



Practical Measures for Reducing Irregular Migration

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The objective of the European Migration Network (EMN) is to provide up-to-date, objective, reliable and comparable information on migration and asylum to Community Institutions, Member States' authorities and institutions, and the general public, with a view to supporting policy-making in the European Union in these areas.



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Preface

The opinions expressed in this study are those of the authors. They do not necessarily reflect the positions of the Luxembourg Ministry of Family and Integration or the Ministry of Foreign Affairs.

This study was drawn up by the members of the National Contact Point Luxembourg of the European Migration Network (EMN NCP LU) under the responsibility and coordination of Christel Baltes-Löhr and Anne Koch-University of Luxembourg- with the continued support of Sylvain Besch, CEFIS - Centre d'Etude et de Formation Interculturelles et Sociales; Claudia Hartmann-Hirsch, CEPS/Instead ; Germaine Thill, STATEC; Sylvie Prommenschenkel, Ministry of Foreign Affairs and Marc Hayot, Luxembourg Reception and Integration Agency, Ministry for Family Affairs and Integration. Members of the EMN NCP LU who were responsible for editing: Anne Koch and Joaquim Monteiro - University of Luxembourg. Adolfo Sommarribas - University of Luxembourg- was responsible for the compilation of the statistics.

This version is a translation from the original document written in French.

Contents

In this study, the EMN NCP LU attempts to provide, as far as possible, an overview of existing approaches, mechanisms and measures implemented in Luxembourg in order to address irregular migration.

The analysis of different governmental programmes has shown that the fight against irregular migration has gradually become a priority on policy level over the last decade. As a matter of fact, for national authorities the fight against irregular migration is one part of a general immigration policy. Addressing irregular migration thus goes hand-in-hand with the promotion of legal migration in accordance with labour force requirements of the economic activity sectors. In this sense, national policy largely follows the guiding lines of European policy on the subject. This latest assertion is equally reflected by the transposition of two main EU directives relating to irregular migration into national law, in particular the “return” directive¹ and the “sanctions”² directive.

On the other hand, the national legislation remains nevertheless the reflection of national political wills. Beyond the transpositions of Community law, it can be observed that the national legislative framework can and has been adapted as a response to a particular situation. Faced with pressures exerted by several associations which argue for the rights of foreigners, national authorities have stipulated pathways out of irregularity. Even if these provisions are considered widely ineffective by the associations, they are nonetheless enshrined in national law.

As for concrete measures that are in place in order to contain irregular migration, they vary in range and type. They range from readmission agreements that have been negotiated at the European level, bilateral political contacts, to information programmes in place in countries of origin, the strengthening of border controls through specific training of officials and the adaptation of technological innovations, international cooperation such as in the context of FRONTEX, to the construction of a new detention centre and even the promotion of voluntary returns in cooperation with IOM.

Although it is quite easy to draw up an overview of European and national policies and legislative frameworks, it is much more complex to quantify the phenomenon of irregular migration as such. This difficulty exists principally for two reasons: Firstly, “irregular” migration is by definition difficult to quantify - a migrant who is in an irregular situation wishes on principle to have as little

¹ Directive 2008/115/EC of the European Parliament and Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

² Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

contact possible with national authorities for fear of potential consequences – and secondly, data collection with regard to irregular migration at the national level is undertaken by different authorities according to their administrative requirements. We nonetheless attempt to provide a summary picture based on few available figures in the latter part of the study. It can be observed that irregular migration accounts for only a small part of migratory flows and immigration reality in Luxembourg.

List of abbreviations

APIS	Advanced Passenger Information System
ASTI	Association de soutien aux travailleurs immigrés (Association for the Support of Immigrant Workers)
BLLD	Bureau luxembourgeois de liaison détachement (Luxembourgish Secondment Liaison Bureau)
CCC	Common Core Curriculum
CEFIS	Centre d'étude et de formations interculturelles et sociales (Centre for Intercultural and Social studies and Training)
CCDH	Commission Consultative des Droits de l'Homme (Consultative Commission of Human Rights)
CPL	Centre Pénitentiaire de Luxembourg (Luxembourg Penitentiary Centre)
DPI	Demandeur de Protection Internationale (Applicant for International Protection)
GAT	General Aviation Terminal
FFE	Fonds pour les frontières extérieures (External Borders Fund)
FRAN	Réseau d'analyse des risques (Risk Analysis Network)
HCR	Haut-Commissariat pour le Réfugiés des Nations Unies (United Nations High Commissioner for Refugees - UNHCR)
ITM	Inspection du Travail et des Mines (Labour Inspectorate)
LFR	Lëtzebuenger Flüchtlingsrot (Luxembourger Refugees Collective)
MAE	Ministère des Affaires (Foreign Affairs Ministry)
MYO	Migrer les yeux ouverts (Migrate with open eyes)
OGB-L	Onofhängege Gewerkschaftsbond Lëtzebuerg
IOM	International Organisation for Migration
OLAI	Office luxembourgeois de l'accueil et l'intégration (Luxembourg Reception and Integration Agency)
NGO	Non-Governmental Organisation
PGD	Police Grand-Ducale (Grand-Ducal Police)
NCP	National Contact Point
SCF	Section Contrôle Frontalier (Border Control Section)
SDTI	Service détachement et travail illégal (Secondment and illegal work department)
SDV	Service des Documents de Voyage (Travel Documents Department)
SGA	Service de Contrôle de Garde à l'Aéroport (Airport Detention Control Department)
SIS	Schengen Information System
SMI	Service Médical de l'Immigration (Immigration Medical Service)
SPJ	Service de Police Judiciaire (Criminal Police Department)
UCPA	Unité Centrale de Police à l'Aéroport (Police Airport Control Unit)
VIS	Visa Information System

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1. INTRODUCTION: OBJECTIVES, METHODOLOGY AND DEFINITIONS

1.1. Objectives

The European Migration Network (EMN) Steering Board approved the selection of a study on *Practical responses to irregular migration* as part of the EMN Work Programme 2011. The overall objective of the study is to provide an overview of existing approaches, mechanisms and measures implemented by Member States³ to address irregular migration in the EU.

The specific aims of the study are to:

- Examine the overall historical and political approaches towards irregular migration in the Member States;
- Outline the EU and national policy and legal frameworks with regard to preventing, detecting, addressing and reducing irregular migration, and their drivers; Provide a comprehensive overview of practical approaches, mechanisms and measures developed by the Member States to reduce the number of irregular migrants in the EU;
- Review transnational cooperation in the area of irregular migration;
- Explore the availability of data and the methods of data collection used by Member States to estimate the irregular migrant population and the costs of implementing practical measures to tackle irregular migration;
- Explore the effects of EU policy and legislation on national policy, procedures and practices;
- Draw conclusions about the effectiveness of the practical responses to irregular migration across Member States, including proportionality considerations and the highlighting of best practice.

In particular, the study will identify effective practical measures undertaken to:

- Address irregular migration before the migrant arrives in the host (Member) State – i.e. at **pre-entry** level;
- Detect the **entry** of irregular migrants onto Member State territory;

³ Norway will also participate in this EMN study and for the purpose of these specifications is considered as a Member State.

- Monitor and ensure migrant compliance with the respective conditions of their visa and/or other permission to **stay** in a Member State in order to avoid overstay; and
 - Address the (legal) situation of irregular migrants by providing **ways out** of irregularity.
- The study will focus on the following groups of third-country nationals found to be illegally present in Luxembourg: Persons entered on the territory illegally (for example clandestinely, by using if necessary false documents or by giving a false indication as regards the purpose of their stay);
 - Persons who have exceeded the validity duration of their visa (or the duration of the maximum period of stay authorised in case of exemption of visa);
 - Persons who no longer have the right to stay, because they no longer have a valid residence permit and their residence permit is no longer extended or has been withdrawn;
 - Persons without the right to stay who have not left the territory of the Member States following a (final) negative decision on their application for international protection;
 - Persons who, having submitted an application for international protection, have "disappeared" and have no longer presented themselves to the authorities during the procedure for examination of the application for international protection, and who have not left the Member State/EU.

