 03 November 2010 modifying the Law of 2008 on Immigration and the Law of 2006 on the Right of Asylum), 22 December 2010.

²⁵⁹ Article 111 of the Law of 01 July 2011.

Finally, the LFR considers that the use of force during a forced repatriation should not be allowed unless absolutely necessary. It argues in favour of independent observers being allowed to witness not only the actual journey but also the phase that precedes the boarding.²⁶⁰

Since its inauguration in August 2011, 129 individuals have been held in the Detention Centre, including 105 unmarried men, 4 unmarried women, a 5-member family, 3 4-member families and 1 3-member family. 23 people were removed to their home countries in 2011; 47 people were transferred to another Member State under the Dublin project; and 35 were released.²⁶¹

Regularisations

The Grand Duchy of Luxembourg has no generalised practice regarding regularisation; rather, regularisations are reviewed on a case-by-case basis.

Regularisations are possible in very exceptional cases, under very serious humanitarian circumstances or in light of the affected person's family situation. The Law of 1 July 2011, modifying the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People and the Law of 05 May 2006, as amended, on the Right of Asylum and to Complementary Forms of Protection,²⁶² transposing into national law the "Returns" Directive, allows residency permits to be granted for private reasons on the grounds of humanitarian reasons of exceptional gravity to third-country nationals residing irregularly within the territory (Article 7879).

²⁶⁰ *Avis du Collectif Réfugiés Luxembourg sur le projet de loi modifiant la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration et la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection* (Opinion of the Luxembourg Refugee Collective on the Bill modifying the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People and the Law of 05 May 2006, as amended, on the Right of Asylum and to Complementary Forms of Protection), 22 December 2010,

<http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6218#>.

²⁶¹ MAE, Immigration Department, Press conference, 2011 Balance, 31 /01/2012, Refugee Division, MAE, Refugee Division, *Statistiques concernant les demandes de protection internationale au Grand-Duché de Luxembourg jusqu'au mois de décembre 2011* (Statistics on international protection requests to the Grand Duchy of Luxembourg up to the month of December 2011), 13 January 2012,

<http://www.mae.lu/Site-MAE/Immigration/Chiffres-cles-en-matiere-d-asile>.

²⁶² Law of 01 July 2011, modifying the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People and the Law of 05 May 2006, as amended, on the Right of Asylum and to Complementary Forms of Protection,

<http://www.legilux.public.lu/leg/a/archives/2011/0151/2011A2180A.html>.

The previous legislation (Law of 29 August 2008) already allowed for the possibility of issuing a residency permit of the “private life” type for humanitarian reasons of exceptional gravity. The legislative modification has tempered the granting conditions insofar as the person requesting such an authorisation need no longer prove the existence of sufficient resources. Furthermore, the maximum term of validity of the “private life” residency permit is extended to 3 years instead of one, as was previously the case. On the other hand, legislators have kept the expression “humanitarian reasons of exceptional gravity”, whereas the “Returns” Directive allows for the possibility of a right of residency based on charitable, humanitarian or other reasons.

Article 89 of the Law of 29 August 2008 remains in effect. This Article allows the Minister in charge of immigration to grant a residency permit, exceptionally, to people residing irregularly in Luxembourg should they meet very specific conditions. Candidates for regularisation must provide proof of, among other things, a continuous stay and habitual professional occupation in Luxembourg for at least eight years.

“Private life” residency permits issued in 2011
(1st issuance + renewal)

Residency permits	Number
Private life (resumption)	392
Private life – other	170
Private life – 78(1)a (sufficient resources)	109
Private life – 78(1)c (family or personal ties)	52
Private life – 78(1)d (humanitarian reasons)	3
Total	726

Directorate of Immigration, 2012

First issuance of “Private life” residency permits to third-country nationals

(23 May – 31 December 2011)

Category	Permits issued (Jan to May)	Permits issued (May to Dec)	TOTAL (permits issued)
Private life (not itemised)	88	25	113
Private life – other	/	45	45
Private life – 78 (1)a (sufficient resources)	/	28	28
Private life – 78 (1)c (family or personal ties)	/	32	32
Private life – 78 (1)d (humanitarian reasons)	/	2	2
Total	88	132	220

Directorate of Immigration, 2012

Provisions against undeclared work

The Government has stated its determination to fight against undeclared work, which goes together with the organisation of legal immigration, and to strictly enforce national legislation based on Directive 2009/52/CE of 18 June 2009, which calls for providing for minimum standards on sanctions and measures against employers of irregularly staying third-country nationals, the so-called “Sanctions” Directive.²⁶³

Luxembourg partially anticipated the transposition of said Directive by the Law of 29 August 2008, as amended, on immigration. Articles 139 to 148 of this Law set out the sanctions related to irregular migration. The Law calls for sanctions for the individuals, related to the entry, the illegal stay, and the disregard of repatriation decisions, work and illegal employment, but also for those persons and transportation companies who support, whether directly or indirectly, the irregular entry and stay of others.

Thus, the Law calls for fines for transportation companies that fail in their obligation to inform the police regarding the identity of the passengers they transport to Luxembourg and that transport third-country nationals who lack the proper travelling documents and, where applicable, the required visas. Sanctions are called for against the employers of third-country nationals staying irregularly, forcing the employer to pay all arrears (wages, social contributions, taxes). Furthermore, additional penalties may be decreed,

²⁶³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:168:0024:0032:FR:PDF>. By late 2011, the directive had not yet been transposed into national law. Expected date of transposition: early 2012.

such as the temporary prohibition against exercising the professional activity (maximum of three years) or the temporary shutdown of the company (a penalty which may be for five years or definitive) (Article 145).

The law also allows for the incarceration and/or fines for any foreigner who, after having been expelled or repatriated, returns to the country despite a denial of entry to the territory. Fines (from 500 to 125,000 Euros and/or imprisonment for between six months and five years) are applicable to any person who, directly or indirectly, knowingly facilitated or attempted to facilitate the entry, transit or/and (for purposes of gain) the irregular stay of a third-country national (Article 141, Article 143).

The Labour and Mining Inspectorate (*Inspection du Travail et des Mines*, or ITM), under the political authority of the Ministry of Labour and Employment, is the proper national authority for the enforcement of provisions concerning the secondment of workers. Its role is to ensure that all laws regarding working conditions and the protection of workers under a work contract are enforced. Verification is the responsibility of its inspectors and controllers, who are increasingly supported by customs-officers workers'. The ITM is responsible for checking working conditions, and particularly wages, work schedules and holidays, and the cross-border secondment of salaried workers. To do so, it organises spot-check visits and routine inspections throughout the year in all business segments. The ITM must enforce all norms concerning to clandestine or undeclared work, including the provisions on work permits for workers who are not nationals of a Member State of the European Economic Area. In this context, the ITM works in close collaboration with the Grand-Ducal Police and the Customs and Excise Authorities.

*Undeclared Work – Cooperation with other Member States’ authorities*²⁶⁴

In 2011, Luxembourg intensified its fight against undeclared work.

As part of the cooperation between competent authorities on working conditions in general, on Directive 96/71/CE on the secondment of workers, and in the specific area of organised undeclared work, the ITM of the Grand Duchy of Luxembourg signed an agreement with the National Labour Inspectorate of the Republic of Poland on 29 June 2010, documenting the strengthening of its exchanges of administrative information and the development of continuing training in the context of periodic exchanges of labour inspectors.²⁶⁵

On 15 February 2011, the Minister of Labour, Employment and Immigration of the Grand Duchy of Luxembourg and the Minister of Labour, Employment and Health of the French Republic declared they wanted to bolster their cooperation regarding the verification of transnational worker secondment and the fight against undeclared work. Closer cooperation is sought between France’s Labour Inspectorate and the Labour and Mining Inspectorate of the Grand Duchy of Luxembourg, through liaison offices²⁶⁶ with national jurisdiction. Thus, the proper authorities may carry out coordinated inspections and exchange information regarding their verification and working methods and the main changes in legal, regulatory and administrative provisions.²⁶⁷

²⁶⁴ In 2008, the ITM had already reached an inter-departmental agreement with Belgium’s Social Laws Inspectorate and Welfare Inspectorate on cooperation and the mutual exchange of information. Inter-departmental agreement signed on 08 July 2011 between the Labour and Mining Inspectorate in Luxembourg and the Social Laws Inspectorate and Welfare Inspectorate, both under the Federal Public Service, Employment, Labour and Social Dialogue the Federal Public Service, Employment, Social Security, in Belgium. Internal Document.

²⁶⁵ ITM 2010, Press release, *Signature d’un Arrangement de Coopération et d’échange d’Information* (Signing of an Agreement for Cooperation and the Exchange of Information), 29 June 2010.

²⁶⁶ For France: the Lorraine’s Regional Department of Enterprise, Competition, Consumer Affairs, Labour and Employment (*Direction régionale des entreprises, de la concurrence, de la consommation, du travail et de l’emploi*, or DIRECCTE), as decentralised liaison office, competent for any exchange of information on the verification of compliance with secondment rules as understood by Directive 96/71/CE, and concerning French or Luxembourgish enterprises rendering transnational services throughout the French or Luxembourgish territory. For Luxembourg: the *Bureau de liaison luxembourgeois en matière de détachement et travail illégal* (Luxembourgish Liaison Office for Secondment and Undeclared Work, or BLLD), executive agency of the national authority responsible for any exchange of information on the verification of compliance with secondment rules as understood by Directive 96/71/CE, and concerning French or Luxembourgish enterprises rendering transnational services throughout the French or Luxembourgish territory.

²⁶⁷ Ministry of Labour and Employment, *Déclaration de coopération conclue entre, d’une part, le Ministre du travail, de l’emploi et de la santé de la République française et, d’autre part, le Ministre du travail, de l’emploi et de l’immigration du Grand-Duché de Luxembourg, en matière de contrôle du détachement transnational de travailleurs et de lutte contre le travail illégal* (Declaration of cooperation signed between, on the one hand, the Minister of Labour, Employment and Health of the French Republic

On 18 February 2011, the ITM and the leading Inspectorates of 11 other Member States signed the Charter of Bruges,²⁶⁸ declaring the need for European cooperation in the fight against undeclared work and cross-border social fraud. This cross-border charter formalises the collaboration between the signatories and reinforces the resolutions of the ICENUW (Implementing Cooperation in a European Network against Undeclared Work) project.²⁶⁹

On July 7, 2011, the ITM and Portugal's *Autoridade para as Condições do Trabalho* (Authority for Working Conditions) agreed to cooperate on matters pertaining to the mutual exchange of information and experience, to the verification of the enforcement of legal provisions concerning occupational safety and health and labour laws, and to the verification of the rules on transnational worker secondment and the fight against undeclared work.²⁷⁰

Furthermore, the lightning actions of the *Cellule inter administrative de lutte contre le travail illégal* (Inter-administrative Cell for the Fight against Undeclared Work, or CIALTI) or under the coordination of the *Pôle détachement et travail illégal* (Secondment and Undeclared Work Pole, or PDTI) and of the ITM continued in 2011. The proper authorities, under the coordination of the CIALTI, conducted in-depth verifications at worksites in Luxembourg.²⁷¹

and, on the other hand, the Minister of Labour, Employment and Immigration of the Grand Duchy of Luxembourg, concerning the verification of the transnational worker secondment and the fight against undeclared work), 15 February 2011.

²⁶⁸ And the leading inspection authorities and governing bodies of fiscal agencies of 11 European countries. *The Charter of Bruges. Common endorsement on the need for further European cooperation in the fight against undeclared work and cross-border social fraud*, 18 February 2011;

http://www.socialsecurity.fgov.be/docs/en/conferences/icenuw/persbericht_icenuw_en.pdf

²⁶⁹ *Implementing Cooperation in a European Network against Undeclared Work*,

<http://www.socialsecurity.fgov.be/docs/en/conferences/icenuw/espanareport.pdf>

²⁷⁰ *Arrangement administratif entre l'Autorité pour les conditions de travail du Portugal et l'Inspection du travail et des mines du Luxembourg en matière de contrôle du détachement transnational de travailleurs et de lutte contre le travail illégal* (Inter-departmental agreement between Portugal's Authority for Working Conditions and Luxembourg's Labour and Mining Inspectorate on the verification of the transnational worker secondment and the fight against undeclared work). In this context, reports on clandestine work were filed against six enterprises. Meanwhile, the PDTI conducted two major night-time inspections in July 2011 at the "Staffelter" Tunnel worksite, on the North Road, and at a construction site located in Esch-Belval. On 13 September 2011, the *Cellule inter administrative de lutte contre le travail illégal* (Inter-administrative Cell for the Fight against Undeclared Work, or CIALTI) carried out an unscheduled inspection control at a large mixed construction site, located in downtown Diekirch. Another lightning action was conducted at a worksite in Ettelbruck, resulting in a Customs report being filed against a company for clandestine work, and a Police report against a multiple-offender employer who had hired three third-country nationals as unauthorised salaried workers.

²⁷¹ In this context, reports on clandestine work were filed against six enterprises. Meanwhile, the PDTI conducted two major night-time inspections in July 2011 at the "Staffelter" Tunnel worksite, on the North Road, and at a construction site located in Esch-Belval. On 13 September 2011, the *Cellule inter*

5.1.3. Developments from the EU perspective

Transposition of Directive 2009/52/CE

The transposition of Directive 2009/52/CE (the “Sanctions” Directive) of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of irregularly staying third-country nationals has not yet been carried out.²⁷²

Luxembourg had already partially anticipated the transposition of said Directive in the Law of 29 August 2008 on Immigration and the Free Movement of People, which called for sanctions concerning irregular migration (Articles 139 to 148),²⁷³ by forcing the employer to pay all arrears (wages, social contributions, taxes).²⁷⁴ The law also allows for the incarceration and/or fines for any foreigner who, after having been expelled or repatriated, returns to the country despite a denial of entry to the territory.²⁷⁵ (See Point 5.1.2.)

Liaison agent

Luxembourg currently has only one liaison agent with Europol. The liaison officer is tasked by the national unit to represent the latter’s interests in Europol in accordance with domestic law and in compliance with the provisions applicable to Europol’s operations. Thus, the liaison officer contributes to the exchange of information between the national units in Luxembourg and Europol (“police mutual aid”).

Nevertheless, on the basis of the enforcement action related to the shared use of the network of Benelux liaison officers, Luxembourg may call upon Belgian or Dutch liaison agents assigned to one or more receiving States, or by one or more international organisations.

administrative de lutte contre le travail illégal (Inter-administrative Cell for the Fight against Undeclared Work, or CIALTI) carried out an unscheduled inspection control at a large mixed construction site, located in downtown Diekirch. Another lightning action was conducted at a worksite in Ettelbruck, resulting in a Customs report being filed against a company for clandestine work, and a Police report against a multiple-offender employer who had hired three third-country nationals as unauthorised salaried workers, <http://www.itm.lu/actualites/action-coup-de-poing-a-ettelbruck>.

²⁷² As of 21 December 2011, no bill had been introduced before the Government Council.