The study will not focus on victims of human trafficking or on the practical measures to combat trafficking or the fight against illegal networks involved in trafficking in human beings. Lastly, the study will not refer to the measures of prevention and detection which are an integral part of the visa issue process, given that these aspects are dealt with in the EMN study "Visa Policy as a Migration Channel"⁴.

The results of this study are aimed at, in particular:

- the political decision-makers, including the Ministers involved and the civil servants (at the Community and national level) involved in drawing up and implementing policies relating to irregular migration;
- national experts, such as university researchers or those belonging to research and think-tank institutions, which could eventually make use of them;
- the players and practitioners of Non-Governmental Organisations (NGO) and their networks;

⁴ More information at <http://www.emn.europa.eu> ; www.emn.europa.eu

- the general public having an interest in irregular migration;
- the media.

Before commencing the subject of irregular migration and more particularly the practical measures and mechanisms implemented in order to reduce it, it is important to highlight the direct relationship which exists between the status of irregular migrant and the legislative policies and measures of a given Member State⁵. Actually, it is the legislative framework and its criteria and official definitions which determine the different migratory statuses. That is to say, irregular migration is not a social phenomenon which exists independently of political and legislative realities.

As a result, in Luxembourg, a country signatory to the Schengen Agreements, legislative and statutory conditions as well as specific administrative practices may result in - or produce - situations of irregularity⁶. Conversely, a political decision may also enable to regularise a person or a category of persons, thus providing pathways out of irregularity.

Several situations of irregularity can be distinguished in Luxembourg⁷:

1. persons who continue to stay in Luxembourg after the expiry of their short-stay visa or, when they do not require a visa, after expiry of the 90-day stay period⁸ ;
2. persons who change status in transit and who no longer fulfil the conditions for the granting or prolonging of the residence permit issued initially and who have no other residence permit⁹;
3. persons whose authorisation to stay or residence permit have not been renewed;
4. persons working without a valid work permit: a) either in total '*clandestinity*' that is, without a residence permit, a work permit and without being registered with Social Security, b) or with no residence permit, no work permit, but registered with Social Security, c) or even with a residence permit, with a non-valid work permit, but registered with Social Security;
5. rejected international protection applicants and former recipients of a tolerance status who have neither a residence permit nor any other status and right of stay.

⁵ CLANDESTINO Research Project: Pathways into Irregularity: The Social Construction of Irregular Migration. Comparative Policy brief, http://clandestino.eliamep.gr/wp-content/uploads/2009/12/clandestino_policy_brief_comparative_pathways.pdf

⁶ Document for awareness raising 'Personnes en situation administrative irrégulière' (Persons in an irregular administrative situation), May 2000, p 8.

⁷ See Point 3.1.2. Article 100 of the Law on the Free Movement of Persons and Immigration of 29 August 2008 which for the effects of this study will be mentioned as the Modified Law of 29 August 2008.

⁸ Article 34 in relation to Article 100 (1) and (2) of the Modified Law of 29 August 2008.

⁹ *ibid.*

Any non-Luxembourgish person may find him/herself in a situation of administrative irregularity¹⁰, but situations of administrative irregularity predominantly affect third-country nationals (Non-members of the EU and/or not within the European Economic Area) in terms of access to their rights and constitute, by contrast to situations of irregularity of European citizens, a concern in terms of national migratory policy.

1.2. Definitions

Within the context of this study, reference is made to the terms "irregularity" or "irregular" as specified in Resolution 1509 (2006) of the Parliamentary Assembly of the Council of Europe¹¹. The expressions "person found to be in an irregular situation" or "persons found to be illegally present" is preferred to terms like "illegal migrants" or "clandestine migrants ". In the same order of ideas, the study uses the term "irregular migration". These expressions are more neutral and not stigmatizing, as in contrast to the term "illegal"¹².

Within a national context, we understand by *persons in an irregular administrative situation* people who live in Luxembourg who do not or who no longer fulfil, for one reason or another, the legal and administrative conditions of the regulations on the free movement of persons and immigration on the entry, stay or work of foreigners, as they are applied and interpreted¹³.

In order to promote comparability on an EU level and between the different national reports, references are also made to the EMN glossary which was developed based on the body of EU law, in particular Directive 2009/52/EC¹⁴.

¹⁰ Article 6 of the Modified Law of 29 August 2008 establishes the entry and stay conditions for nationals who are EU foreigners.

¹¹ [Council of Europe, Parliamentary Assembly, Resolution 1509 \(2006\), Human Rights of irregular Migrants, 27/06/06.](#)

¹² [Council of Europe, Parliamentary Assembly, Resolution 1509 \(2006\), Human Rights of irregular Migrants, 27/06/06.](#)

¹³ Confédération Caritas Luxembourg asbl, Commission Diocésaine Caritas et Diaconie, Commission Diocésaine pour la Pastorale Intercommunautaire, Commission Luxembourgeoise Justice et Paix, LCGB, Document on awareness raising: Les sans-papiers au Luxembourg (Undocumented Persons in Luxembourg), 2000, p 3.

¹⁴ [Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.](#)

1.3. Methodology

Each national study analyses the legal and political situation in the respective Member State, complying with the common EMN specifications drawn up in advance. Consequently, a comparative synthesis report is produced by the European Commission which summarizes the principal conclusions of each national report, while highlighting the most important aspects and placing them as far as possible within a European perspective. The different national studies as well as the synthesis report are accessible to the general public¹⁵.

This study, as with all other EMN studies, will be carried out in each Member State mainly through desk-based research, i.e. based on secondary sources. It collects and analyses data and information already available or published in the Member State or at the international level while putting into perspective with regards to the common specifications.

This study, conducted by the National Contact Point Luxembourg, is based on different sources of information, mentioned and ordered by document type in the bibliography.

In order to determine the national vision, policy and legislation with regard to irregular migration, an in-depth analysis of legal and political documents such as governmental programmes, official speeches, laws, bills and comments on the latter, the views of different socio-political players, and the responses to Parliamentary questions, was conducted. Annual reports by Ministers and administrations concerned with irregular migration and of the Grand Ducal police, and public positions of NGOs as well as publications in the media were considered.

The national policies and practices in place with regard to irregular migration are situated within the framework of the EU policy.

Beyond the analysis of secondary sources, six semi-structured interviews were conducted with

- The Minister of Labour, Employment and Immigration;
- High-level civil servants from the Ministry of Labour, Employment and Immigration;
- NGO representatives working in the area of (irregular) migration;
- a lawyer practicing in foreign law;
- the Police Airport Control Unit (UCPA) service

The interview partners were chosen according to their expertise with regard to certain aspects relating to irregular migration. All of the interviews were transcribed and analysed systematically.

¹⁵ www.emnluxembourg.lu; www.emn.europa.eu

As a preparation to this study, a workshop entitled ‘La politique des visas et la migration irrégulière au Luxembourg’ (Visa policy and irregular migration in Luxembourg) was organised at the University of Luxembourg. This workshop, organised on 7 July 2011, brought together 16 representatives of migrant associations in Luxembourg. Its principal aim was the exchange of ideas and experiences on the aforementioned subject. The conclusions of this workshop were incorporated into this study.

Lastly, although the common specifications set the period of coverage of the study from 2005 to 2010, NCP LU decided to extend the national study until August 2011. This decision can be justified because of major legislative modifications undertaken during the first semester of 2011: the adoption of the law of 1 July 2011¹⁶ modifying the law on the free movement of persons and immigration, the adoption of the law relating to the right of asylum and to additional forms of protection and transposing directive 2008/115/EC into national law¹⁷ (Directive 2008/115/EC of the European Parliament and Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals), hereinafter called the "returns directive", and the numerous discussions which preceded the opening of the new detention centre for persons having received the order to leave Luxembourgish territory¹⁸.

Inclusion of these developments was deemed indispensable in order to provide a complete current overview with regard to irregular migration in Luxembourg.

¹⁶ Mémorial A No. 151, 25/07/2011, <http://www.legilux.public.lu/leg/a/archives/2011/0151/2011A2180A.html> ; <http://www.legilux.public.lu/leg/a/archives/2011/0151/2011A2180A.html>

¹⁷ Directive 2008/115/EC of the European Parliament and Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:FR:PDF>

¹⁸ Avis du Collectif Réfugiés Luxembourg (LFR) (Opinion from the Luxembourg Refugee Collective), 19/03/2009, Opinion from the Consultative Commission of Human Rights of the Grand Duchy of Luxembourg, 31/03/2009, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=5947>, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=5947>

2. POLICY AND LEGAL FRAMEWORK IN RELATION TO IRREGULAR MIGRATION IN LUXEMBOURG

2.1. National policy

The analysis of official documents, published by the government over the last few years, enables us to draw initial conclusions on national policy and the governmental approach (in recent history) to irregular migration in Luxembourg.

2.1.1. The different governmental programmes, the ministerial point of view and the associations

While the governmental programme of 1999-2004 did not explicitly refer to irregular migration/immigration, the programme of 2004-2009¹⁹ highlighted three points:

- The government is committed to respect the right to international protection, to welcoming "with generosity from a social as well as a legal point of view" persons fleeing a region in conflict or who are persecuted.
- In order to reduce the duration of the procedure of processing applications and to cope with the misuse of the right to international protection, the governmental programme has stipulated amending the law on the asylum procedure, which brought about the law of 5 May 2006 relating to the right of asylum and additional forms of protection²⁰. Continuing the same objective, the different administrative departments responsible for processing asylum applications have been reinforced.
- The government has also reiterated its wish to vigorously address irregular immigration and to apply a firm return policy. To achieve these objectives, the government is committed to undertake close cooperation with the countries of origin, to encourage voluntary returns and to build a detention centre. Besides the introduction of mechanisms of positive incentives to returns, sanctions are also stipulated.

¹⁹ Government programme 2004-2009, <http://www.gouvernement.lu/gouvernement/programme-2009/programme-2004/index.html>, <http://www.gouvernement.lu/gouvernement/programme-2009/programme-2004/index.html>

²⁰ Loi du 5 mai 2006 relative au droit d'asile et à des formes de protection complémentaires (Law of 5 May 2006 relating to the right of asylum and additional forms of protection), Mémorial A Issue 78 of 09/05/2006, <http://www.legilux.public.lu/leg/a/archives/2006/0078/index.html>, <http://www.legilux.public.lu/leg/a/archives/2006/0078/index.html>

In its 2009-2014 governmental programme, the government emphasizes "the importance of the proper functioning of control mechanisms, and the importance of evaluation and sanctions as indispensable tools for the promotion of legal immigration"²¹. The close link between the promotion and organisation of regular immigration based on concrete national labour force requirements and the effective combat against irregular immigration and illegal work has been underlined.

Furthermore, the programme confirms that a credible fight against irregular immigration must be based on a consistent return policy of people found to be illegally present. Within this context, the promotion of voluntary returns is presented as a priority in order to preserve the human dignity of the persons concerned. With the objective of developing a common approach for the promotion of voluntary return, the government aims to strengthen cooperation with associations active within the domain of immigration as well as with international organisations specialised in this domain, particularly the UNHCR (the United Nations High Commissioner for Refugees) and the IOM (International Organisation for Migration)²².

At the same time, the government has confirmed its desire to combat illegal work, corollary to the organisation of regular immigration and to rigorously apply the national legislation founded on the European directive on the subject. In particular, the bill transposing the "sanctions" directive²³ should be submitted to the Government Council on 30 September 2011²⁴. Luxembourg had already partially anticipated transposition of the same directive in the Law of 29 August 2008 on the free movement of persons and immigration stipulating sanctions relating to irregular migration (Art. 139 to 148)²⁵.

Ministerial point of view

Questioned on the various aspects of irregular migration, the Minister responsible for immigration emphasized the importance of a holistic approach encompassing the aspects of prevention, control, detention and return policy, but also regularisation. Nevertheless the decision to apply such and such an aspect of the national migration policy seems to depend on the migrants' countries of origin and

²¹ Government Programme 2009, p. 21, <http://www.gouvernement.lu/gouvernement/programme-2009/programme-2009/programme-gouvernemental-2009.pdf>

²² Government Programme 2009, pp. 21-22, <http://www.gouvernement.lu/gouvernement/programme-2009/programme-2009/programme-gouvernemental-2009.pdf>

²³ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0052:FR:NOT>

²⁴ MAE, 2010, Report on the state of transposition of European directives (State of play on 10 May 2011).

²⁵ Law on the Free Movement of Persons and Immigration of 29 August 2008, <http://www.legilux.public.lu/leg/a/archives/2011/0151/a151.pdf>

the specific requirements. On the other hand, even though he admits its shortcomings in the past, the Minister also insisted on the need for a consistent return policy, which has been reinforced in 2011 with the opening of the new detention centre²⁶.

The government's wish to develop a national policy that is falling squarely within the European context was also mentioned during the interview. The Ministers notably insisted on the fact that it is necessary for national policy to reflect legislative developments on the European level, based on a spirit of cooperation and solidarity between Member States²⁷.

From the Ministerial point of view, the modification of the law of the free movement of persons and immigration, transposing the "returns directive", presents a clear framework for dealing with situations of irregularity and return, while the Minister acknowledges the complexity of certain individual situations²⁸.

Associations

On the other hand, during the interviews, the NGOs expressed generalised criticism relating to various national procedures. The need to have a comprehensible 'straight line' policy regulating the procedures of asylum, return or regularisation, was highlighted on several occasions. Specific administrative practices, or "case-by-case" policy, were mentioned as subjects of concern.²⁹

For a more advanced analysis, it goes without saying that the general political framework regarding irregular immigration must be put into relation to the legislative framework. As already mentioned above, the latter has undergone major modifications throughout the last few years.

²⁶ Ministerial point of view, 07/07/2011, lines 320-324.

²⁷ Ministerial point of view, 07/07/2011, lines 334-339.

²⁸ Ministerial point of view, 07/07/2011, lines 192-196 and 236-239.

²⁹ Point of view of NGOs, 11/07/2011, lines 603-607: "I have the impression that Luxembourg prefers to have more latitude, more freedom of possible action and like that, it can do so on a case-by-case basis, the great difficulty in all that, is that there are no straight lines".

Point of view of NGOs, 22/06/2011, lines 510-519 and 529-530:

«At present we have a policy which stipulates a procedure, an asylum or other procedure, and if a person is in an irregular situation, the consequence is that they are returned to their country. With the present laws, it's a logical consequence... If the law stipulates the return, it is still better to do so as rapidly as possible to undertake the procedures rapidly and to send them back rapidly. This is what we observe often, that people still have hope and try to do everything to stay. It's this incomprehension of the system; it's very serious for other people".

2.2. The legislative framework

The legislative framework with regard to irregular migration is made up in particular by the modified law of 29 August 2008 on the free movement of persons and immigration³⁰ and the modified law of 5 May 2006 relating to the right of asylum and additional forms of protection³¹ which were recently modified by the law of 1 July 2011.

The law of 1 July 2011 transposed into national law directive 2008/115/EC³² entitled "returns directive". Moreover, the Law of 29 August 2008 on the free movement of persons and immigration had already transposed six European directives into national law: the family reunification directive³³, the directive on the status of third-country nationals long-term residents³⁴, the directive on the right of citizens of the Union and their family members to move and reside freely³⁵, the directive on the residence permit issued for victims of trafficking in human beings³⁶, the directive on the entry and residence conditions for students³⁷ and the directive relating to admission and residence of researchers³⁸.