²⁷³ Law of 29 August 2008 on Immigration and the Free Movement of People, <http://www.legilux.public.lu/leg/a/archives/2011/0151/a151.pdf>.

²⁷⁴ Article 146 of the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People.

²⁷⁵ Article 142 of the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People.

5.2. Return migrations

5.2.1. Specific context before 2011

Promotion of voluntary return

The Government's 2009-2014 programme states that a credible fight against illegal immigration must be based on a coherent return policy for people staying irregularly. The Government wishes to foster the voluntary return of people in an irregular situation, to preserve the human dignity of the people involved, by setting the term granted a person staying irregularly to comply voluntarily with the obligation to leave the territory at 30 days and by grounding in the law the possibility for those affected of receiving assistance for their return. Underlining the common approach in the promotion of voluntary returns, the Government is cooperating with the OIM (*Organisation internationale pour les migrations*, or International Organisation for Migration).²⁷⁶

The first cooperative project between the Government and the OIM, on assistance for the voluntary return of foreign nationals and their reintegration in their home countries, was signed on 5 August 2008.²⁷⁷ This first project covered the period from 1 August 2008 to 15 March 2009 and was limited to rejected DPI from Kosovo who could no longer benefit from grace measures. Sixteen Kosovars have been involved in this programme.

The second programme, covering the period from 1 August 2009 to 31 December 2009, eliminated the geographical limit and the reference to one group of beneficiaries. Along with rejected asylum seekers, it targeted third-country nationals in an irregular situation. Thirty-eight people were able to benefit from the OIM programme. The support and assistance for the return have already been described in detail in the 2009 report.²⁷⁸

As regards the legal and regulatory mechanism, one must also mention the new Grand-Ducal Regulation of 17 August 2011²⁷⁹ establishing good-conduct rules to be followed

²⁷⁶ Cf. also Point II (f).

²⁷⁷ MAE, *Fonds européen pour le retour, Programme pluriannuel 2008-2013* (European Return Fund, Multi-Year Programme 2008-2013), <http://www.mae.lu/en/content/view/full/25548>.

²⁷⁸ European Migration Network – National Contact Point – Luxembourg, *Rapport politique sur les migrations et l'asile 2009* (2009 Political Report on Migration and Asylum), ch.3.11, pp 53-55, published in 2010, http://www.emnluxembourg.lu/sites/default/files/2009_RapportPolitique_EMN-NCP-LU.pdf.

²⁷⁹ <http://www.legilux.public.lu/leg/a/archives/2011/0180/a180.pdf>.

by agents tasked with the execution of a repatriation measure, in accordance with Article 124(4) of the Law of 29 August 2008, as amended.

5.2.2. Developments within the national perspective 2011

The year was marked by the new Assisted Voluntary Return and Reintegration Programme, but also by the debate surrounding the transposition of the “Returns” Directive (*Cf.* also Point 5.1)

Assisted Voluntary Return and Reintegration from Luxembourg (AVRR L) programme

The Law of 29 August 2008, as amended,²⁸⁰ sets a term of thirty days from the date of notification of the decision for voluntary returns.²⁸¹

The project for Assisted Voluntary Return and Reintegration throughout the world, implemented for the year 2010 through an agreement between the MAE and the OIM,²⁸² was extended during the first semester of 2011 (from 1 January to 30 June 2011). 60 people benefitted from this project until late June 2011.

Since 1 July 2011, and following a request for proposals launched by the Directorate of Immigration for the 2011-2013 period, the agreement between the MAE and the OIM was continued within the framework of the European Return Fund.²⁸³

A mechanism of assistance for the voluntary return and reintegration is made available disposition through the Assisted Voluntary Return and Reintegration from Luxembourg (AVRR L) programme.

²⁸⁰ Article 111(2) <http://www.legilux.public.lu/leg/a/archives/2011/0151/a151.pdf>.

²⁸¹ Article 22(1) calls for a term for voluntary return which, under exceptional circumstances, may exceed thirty days.

²⁸² This project follows on the heels of the pilot project of Assistance for Voluntary Return and Reintegration from Luxembourg to Kosovo, signed in 2008 (returns to Kosovo organised for 16 recipients), and the 2009 project of Assistance for Voluntary Return and Reintegration throughout the world. See also European Migration Network-National Contact Point Luxembourg, *Rapport politique sur les migrations et l'asile 2009 et 2010* (2009 and 2010 Political Reports on Migration and Asylum), www.emnluxembourg.lu.

²⁸³ International Organisation for Migration, *Assistance au Retour volontaire depuis le Grand-Duché du Luxembourg 2011* (2011 Assistance for Voluntary Return from the Grand Duchy of Luxembourg), Information Session, Luxembourg Red Cross, 13 September 2011.

The assistance includes, among other things, travelling expenses for those people considering a voluntary return, as well as the expenses of organising the voluntary returns, (e.g. costs related to the acquisition of a travelling document), and money for out-of-pocket expenses given to people returning voluntarily. Likewise, the assistance includes a financial contribution for initial post-return expenses, including, if applicable, transportation expenses within the country of return or expenses for temporary lodging. The geographical coverage includes all countries of return. To facilitate the reintegration in the country of origin, assistance is available to develop revenue-generating activities or to search for employment; if applicable, specific assistance for vulnerable people is also available.

The 2011 programme distinguishes seven categories and calls for a decreasing schedule of assistance. Certain categories of individuals may benefit from full assistance (A1, B1, C1, C2), while others receive basic assistance (A2, B2, D). Under the AVVRL, Serbian and Macedonian nationals, since they come from “safe countries”, may only receive basic assistance.²⁸⁴

²⁸⁴ The AVVRL (**complete assistance**) applies to:

(A.1) third-country nationals who, in the course of an international protection request procedure filed at least 12 months earlier, decide – of their own free will – to waive their international protection request and voluntarily return to their country of origin;

(B.1.) third-country nationals who have been ordered to leave Luxembourg territory under the applicable provisions of the Law of 05 May 2006, as amended, on the Right of Asylum and to Complementary Forms of Protection;

(C.1) third-country nationals who have filed no international protection request, were in Luxembourg’s territory prior to 01 January 2010, and to whom a residency permit and/or residency itself has been denied under the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People; such persons must prove they have resided in Luxembourg uninterruptedly for at least 12 months at the time they present themselves;

(C.2) third-country nationals who have filed no international protection request, were illegally in Luxembourg’s territory prior to 01 January 2010, and decide – of their own free will – to waive their international protection request and voluntarily return to their country of origin; such persons must prove they have resided in Luxembourg uninterruptedly for at least 12 months at the time they present themselves.

The AVVRL (**basic assistance**) applies to the:

(D.) undocumented third-country nationals being held in accordance with the Law of 05 May 2006, as amended, on the Right of Asylum and to Complementary Forms of Protection or with the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People, and who wish return back voluntarily.

(A.2) third-country nationals who, in the course of an international protection request procedure filed less than 12 months earlier, decide to waive their international protection request and voluntarily return to their country of origin;

(B.2) third-country nationals who have been ordered to leave Luxembourg territory under the applicable provisions of the Law of 05 May 2006, as amended, on the Right of Asylum and to Complementary Forms of Protection, who come from a safe country as per the Grand-Ducal Regulation of 21 December 2007 defining a list of safe home countries as understood by the Law of 05 May 2006, as amended, on the Right of Asylum and to Complementary Forms of Protection, and who filed an international protection request after 01 January 2010.

	Categories A1, B1, C1, C2	Categories A2, B2, D
Material assistance for the return	600 € maximum per adult, 300 € maximum per child	300 € maximum per person
Reintegration assistance	2,000 € maximum per family + 2,000 € maximum per family Or 600 € maximum per family for finding employment +600 € maximum for vulnerable cases	500 € per family

OIM, Red Cross 2011, Information document

Out of the 1,389 decisions on international protection made in 2011, 15 people were granted tolerance status. 257 people received a reprieve for repatriation.

People granted tolerance status:

Pays	Nombre
Kosovo	6
FYROM	3
Bosnia	2
Afghanistan	1
Iran	1
Liberia	1
Dem. Republic of the Congo	1
Total	15

Source: Directorate of Immigration, 2012

Returns in 2011

Total returns	2011
Repatriations of Luxembourg	26
Forced returns	32
Returns (after detention)	524
Voluntary returns	99
Total	582

Source: Directorate of Immigration, 2012

Return statistics include repatriations of persons refused international protection and of irregular persons.

Returns in 2011

Continent	Nationality	Voluntary		After detention	Forced	Total
		With or Without OIM assistance	With OIM assistance	(under escorte)	(underes corte)	
Balkans	Albania	2	3	5	0	7
	Bosnia and Herzegovina	8	1	1	3	12
	Kosovo	58	56	2	12	72
	FYROM (Macedonia)	62	2	3	0	65
	Montenegro	5	0	0	1	6
	Serbia	348	1	2	0	350
Afrique	Algeria	1	1	2	0	3
	Cape Verde	0	1	3	2	5
	Côte d'Ivoire	1	1	0	0	1
	Ethiopia	1	1	0	0	1
	Gambia	0	1	1	0	1
	Guinea	0	1	1	1	2
	Morocco	0	0	0	1	1
	Nigeria	0	0	0	3	3
	Sudan	1	1	0	0	1
	Tunisia	2	2	3	2	7
Amérique	Brazil	8	3	3	0	11
	Mexico	2	2	0	1	3
	Paraguay	0	0	1	0	1
Reste Europe	Belarus	5	5	2	0	7
	Bulgaria	2	0	0	0	2
	Moldavia	2	1	1	0	3
	Russia	1	0	0	0	1
Asie	Bangladesh	1	1	0	0	1
	China	10	10	0	0	10
	Afghanistan					
Moyen Orient	Iraq	0	1	1	0	1
	Kirghizstan	2	3	1	0	3
	Australia	1	1	0	0	1
	Belarus					
Océanie	Bulgaria	1	0	0	0	1
TOTAL		524	99	32	26	582

The suspension of removal for medical reasons

Article 130 of the Law of 29 August 2008 on the Free Movement of Persons and Immigration provides that "a foreigner cannot be expelled from the territory if it is established through medical certification that his health requires medical care and the lack of this care would entail exceptionally severe consequences, and that no appropriate treatment is available in the country to which he is likely to be removed".

The person who meets these criteria may obtain a "suspension of removal for a maximum of six months. The suspension is renewable and may not exceed the duration of two years "(Article 131).

The Immigration Minister decides on the suspension of removal after motivated advice by the Medical Service of Immigration (SMI)

During 2011, the SMI was approached 196 times by the Directorate of Immigration to advice on a possible suspension of removal.

The affected persons came from 36 different countries of origin: 72 (36%) of applicants were from Kosovo, 111 (56%) were nationals of the former Yugoslavia and 57 (29%) were from Africa (including 15 from Nigeria and five Maghreb).

71 (36%) of persons suffered from psychiatric problems (depression, psychoses, PTSD), 22 (11%) from infectious diseases (HIV- Hepatitis...), 16 (8%) from cardio problems and 15 (8%) from neurological problems.

5.2.3. Developments from the EU perspective

Transposition of the "Returns" Directive

The Law of 01 July 2011 modifying the Law on Immigration and the Free Movement of People and the Law on the Right of Asylum and to Complementary Forms of Protection²⁸⁵ transposed Directive 2008/115/CE,²⁸⁶ the so-called "Returns" Directive, into national law.

²⁸⁵ *Mémorial A* N° 151, 25 July 2011,
<http://www.legilux.public.lu/leg/a/archives/2011/0151/2011A2180A.html>.

The law on immigration adopted in 2008²⁸⁷ and the one organising the Detention Centre²⁸⁸ already included a significant part of provisions which complied with the “Returns” Directive, notably as regards detention, procedural guarantees during repatriation, repatriation reprieve in the case of illness, and the good-conduct rules to be followed by agents tasked with the execution of a repatriation measure.

The most important modifications relate to:

- a) the promotion of voluntary return: the person subject of a return decision has a term of 30 days to comply voluntarily with the obligation to leave the territory. This term may be extended, if needs be, and the affected person may solicit a mechanism of assistance for the return;²⁸⁹
- b) the introduction of a less coercive alternative measure to complement statutory detaining in an enclosed structure, *i.e.* house arrest;²⁹⁰
- c) the strictly equal treatment of people subject to the obligation to return, whether they are staying irregularly because they entered the national territory irregularly or whether they are staying irregularly because their request for asylum was definitely rejected. In certain circumstances, and after a case-by-case verification, they may have their repatriation postponed for a specific period;²⁹¹
- d) a softening of the conditions for granting a residency permit for humanitarian reasons of exceptional gravity.²⁹²

²⁸⁶ *Directive 2008/115/CE du Parlement Européen et du Conseil du 16 décembre 2008 relative aux normes et procédures communes applicables dans les États membres au retour des ressortissants de pays tiers en séjour* (Directive 2008/115/CE of the European Parliament and the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals), <http://eur-lex.europa.had/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:FR:PDF>.

²⁸⁷ Law of 29 August 2008, as amended, on Immigration and the Free Movement of People.

²⁸⁸ Law of 18 May 2009 on the creation and organisation of the Holding Centre; Grand-Ducal Regulation of 17 August 2011 defining the general terms and conditions of the Holding Centre’s holding system, abrogating Article I of the Grand-Ducal Regulation of 20 September 2002 on the creation of a temporary Holding Centre for foreigners in irregular situations, and modifying the amended Grand-Ducal Regulation of 24 March 1989 on the administration and internal regime of penal institutions.

²⁸⁹ Article 111(2) of the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People.

²⁹⁰ Article 125 of the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People.

²⁹¹ Article 125 encores of the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People.

²⁹² Article 78 of the Law of 29 August, as amended, on Immigration and the Free Movement of People.

Readmission agreements

Readmission agreements, which seek to facilitate the repatriation “of people who do not, or no longer, meet the requirements for their entry, presence or stay in the requesting State”, are seen as an essential means in the fight against irregular immigration, whether at the bilateral, intergovernmental or Community level.

All agreements applicable in Luxembourg were negotiated either with Benelux partners under the Schengen Agreement, or they consist of agreements negotiated by the European Commission under a mandate from the Council of the European Union.

The **Readmission Agreement** (*Accord de reprise et de réadmission*), signed on 12 May 2011 between the Benelux countries and Kosovo, is meant to define straightforward, transparent conditions and practical modes for the readmission of irregular residents ordered to leave the territory. Netherlands, Belgium and Luxembourg have agreed on the need to negotiate such an agreement with Kosovo, on the one hand to improve the cooperation with this country, and on the other hand to provide a precise legal framework for repatriation measures. Finally, another desired goal is to expedite, as much as possible, the issue of travelling documents for return purposes. The provisions of the Readmission Agreement apply to all Benelux citizens, on the one hand, and to nationals of the Republic of Kosovo, on the other, regardless of their ethnic origin. They also apply to third-country nationals who have transited through the territories of the contracting Parties.

The **Application Protocol** for the Readmission Agreement between **Luxembourg and Russia** was signed on 13 September 2011.²⁹³

²⁹³ Ratification is expected in early 2012. Approval of the bill approving the Application Protocol between the Government of the Grand Duchy of Luxembourg and the Government of the Russian Federation on the implementation of the Readmission Agreement of 25 May 2006 between the European Community and the Russian Federation is expected in early 2012.