³⁰ <http://www.legilux.public.lu/leg/a/archives/2011/0151/a151.pdf>

³¹ Mémorial A No. 151, 25/07/2011, <http://www.legilux.public.lu/leg/a/archives/2011/0151/2011A2180A.html>
<http://www.legilux.public.lu/leg/a/archives/2011/0151/2011A2180A.html>

³² [Directive 2008/115/EC of the European Parliament and Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.](#)

³³ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification,

³⁴ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:016:0044:0053:fr:pdf>, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:016:0044:0053:fr:pdf>

³⁵ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:229:0035:0048:fr:pdf>, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:229:0035:0048:fr:pdf>

³⁶ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities,

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:261:0019:0023:FR:PDF>, <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:261:0019:0023:FR:PDF>

³⁷ Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:375:0012:0018:FR:PDF>, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:375:0012:0018:FR:PDF>

³⁸ Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research,

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:289:0015:0022:FR:PDF>.

By establishing provisions relating to the employment of highly qualified personnel, the law has partially anticipated transposition of the Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (Article 45),

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:155:0017:0029:fr:PDF>.

By establishing provisions relating to the employment of highly qualified personnel, the law has partially anticipated transposition of the Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (Article 45), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:155:0017:0029:fr:PDF>

National legislation on immigration, adopted in 2008³⁹, the law establishing the Detention Centre⁴⁰, already comprised a large part of the provisions complying with the "returns directive", particularly in relation to detention, procedural guarantees during removal, suspension of removal in case of illness and the rules of good conduct to be applied by the officials responsible for execution of a removal order.

However, integral transposition of the aforementioned directive was only achieved by the Law of 1 July 2011 modifying the modified law of 29 August 2008 and the Modified law of 5 May 2006.

The major modifications concern:

- a) the promotion of voluntary return: the person who is the subject of a return decision has a period of 30 days to voluntarily satisfy the obligation to leave the territory. This time-limit may if necessary be extended and the person concerned can request voluntary return assistance⁴¹;
- b) the introduction, besides administrative detention in a closed detention centre of a less coercive alternative measure, namely a compulsory residence order⁴²;
- c) the strictly equal treatment of persons subject to the obligation of return, whether they are residing without authorisation because they entered the national territory irregularly or whether they are residing without authorisation because they are rejected applicants for international protection. They may all, in certain circumstances and after verification undertaken on a case-by-case basis, be granted a deferral of removal for a fixed duration⁴³;
- d) a relaxation of the conditions for granting a residence permit for humanitarian reasons of exceptional gravity⁴⁴.

The Grand Ducal regulation of 17 August 2011⁴⁵ sets the general terms and conditions of the detention regime in the new Detention centre, in particular the rights and duties of the persons placed in administrative detention. It repeals at the same time the Grand Ducal regulation of 20 September 2002, creating a temporary centre of residence for foreigners in an irregular situation.

³⁹ Modified law of 29 August 2008 on the free movement of persons and immigration.

⁴⁰ Law of 28 May 2009 establishing and organising the Retention Centre; Grand Ducal regulation of 17 August 2011 setting the practical terms and conditions of the detention regime of the Retention Centre and repealing Article I of the Grand Ducal regulation of 20 September 2002 creating a temporary centre of residence for foreigners in an irregular situation and modifying the modified Grand Ducal regulation of 24 March 1989 regarding the administration and internal regime of penitentiary establishments.

⁴¹ Article 111(2) of the Modified law of 29 August 2008 on the free movement of persons and immigration.

⁴² Article 125 of the Modified law of 29 August 2008 on the free movement of persons and immigration.

⁴³ Article 125 a) of the Modified law of 29 August 2008 on the free movement of persons and immigration.

⁴⁴ Article 78 of the Modified law of 29 August 2008 on the free movement of persons and immigration.

⁴⁵ <http://www.legilux.public.lu/leg/a/archives/2011/0180/a180.pdf>

The legitimacy and holding conditions of third-country nationals in a situation or irregular stay in Luxembourg have been raised several times over the last few years and have been the subject to a number of debates within civil society, culminating in a press release from the Lëtzebuenger Flüchtlingsrot – Luxembourgger Refugees Collective (LFR) in 2010⁴⁶. More particularly, before the opening of the new Detention centre, persons found to be in an irregular situation were detained at the Luxembourg Penitentiary Centre (CPL) in Schrassig, which was the subject of strong criticism. A decision of the administrative court⁴⁷ furthermore ordered the immediate release of a person held in the Penitentiary Centre referring to a decree of the administrative court (decree 25.5559 C)⁴⁸ which had deemed the Detention Centre as not compliant with article 120 (1) of the Law of 29 August 2008. The Court followed up its decision by imposing a period of 2 years for the construction of a new detention centre outside the CPL. As on 1 October 2010 the new detention centre had not yet been completed, the court ordered the release of the person.

The government, claiming that the placement of a person within the Penitentiary Centre in a unit separate from that of other detainees, responded to the clauses of article 120 (1) of the law of 29 August 2008, appealed against the court's decision⁴⁹.

The Administrative Court, in an extraordinary public hearing on 15 October 2010⁵⁰, reformed the decision initially pronounced by declaring that the detention of persons in an irregular situation in the Luxembourg Penitentiary Centre in Schrassig, responded in principle to the requirements of the law of 29 August 2008 complying with the entry and stay of foreigners⁵¹. Nonetheless, these

⁴⁶ Opinion from the LFR on the Grand Ducal preliminary bill setting the general conditions of the Retention Centre's detention regime, <http://www.caritas.lu/Files/AvisduLFR.pdf>

⁴⁷ Administrative court, public hearing of 4 October 2010, roll number 27321, <http://www.ja.etat.lu/27321.doc>

⁴⁸ Administrative court, hearing of 2 April 2009, roll number 25559C, According to this decree the residential centre in the prison for foreigners in an irregular situation will no longer be used for the detention of foreigners from 1 October 2010. The Court stated: "Considering that the Court estimates that the present temporary situation of the residential centre functioning within the penitentiary centre enclosure will not in the long term comply with the notion of a closed structure as stipulated by the legislator by way of Article 120 (1) of the Law of 29 August 2008 and should be absorbed by effective implementation of a closed structure outside of the penitentiary centre enclosure within a reasonable time period of two years from coming into force, on 1 October 2008, of the aforementioned Law of 29 August 2008, which is in concrete terms up until 1 October 2010." See <http://www.ja.etat.lu/25559c.doc>

⁴⁹ Answer to the urgent parliamentary query No. 920 of Mr Félix Braz, 24 September 2010, www.chd.lu

⁵⁰ http://www.clae.lu/pdf/migrations/desicions_judiciares/retention/2010/27345C.pdf

⁵¹ This confirmation was based more on a pleading error by the recurring party than on a genuine analysis of the situation. . On this point the Court says: "Insofar as where the defendant has essentially only criticized the position of principle that the Retention Centre cannot be, for this specific case, within the enclosure of a penitentiary centre but it does not moreover criticize the concrete detention terms put forward by the State, the Court is led, by reformation of the decision taken, to hold that at the present time, even beyond 1 October 2010, the temporary residential centre is to be described as a closed structure responding in principle to the requirements of Article 120 (1) of the Law of 29 August 2008".

discussions have emphasized the importance of the establishment of a new independent Detention Centre outside of the Penitentiary Centre, which finally opened on 21 August 2011⁵².

Regarding the legislative and statutory mechanism, it is still necessary to mention the new Grand Ducal regulation of 17 August 2011⁵³ establishing the rules of good conduct to be applied by the officials responsible for execution of the removal order, complying with article 124 (4) of the modified law of 29 August 2008.

Over and above the law on immigration, the following laws are to be taken into consideration, even if the latter do not contain a direct reference to irregular migration:

- i) the law of 18 December 2009 organising social assistance⁵⁴ and
- ii) the law of 6 February 2009 relating to compulsory school attendance⁵⁵.

These two laws are analysed in more detail under section 2.1.4.

The Labour Code⁵⁶ takes into account the fight against illegal work. The Labour Code provisions relating in particular to the secondment of workers within the framework of a transnational service provision⁵⁷, to the illegal availability of labour⁵⁸ and the prohibition on clandestine work⁵⁹ are particularly important to underline.

2.2.1. Sanctions stipulated in the national legislation as regards irregular migration

Articles 139 to 148 of the modified Law of 29 August 2008 on the free movement of persons and immigration establish sanctions relating to irregular migration⁶⁰. The law stipulates sanctions for individuals, linked to the entry, irregular stay and to the lack of awareness of decisions of removal, illegal work and employment, but also for people and transport companies which support, directly

⁵² <http://www.wort.lu/wort/web/fr/luxembourg/articles/2011/08/159121/le-centre-de-retention-fin-pret.php>

⁵³ <http://www.legilux.public.lu/leg/a/archives/2011/0180/a180.pdf>

⁵⁴ Law of 18 December 2009 organising social assistance,
<http://www.legilux.public.lu/leg/a/archives/2009/0260/index.html>,
<http://www.legilux.public.lu/leg/a/archives/2009/0260/index.html>

⁵⁵ Law of 6 February 2009 relating to compulsory school attendance, Articles 2 and 7-12, Mémorial A Issue 20 of 16/02/2009, <http://www.legilux.public.lu/leg/a/archives/2009/0020/index.html>,
<http://www.legilux.public.lu/leg/a/archives/2009/0020/index.html>

⁵⁶ Law of 31 July 2006 introducing a Labour Code.

⁵⁷ First Text – Title IV, Article L.142-1. to L.142-5

⁵⁸ First Text – Title III, Article L.133-1. to L.134

⁵⁹ First Text – Title VII, Article L.571

⁶⁰ Mémorial A No. 151, 25/07/2011, <http://www.legilux.public.lu/leg/a/archives/2011/0151/2011A2180A.html>
<http://www.legilux.public.lu/leg/a/archives/2011/0151/2011A2180A.html>

or indirectly, the irregular entry and stay of other people⁶¹. In this way the law stipulates fines for transport companies which breach their obligation to inform the police of the identity of the passengers they transport to Luxembourg and which transport third-country nationals without travel documents and required visas⁶².

The modified Law of 29 August 2008 on immigration also equips the government with instruments related to the fight against illegal work, by strengthening the sanctions against employers who employ foreigners without residence permits for salaried workers; prison sentences were increased⁶³.

Furthermore, additional sentences may be pronounced as a temporary prohibition to exercise a professional activity (maximum of three years) or temporary closure of the business (a sentence which may be five years or be definitive)⁶⁴.

Luxembourg has partially anticipated transposition of the directive stipulating sanctions against employers of third-country nationals staying irregularly, by obliging the employer to pay arrears (salaries, social security contributions, taxes)⁶⁵.

The law also stipulates custodial sentences and/or fines for any foreigner who, removed or deported, has entered the country despite a ban on entry to the territory⁶⁶.

2.2.2. Recent legislative and political adaptations as regards irregular migration

To cope with the increased number of applicants for international protection of Serbian origin known since the end of 2010, Luxembourg entered into a cooperation agreement with Belgrade on 5 May 2011⁶⁷. The increase in the number of applicants for international protection (mostly Roma) was presented as a direct consequence of the liberalisation of the visa regime within the Schengen Area for Serbian and Macedonian nationals⁶⁸. National authorities have a tendency to consider these migrants as "economic refugees", an expression which departs from the "typical" framework of

⁶¹ Articles 107 and 108 of the Modified law of 29 August 2008 on the free movement of persons and immigration.

⁶² Articles 147 and 148 of the Modified law of 29 August 2008 on the free movement of persons and immigration.

⁶³ Article 144 of the Modified law of 29 August 2008 on the free movement of persons and immigration.

⁶⁴ Article 145 of the Modified law of 29 August 2008 on the free movement of persons and immigration.

⁶⁵ Article 146 of the Modified law of 29 August 2008 on the free movement of persons and immigration.

⁶⁶ Article 142 of the Modified law of 29 August 2008 on the free movement of persons and immigration.

⁶⁷ <http://www.lequotidien.lu/politique-et-societe/23018.html>. See also

<http://www.europaforum.public.lu/fr/actualites/2011/05/schmit-serbie/index.html?highlight=dacic>,

<http://www.europaforum.public.lu/fr/actualites/2011/05/schmit-serbie/index.html?highlight=dacic>

⁶⁸ Article d'Actualité, Bilan 2010 en matière d'asile et d'immigration (News Article, 2010 Report on asylum and immigration): "Afflux de demandes d'asile émanant de ressortissants de la Serbie", 01/02/2011,

http://www.gouvernement.lu/salle_presse/actualite/2011/02-fevrier/01-schmit/index.html

http://www.gouvernement.lu/salle_presse/actualite/2011/02-fevrier/01-schmit/index.html

regulations defining international protection. If it is true that international protection seekers coming from the Republic of Serbia cannot be considered irregular migrants⁶⁹ as such, the fact that migrants considered "economic migrants" have few options to settle in the Grand Duchy, leaves us to assume that many decide to use the international protection application procedure as a "migratory strategy". However, as Serbia is on the list of 'safe countries of origins', the chance that an application for international protection will be accepted is practically nil as the figures on the decisions regarding international protection illustrate.⁷⁰ As a consequence, this situation risks creating tomorrow's irregular migrants. If their applications for international protection are systematically refused and the persons have only little possibility of obtaining a residence permit, these migrants may turn towards the informal economy, particularly as regards the labour market, as a last resort for their "migratory strategy", unless they decide on a voluntary return to their country of origin.

As a direct response to the growing number of applications for international protection, notably from Serbia, and in order to contain the migratory flow the government has concluded a cooperation agreement with the Serbian authorities and has reintroduced the option of processing international protection applications (of Serbian nationals) via an accelerated procedure⁷¹. The national authorities no longer used this accelerated procedure following the preliminary question posed by the Administrative Court relating to the lack of an option of making recourse against the administrative decision to process an application via an accelerated procedure⁷². The option of recourse was finally introduced by a legislative modification⁷³.

In concrete terms, the government has taken two initiatives to respond: on one hand, the Council of Government has added Serbia to the list of safe countries of origin – which enables to resort to the

⁶⁹ Following liberalisation of the visa regime, nationals of the Republic of Serbia have more ease accessing the Schengen Area. Official Journal of the European Union, 19 Dec. 2007, Nr. L 334/137, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:334:0137:0147:EN:PDF>

⁷⁰ Article d'actualité, Statistiques concernant les demandes de protection internationale au Luxembourg jusqu'au mois de September 2011, (News Article, Statistics regarding application for international protection in Luxembourg up until September 2011) 14/10/2011, p. 5, http://www.gouvernement.lu/salle_presse/communiqués/2011/10-octobre/14-statistiques/stat.pdf

⁷¹ The accelerated procedure is stipulated by Article 20 of the Modified law of 5 May 2006 relating to the right of asylum and additional forms of protection for any application concerning in particular applicants originating from safe countries as defined by Article 21 of the aforementioned law, <http://www.legilux.public.lu/leg/a/archives/2006/0078/a078.pdf>

⁷² It was suspended by a preliminary question made by the Administrative Court, hearing of 3 February 2010, no. 26396 of the roll, before the European Court of Justice. The decision of the European Court of Justice occurred on 28 July 2011 (Order of 28 July 2011, Brahim Samba Diouf v. Ministre du Travail, de l'Emploi et de l'Immigration, Case C-69/10) and showed that administrative action was not necessary.

⁷³ Article 20(4) of the law relating to the right of asylum and additional forms of protection, <http://www.legilux.public.lu/leg/a/archives/2006/0078/a078.pdf>

accelerated procedure; on the other, the government registered the bill creating an appeal against the ministerial decision to process an application for international protection within the accelerated procedure framework.

The addition of Serbia to the list of safe countries of origin⁷⁴ was perceived by NGOs as an example where the government has not delayed in dealing with a specific situation «according to the contingent of applicants for international protection» known in Luxembourg⁷⁵.