5.3. Measures taken against human trafficking

5.3.1. Specific context before 2011

The Law of 29 August 2008²⁹⁴ on Immigration and the Free Movement of People grants trafficking victims who are third-country nationals a ninety-day cooling-off period during which the victim cannot be removed from Luxembourg territory. This Law sets the conditions under which residency permit may be granted upon expiration of this period (Articles 95 to 98).

The Law of 08 May 2009 on the assistance to, and protection and security of, victims of human trafficking²⁹⁵ created a framework for the protection of and assistance to trafficking victims.

No organised clandestine immigration has ever been detected in Luxembourg. No arrest has been made in this field in Luxembourg. Luxembourg collaborates with other Member States to dismantle organisations dedicated to clandestine immigration.

As regards human trafficking, the police focus essentially on prostitution. There are no indications that would lead to the conclusion that Luxembourg is affected by organ trafficking or by other kinds of trafficking.

In 2010, judicial authorities punished four people for human trafficking (six in 2009). Sentences of, respectively, nine months, fifteen months, three years and four years were handed out.

5.3.2. Developments within the national perspective 2011

*Legal proceedings against human trafficking in 2011*²⁹⁶

On 14 July 2011, Luxembourg's judicial police arrested four persons in a cabaret on suspicion of human trafficking, procuring, and money laundering.

In 2011, 3 judgments in human trafficking cases were pronounced:

²⁹⁴ *Mémorial A* N° 138, 10 September 2008,

<http://www.legilux.public.lu/leg/a/archives/2008/0138/index.html>.

²⁹⁵ *Mémorial A* N° 129, 09 June 2009, <http://www.legilux.public.lu/leg/a/archives/2009/0129/a129.pdf>.

²⁹⁶ Minutes of the meeting between the EMN NCP LU and the Grand-Ducal Police, 14 October 2010.

http://ec.europa.eu/anti-trafficking/download.action;jsessionid=GBQJNZDb9jdS16JmJHTgh4pnc2hTwbC6JzRnJbJRDC4l8YdFFJbv!1145937442?nodeId=99117697-83ae-4304-b725-0a2de6531a81&fileName=Luxemborg+National+information+P._fr.pdf&fileType=pdf

On 13 July 2011,²⁹⁷ the Appellate Court sentenced two Bulgarian nationals. They were convicted for acts of procuring with aggravating circumstances and of human trafficking (Articles 382-1 and 382-2 of the Criminal Code), and sentenced to 12 months of jail and a 3,000-Euro fine each. After having met the two victims, also Bulgarian nationals, in Germany's prostitution circles, they organised the latter's transportation to and lodging and prostitution activities in Luxembourg by resorting to violence and depriving them of a significant part of their earnings.

On 28 April 2011,²⁹⁸ a person of Brazilian origin was sentenced to 5 years' imprisonment and a criminal fine of 10,000 Euros for human trafficking (Articles 382-1 and 382 -2), procuring (379bis, Paragraph 5), and fraud. The accused had convinced several people to travel from Brazil, via France, to Luxembourg, with the promise of employment. After payment of a 500-Euro "tax to enter the territory", made to the accused, the victims found themselves irregularly in Luxembourg territory and without employment. The accused recommended they turn to prostitution, which the accused then arranged. Luxembourg cooperates with other countries on the basis of the Law on the assistance to, and protection and security of, victims of human trafficking.

National Action Plan for Equality of Women and Men (2009-2014)

Part 4 of the National Action Plan for Equality of Women and Men (2009-2014)²⁹⁹ deals with violence, trafficking and prostitution, and calls for the establishment of a system to follow up on laws dealing with human trafficking. The Government's programme expects this National Action Plan to be monitored scientifically by an outside expert and evaluated in late 2013.³⁰⁰

²⁹⁷ Judgment N° 387/11 X of 13 July 2011.

²⁹⁸ Judgment N° 144/2011 Not. 919/10/CD.

²⁹⁹ Ministry for Equal Opportunities,

http://www.mega.public.lu/publications/1_brochures/2010/pan_egalite_2009-2014/Pan_Egalit__.pdf.

³⁰⁰ Ministry for Equal Opportunities, *La mise en œuvre du PAN Égalité* (Implementation of Equality National Action Plan),

http://www.mega.public.lu/actualites/actu_min/2010/02/pan_egalite/pan_egalite/index.html.

Bilateral consultation on the regulation and the supervision of the phenomenon of prostitution

On 12 September 2011, the Minister for Equal Opportunities went on a working visit to The Hague, Rotterdam and Amsterdam.³⁰¹ This visit was part of a series of bilateral consultations on the regulation and supervision of the phenomenon of prostitution. By stressing the fact that prostitution is intimately related to the phenomenon of human trafficking, both Ministers highlighted the need to find a legislative mechanism that offers a fair balance between, on the one hand, defending the rights of prostitutes and protecting them against all forms of exploitation and, on the other hand, constituting an effective tool in the fight against human trafficking.³⁰²

5.3.3. Developments from the EU perspective

The Grand-Ducal Police is still a member of the Europol's AWF Phoenix, in charge of gathering and analysing information on human trafficking. Besides going through the usual channels of police cooperation, European Union countries are increasingly seeking to organise joint investigation teams.

³⁰¹ With the Dutch Minister of Justice and Security, The Hon. Ivo Opstelten.

³⁰² News article, *Réunion de travail de Françoise Hetto-Gaasch avec le ministre hollandais de la Justice et de la Sécurité, Ivo Opstelten* Working meeting of Françoise Hetto-Gaasch with the Dutch Minister of Justice and Security, Ivo Opstelten), 12-13 September 2011, http://www.gouvernement.lu/salle_presse/actualite/2011/09-septembre/12-hetto/index.html.

6. BORDER CONTROL

6.1. Immigration control and monitoring at the border

6.1.1. Specific context before 2011

Control at the outer border/at the Luxembourg airport

Border controls performed within the Luxembourg airport, which is Luxembourg's only outer border, are carried out, notably, to contribute to the fight against irregular immigration and human trafficking. In accordance with the Schengen Borders Code, the controls are performed at the border crossing points by members of the Central Police Unit at the airport, to ensure that travellers are allowed to enter or leave the territory of the Grand Duchy of Luxembourg.

This unit, which consists of the Airport Control Department (*Service de Contrôle à l'Aéroport*, or SCA) and the Airport Detention Control Department (*Service de Contrôle de Garde à l'Aéroport*, or SGA), has 60 people (police officers and private security personnel), 30 of whom are in charge of border control.

Beginning on 21 May 2008 with the inauguration of a new "Terminal A", border control personnel has been increased. To be able to carry out all the missions for which the SCA is responsible, the SCF received two additional officers, as did the SDV.

The Travel Documents Department (*Service des Documents de Voyage*, or SDV) currently consists of 5 specialists in the area of forged documents. They also provide the so-called "second-line" control, *i.e.* a more exhaustive analysis of the identity check and a close study of the travelling documents presented by the traveller. Because of their know-how, these police officials constitute the national centre of expertise regarding the assessment of any official document. In they also provide part of the in-house, ongoing training of SCF members. They manage and update databases such as FADO (for False and Authentic Documents Online) and are in charge of statistics related to the outer border.

All passengers and crews who go through the A terminal and the GAT (General Aviation Terminal) coming from or going to a "Non-Schengen" country must go

through the border control before entering or leaving Luxembourg territory. The control procedures include:

- prior verification of the “APIS” lists for every flight from a “Non-Schengen” country;
- verification of the validity and authenticity of the travelling document, using the specialised material available at the ticket windows;
- consultation of computer databases (SIS, Interpol...) by using the “Passport reader” and, for biometric passports, the “chip verifier”;
- comparison of the document’s photograph with the traveller’s physiognomy, “imposter” analysis;
- various evaluations of the traveller, depending on whether the person is a tourist, student, businessperson, travelling in a group or alone;
- profiling, which consists in asking questions, checking linguistic knowledge, checking routing, verifying plane ticket for place of departure and place of destination, and observing the traveller’s behaviour.

Border control does not consist only of verifications of the people showing up at the ticket windows; it also covers the risk analysis of illegal immigration. The Airport Control Department is the unit responsible for this risk analysis at the Luxembourg airport; it prepares bimonthly reports based partly on statistics and reports prepared by FRAN (Frontex Risk Analysis Network), of the Frontex (European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union) agency, and intended for all members of the department.

Profiling, a method used by SCA agents in Luxembourg and applied to both arrivals and departures to Schengen and non-Schengen countries alike, is based on this weekly risk analysis from Frontex monitoring. In the same goal, SCA members ensure they perform regular and spot checks in strategic areas of the Luxembourg airport, notably near embarkation and disembarkation doors and the “check-in” windows. Passengers controls are carried out unexpectedly; they are non-systematic, non-discriminatory, and respectful of human rights.

External border controls and asylum seekers

All SCF members have been received instruction on the theme. Specific training was provided to the new members of the SCA, as part of the CCC (Common Core Curriculum) training.

In order to guarantee, as best as possible, the respect for human rights and the protection of the people in question, controllers are required to contact, if needs be, the MAE's Directorate of Immigration through the Judicial Police Department (*Service de Police judiciaire*, or SPJ-ETR), which is in charge of establishing the identity and itinerary of the applicant's journey and hear the applicant, as per the provisions of Article 8 of the Law of 05 May 2006 on the Right of Asylum and to Complementary Forms of Protection.

Asylum seekers are told they may communicate freely with the "Refugee Division of the Directorate of Immigration".

6.1.2. Developments within the national perspective 2011

Nothing to report.

6.1.3. Developments from the EU perspective

Fonds pour les frontières extérieures (External Borders Fund, or FFE)

The 2007-2013 multi-year implementation programme of the External Borders Fund (FFE) is one of the four financial instruments of the general programme, "Solidarity and management of migratory flows" ("*Solidarité et gestion des flux migratoires*") which encourages Member States to share equitably in the responsibilities derived from instituting the integrated management of the European Union's external borders and implementing Community policies on asylum and immigration. Thus, the Fund creates a financial-support mechanism for Member States who bear a lasting, heavy financial burden related to the implementation of common norms on the control and surveillance of external borders.

For its 2007-2013 multi-year programme, Luxembourg decided to implement four of the five objectives of the FFE, chosen in light of its immediate and priority needs in external-border control:

1. acquisition of equipment allowing to distinguish false travelling documents and forged documents;
2. improvement of visa-issuance conditions;
3. need to adapt control equipment and computer systems to make them compatible with the regulatory requirements imposed by the implementation of SIS and VIS;
4. training of border-control personnel.

The projected measures subject to financing from the FFE programme are submitted to the Directorate-General of the Police and the Ministry of the Interior and to the Greater Region for approval. In practice, the responsibility for full management of the Fund in question and for the implementation of the measures falls on the Grand-Ducal Police.

The projects considered for 2011 were selected according to the priorities of the Grand-Ducal Police:³⁰³

Participation in the “Public Key Directory” (PKD) system of the International Civil Aviation Organisation (OACI)

Luxembourg’s participation in the PKD system allows the agents responsible for border control to determine the authenticity of other Member States’ electronic passports.³⁰⁴ This system permits the exchange of public keys between the various Member States through the “Public Key Directory” (RCP).³⁰⁵ This measure comes under the aforementioned Priority 1.

³⁰³ Grand-Ducal Police, European External Borders Fund (*Fonds Européen pour les Frontières Extérieures*, or FFE), *Programme annuel 2011* (2011 Annual Programme), 10 May 2011, http://www.police.public.lu/PoliceGrandDucal/mission_organigramme/description/services-centraux/UCPA/Fonds_europ_front_ext/index.html

³⁰⁴ Every electronic passport holds an integrated computer chip containing the passport holder’s personal data and photograph. This microchip bears a digital signature, to avoid any unauthorised modification. These digital signatures, used to guarantee the passport’s authenticity, are unique for each Member State.

³⁰⁵ The RCP contains every public key of participating Member States. It holds no personal information concerning the passport holder, and contains only data permitting to ensure the authenticity of the electronic passport. In the absence of the RCP, each Member State would have to negotiate keys on a bilateral basis.

Standardised tests as part of the SIS 2 implementation

As part of the preparations and development of SIS 2 at the national level, several tests have been conducted³⁰⁶ to guarantee the proper flow of the M2 test (SIS 2 milestone 2) in 2012. These tests come under the aforementioned Priority 3 (*Cf.* above).

Verification of means of livelihood

According to the entry conditions set out in the Schengen Borders Code, control agents may verify the means of livelihoods (financial resources) of people entering the territory. While the Code calls for the national authorities to determine the reference amounts required for crossing their external borders, said amounts have yet to be defined by the competent Luxembourgish authorities. The lack of any guideline, *i.e.* of a specific amount to evaluate the means of livelihood, may raise concerns regarding the objectivity of SCA agents who find they must deal with a considerable margin for interpretation. Consequently, over the last few years, no refusal of entry has been decreed at Luxembourg's outer border based on insufficient means of livelihoods.

Evolutions concerning programmed EU-wide control measures

The Automatic Border Control System is not expected in Luxembourg.

The entry/exit system (EES):³⁰⁷ As yet, Luxembourg does not have an automatic system. Installation of such a system at the national level depends on developments within the EU.

Implementation of the EU's "Registered Traveller Programme" (RTP)³⁰⁸ is not expected in Luxembourg.

Nation-wide implementation of the Schengen Information System (SIS II) depends on its EU-wide implementation.

³⁰⁶ The European Commission has distributed two documents, called "Test Plan" and "Test Approach", defining the framework for these tests. The series of tests includes: Connectivity Tests, Informal Functional Tests, Compliance Tests Extended and Provisional System Acceptance Tests..

³⁰⁷ EE entry/exit system.

³⁰⁸ EU Registered Traveller Programme.

6.2. Cooperation in border control

6.2.1. Specific context before 2011

Nothing to report.

6.2.2. Developments within the national perspective 2011

Nothing to report.

6.2.3. Developments from the EU perspective

Commitment as part of Frontex operations

Cooperation and relations with the supervisors of airports in bordering countries (Hahn, Liege, Metz, Zaventem) are obviously important to ensure a permanent exchange on the subject.

Furthermore, participation in seminars or training courses organised by Frontex are an essential source for border control and for the acquisition of new knowledge related to clandestine immigration networks.

Over the last few years, the Grand-Ducal Police has participated in a number of Frontex operations and activities.

As with all Frontex activities, joint operations are based on risk analyses.³⁰⁹

³⁰⁹ There are usually three sorts of impulses that can lead to a joint operation:

The first possibility is when the Frontex agency suggests a joint operation on the basis of facts identified in a risk analysis. The second possibility is the proposal for a joint operation or a pilot project from a Member State. Such a proposal is then evaluated by Frontex, and the joint operation or pilot project may be co-financed by the agency under the form of a subsidy. The third possibility is a request from a Member State facing a specific situation and requiring assistance.