Already beforehand, with the formal acknowledgement of Kosovo, on 21 February 2008⁷⁶, a change as regards the return policy for nationals of Kosovo (rejected international protection seekers) could be observed. In 2008, the Luxembourgish authorities considered that the circumstances which had rendered the return of refused applicants for international protection from Kosovo impossible, no longer existed. The national authorities actually considered that the personal safety of rejected applicants was no longer threatened and their basic rights would be guaranteed by the Kosovar authorities⁷⁷.

In order to facilitate voluntary returns, the Ministry signed a cooperation project relating to assistance with voluntary return for third-country nationals and with their reintegration into their country of origin with the IOM. The first programme which covered the period from 1 August 2008 to 15 March 2009 was limited to rejected applicants from Kosovo who no longer benefited from measures of tolerance. Sixteen people from Kosovo were concerned at the time.⁷⁸

With the same objective (to reduce irregular migration), the programme «Migrate with open eyes» (MYO) was initiated in Cape Verde. The latter was moreover extended from 2009-2010 and focused mainly on «the familiarisation of future Cape Verdean migrants (family reunification) with the social, linguistic and other realities of life in Luxembourg»⁷⁹.

Likewise, the Partnership for mobility signed on 5 June 2008 between Luxembourg, the European Union and Cape Verde, aims to facilitate legal migration and to prevent irregular immigration⁸⁰.

⁷⁴ Grand Ducal regulation of 1 April 2011 which modifies the Grand Ducal regulation of 21 December 2007.

⁷⁵ Point of view of NGOs, 11/07/2011, lines 359-362.

⁷⁶ <http://www.europaforum.public.lu/fr/actualites/2008/02/kosovo-reconnaissance/index.html>

⁷⁷ Intervention by Jean Asselborn on the subject of Kosovo's independence, Chambre des députés, 20/02/2008, "http://www.gouvernement.lu/salle_presse/discours/autres_membres/2008/02-fevrier/20-asselborn-kosovo/index.html" http://www.gouvernement.lu/salle_presse/discours/autres_membres/2008/02-fevrier/20-asselborn-kosovo/index.html

⁷⁸ IOM, Assistance with Voluntary Return from the Grand Duchy of Luxembourg 2011, Information Session, 13/09/2011.

⁷⁹ Answer from the Minister of Labour, Employment and Immigration to Parliamentary Question no. 955 on the mobility partnership with Cape Verde, posed by the Honourable Deputy Mr Eugene Berger, 13/10/2010, <http://www.chd.lu>, www.chd.lu

⁸⁰ Government of Luxembourg, News Article, Signing of the Partnership for mobility between the European Union and

From 2008-2010, the number of people who took part in information and awareness-raising activities is estimated at 2,200. Between December 2008 and October 2010, 216 people presented an application to obtain an authorisation to stay with a view to family reunification via the Luxembourg Bureau of Cooperation in Praia. 156 of these applications were approved⁸¹.

It is within this same context that the CAMPO project was initiated in 2009 (and which will end in December 2011)⁸². The principal objective of this project is to promote legal mobility between Cape Verde and the EU by providing information on the legal migration channels. The project also aims to facilitate reintegration into the Cape Verdean labour market of emigrants who return to the country and to better capitalise on the abilities and resources they acquired during their stay abroad.

2.2.3. Regularisation programme

In May 2001⁸³, the Government undertook a "large scale" regularisation of migrants in an irregular situation in Luxembourg. This administrative regularisation, presented as a single measure (a 'one shot' action) aimed to regularise the situation of certain categories of third-country nationals residing without authorisation to stay for a certain amount of time on Luxembourg territory, and rejected international protection seekers. This regularisation was predominantly based on labour market integration of the concerned persons, but it also focused on certain categories of people being regularised for humanitarian reasons. Applicants had to prove that they had been in the country since 1 July 1998 at least; had resided and worked there since 1 January 2000 or, in the case of Kosovo refugees that they had arrived before the 1st of January 2000⁸⁴.

The political decision to undertake this regularisation was also the result of pressure exerted by several main associations and principal unions⁸⁵ after a time (at the end of the 1990s) where Luxembourg faced a rise in the number of accepted refugees, particularly from the countries of the former Yugoslavia. Consequently, 75% of the individuals regularised were nationals of countries of

Cape Verde, http://www.gouvernement.lu/salle_presse/actualite/2008/06-juin/05-schmit-jai/index.html
http://www.gouvernement.lu/salle_presse/actualite/2008/06-juin/05-schmit-jai/index.html

⁸¹ See reference 76.

⁸² CAMPO : for greater mobility of skills between Cape Verde and the EU, <http://www.africa-eu-partnership.org/fr/node/1846>

⁸³ Applications for regularisations were presented between 15 May and 13 July 2001.

⁸⁴ Individuals were nevertheless excluded who, by their behaviour, posed a threat to public order or who presented false papers. News Articles, 'Marie-Josée Jacobs, Francois Biltgen and Luc Frieden provide information on the regularisation of undocumented persons, 09/05/2001,

http://www.gouvernement.lu/salle_presse/actualite/2001/05/09_biltgen/index.html
www.gouvernement.lu/salle_presse/actualite/2001/05/09_biltgen/index.html)

⁸⁵ Including a representative who was moreover part of a ministerial committee accompanying the regularisation.

the former Yugoslavia. And the majority of people regularised were international protection applicants who arrived before 1st of July 1998, a category of people registered and known by the authorities. As this regularisation was done in consultation with the sectors of the countries that were most affected by labour shortages, the programme initially had a positive echo and was hailed as innovative. However, considering the low number of applicants and the reluctance of some employers to hire immigrants, especially due to certain administrative requirements (like the obligation for the candidate to be in possession of a valid passport which was not always easy for nationals of countries of the former Yugoslavia under administration of the international community), the regularisation programme had difficulty achieving its objectives⁸⁶. Moreover, the fear of some employees in an irregular situation of losing their job by introducing a regularisation application (due to, if necessary, pressure exerted by their employers) constituted a genuine obstacle to regularisation.

2.2.4. Other policies indirectly linked to irregular migration: access to social rights

The right to education based on compulsory schooling⁸⁷, two aspects stipulated by the national legislation, requiring that any child residing in Luxembourg and aged over four years (over four before 1 September of the school year), receives an education and this independently of his/her legal status or that of his/her parents. Therefore, children of an age to attend school must be enrolled in the municipality of their place of residence, which does not go without posing several practical problems for people in an irregular situation⁸⁸ especially if the municipalities refuse to enrol the children.

As regards the right to access social assistance and housing in Luxembourg, the administrative distinction between applicants for international protection who have been rejected, and people in an irregular situation is set. The latter have no right to accommodation or to other types of social assistance, with the exception of access to emergency medical care. However, during the months of "Winter action" (December-March), a national association takes care of people in an irregular situation providing

⁸⁶ Commission on Migration, Refugees and Population, Rapporteur: Mr John Greenway, United Kingdom, European Democratic Group, Programmes of regularisation of migrants in irregular situations, 10/07/2007.

⁸⁷ Compulsory school attendance is extended over twelve consecutive years from September of the year in question and is terminated at the age of fifteen, if an apprenticeship measure is stipulated..

Law of 6 February 2009 relating to compulsory school attendance, Articles 2 and Art 7-12, Mémorial A Issue 20 (16/02/2009), <http://www.legilux.public.lu/leg/a/archives/2009/0020/index.html>
<http://www.legilux.public.lu/leg/a/archives/2009/0020/index.html>

⁸⁸ Point of view of NGOs, 05/07/2011, lines: 406-410.

emergency accommodation in one of its shelters⁸⁹.