7. INTERNATIONAL PROTECTION

7.1. Specific context before 2011

In 2010, 786 people filed an international protection request in Luxembourg. These 786 people represent 505 dossiers. The main home countries were Kosovo (162 applicants), which overtook Serbia (148). A considerable increase in international protection requests was evident over the last quarter of 2010 (207 people in the months of November and December), particularly from Serbia nationals. This trend continued in 2011.

In 2010, there were no reforms to the legal framework, nor did the refugee issue generate any major debate. More information can be found in the 2010 policy report.

The most significant development in 2011 was that in 2010, the authorities no longer resorted to the fast-track procedure to examine international protection requests. The lack of appeal against the ministerial decision to fast-track a request had been the subject of an interlocutory question on 3 February 2010. The Administrative Tribunal had brought before the European Court of Justice³¹⁰ the question of the legality of Article 20 (5) of the Law of 5 May 2006 on the Right of Asylum and to Complementary Forms of Protection, and of the compatibility of this provision with European directives. While awaiting the judgment of the European Court of Justice, the services in charge of processing international protection requests had ceased to resort to the fast-track procedure.

7.2. Developments within the national perspective 2011

The year 2011 saw particularly significant debates on international protection, as Luxembourg was faced with an exceptional inflow of asylum seekers.

The authorities described the increase in the number of asylum seekers (mostly Roma and nationals of the western Balkan countries, particularly Serbia and Macedonia) as a direct consequence of the liberalisation in 2010 of the visa system under the Schengen

³¹⁰ Administrative Tribunal, Hearing of 03 February 2010, Docket N° 26396.

Agreement, which favoured nationals from several Balkan countries (Albania, Macedonia, Montenegro, Serbia).³¹¹

In 2011, the Directorate of Immigration received 2,164 international protection requests (individuals), compared to 786 in 2010. Over 78% of all DPI come from western Balkan countries, notably Serbia (43.76% of all requests received), Macedonia (20.61%), Kosovo (7.02%) and Montenegro (4.76%).³¹²

This considerable inflow of asylum seekers was to have consequences throughout the year on the policy and the debate regarding the request-examination procedure, DPI reception, and the return policy.

The Government and legislators reacted quickly to this situation, through various measures:

In its 6 April 2012 speech on the State of the Nation,³¹³ the Prime Minister declared that Luxembourg was not ready, at this time, to open its doors to those who came from safe countries. It sought a quick approval of the bill seeking to re-launch the fast-track procedure. It then announced assistance would be provided for the return of Serbian nationals who left the country within three months of their arrival: 250 Euros per adult and 100 Euros per child.

In order to process these new international protection requests from Serbia as quickly as possible, the Government launched two initiatives:

- a) Insofar as international protection requests filed by persons from safe home countries may, under the Law of 5 May 2006 on the Right of Asylum, be processed under a fast-track procedure, the Government Council of 18 March 2011 signified its agreement to the Grand-Ducal Regulation proposal modifying the Grand-Ducal Regulation of 21 December 2007 defining a list of safe home countries. The Republic of Serbia was added to the list of “safe home countries” by the Grand-

³¹¹ News article, *Bilan 2010 en matière d’asile et d’immigration: “Afflux de demandes d’asile émanant de ressortissants de la Serbie”* (2010 Balance on asylum and immigration issues: “Inflow of requests for asylum from Serbian nationals”), 01 February 2011, http://www.gouvernement.lu/salle_presse/actualite/2011/02-fevrier/01-schmit/index.html.

³¹² MAE, Immigration Department, Press conference, 2011 Balance, 31 January 2012.

³¹³ News article, *Déclaration du gouvernement sur la situation économique, sociale et financière du pays 2011* (Government’s statement on the country’s 2011 economic, social and financial situation), 06 April 2011, <http://www.gouvernement.lu/gouvernement/etat-nation/index.html>.

Ducal Regulation of April 11 2011.³¹⁴ The addition of Serbia to this list³¹⁵ was seen by various NGO's as a retroactive measure by the Government to face the large number of asylum seekers in Luxembourg.³¹⁶

In order to be able to resort to the fast-track procedure once again, and while awaiting the judgment of the European Court of Justice, the Minister of Labour, Employment and Immigration introduced, on 19 April 2012, a bill seeking to modify the Law of 5 May 2006 on the Right of Asylum.

The project allows the possibility for the asylum seeker to appeal against the Minister's decision to adjudicate upon the international protection request as part of a fast-track procedure. The bill was adopted on 5 May 2011.

Article 20 (4) of the Law of 19 May 2011³¹⁷ modifying the Law of 05 May 2006, as amended, on the Right of Asylum and to Complementary Forms of Protection allows an action for annulment against the Minister's decision to adjudicate upon the merit of the international protection request as part of a fast track procedure, as well as an action for reversal against a decision to dismiss the international protection request taken as part of a fast-track procedure, and finally an action for annulment against the order to leave the territory.

The associations criticised this last point, which means that the recourse against the ministerial decision to use the fast-track procedure must be made at the same time as the one opposing the decision rejecting the request for asylum.³¹⁸

³¹⁴ *Mémorial* N° 67, 01 April 2011, Grand-Ducal Regulation of 11 April 2011 modifying the Grand-Ducal Regulation of 21 December 2007 defining a list of safe home countries as understood by the Law of 05 May 2006, as amended, on the Right of Asylum and to Complementary Forms of Protection, <http://www.legilux.public.lu/leg/a/archives/2011/0067/a067.pdf>.

³¹⁵ Grand-Ducal Regulation of 01 April 2011 modifying the Grand-Ducal Regulation of 21 December 2007.

³¹⁶ *Press release de la Ligue des Droits de l'Homme – Luxembourg (ALOS-LDH) à l'occasion de la Journée internationale des Roms* Press release of the League of Human Rights – Luxembourg on the occasion of the International Day of the Roma), 08 April 2011, p2, <http://www.ldh.lu/LDH-Journee-des-Roms-20110408-communique.pdf>

³¹⁷ *Mémorial* A N° 102, 20 May 2009, <http://www.legilux.public.lu/leg/a/archives/2011/0102/a102.pdf>.

³¹⁸ ASTI, *Communiqué de presse, Procédure accélérée ou construction juridique dictée par l'actualité?* (Press release, Fast-track or Judicial construction dictated by current events?), 03 May 2011, <http://www.asti.lu/wp-content/uploads/2011/05/030511CommuniquAccelere.pdf>; Frank Wies, 28 September 2011, EMN NCP LU Conference, Luxembourg.

- b) To stop the migratory flow and deal with the increasing number of international protection requests, the Government sought the cooperation of the Serbian authorities, as shown by several mutual working visits.³¹⁹

During one such working visit to Luxembourg on 05 May, the Minister of Immigration, The Hon. Nicolas Schmit, and Serbia's Prime Minister and Minister for the Interior, The Right Hon. Ivica Dačić, discussed the question of Serbian immigration to Luxembourg and, notably, the question of the increased number of Serbian-origin asylum seekers in Luxembourg, observed starting in late 2010. Luxembourg's Deputy Prime Minister and Minister for Foreign Affairs and Immigration, The Hon. Jean Asselborn, also brought the attention of his Serbian counterpart to the consequences for Luxembourg of the liberalisation of visa system for Serbian nationals during a working visit to Belgrade on 17 May 2011. He stressed that, despite the recent inflow of asylum seekers, notably from this country, Luxembourg continues to support the liberalisation, which represents an essential, concrete instrument with which to bring the populations of the Balkans and the European Union closer.

The Deputy Prime Minister of Serbia is considering a series of measures³²⁰ to slow down the migratory flows, such as strengthened border controls, meetings with representatives of the Roma communities and the members of the Bosnian minorities to awaken "the political conscience" and dissuade its nationals from seeking asylum in EU countries, or the efforts to fight against the existence of criminal networks or organisations of smugglers specialised in the transportation of Serbian nationals to the European Union. These measures have been applauded in Luxembourg.³²¹

³¹⁹ *Nicolas Schmit et Ivica Dačić ont fait part de leur volonté que Luxembourg et Serbie poursuivent leur coopération «dans un esprit parfaitement européen» pour lutter contre l'afflux de demandeurs d'asile en provenance de Serbie* (Nicolas Schmit and Ivica Dačić have indicated their wish to see Luxembourg and Serbia continue with their cooperation "in a perfectly European spirit" to fight against the inflow of asylum seekers from Serbia), 05 May 2011,

<http://www.europaforum.public.lu/fr/actualites/2011/05/schmit-serbie/index.html>.

³²⁰ http://www.gouvernement.lu/salle_presse/actualite/2011/05-mai/05-schmit/index.html.

³²¹ http://www.gouvernement.lu/salle_presse/actualite/2011/05-mai/17-asselborn/index.html. Also noteworthy are the 07 November 2011 working visit of the Ambassador of the Republic of Serbia, the 08 December 2011 interview with the Minister without Portfolio of the Government of Serbia, The Hon. Sulejman Ugljanin; the 22 December 2011 interview with the Foreign minister of Republic of Serbia, The Hon. Vuk Jeremic.

Moreover, a joint letter was sent by the Luxembourg and Belgian authorities to the European Commissioner for Home Affairs asking her to find a European solution to the problem, possibly through sterner control at EU borders with the help of Frontex.³²² (*Cf.* Point 7.3, below)

The considerable increase in the number of international protection requests generated strong pressure, both political and public, on the structures in charge of international protection, whether (a) the OLAI, which answers to the Ministry of Family and Integration and has jurisdiction in matters of DPI reception and lodging, or (b) the Directorate of Immigration, an offshoot of the Ministry of Foreign Affairs, tasked with the examination procedure for international protection requests.

a) Where should asylum seekers be housed?

The debate on the reception of asylum seekers, which has been greatly politicised and mediatised, was renewed several times in 2011, involving various players (national authorities, local authorities, NGO's, political parties, other organisations, the media).

In Luxembourg, DPI are housed either in homes managed by the Luxembourg Reception and Integration Agency (OLAI), State-owned or leased, or safe houses managed by NGO's and financially supported by the OLAI.³²³

Luxembourg's existing lodging structures, which were put to the test in 2011 by the significant number of DPI, could not bear the pressure. From the start of the year, various NGO's drew attention to the lodging issue and criticised the management for the reception and lodging of refugees.

On 16 February and 1 March, the ASTI suggested meeting with the SYVICOL and the Ministry of Family and Integration to find a solution to the problem of lodging asylum seekers;³²⁴ it also decried the back-and-forth between the national and communal

³²² Commission for Foreign and European Affairs, Defence, Cooperation and Immigration, Minutes of the Meeting of 20 October 2011, Lower House.

³²³ Response of the Minister for the Family and Integration to Parliamentary Question N° 1712 of 19 October 2011, 23 November 2011, www.chd.lu.

³²⁴ *Cf.* Journal, *Le Quotidien* of 17 February 2011, and ASTI: *Une table ronde constructive* ("A constructive round table"), *Voix du Luxembourg*, 08 April 2011, p3; *ASTI appelliert an die nationale Solidarität*, *Tageblatt*, 08 April 2011, p12. *Cf.* also *Le Quotidien*, *Journal*, *Luxemburger Wort* and *Zeitung*, 08 April 2011.

authorities, who lay the blame for the lack of lodging structures for asylum seekers on each other.³²⁵

On 6 April 2011, talks were held between the Ministry of the Family and Integration and the SYVICOL (*Syndicat des Villes et Communes Luxembourgeoises*, or Union of Luxembourg Cities and Communes) to find lodging possibilities at the communal level.³²⁶ The answer and proposals for possible lodging possibilities were limited.³²⁷

As the housing capacities Government- and NGO-managed homes were soon overwhelmed, increasing numbers of DPI were temporarily lodged on camping grounds. This situation was to last until the month of November 2011, and repeatedly generated indignation among the associations: the LFR and ASTI criticised the fact that, despite various calls, the Government was now forced to lodge people, including children, in unheated tents.³²⁸ The LFR³²⁹ blamed this on a faulty forecast and a lack of preparation. According to the LFR, by late October, 150 DPI were still being sheltered on camping grounds.

Finally, more suitable lodging possibilities were found with the collaboration of Caritas and the Red Cross, as well as that of the National Federation of Luxembourg Scouts (*Fédération Nationale des Eclaireurs et Eclaireuses du Luxembourg*, or FNEL), the Guides and Scouts, and the National Youth Service (*Service Nationale de la Jeunesse*), which made certain facilities, little used in wintertime, available.

On numerous occasions, local inhabitants demonstrated against the Government's planned installation of asylum seekers on the territory of certain communes.³³⁰

³²⁵ Le Quotidien, Luxemburger Wort, Zeitung, 02 March 2011, Journal, 01 March 2011.

³²⁶ SYVICOL: "wir stehen als Land auf dem Prüfstand" in Luxemburger Wort, 07 April 2011, p4.

³²⁷ LFR, Refugee Collective, Press release, 29 September 2011,

http://www.caritas.lu/Files/110929_PO_LFR_log_demandeurs_as.pdf.

³²⁸ Journal, 30 September 2011, p2, Le Quotidien, 30 September 2011, p5.

³²⁹ *Luxemburger Flüchtlingsrat kritisiert Regierungspolitik: Improvisation statt Planung*: Tageblatt, 29 October 2011, p13; Le Quotidien, 29 October 2011, p5.

³³⁰ Public evening on 29 March 2011. *Manifestation à Bollendorf-Pont où les habitants du village avaient protesté contre l'installation de demandeurs d'asile dans un hôtel* (Demonstration in Bollendorf-Pont, where inhabitants of the Berdorf commune protested against asylum seekers being moved into a hotel), <http://www.lequotidien.lu/politique-et-societe/22926.html>. Under the heading: The lodging of 60 Roma in a Bollendorf-Pont hotel, citizens of Bollendorf-Pont have invited the inhabitants of Bollendorf-Pont, Grundhof and Weilerbach to an information evening in the presence of the burgomaster and members of the communal council.

Communal authorities and the inhabitants of the Berdorf commune had launched a petition to oppose the reception of new refugees 60 new asylum seekers were expected to be lodged in a hotel located within the commune's territory. Communal authorities had refused to register these people in their commune. They

Throughout the year, various organisations or public figures or national residents spoke to the general public on the importance of solidarity, warning it of the dangers of fear-mongering speeches targeting the DPI.³³¹ Several people also spoke against comments made attacking Balkan Roma, who were repeatedly described as asylum tourists, while also drawing attention to the situation of the Roma and to the discrimination against them in the Balkan countries.³³² While they insist on the low probability of their being granted international protective status, the Luxembourgish authorities also acknowledged the difficult situation of the Roma in their home countries³³³ and that the situation of the Roma is a European problem which Luxembourg, specifically, must face. The discussion within the parliamentary commission revealed that “the problem must be solved in the country of origin by acting against discrimination and setting up minimum social criteria for all. This presupposes the development of EU-financed programmes. This applies to the Balkan countries as well as to Hungary or Romania”.³³⁴

Two political parties or parliamentary groups have taken a public stand.

The ADR (specifically, one of its sections) repeatedly issued press releases and held press conferences.³³⁵

stressed the fact that the territory of their commune had already received some 300 DPI's in Weilerbach, and expressed their concern regarding the negative impact this reception would have on local tourism. The commune's authorities and inhabitants received support from the National Tourist Office. *Voix du Luxembourg*, 08 April 2011, p. 3.

In the commune of Pétange, some 120 inhabitants demonstrated in opposition to the lodging of families with children in a container near a school.

Manifestation à Pétange contre l'installation des DPI aux alentours d'une école (Demonstration in Pétange against the installation of DPI's next to a school),

<http://www.lesentiel.lu/fr/news/luxembourg/story/27147682>; *Luxemburger Wort*, 16 November 2011, p. 29; *Quotidien*, 16 November 2011, p. 16.

³³¹ *Arrêtons les discours de la peur* (Let's put an end to fear-mongering), Press release of the ASTI, *Woxx*, 15 April 2011, p. 5, *Asylanten zu Péiteng!*; *Tageblatt. Leserforum*, 23 November 2011, p. 52, *JSL* “Asylsuchende sind keine Kriminellen”, *Journal*, 19 November 2011, p4; see also Charles Goerens on the issue of asylum and development policies, Background RTL broadcast, 09 April 2011.

³³² Chachipe NPO, *Demandeurs d'asile : Eviter les propos calomnieux et la démagogie !* (Asylum seekers: Avoid slanderous comments and demagoguery!), *Journal Ä Meenung*, 06 October 2011, p. 6, *Zu “Flüchtlinge: Verwaltung überfordert?”*, *Tageblatt Leserforum*, 06 October 2011, p. 55, “*Il suffit de regarder*” (You need only look), *Le Quotidien*, 15 December 2011, p. 7.

³³³ *Information sur l'état des demandes d'asile au Luxembourg* (Information on the status of asylum requests in Luxembourg), Minutes of the Commission on Foreign Affairs, 20 October 2011.

³³⁴ *Information sur l'état des demandes d'asile au Luxembourg* (Information on the status of asylum requests in Luxembourg), Minutes of the Commission on Foreign Affairs, 20 October 2011.

³³⁵ *Pressekommuniké: Flüchtlingpolitik: richteg Entscheedunge gi verlaangt!*, 04 October 2011, <http://www.adr.lu/index.php/nejegkeeten/pressematdeelungen/101>; *Fluechtlingpolitik Péiteng: Flüchtlinge bei der Schoul?*, <http://www.adr.lu/index.php/peiteng/114-fluechtlinge-bei-der-schoul-Pressekonferenz:Parlamentaresch Rentrée 2011>, <http://www.adr.lu/index.php/nejegkeeten/pressekonferenzen/104-rentree-parlementaire>.

Under the evocative title “Kee Lampedusa zu Lëtzebuerg!”³³⁶ (“No Lampedusa in Luxembourg!”), the ADR party published a press release on 27 March 2011. The ADR, having posited a cause-and-effect relationship between the agreement on visa liberalisation between the European Union and Serbia and the arrival of significant numbers of asylum seekers, demanded swift, concrete measures to solve the situation. It demands that Serbia be listed, as soon as possible, as a safe home country, and that all requests thus be fast-tracked. It also demands the Detention Centre be completed as soon as possible, and that temporary lodging structures be installed on the grounds of the Detention Centre. It further demands the application of the Dublin Regulation, under which the first country of entry must process the protection requests. Should circumstances so require, it calls for the establishment of inner-border controls and the suspension of the visa agreement with Serbia. Several times during the year, the ADR criticised “asylum tourism”, *i.e.* abusive requests for asylum.³³⁷

As for the Déi Gréng party, on 8 April 2011, it criticised the obvious confusion of the national authorities, a result of the lack of political will on the Government’s part.³³⁸ The blame for the lack of housing policies and infrastructures must not be laid on the communal authorities. They argue in favour of a dignified refugee-reception policy and the implementation of a concept and a strategy for reception within which communes are given a role.

On 19 October 2011, the Minister for the Family and Integration confirmed her declarations regarding her intention to introduce a lodging quota system for asylum seekers.³³⁹ This question would also be raised during the 14 November 2011 meeting of the Commission for Foreign and European Affairs, Defence, Cooperation and Immigration, where the Minister for the Family informed the deputies on the issue of

³³⁶ <http://www.adr.lu/index.php/neiegkeeten/pressematdeelungen/13-startsaeit-4>,

<http://www.adr.lu/index.php/neiegkeeten/pressematdeelungen/101-fluechtingspolitik>.

³³⁷ *Nationalkongress 2011*, <http://www.adr.lu/index.php/component/content/article/20-partiestruktur/19-et-geet-duer>, Pressecommuniqué: Flüchtlingspolitik: richtig Entscheedunge gi verlaangt!, 4 October 2011, <http://www.adr.lu/index.php/neiegkeeten/pressematdeelungen/101-fluechtingspolitik>. Indeed, the ADR’s speech resulted in the Youth section of the “Adrenalin” party distancing itself in disapproval of the aggressive comments, *Cf.* Tageblatt, 09 April 2011, p10.

³³⁸ Déi Gréng, *Pour une politique d’accueil des réfugié-e-s digne* (For a dignified refugee reception policy), Press release 08 April 2011, <http://www.greng.lu/actualites/pour-une-politique-d%E2%80%99accueil-des-r%C3%A9fugi%C3%A9-e-s-digne>.

³³⁹ Response of Mr Claude Haagen (LSAP) to Parliamentary Question N° 1712 of 24 November 2011 on the lodging of asylum seekers.

DPI lodging. She raised the possibility of introducing a minimum quota which every Canton would be required to meet.³⁴⁰

While the proposal was well received by the organisations working in migration and asylum, the SYVICOL was more reticent. A quota system might lead current hosting communes to refuse access to refugees in excess of their quota. Also, the current concept of large centralised structures should be dropped in favour of small, decentralised structures allowing appropriate DPI supervision.³⁴¹

On 7 December 2011, the Minister of the Family and Integration explained that the approach which sought national coordination for DPI reception has been initiated, that a meeting had been held with the SYVICOL, and that other meetings were expected starting in January 2012. The DPI distribution criteria were expected to be defined during these meetings.

Schooling of asylum seekers' children

Another problematic issue is that of the schooling of the children of asylum seekers. Schooling these children entails additional financial burdens for the receiving communes. To cover the expenses resulting from the reception of asylum seekers, the State grants the large hosting communes an annual subsidy of 991.57 Euros per child of asylum seekers attending class in the basic-education system.³⁴² For smaller communes, subsidies – the amount of which would be decided on a case-by-case basis according to the number of days during which the pupils attended school – may be granted. In 2010, 16 communes hosting 160 pupils were thus granted a total of 92,754.30 Euros (against 108,926 Euros for 151 pupils in 2009).³⁴³

³⁴⁰ P-2011-O-AEDCI-08-01, www.chd.lu;

http://www.chd.lu/wps/portal/public/!ut/p/c0/04_SB8K8xLLM9MSSzPy8xBz9CP0os3gXI5ewIE8TIwN380ATAyMvVy_z0GA_YwsXM_2CbEdFAM6dnkU!/?WCM_PORTLET=PC_7_D2DVRI420GLI702F00BK1Q00G1_WCM&WCM_GLOBAL_CONTEXT=/wps/wcm/connect/Contents.public.chd.lu/st-www.chd.lu/sa-actualites/sa-evenements/refugiescoupdesang;

http://www.gouvernement.lu/salle_presse/actualite/2011/11-novembre/25-jacobs/index.html

³⁴¹ *Demandeurs d'asile: le SYVICOL contre le système de quotas* (Asylum seekers: the SYVICOL against the quota system), 20 January 2012,

<http://www.wort.lu/wort/web/fr/luxembourg/articles/2012/01/173694/demandeurs-dasile-le-syvicol-contre-le-systeme-de-quotas.php>.

³⁴² Settled in sessions of the Government Council of 02 April 1999 and the Government Council of 12 September 2008, http://www.gouvernement.lu/salle_presse/conseils_de_gouvernement/index.html.

³⁴³ Response of the Minister for the Family and Integration to Parliamentary Question N° 1354 of 31 March 2011, 23 May 2011, www.chd.lu.

Reception Agency of the Refugee Division and request-processing terms

The exceptional number of international protection requests filed (1,550 people between 01 January and 11 October 2011; 165 solely during the week of 26 September) soon overwhelmed the Directorate of Immigration's Refugee Division. Delays dossier processing started to accumulate. Initially, the Government Council of 1 September 2011 decided to hire, for a fixed term, six additional agents, two of which were assigned to hearings and 4 to decision-making.³⁴⁴ It also reassigned agents to bolster the Reception Agency's staff.³⁴⁵

The excessive delay in processing international protection requests and obtaining a first hearing were the root cause for a hunger strike started by 37 Iraqis on 31 August 2011. These people demanded that a fixed term be defined for processing their requests.³⁴⁶ After having been received once by the Minister, three people continued the strike for 21 days, with the support of a migrant association and a political party (CLAE,³⁴⁷ Déi Lénk³⁴⁸).

After the Minister informed the persons involved that their hearing would be held between 22 September and 8 December 2011, and that the decisions would be made in the spring of 2012,³⁴⁹ the hunger strike finally came to an end.³⁵⁰

³⁴⁴ Including its new recruits, the Refugee Division of the Immigration Department has 9 agents in charge of hearings and 9 agents in charge of decisions and the writing of memoranda to be filed as part of legal appeals to administrative jurisdictions. Response of the Minister of Labour, Employment and Immigration to Urgent Parliamentary Question N° 1661 by Mr André Hoffmann of 19 September 2011, www.chd.lu.

³⁴⁵ Joint response of the Minister of Justice, The Hon. François Biltgen, and of the Minister of Labour, Employment and Immigration, Mr Nicolas Schmit, to Parliamentary Question N° 1778 of 30 November 2011, 12 January 2012, www.chd.lu.

³⁴⁶ *Tageblatt*, *Irakische Hungerstreikende am Ziel* ?, 22 September 2011.

³⁴⁷ CLAE, *La place pour la dignité* (The place for dignity) CLAE Press release, 06 September 2011, <http://www.clae.lu/html/m5sm3.html>. Other associations distanced themselves from the chosen approach (hunger strike), but supported the criticisms regarding the length of the procedures. ASTI, *Procédures d'asile : pour des délais de traitement plus courts !* (Asylum Procedures: A Call for Shorter Processing Times!), 12 September 2011, <http://www.asti.lu/wp-content/uploads/2011/09/120911Position-a-lire-def.pdf>.

³⁴⁸ Déi Lénk, Press release, *Droit d'asile pour les réfugiés irakiens* (Right of asylum for Iraqi refugees), 01 September 2011, <http://www.lenk.lu/de/node/7371>.

³⁴⁹ Response of the Minister of Labour, Employment and Immigration to Urgent Parliamentary Question N° 1661 by Mr André Hoffmann, 19 September 2011, www.chd.lu.

³⁵⁰ «*Traitement individuel approfondi*» promis. *Les réfugiés irakiens stoppent leur grève de la faim* ("Detailed Individual Processing" promised. Iraqi refugees stop their hunger strike), *Voix du Luxembourg*, 24 September 2011, p. 3.

To deal with the difficulties of handling the requests filed with the Division, the Minister of Immigration decided, on 30 September, to close the Reception Agency temporarily.³⁵¹ While the Reception Agency was closed, the Division's agents registered and opened the dossiers of people who had arrived prior to 30 September 2011. While waiting for the new recruits to assume their functions, the Minister reassigned agents to bolster the staff of the Reception Agency, which – according to the Minister – had an impact on the processing time of other international protection requests. Finally, the Reception Agency re-opened its doors on 10 October 2011.

This “temporary closing” of the Reception Agency was to engender multiple reactions from NGO's, organisations and political parties.

The Administrative Tribunal, which received a request for a summary decision concerning the Minister's implicit decision not to register their international protection request, ordered the Government to lodge the applicants or to provide them with the means to find lodging on their own.³⁵² Siding with the ASTI, Caritas³⁵³ and the LFR, the CCDH, in a press release,³⁵⁴ also indicated its concern, estimating that the impossibility to file their request deprived the DPI of the physical document that would give them access to physical material conditions of reception. It estimated that this obstacle, temporary though it might be, to the exercise of the fundamental right to seek asylum, “cannot be justified by considerations such as reduced personnel, and that it therefore becomes urgent that the Minister be given the means needed to allow him to comply with his functions”. The CCDH also expressed concern about the lodging conditions of some applicants. It “is conscious that the applicable texts allow for the possibility of lodging asylum seekers in emergency reception structures when normally available lodging facilities are temporarily full, but it estimates that said emergency reception structures must guarantee the affected people's human dignity and the respect of their private life”.

³⁵¹ [http://www.caritas.lu/Files/LFR-CP101011 \(2\).pdf](http://www.caritas.lu/Files/LFR-CP101011%20(2).pdf).

³⁵² Administrative Tribunal, Public Hearing of 06 October 2011, Docket N° 29233.

³⁵³ *Le Ministre de l'Immigration ferme temporairement le bureau d'accueil du service des réfugiés. Une décision illégale ?* (Minister of Immigration temporarily shuts down Refugee Division's Reception Agency. Illegal decision?), Journal, 05 October 2011, p. 4.

³⁵⁴ CCDH, *Communiqué concernant la fermeture temporaire du bureau d'accueil pour demandeurs de protection internationale et les conditions d'accueil des demandeurs de protection internationale*, (Press release the temporary shutdown of the Reception Agency for asylum seekers and the reception conditions of asylum seekers), www.ccdh.public.lu/fr/actualites/2011/10/fermeture_bureau_accueil/index.html, Le Quotidien, Tageblatt, 27 October 2011.

In order to guarantee a better management of requests in the future, a system to channel international protection requests has been introduced. The request-filing procedure will be divided. As soon as he arrives, the applicant is given a serial number with an indication of the date on which he is invited to appear before the Reception Agency to open his dossier. To accelerate the dossier-opening procedure, he will be given a form which he must complete while waiting for the appointment.

Afterwards, the applicant will report to the Reception Agency to present the dossier and have the agents in attendance start processing the request.³⁵⁵

The increased number of DPI had no effect on the structuring of administrative jurisdictions. In response to a parliamentary question, which challenged the fact that there was no Chamber in Luxembourg's Administrative Tribunal specifically dedicated to cases involving foreigners' rights (despite such cases representing a significant portion of administrative disputes), the Minister answered by stressing that the current system, where each of the three Chambers of the Administrative Tribunal examines appeals filed in matters of immigration and asylum, has proven itself and fully satisfies both litigants and judges.³⁵⁶

Immigration's Medical Department (Service médical de l'immigration, or SMI)

Since the Law of 26 August 2008 on Immigration and the Free Movement of People came into effect, the Occupational Health division has performed those missions which it was assigned under said Law. The SMI ensures the organisation of the medical exam of foreigners as per the laws on the entry and stay of foreigners in the country.

During 2011, the Directorate of Immigration asked the SMI, on 196 occasions, to provide an opinion on a possible reprieve to the repatriation of foreigners whose request for asylum had been disallowed.