For rejected international protection seekers, social assistance ceases in principle after the final negative decision relating to their application. In practice, people "rejected" continue to receive accommodation and food for a certain amount of time (possibly up until their effective return) but no longer have the right to financial assistance and to granting of a transport permit.⁹⁰

Access to health insurance

Rejected international protection seekers may continue to receive Social Security benefits as long as they remain in contact with the Luxembourg Reception and Integration Agency (OLAI) which is responsible for the payment of Social Security contributions. They may therefore receive medical care until they leave the country. Moreover, within the domain of access to medical care for international protection seekers, a practical information guide on access to medical care⁹¹ was launched in 2008 by a body of associations.

People deprived of the residence permit remain, in principle, excluded from health insurance benefits. They may, however, have access to optional voluntary insurance as long as they provide proof of residence (proof of rent or accommodation certificate). They must as a final step present a residence certificate of the municipality. People residing without an authorisation may enrol and be insured voluntarily with the Social Security Centre (Centre commun de la sécurité sociale - CCSS). The CCSS does not undertake a check to verify if the conditions for stay or residence of a foreigner on Luxembourg territory are fulfilled⁹². It is equally possible for a boss to enrol his/her employees in an irregular situation with social security, given that the Labour and Employment Ministry does not have the right to conduct verifications at the level of Social Security files. The centre accepts

⁸⁹ For the rest of the year, this shelter managed by Caritas in collaboration with the Ministry, remains limited to homeless people or to people at risk of becoming so, but who are in a regular administrative situation.

⁹⁰ Point of view of NGOs, 05/07/2011, lines 268-274 : "So it is nevertheless necessary to know that up until now, the policy of the OLAI and therefore of the Family Ministry, was moving regardless in the direction that especially families with children, even after the end of the asylum procedure, remain accommodated in hostels, so continue to receive social cover, to obtain food, so they are fed and housed, so, er, there are a certain number of single people, but for single people, it is actually more difficult."

⁹¹ Guide d'accès aux soins médicaux pour demandeurs de protection internationale, déboutés du droit d'asile et personnes en situation irrégulière au Luxembourg, Groupe de travail « Santé des Migrants » (ASTI, CARITAS, CLAE, CROIX-ROUGE sous l'impulsion de MSF), (Guide to access to medical care for applicants for international protection, rejected asylum seekers and people in an irregular situation in Luxembourg, Working Group "Health of Migrants" (ASTI, CARITAS, CLAE, RED CROSS under the impetus of MSF)), 2008 http://www.asti.lu/media/asti/pdf/guide_msf.pdf

⁹² Answer of the Deputy Ben Fayot to Parliamentary Query no. 1399 of 14 November 2006,

affiliation if there is a hierarchical relationship in accomplishment of the work⁹³. As soon as social security contributions have been paid, rights to health care services are open⁹⁴.

Even in the absence of voluntary affiliation to Social Security, any person has the right to be cared for in Luxembourg, however at his/her own expense, since a person who is not affiliated may not claim reimbursement of health care costs from health insurance. Financial payment (up to 80% of the costs) may be granted by the "Commission des Subsidés Sociaux pour Particuliers" (Commission of Social Subsidies for Individuals) after consultation with the attending doctor or the social service of the clinic in question⁹⁵.

2.3. The institutional framework

In accordance with the legislation, the Minister who is in charge of immigration as part of his/her duties may conduct controls or have controls carried out to verify if the conditions set for entry and stay of foreigners are fulfilled⁹⁶. In practice, several government actors and institutions are responsible for the implementation and/or application of the mechanisms and practical measures aiming to fight irregular migration⁹⁷.

2.3.1. Pre-entry and stay

The Ministry of Foreign Affairs (MAE) is responsible for issuing visas at the level of its consular network and for implementation of computer tools linked to visa issuing (VIS) in association with the Centre informatique de l'Etat (Government Computer Centre - administration coordinating computer activities for the entire Luxembourg State). Regarding the latter aspect, an inter-ministerial working party, bringing together the MAE, the Ministry of Justice, the Grand Ducal Police, the Government Computer Centre and Information Service, was responsible for piloting the implementation of the VIS and the SIS and of the common visa policy.

The Passport Office is responsible for issuing short-term visas (visa C). As Luxembourg has relatively few direct representations abroad, the Grand Duchy resorts to the diplomatic missions of

⁹³ National Ethics Commission, Opinion 20 'Les limites de l'accès aux soins au Grand-Duché de Luxembourg', p. 60, <http://www.cne.public.lu/publications/avis/index.html>

⁹⁴ Answer of the Deputy Ben Fayot to Parliamentary Query no. 1399 of 14 November 2006,

⁹⁵ National Ethics Commission, Opinion 20 'Les limites de l'accès aux soins au Grand-Duché de Luxembourg', pp. 60-61, <http://www.cne.public.lu/publications/avis/index.html>

⁹⁶ Article 133 of the Modified law of 29 August 2008 on the free movement of persons and immigration, <http://www.legilux.public.lu/leg/a/archives/2011/0151/a151.pdf> \1

⁹⁷ Article 134 of the Modified law of 29 August 2008 on the free movement of persons and immigration.

other European Union Member States (Germany, Belgium, Spain, France, Hungary, Netherlands, Portugal, Slovakia) as regards applications and processing of visas sent directly to it.

The Directorate of Immigration of the Ministry of Foreign Affairs is responsible for processing long-term visa applications (visa D). The Minister of Immigration grants residence permits and issues residence permits exclusively. The Directorate of Immigration also processes applications for international protection registered in Luxembourg and the Minister of Immigration grants or refuses the status of refugee and the status of subsidiary protection⁹⁸.

2.3.2. *Border controls*

Numerous players possess competences for border control at the sole external border of the Grand Duchy of Luxembourg, namely the International Airport of Luxembourg.

The Grand Ducal Police and in particular the Police Airport Control Unit (Unité Centrale de la Police à l'aéroport - UCPA) is responsible for surveillance and control at the airport border, issuing emergency visas as well as the implementation of the information system (SIS). The Airport Control Department (SCA), hierarchically dependent on the UCPA, is comprised of two departments, the SCF (Border Control Department) and the SDV (Travel Documents Department).

The SCF constitutes the first line of control. It is responsible for checking any person who enters or leaves the Schengen Area as well as control at the General Aviation Terminal (GAT) counter. In summary, the SCF is responsible for surveillance and control of the sole external border in Luxembourg. The department's duties include the fight against irregular immigration, the fight against trafficking in human beings and the prevention of any threat concerning domestic security and public order⁹⁹.

2.3.3. *Controls on the territory*

Foreigners must be in a position to show documents proclaiming their right of entry and stay on the territory on demand of the Grand Ducal Police. Officials may nevertheless

⁹⁸ Article 3 of the Modified Law of 5 May 2006.

⁹⁹ European External Borders Fund, Annual programme,

http://www.police.public.lu/PoliceGrandDucale/mission_organigramme/description/services-centraux/UCPA/Fonds_europ_front_ext/programme-pluranniel-2007-2013.pdf

http://www.police.public.lu/PoliceGrandDucale/mission_organigramme/description/services-centraux/UCPA/Fonds_europ_front_ext/programme-pluranniel-2007-2013.pdf;

http://www.police.public.lu/PoliceGrandDucale/mission_organigramme/description/services-centraux/UCPA/Fonds_europ_front_ext/

For the technical details available to airport control officials, see also European Migration Network, National Contact Point, 2009 Political report on migration and asylum, <https://www.emnluxembourg.lu/type-documentation/rapport-politique-2009-sur-les-migrations-et-lasile>, <https://www.emnluxembourg.lu/type-documentation/rapport-politique-2009-sur-les-migrations-et-lasile>

retain the travel documents of people in an irregular situation on production of a receipt acting as a justification of their identity¹⁰⁰.

According to the clauses of the Labour Code, the Labour Inspectorate (ITM) is the competent national authority regarding the application of clauses concerning secondment of workers. The ITM must ensure that the standards relating to clandestine or illegal work are respected and applied including the stipulations regarding work permits for third-country nationals from a Member State who are not nationals of a Member State of the European Economic Area¹⁰¹. Within this framework, the ITM works in close collaboration with the Directorate of Immigration, the Grand Ducal Police and the Customs and Excise Administration.