The applicants came from 36 different countries: 72 (36%) applicants came from Kosovo; 111 (56%) were nationals of the former Yugoslavia; and 57 (29%) came from the African continent (including 15 from Nigeria and 5 from the Maghreb); 71 (36%)

³⁵⁵ Response of the Minister of Labour, Employment and Integration to Parliamentary Question N° 1676 of 04 October 2011, 11 October 2011, www.chd.lu.

³⁵⁶ Response of the Minister of Justice to Parliamentary Question N° 1115 of 21 December 2010, 24 January 2011, www.chd.lu.

applicants had psychiatric problems (depression, psychoses, PTSD...); 22 (11%) bore infectious problems (HIV, hepatitis...); 16 (8%) applicants had heart problems (vascular or congenital heart disease...); and 15 (8%) had neurological problems (AVC, mental retardation, cerebral tumours...).

The ASTI launched the FER 2011-2013 project, known as “Intercultural Garden – Beieneen”. This gardening project seeks to foster bonds between the asylum seekers of the Marienthal home and the inhabitants of the commune of Tuntange and, in a wider sense, the residents of Luxembourg, through gardening activities which are led by a horticulture graduate and a French teacher.³⁵⁷

Statistics on International Protection

792 decisions were taken with regard to refusal and acceptance of international protection applications. Among 792 decisions, 745 (94, 1%) were negative and 47 (5, 9%) were positive. As with regards to granted status, 41 people were granted refugee status; 6 were granted subsidiary protection. Among 745 refusals, 494 applications were deemed ‘unfounded’; 207 were rejected in the context of a fast-track procedure; 44 were deemed ‘inadmissible’.

As a large number of international protection seekers allege ethnicity-related discrimination problems, the fast-track procedure is only applied in cases where the reasons alleged by the applicants do not obviously constitute one of the reasons covered by the Convention Relating to the Status of Refugees (reasons of a merely economic or financial nature, or of a medical nature).³⁵⁸

³⁵⁷ ASTI, <http://www.asti.lu/2011/05/18/beieneen-jardin-interculturel-au-marienthal/>

³⁵⁸ Response of the Minister of Labour, Employment and Immigration to Parliamentary Question N° 1778 of 30 November 2011, 12 January 2011, www.chd.lu.

People granted refugee status in 2011:

Country	People
Iran	9
Iraq	9
Kosovo	7
Azerbaijan	3
Ethiopia	3
Afghanistan	2
Dem. Republic of the Congo	2
Belarus	1
Guinea	1
Russia	1
Serbia	1
Tunisia	1
Turkey	1
Total	41

Directorate of Immigration, 2012

People granted subsidiary protection status in 2011

Country	Number
Burundi	2
Albania	1
Angola	1
Iraq	1
Israel	1
Total	6

Directorate of Immigration, 2012

People whose international protection request were denied:

Pays	Nombre
Country	Number
Serbia	317
FYROM	90
Kosovo	47
Afghanistan	6
Iraq	6
Albania	5
Bosnia	5
Mexico	5
Algeria	3
Bosnia and Herzegovina	2
Belarus	1
Guinea	1
Iran	1
Israel (Palestine)	1
Morocco	1
Nigeria	1
Somalia	1
Total	494

Directorate of Immigration, 2012

Persons whose application for international protection was rejected in a fast-track procedure:

Country	Persons
Serbia	99
FYROM macedonia	58
Montenegro	35
Bosnia	7
Albania	5
Kosovo	2
Mexico	1
Total	207

Directorate of Immigration, 2012

***Country of origin of people who requested international protection
(January 2011 to late December 2011)***

Country of origin	Number of people	% in relation to all 2011 requests
Serbia	947	43,76 %
FYROM Macedonia	446	20,61 %
Kosovo	152	7,02 %
Montenegro	103	4,76 %
Bosnia and Herzegovina	51	2,36 %
Russia	49	2,26 %
Iraq	43	1,99 %
Tunisia	42	1,94 %
Iran	35	1,62 %
Algeria	30	1,39 %
Other	266	12,29 %
Total	2164	100 %

Directorate of Immigration, 2011

7.3. Developments from the EU perspective

The Minister of Immigration once again stated that Luxembourg supports the implementation of a European asylum system. He insisted on Luxembourg's specific interest:

“Given that, as the disparities between the various national systems increase, there is a corresponding increase in the risk of ‘asylum shopping’ abuses appearing. To this is added the fact that Luxembourg is one of the European countries to offer the best settlement conditions for asylum seekers. Hence, the need for a Europe-wide harmonisation”.³⁵⁹

Faced by an exceptional inflow of asylum seekers, mainly from Serbia, Macedonia, Bosnia and Herzegovina, and Kosovo, the Minister of Labour, Employment and Immigration and the Belgian Secretary of State for Migration and Asylum Policy sent a

³⁵⁹ Minutes of the Commission on Foreign and European Affairs, Defence, Cooperation and Immigration of 18 July 2011, p3,
http://chd.lu/wps/portal/public!/ut/p/c1/jczJDoIwFIXhZ_EJ7u1lapdMVkAxpakBNqQxhJAwuDAa315Wxp3mLP98B1rYttjHONj7uC52ghpav0souVSZSygD5SLlaR4YXTqc-1tv_I4415UMT6kQJsIMY6ZTFRFm9I_-dB6LzUh1LGLmodTOD10e1rmHBtrg60Pke6SSacPV2SmYB83UD_b6gtts6uca7t6WzK08/dl2/d1/L0IJSklna21BL01KakFBRX1BQkVSQ0pBISEvWUZOQTFOSTUwLTVGd0EhIS83X0QyRFZSSTQyMDg5SkYwMk4xU1U4UU8zSzE1L0NMdVnJMTU0NTAyNDE!/?PC_7_D2DVRI42089JF02N1SU8QO3K15_selectedDocNum=1&PC_7_D2DVRI42089JF02N1SU8QO3K15_secondList=&PC_7_D2DVRI42089JF02N1SU8QO3K15_action=document#7_D2DVRI42089JF02N1SU8QO3K15

joint letter to the European Commissioner European Commissioner for Home Affairs, Mrs Cecilia Malmström, asking her to find a European solution to the problem.³⁶⁰

According to the Minister of Labour, Employment and Immigration, a European solution to the problem might be found in sterner control of European Union borders with the assistance of Frontex.³⁶¹

Resettlement/relocation of refugees

There were no resettlements or relocations to Luxembourg in 2011. The last refugee relocation dates back to 2010 (6 people from Malta). The last resettlement of Iraqi refugees (25 from Syria and 3 from Jordan) occurred in 2009.³⁶²

During the press conference given after the first day of the JHA Consilium, held in Luxembourg on 11 and 12 April 2011 and dedicated to “the migratory dimension of Mediterranean transitions”, Luxembourg’s Minister of Immigration found himself being forced to refuse his country’s help in accepting refugees from Malta, as it had already

³⁶⁰ Europaforum.lu, *Le Conseil JAI a discuté de la gestion des migrations en provenance de Turquie, du Sud de la Méditerranée et de l’Europe du Sud-Est qui intéresse particulièrement le Luxembourg* (JHA Consilium debate management of migrations from Turkey, the South Mediterranean, and Southeast Europe, of particular interest for Luxembourg), 27 October 2011, <http://www.europaforum.public.lu/fr/actualites/2011/10/conseil-jai-schmit/index.html>; Meeting of the Commission on Foreign and European Affairs, Defence, Cooperation and Immigration of 20 October 2011, p 3,

http://chd.lu/wps/portal/public!/ut/p/c1/jczJDoIwFIXhZ_EJ7u1lapdMVkAxpakBNqQxhJAwuDAa315Wxp3mLP98B1rYttjHONj7uC52ghpav0souVSZSygD5SLlaR4YXTqc-1tv_I4415UMT6kQJsiMY6ZTFRFm9I_-dB6LzUh1LGLmodTOD10e1rmHBtrg60Pke6SSacPV2SmYB83UD_b6gtts6uca7t6WzK08/dl2/d1/L0IJSklna21BL0IKakFBRXIBQkVSQ0pBISEvWUZOQTFOSTUwLTVGd0EhIS83X0QyRFZSSTQyMDg5SkYwMk4xU1U4UU8zSze1L2k5SnZQNjUyMDAwNzE!/?PC_7_D2DVRI42089JF02N1SU8QO3K15_s_electedDocNum=20&PC_7_D2DVRI42089JF02N1SU8QO3K15_secondList=&PC_7_D2DVRI42089JF02N1SU8QO3K15_action=document#7_D2DVRI42089JF02N1SU8QO3K15

³⁶¹ Minutes of the Meeting of the Commission on Foreign and European Affairs, Defence, Cooperation and Immigration of 20 October 2011, *Information sur l’état des demandes d’asile au Luxembourg* (Information on the status of requests for asylum in Luxembourg), http://chd.lu/wps/portal/public!/ut/p/c1/jczJDoIwFIXhZ_EJ7u1lapdMVkAxpakBNqQxhJAwuDAa315Wxp3mLP98B1rYttjHONj7uC52ghpav0souVSZSygD5SLlaR4YXTqc-1tv_I4415UMT6kQJsiMY6ZTFRFm9I_-dB6LzUh1LGLmodTOD10e1rmHBtrg60Pke6SSacPV2SmYB83UD_b6gtts6uca7t6WzK08/dl2/d1/L0IJSklna21BL0IKakFBRXIBQkVSQ0pBISEvWUZOQTFOSTUwLTVGd0EhIS83X0QyRFZSSTQyMDg5SkYwMk4xU1U4UU8zSze1L3dQdVNjMTU0NTAyNTM!/?PC_7_D2DVRI42089JF02N1SU8QO3K15_action=list#7_D2DVRI42089JF02N1SU8QO3K15

³⁶² In its political statement on World Refugee Day, the LFR asked the authorities to continue participating in intra- and extra-European solidarity efforts by joining in the efforts to relocate and resettle refugees, LFR, *Déclaration politique du Collectif Réfugiés Luxembourg à l’Occasion de la Journée Mondiale du Réfugié* (Political Statement of the Luxembourg Refugee Collective on the Occasion of World Refugee Day), 20 June 2011, http://www.clae.lu/pdf/migrations/asile/lfr/declaration_politique_LFR_2011.pdf

reached the saturation point of its reception capacities because of the inflow of Serbian asylum seekers, explained The Hon. Nicolas Schmit. Luxembourg wants to and will demonstrate its solidarity “as soon as it gets a breath of air that allows it to breathe.”³⁶³

Suspension of Dublin transfers to Greece

The application of the Dublin II Regulation to Greece, to wit, the transfer of asylum seekers from Luxembourg to Greece, had already been suspended prior to the 21 January 2011 judgment of the European Court of Human Rights.³⁶⁴

Since 2008, 33 requests (41 people) for readmission under the Dublin Regulation II had been sent by Luxembourg to Greece. Still, in 2010, two people returned to Greece voluntarily, insisting they should be able to return there.³⁶⁵

Dublin transfers

In 2011, 219 decisions concerning lack of jurisdiction were issued, which represents 15.8% of all decisions rendered concerning the granting or denial of international protection status (1,389). 170 people were transferred to other Member States, signatories to the Dublin Regulation, with 44 going to France, 33 to Belgium, 19 to Germany, 18 to Italy, 9 to the Netherlands; 42 people were transferred to Luxembourg, 11 of which came from Switzerland and 9 from the Netherlands.

³⁶³ *Justice, liberté, sécurité et immigration* (Justice, liberty, security and immigration), *Conseil JAI: Selon Nicolas Schmit, le mouvement migratoire en Méditerranée dû aux changements dans le monde arabe met à l'épreuve la capacité de l'UE à gérer ses frontières, et sa capacité à être un véritable acteur international* (Justice and Home Affairs Consilium: According to Nicolas Schmit, Mediterranean migratory movements, due to changes in the Arab world, are testing the EU's abilities to manage its borders and to be a true international player.)

<http://www.europaforum.public.lu/fr/actualites/2011/04/conseil-jai-tunisie-libye/index.html>.

³⁶⁴ *Arrêt M.S.S. c. Belgique et Grèce, Projet Transnational Dublin, Rapport Final* (Judgment, M.S.S. Vs Belgium and Greece, Transnational Dublin Project, Final Report), May 2011, p 22, <http://www.dublin-project.eu/fr/Projet-Dublin/Projet-Dublin-Partie-I/Projet-Transnational-Dublin-Rapport-Final-Mai-20113>.

³⁶⁵ Response of the Minister of Labour, Employment and Immigration to Parliamentary Question N° 1206 of 28 January 2011, 08 February 2012, www.chd.lu.

8. UNACCOMPANIED MINORS (AND OTHER VULNERABLE GROUPS)

8.1. Specific context before 2011

The Law of 05 May 2006, as amended, on the Right of Asylum and to Complementary Forms of Protection defines as unaccompanied minors those third-country nationals or stateless people aged eighteen years or less who enter the territory without being accompanied by an adult who assumes responsibility for them, whether by law or custom, and so long as they do not effectively come under the responsibility of such a person; this expression also covers those minors who have been left alone after having entered the territory.

Article 12 of this Law already contained certain procedural guarantees for unaccompanied minor DPI. Article 52 of this Law deals with the rights granted to unaccompanied minors given international protection.

Article 70(4) of the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People regulates the right to family reunification of unaccompanied minors granted international protection. The Grand-Ducal Regulation of 1 September 2006 defining the terms and conditions for granting social assistance to asylum seekers determines the manner in which unaccompanied minors are to be supervised. Social assistance takes into consideration the specific needs of vulnerable people, such as minors, unaccompanied minors (Article 4(1)).

8.2. Developments within the national perspective 2011

Nothing to report.

8.3. Developments from the EU perspective

The Law of 1 July 2011 modifying the Law of 29 August 2008 on Immigration and the Free Movement of People and the Law of 5 May 2006 on the Right of Asylum and to Complementary Forms of Protection reinforces the rights of unaccompanied minors.

The Law modified Article 103 of the Law of 29 August 2008 on Immigration and the Free Movement of People to the effect that unaccompanied minors must be assigned an

ad hoc administrator as part of the administrative and jurisdictional procedures concerning the entry and stay in the territory.³⁶⁶

The Law of 1 July 2011 also introduced Article 125bis (2), which stipulates, among other points, that “during the period during which repatriation was postponed, the foreigner is entitled to humanitarian assistance...”³⁶⁷ and that “minors have access to the basic educational system according to the term of their stay”. Furthermore, under the same Article, the specific needs of vulnerable people, including those of unaccompanied minors, are taken into consideration.

The unaccompanied minor is also assisted by an “ad hoc administrator” as part of the exam of the international protection request.³⁶⁸

The Law of 1 July 2011 modifies the provision on the statutory detaining of unaccompanied minors, specifying that they may be held in a suitable location adapted to the needs of their age. Legislators also added the sentence, “The child’s best interest is taken into consideration”.³⁶⁹

In 2011,³⁷⁰ there were 15 unaccompanied minor DPI, against 19 (in 2010) and 13 (in 2009).

³⁶⁶ Law of 29 August 2008, as amended, <http://www.legilux.public.lu/leg/a/archives/2011/0151/a151.pdf>.

³⁶⁷ As defined in Article 27 of the Law of 18 December 2009 organising social assistance, <http://www.legilux.public.lu/leg/a/archives/2009/0260/a260.pdf>.

³⁶⁸ *Mémorial* N° 151, 25 July 2011, Article 103, <http://www.legilux.public.lu/leg/a/archives/2011/0151/a151.pdf>.

³⁶⁹ Article 120 (1) of the Law of 29 August 2008, as amended, <http://www.legilux.public.lu/leg/a/archives/2011/0151/a151.pdf>.

³⁷⁰ As of 08 December 2011.

9. FOREIGN RELATIONS AND THE GLOBAL APPROACH

9.1. Specific context before 2011

Nothing to report.

9.2. Developments within the national perspective 2011

Type of agreement	Third country	Main purpose of agreement
Bilateral	Russia	Application Protocol of the Readmission Agreement between Luxembourg and Russia (signed on 13 September 2011) ³⁷¹

9.3. Developments from the EU perspective

Cooperation with the European Union or with international organisations

The Mobility Partnership between the European Union and Cape Verde, signed on 5 June 2008 by Cape Verde, Luxembourg, Spain, Portugal and France, seeks to facilitate the movement of people and legal migration between Cape Verde and these countries, to foster real cooperation on migration and development, and to prevent and fight against irregular migration, migrant trafficking, and human trafficking. This policy also consists in promoting an efficient policy on returns and readmissions, while ensuring the respect of human rights and taking into consideration the migrants' situation.³⁷²

It was in this same context that the CAMPO project³⁷³ was born, with the participation of Luxembourg's Embassy in Praia. This project started in 2009 and ended in December 2011.

³⁷¹ Approval of the bill approving the Application Protocol between the Government of the Grand Duchy of Luxembourg and the Government of the Russian Federation on the implementation of the Readmission Agreement of 25 May 2006 between the European Community and the Russian Federation is expected in early 2012.

³⁷² News article, *Signature du Partenariat pour la mobilité entre l'Union européenne et le Cap-Vert* (Signature of Mobility Partnership between European Union and Cape Verde), 05 June 2008, http://www.gouvernement.lu/salle_presse/actualite/2008/06-juin/05-schmit-jai/index.html.

³⁷³ <http://www.campo.com.cv/>; *CAMPO : pour une plus grande mobilité des compétences entre le Cap-Vert et l'UE* (CAMPO: for greater mobility of skills between Cape Verde and the EU), <http://www.africa-eu-partnership.org/fr/node/1846>.

The main objective of this project is to promote legal mobility between Cape Verde and the EU by providing information on migration channels, in order to promote the use of legal channels. The project also seeks to facilitate the reintegration in the Cape Verdian labour market of emigrants who return to the country, and to make better use of the capacities and resources they acquired during their stay abroad.

10. TRANSPOSITION OF THE EUROPEAN LEGISLATION INTO NATIONAL LAW

10.1. Transposition of European legislation in 2011

Transposition of Directive 2008/115, the so-called “Returns” Directive

The Law of 01 July 2011³⁷⁴ transposed the “Returns” Directive into national law. The most important modifications specifically relate to the provisions on the modes of repatriation and to the possibilities of placing foreigners in detention while they await the material execution of the decision ordering their return.

Promotion of voluntary return (Article 111(12)):

Decisions to deny a stay are accompanied by an obligation to leave the territory,³⁷⁵ which indicates the term granted to leave the territory voluntarily, as well as the country to which the foreigner will be sent back in case of execution of the order. The foreigner has thirty days from the date of notification of the decision to comply voluntarily with the obligation to leave the territory. For this purpose, he may apply for a mechanism of return assistance. Exceptionally, and taking the foreigner’s personal situation into consideration, the Minister may grant a term in excess of thirty days for the foreigner’s voluntary departure.

A foreigner may be obligated to leave the territory immediately if his behaviour constitutes a danger to the public order, public security or national security; if the request for the authorisation to stay or the residency permit was rejected because it was obviously inadmissible, *i.e.* unfounded or fraudulent; or if there is a flight risk. A flight risk must be evaluated on a case-by-case basis. It is presumed in 6 different cases:

- if the foreigner no longer meets the conditions of Article 34 (holding a valid passport or/and visa, not having been reported under Article 96 of the SIS nor having been refused entry to the territory, not representing a threat to the public order, internal security, public health, or international relations of the GDL);

³⁷⁴ Law of 01 July 2011, modifying the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People and the Law of 05 May 2006, as amended, on the Right of Asylum and to Complementary Forms of Protection, *Mémorial A N° 151*, 25 July 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0151/2011A2180A.html?highlight=>.

³⁷⁵ Article 112.

- if he remains in the territory beyond the term of validity of his visa or, if he is not subject to a visa requirement, beyond three months from his entry into the territory;
 - if he has evaded the execution of a previous measure of repatriation;
 - if an expulsion order (Article 116) has been issued against him;
 - if he falsified, forged or drew up a residency permit or an identity or travelling document;
 - if he cannot justify the possession of valid identity or travelling documents, or if he has concealed elements of his identity, did not declare the place of his effective domicile
- **A relaxation of the conditions for granting a residency permit for humanitarian reasons:** Article 78(3) allows for the granting of a residency permit to third-country nationals for humanitarian reasons of exceptional gravity, provided that their presence does not constitute a threat to the public order, public health or public security. Where such a residency permit is granted, any previously issued return order is made null and void. Legislators therefore retained the expression “exceptional gravity”. On the other hand, it is no longer necessary to justify, in such cases, suitable lodgings and sufficient resources.

Third-country nationals authorised to stay under Article 78 are granted a residency permit bearing the mention “private life”, valid for a term that may not exceed 3 years, renewable upon request and after re-evaluation of the situation. Previously, the maximum term of validity of such a residency permit was one year.

- The denial of entry into the territory: The repatriation decision comes with a denial of entry into the territory for a maximum term of five years, decreed either at the same time as the return order or through a separate, later decision if the person involved did not comply with the obligation to return within the given term or if he represents a danger to the public order, public security or national security (Articles 96(3) and 112(1)).
- Placement in the Detention Centre:

Article 120 allows a foreigner to be held in an enclosed structure in preparation of the execution of a repatriation measure, if there is a flight risk or if the person involved

evades or otherwise impedes the preparation of the return or the repatriation procedure. The law also allows detaining an unaccompanied minor in a suitable location, adapted to the needs of his age. The term of holding is set at one month, but may be extended three times, up to a maximum of four months. If the repatriation operation extends beyond this due to the involved third-country foreigner's lack of cooperation in obtaining the necessary documents, detention may be extended twice, for one month each time.

- **The introduction, next to statutory detention in an enclosed structure**, of a less coercive measure, *i.e.* **house arrest**, for a maximum term of six months (Article 125(1)). The Minister may order house arrest for a foreigner when the execution of the latter's repatriation has only been postponed for technical reasons and who offers guarantees to appear at his hearing which are deemed sufficient to obviate the flight risk.
- **The strictly equal treatment of people subject to the obligation to return**, whether they are staying irregularly because they entered the national territory irregularly or whether they are staying irregularly because their request for asylum was definitely refused. Under certain circumstances, and after a case-by-case verification, they may all have their repatriation postponed (Article 125bis(1)). Postponement of the repatriation replaces the grace measure, previously reserved exclusively to DPI who had been refused status under Article 22 of the Law of 05 May 2006 on the Right of Asylum and to Complementary Forms of Protection.³⁷⁶

If the foreigner can prove he is unable to leave the territory for reasons beyond his control, or if he can neither regain his country of origin nor go to any other country, the Minister may postpone the foreigner's repatriation for a term to be determined in light of the specific circumstances of each case and until there is a reasonable likelihood that his obligation may be executed. The foreigner may temporarily remain in the territory, but without being allowed to stay there.³⁷⁷

The decision to postpone the repatriation may come with an order for house arrest under the terms of Article 125(1).

³⁷⁶ Law of 05 May 2006 on the Right of Asylum and to Complementary Forms of Protection, *Mémorial A* N° 78, 09 May 2006, <http://www.legilux.public.lu/leg/a/archives/2006/0078/index.html>.

³⁷⁷ Article 125bis.

Article 125(2) on the period the postponement of the repatriation repeats the definition of vulnerable people taken from the “Returns” Directive.³⁷⁸

Adaptations of Grand-Ducal Regulations

The transposition of the “Returns” Directive made it necessary to adapt the Grand-Ducal Regulation of 5 September 2008 defining the resources and lodging criteria³⁷⁹ and the Grand-Ducal Regulation of 26 September 2008 establishing good-conduct rules to be followed by agents tasked with the execution of a repatriation measure.

To be granted a residency permit for private reasons on the basis of humanitarian grounds of exceptional gravity, the person affected need no longer justify having sufficient resources, as defined by the Grand-Ducal Regulation.

The Grand-Ducal Regulation of 17 August 2011 modifying the Grand-Ducal Regulation of 26 September 2008 establishing good-conduct rules³⁸⁰ refers to the specific needs of vulnerable people,³⁸¹ as defined in Article 125bis(2) of the Law of 29 August 2011, as amended. Article 4(3) of the Grand-Ducal Regulation of 26 September 2008, as amended, repeats Requirement 10(2) of the “Returns” Directive, according to which the Member State, before removing an unaccompanied minor from its territory, must ensure the said minor will be delivered to a family member or designated guardian, or to appropriate reception structures.

The Grand-Ducal Regulation to enforce certain provisions related to administrative formalities and the Grand-Ducal Regulation of 26 September 2008 on the creation of data processing of a personal nature were modified by the Grand-Ducal Regulation of 19 May 2011.³⁸² These modifications were needed to adapt the legislative mechanism to Community regulations.³⁸³ They call for the introduction of biometric data in the

³⁷⁸ <http://www.legilux.public.lu/leg/a/archives/2011/0151/a151.pdf>.

³⁷⁹ <http://www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf>.

³⁸⁰ Grand-Ducal Regulation of 17 August 2011 modifying the Grand-Ducal Regulation of 26 September 2008 establishing good-conduct rules, *Mémorial A* N° 180, 22 August 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0180/a180.pdf#page=4>.

³⁸¹ <http://www.legilux.public.lu/leg/a/archives/2011/0180/a180.pdf#page=4>.

Vulnerable people: minors, unaccompanied minors, the handicapped, pregnant women, single parents with minors, and people who have been the victims of torture, rape or any other kind of severe psychological, physical or sexual violence.

³⁸² <http://www.legilux.public.lu/leg/a/archives/2011/0102/a102.pdf#page=3>.

³⁸³ Regulation (EC) N° 380/2008 of the Council of 18 April 2008 modifying EC Regulation N° 1030/2002 establishing a uniform residency-permit template for third-country nationals, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:115:0001:01:FR:HTML>.

residency permits of third-country nationals. In addition, a provision concerning the preservation of the data in the context of the issuance of a biometric residency permit was introduced in the national regulation. Thus, the Grand-Ducal Regulation specifies that “once the residency permit has been delivered to the recipient, or at the latest six months after the production of the document, the Minister shall erase these data”.

Transposition of Directive 2009/50/CE, the so-called “European Blue Card” Directive

In order “to adapt immigration to the needs of Luxembourg’s economy, in full compliance with the European and international commitments to which Luxembourg subscribes”, the Bill modifying the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People guarantees the transposition into national law of Directive 2009/50/CE³⁸⁴ on the “European Blue Card”. The Bill was adopted on 17 November in the Lower House.³⁸⁵ The Law of 8 December 2011 was published on 3 February 2012.³⁸⁶

The Bill modifies the mechanism concerning entry and stay conditions for third-country nationals for highly-qualified employment. The new Article 45 allows the granting of a residency permit for the purpose of exercising a highly-qualified job if the applicant presents a valid work contract for a highly-qualified job, if he presents a document attesting that he possesses the relevant high professional qualifications, and if his remuneration is at least equal to a level of remuneration to be determined by Grand-Ducal Regulation.

³⁸⁴ Directive 2009/50/CE of the Council of 25 May 2009 establishing entry and stay conditions for third-country nationals for highly-qualified employment, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:155:0017:0029:fr:PDF>.

³⁸⁵ Dispensation of the second constitutional vote on 24 November 2011. Bill modifying the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6306>.

³⁸⁶ Law of 08 December 2011, as amended, modifying the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People, *Mémorial A N° 19*, 03 February 2012. Several provisions concerning highly-qualified workers were already featured in the Law of 29 August 2008 on Immigration and the Free Movement of People. For example, highly-qualified workers may be hired without being subjected to the standard practice for salaried workers, consisting in verifying hiring priorities and submitting requests to the Consultative Commission for Salaried Workers for review. Furthermore, they are already allowed to have members of their nuclear family accompany them or join them later on, without being subjected to a term-of-residency requirement. Finally the current tax regime for highly-qualified expatriates bears mentioning: this applies both to salaried workers temporarily seconded by a foreign enterprise to a Luxembourg enterprise belonging to the same international group and to salaried workers hired abroad directly to exercise a paid activity in Luxembourg, and allows the employer and the expatriate to take advantage of certain fiscal advantages.

Currently, this amount stands at three times the amount of the minimum social wage for unskilled workers. The Government Council of 2 December 2011 approved the Grand-Ducal Regulation proposal³⁸⁷ setting the new remuneration threshold. It will be set at one-and-a-half times the gross average yearly salary, except for certain cases. Indeed, as regards employment in professions belonging to main groups 1 and 2 of the CITP (International Standard Classification of Occupations), the remuneration threshold is set by derogation to the general principle of 1.2 times the gross average yearly salary. The transposition of the Directive also made it necessary to modify the amended Grand-Ducal Regulation of 5 September 2008 defining the resource and lodging criteria set forth in the Law of 29 August 2008 on Immigration and the Free Movement of People. The text proposed to the Government Council specifies how the resources of the European Blue Card holder are evaluated: “the resources of the European Blue Card holder are evaluated in relation to their nature and their regularity, as well as by reference to the monthly amount of the minimum social wage of an unskilled worker. The Minister may take the number of family members of the person affected into consideration. This evaluation does not occur during the period of unemployment allowed for under Article 45-3 of the Law.”³⁸⁸

The new Article 45 repeats the most important definitions (Article 45(2)), lists the 11 cases for exclusion (Article 45(3)) and the procedural guarantees ((Article 45(4)) contained in the Directive.

The third-country national granted a residency permit as a highly-qualified worker must deliver proof that he has appropriate lodging to be issued the “European Blue Card” residency permit.³⁸⁹ Thus, legislators are more demanding than the Directive, which states in Article 5(2) that Member States may require the applicant to provide his address within the territory of the Member State.

³⁸⁷ Proposed Grand-Ducal Regulation modifying the Grand-Ducal Regulation of 26 September 2008 defining the minimum level of remuneration for a highly-qualified worker, in application of the Law of 29 August 2008 on Immigration and the Free Movement of People and the amended Grand-Ducal Regulation of 05 September 2008 defining the resource and lodging criteria set forth in the Law of 29 August 2008 on Immigration and the Free Movement of People, http://www.conseil-etat.public.lu/fr/avis/2012/01/49_581/49581__Texte_du_projet_de_r_glement_grand-ducal.pdf.

³⁸⁸ Grand-Ducal Regulation of 25 January 2012, *Mémorial A* N° 19, 03 February 2012, p.243, <http://www.legilux.public.lu/leg/a/archives/2012/0019/a019.pdf>.

³⁸⁹ Article 45-1(1) of the Law of 08 December, *Mémorial A* N° 19, 03 February <http://www.legilux.public.lu/leg/a/archives/2012/0019/a019.pdf>.

Article 45-1(2) establishes the term of validity of the “European Blue Card”. This will be valid for a term of 2 years or for the term of the work contract plus three months if the term of the contract is less than two years.

The current Law calls for a valid residency permit for the requested term, insofar as said term does not exceed 3 years.

Luxembourg did not make use of the option granted by Article 8(2) of the Directive, under which Member States may, during the first two years of exercise of a highly-qualified job, verify whether the vacant position might not be filled by domestic or Community labour, by a third-country national staying regularly in the Member State, or by a long-term resident who wishes to travel to the Member State to occupy a highly-qualified position.

Luxembourg does call on the faculty reserved under Article 12(1) of the Directive. Under the new Article 45-2(4), the holder of a European Blue Card is entitled to equal treatment with nationals as regards access to all highly-qualified jobs (except for jobs that participate in the exercise of public authority and of functions the object of which is to protect the general interest of the State), and not only as regards the professional activities for which the holder obtained the Blue Card. But the authorities do not grant the holder of the Blue Card access to all jobs available on the labour market.

The Bill, as adopted, gives highly-qualified workers greater mobility inside the EU. Article 45(4) allows the holder of a European Blue Card and his family members to travel to another Member State for the purpose of highly-qualified employment after having stayed legally in the Member State that issued the Blue Card for at least 18 months.

Compared to the Law of 29 August 2008, the Bill allows for certain minor modifications concerning family reunification. The residency permit of the family members of a Blue Card holder is granted, at the latest, within six months of the date on which the request was filed, if the conditions for a family reunification are met (Article 73(6)). The term of validity of the residency permit of family members is identical to that of the residency permit issued to the holder of the European Blue Card (Article 74(1)).

Article 76 foresees an autonomous residency permit for the spouse, non-married partner, or adult child of the sponsor, or to people covered by Article 70(5), after no more than five years of residency or after the cohabitation is terminated (*e.g.* sponsor's death, divorce or breakup of the partnership at least three years after the issuance of the residency permit within the territory as part of a family reunification, or separation due to particularly serious situations – domestic violence), which is valid “regardless of that of the sponsor”.

Calculation of the five years' residency when applying for an autonomous residency permit takes into consideration the accrued periods of stay by family members in various Member States (Article 76(2)).

Finally, to be granted the status of long-term resident, a new paragraph is added to Article 80 that specifies that the holder of a European Blue Card is allowed to accumulate stays in various Member States to satisfy the requirement concerning the length of the stay. To do so, he must justify: 5 years' legal and interrupted residency as a Blue Card holder within the territory of the Union and 2 years of legal and uninterrupted residency within the national territory as a European Blue Card holder.³⁹⁰

10.2. Experiences and debates concerning the (non-) transposition of European legislation

Debate around the transposition of the “Returns” Directive

While the Law of 01 July 2011, transposing the “Returns” Directive³⁹¹ into national law, was being adopted, the directive proposal was strenuously challenged by human-rights NGO's. Concerns arose from the fact that the project would hinder the free movement of third-country nationals concerned by detention. Thus, six associations, (ACAT, ASTI, Caritas, CLAE, the CPJPO and the SeSoPi/CEFIS) regularly brought

³⁹⁰ Sole Article, Point 24th, of the Law of 08 December 2011, as amended, modifying the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People, *Mémorial A* N° 19, 03 February 2012.

³⁹¹ Commission Report(s): Commission for Foreign and European Affairs, Defence, Cooperation and Immigration, 16 May 2011, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6218#>.

this directive proposal to the attention of the public and policymakers.³⁹² Two major points were criticised: the extension of the detention term and the denial of entry into the territory.

The bill seeking to transpose the “Returns” Directive was criticised by several civil-society players.

Even though various players thought the proposed reform included certain improvements compared to the legal framework applicable to immigration and asylum, it still included several points of concern.

The Council of State noted the following points, among others:

As regards residency authorisations issued for humanitarian reasons of exceptional gravity, it suggested the expression “of exceptional gravity” be replaced by word “serious”.

The Council of State disagreed with the notion that “if the Minister is materially unable to produce a decision to hold in writing, the foreigner may be held on the Minister’s verbal decision, subject to its confirmation in writing within the following 48 hours at the latest”. It proposes Article 15(2) of the Directive, which states that “Detention shall be ordered in writing with reasons being given in fact and in law”.

It then repeats its highly critical position regarding an extension of the detention term, a position it had already expressed in its opinion of 20 May 2008 on the bill which resulted in the Law of 29 August 2008.

Along with the mandatory opinion of the Council of State, the following organisations emitted an opinion on the Bill: ASTI, LFR, CCDH, HCR.

The main criticisms often expressed (with some slight variances) by the various players are the following:

- The fact that no sufficient consideration is given to the proportionality of the detention measure (ASTI, CCDH, LFR).

³⁹² *La directive de la honte* (The Directive of Shame), Press Kit, 08 May 2007, <http://www.asti.lu/media/asti/pdf/directivehontedossierpresse.pdf>.

- The limited access to alternative measures to placement in statutory detention for repatriation purposes: only home arrest is offered as an alternative³⁹³ (ASTI, LFR, CCDH).

While the Directive (Article 15.1) specifies that placement in detention should be the last recourse after verification of the existence and applicability of alternative, less custodial measures, only one measure was presented as an alternative to placement in detention under the new Law: *i.e.* house arrest (Article 125).

- The increase in the maximum duration of the statutory detention (LFR, CCDH).

The HCR also lamented the extension of the maximum detention term.

- The excessively wide definition of flight risk, which does not take into consideration the Directive's provisions (ASTI, LFR, CCDH) and the need to verify the flight risk on a case-by-case basis.

Without defining the concept of flight risk, legislators introduced a system of legal presumption in the Bill. Thus, Article 111(3)³⁹⁴ of the new Law considers six situations in which flight risk is presumed.³⁹⁵ More specifically, it is the presumption of the existence of a flight risk due merely to the fact for that a person has remained on the territory beyond the term of validity of his visa that was called into question. Furthermore, this approach was decried as not complying with the spirit of the Directive, which does, however, expressly allow for national legislators' adoption of objective criteria which must be met "in a specific case" regarding the presumption of flight risk (Article 3 (7)). However, national legislation may therefore avoid an

³⁹³ The Council of State points out that the home arrest already includes part of the alternative measures, to wit, the obligation to respond personally to the Minister's notices to appear, the retention of travelling documents...

³⁹⁴ Law of 01 July 2011, modifying the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People and the Law of 05 May 2006, as amended, on the Right of Asylum and to Complementary Forms of Protection; *Mémorial A* N° 151, 25 July 2011.

³⁹⁵ A flight risk is presumed (1) if the foreigner does not meet, or no longer meets, the conditions of Article 34; (2) if the foreigner remains within the territory beyond the term of validity of his visa or, if he is not subject to the visa requirement, beyond the term of three months from his entry into the territory; (3) if the foreigner has evaded the execution of a prior measure of repatriation; (4) if a deportation order is issued against the foreigner, in accordance with Article 116; (5) if the foreigner has counterfeited, falsified, or obtained under a name other than his own, a residency permit or identity or travelling documents; (6) if the foreigner does not present sufficient guarantees, particularly because he cannot justify the possession of currently valid identity or travelling documents, or he concealed elements of his identity, or he did not disclose his effective residency, or he evaded the obligations set forth in Articles 111 and 125. (Law of 29 August 2008, as amended, on Immigration and the Free Movement of People).

individual exam of the existence of flight risk by basing themselves on this system of objectives of presumption.³⁹⁶

- The possibility of placing children, and particularly unaccompanied minors, in holding.
- A transposition of the conditions for obtaining a residency permit for humanitarian reasons which is more restrictive than what the Directive calls for, as is the one concerning the extension of the term for a voluntary return (LFR,³⁹⁷ CCDH³⁹⁸).
- The possibility of emitting a denial-of-entry decision through a separate, later decision, and the consequences of this provision on the right of defence, particularly if said decision is communicated after the execution of the repatriation.

The HCR stresses the principle under which a denial of entry into the territory may not adversely affect the right to international protection.

- The possibility for the Minister to emit a verbal placement decision, which must subsequently be confirmed in writing (ASTI, LFR, CCDH).

The CCDH expressed its regret that Article 103(1), currently in effect, reads as follows:

“Before making a decision to refuse the stay, withdraw or renewal of the residency permit, or order the repatriation from the territory of the third-country national, the

³⁹⁶ *Avis du Collectif Réfugiés Luxembourg sur le projet de loi modifiant la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration et la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection* (Opinion of the Luxembourg Refugee Collective on the Bill modifying the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People and the Law of 05 May 2006, as amended, on the Right of Asylum and to Complementary Forms of Protection), 22 December 2010, p. 5,

http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/071/969/097608.pdf; *Avis du Conseil d'État, Projet de loi modifiant la loi modifiée du 29 août 2008 sur la circulation des personnes et l'immigration et la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection*, (Opinion of the Council of State, Bill modifying the Law of 29 August 2008, as amended, on Immigration and the Free Movement of People and the Law of 05 May 2006, as amended, on the Right of Asylum and to Complementary Forms of Protection), 08 March 2011, pp 5,7,

<http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6218#>.

³⁹⁷ *Avis du Collectif Réfugiés Luxembourg* (Opinion of the Luxembourg Refugee Collective), 22 December 2010, p 5,

http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/071/969/097608.pdf.

³⁹⁸ CCDH, Opinion 02/2011, http://www.ccdh.public.lu/fr/avis/2011/avis_PL6218_final.pdf.

Minister takes into consideration, among other things, the duration of the affected person's stay on Luxembourgish territory, his age, his state of health, his family and economic situations, his social and cultural integration in the country, and the intensity of his ties with his country of origin, except if his presence constitutes a threat to public order or public security", and it should be applied to more than merely beneficiaries of long-term resident status or of family reunification, and that, in addition, the consideration of social integration should be eliminated.

As a consequence, the bill's authors have abrogated the criteria mentioned therein, which are supposed to guide the Minister in his decisions concerning third-country nationals others than those having been granted the status of long-term resident or involved in family reunifications.

This modification, which includes the deletion of guarantees for all third-country nationals, is motivated by the concern to strengthen legal compliance.

A certain number of amendments were made to the bill following the criticisms which had been made:

In light of multiple criticisms, legislators expressly introduced in the definition of flight risk the notion that it must be analysed on a case-by-case basis (and therefore not exclusively on the basis of the objective criteria defined in the Law).

Two resolutions were introduced

The first motion, which was rejected, called on the Government³⁹⁹ to

- “make use of its right to deprive persons being held of their liberty for a maximum term of six months only in exceptional and isolated cases;
- consider favourably the recommendation of the Council of State and give itself sufficient human and material means to ensure a speedy conclusion to procedures;

³⁹⁹ Motion Topic: *Durée maximale de rétention, rétention répétée et évaluation des conséquences* (Maximum holding term, repeated holding, and assessment of consequences), Xavier Bettel, 09 June 2011, http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletImpl/?path=/exp/ort/exped/sexpdata/Mag/118/019/101178.pdf

- put an end to the current practice of repeatedly placing in detention, thus exceeding the six months set forth in the Law;
- conduct a detailed evaluation of the effects of an increase in the maximum term of holding on the mental and physical health of persons being held, within six months after its application...”.

The second motion,⁴⁰⁰ which was unanimously adopted, invited the Government only to order statutory detention for repatriation purposes as a last resort, to implement other alternatives to detention such as home arrest, and to perform a study on the appropriateness of introducing electronic bracelet as an alternative to holding.

*Debate on the transposition of Directive 2009/50/CE, the so-called “European Blue Card” Directive*⁴⁰¹

The debate was limited to the opinions expressed during the legislative process.

The Council of State, seeking to make Luxembourg sufficiently attractive for highly-qualified workers, indicated its preference for a European Blue Card issued for a term of three years.⁴⁰²

It also wished the Government would set a yearly quota of admission for third-country nationals into the territory. It then criticised the fact that legislators set, as a condition for obtaining the Blue Card, proof of suitable accommodation, whereas the Directive only asks Member States to require a fixed address.

The Chamber of Commerce had the same criticism. It argued for a minimum remuneration equal to the minimum threshold called for in the Directive, *i.e.* once and half the average salary in effect in Luxembourg. It also lobbied in favour of accepting firm employment offers, in the form of commitments to hire, which the Blue Card applicant could produce. This would permit “giving more flexibility both to the

⁴⁰⁰ *Rétention comme mesure de dernier ressort, mise en œuvre d’alternatives à la rétention et étude sur l’opportunité de l’introduction d’un bracelet électronique* (Holding as a last-resort measure, implementation of alternatives to holding, and study on the expediency of the introduction of an electronic bracelet), Xavier Bettel, 09 June 2011, http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletImpl/?path=/exp/ort/exped/sexpdata/Mag/118/018/101177.pdf.

⁴⁰¹ See also under Point 4.1.2.

⁴⁰² *Avis du Conseil d’État* (Opinion of the Council of State), 11 October 2011, p 2, http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletImpl/?path=/exp/ort/exped/sexpdata/Mag/141/041/104400.pdf.

company wishing to hire the third-country national for the purpose of a highly-qualified job and to the affected person”.⁴⁰³ It then suggested the employer should also be given the opportunity to file a request for a European Blue Card. It estimated that legislators should have chosen the maximum term of validity set forth in the European Blue Card Directive, *i.e.* 4 years.

The Chamber of Salaried Workers⁴⁰⁴ questioned the merits of the Bill in the absence of a circumstanced evaluation on the real needs for hiring highly-qualified third-country nationals. In the absence of such an evaluation, it fears that the hiring of third-country nationals endangers social benefits both in Luxembourg and in the other Member States.

⁴⁰³ *Avis de la Chambre de Commerce* (Opinion of the Chamber of Commerce), 22 August 2011, pp 2, 9, http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/131/045/103404.pdf.

⁴⁰⁴ *Avis de la Chambre des Salariés* (Opinion of the Chamber of Salaried Workers), 11 October 2011, p 2, http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/144/061/104630.pdf.

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The objective of the European Migration Network, created by Decision N° 2008/381/CE of the Council, dated 14 May 2008, is to provide up-to-date, objective, reliable and comparable information on immigration and asylum to Community institutions, the authorities and institutions of the Member States, and the general public, to foster the development of policies and facilitate the decision-making process within the European Union