2.3.4. Detention

Until the opening of the new Detention Centre on 21 August 2011, people found to be in an irregular situation were detained in a separate section of Luxembourg's Penitentiary Centre in Schrassig. This former 'centre' operated under the responsibility of the Ministry of Justice, while the population detained there was under the supervision of the Directorate of immigration of the Ministry of Foreign Affairs¹⁰².

2.3.5. Return

The removal of persons refused the right to international protection and persons found to be irregular present is incumbent upon the Directorate of Immigration. On the other hand, the Grand Ducal Police which arrests and escorts the people is under the jurisdiction of the Minister of the Interior and the Greater Region.

With due regard to ensuring the rules of good conduct during a removal order¹⁰³, the Minister

¹⁰⁰ Article 136 of the Modified Law of 29 August 2008.

¹⁰¹ Article 137 of the Modified Law of 29 August 2008.

¹⁰² Conditions for third-country nationals detained in centres (detention camps and open centres, as well as transit zones), with particular attention focused on services and resources for people with specific needs within the 25 European Union Member States, Report of visit to Luxembourg, p. 15, http://www.cimade.org/uploads/File/admin/Rapport_Luxembourg.pdf
http://www.cimade.org/uploads/File/admin/Rapport_Luxembourg.pdf

¹⁰³ See: Grand Ducal regulation of 17 August 2011 modifying the Grand Ducal regulation of 26 September 2008 establishing the rules of good conduct to be applied by officials in charge of execution of a removal order and modifying the Grand Ducal regulation of 21 December 2006, transposing Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air. Mémorial A Issue 180 of 22/08/2011
<http://www.legilux.public.lu/leg/a/archives/2011/0180/a180.pdf#page=4>,
<http://www.legilux.public.lu/leg/a/archives/2008/0145/2008A2126A.html>

Delegate for Foreign Affairs signed a framework agreement on 5 February 2009 with the Red Cross conferring on the latter a mission of observer stipulated by Article 6 of the Grand Ducal regulation of 26 September 2008¹⁰⁴. This agreement stipulates that the Red Cross is informed at least 72 hours in advance before the removal of a person. The Red Cross may moreover support the persons concerned by a removal order in preparations before their departure. During boarding and throughout the trip, a Red Cross representative accompanies the persons removed, offers them moral support and protects them against any use of brutal immobilisation techniques. However, the report written by the Red Cross following each removal remains confidential.

The removal itself is undertaken by Grand Ducal Police officers.

2.3.6. Other players working in the domain of irregular migration and their roles regarding the elaboration and implementation of policies

The LFR (Lëtzebuenger Flüchtlingsrot/Luxembourger Refugees Collective) is a collective of autonomous associations, comprised of member associations, each of which retains its autonomy, mode of operation and specific approach.

The core of the Collective's work consists of protecting the rights of persons who seek refuge in Luxembourg, in agreement with the international and European standards and the Luxembourgish legislation. When persons are rejected international protection and risk return, the LFR also intervenes¹⁰⁵. Other players who regularly intervene on the matter are the Consultative Commission of Human Rights which presented a very detailed opinion in April 2003¹⁰⁶ on the removal of persons in an irregular situation, and ASTI, CLAE, Caritas and CEFIS (formerly known as Inter-Community Sesopi-Centre)¹⁰⁷. The last 4 associations joined forces with the unions OGB-L and LCGB, to lobby in favour of the regularisation of irregular persons. During implementation of the regularisation, the platform was represented by a member with observer status within the support

¹⁰⁴ European Migration Network-National Contact Point Luxembourg- 2009 Political report on migration and asylum, p. 51, <https://www.emnluxembourg.lu/type-documentation/rapport-politique-2009-sur-les-migrations-et-lasile>

<https://www.emnluxembourg.lu/type-documentation/rapport-politique-2009-sur-les-migrations-et-lasile>

¹⁰⁵ Basic position of the LFR on forced return procedures of asylum applicants rejected in July 2001.

¹⁰⁶ E.g. Opinion of the Consultative Commission of Human Rights, 2003: "L'expulsion et le refoulement du territoire des étrangers en situation irrégulière" (Expulsion and return to the territory of foreigners in an irregular situation), http://www.asti.lu/files/2009/12/Avis_expulsions_CCDH2003.pdf

¹⁰⁷ E.g. Directive de la honte, Dossier de Presse (Directive of shame, Press Release, <http://www.asti.lu/media/asti/pdf/directivehontedossierpresse.pdf>
<http://www.asti.lu/media/asti/pdf/directivehontedossierpresse.pdf>

committee, comprised of representatives from the 3 Ministries concerned (Family, Justice and Labour)¹⁰⁸.

The LFR also follows evolution of international and European legislative instruments, their transposition into national law and their implementation. This informal platform also carries out the objective of awareness raising on international protection among the public¹⁰⁹. In order to do so, the Refugee Collective writes and publishes opinions on bills, policy statements and evaluation reports. Any policy statement or public action requires the unanimous approval of the members of the Collective. If unanimity is not achieved, the policy statement may still be made public but only on behalf of the signatory associations and not on behalf of the LFR.

Other players question legislative initiatives of political decision-makers with regard to migration and the right to international protection. This is particularly the case with the "Migration and Integration Platform"¹¹⁰ which regularly submits opinions on bills. Any association or NGO may moreover contribute to the political debate by way of official opinions and policy statements.

¹⁰⁸ News Article, Marie-Josée Jacobs, Francois Biltgen and Luc Frieden provide information on the regularisation of undocumented persons, 09/05/2001 ; www.eurofound.europa.eu/eiro/2001/12/feature/lu0112140ffr.doc

¹⁰⁹ Lëtzebuerger Flüchtlingsrot (LFR) Luxembourger Refugees Collective, The LFR's Charter (2011), <http://www.clae.lu/html/m1sm3ssm3.html> , <http://www.clae.lu/html/m1sm3ssm3.html>

¹¹⁰ Members of the migration and integration platform: APL – ASTI – ASTM – CARITAS – CCPL – FAAL – FACVL – FAEL – LCGB – OGB-L – FNCTTFEL – CEFIS – SYPROLUX, <http://www.asti.lu/migrations/plate-forme-migrations-et-integration/memorandum-pour-un-meilleur-vivre-ensemble/> <http://www.asti.lu/migrations/plate-forme-migrations-et-integration/memorandum-pour-un-meilleur-vivre-ensemble/>

3. PRACTICAL MEASURES IMPLEMENTED FOR REDUCING IRREGULAR MIGRATION

3.1. Pre-Entry: practical measures undertaken to address irregular migration before the migrant arrives in the host (Member) State.

With regards to the prevention of irregular migration, it must first of all be noted that preventive measures implemented in Luxembourg are considered as limited as they exceed the country's own resources¹¹¹. In addition, Luxembourg does not have external borders¹¹² with the exception of the international airport, and has no diplomatic presence in the majority of third countries¹¹³. Hence the importance for Luxembourg of a common European policy and cooperation (controls at external borders, exchange of information) in this matter was highlighted by the Minister himself¹¹⁴. This concern goes hand-in-hand with a commitment and the involvement of Luxembourg in accordance with its available resources in common actions and operations (for example involvement in FRONTEX operations)¹¹⁵.

3.1.1. Information programmes

At the preventive level, a number of initiatives existed or still exist; more particularly the project "Migrate with open eyes (MYO)"¹¹⁶ and the mobility partnership between the EU and Cape Verde¹¹⁷. The project "MYO" put in place in 2006 in Cape Verde with Luxembourgish cooperation and extended from 2009 to 2010 enabled persons who envisage immigrating to Luxembourg for family reunification to obtain information about the opportunities and constraints of immigration, to familiarise themselves with the country's social and cultural realities, or even to obtain information about options to return to Cap Verde.

¹¹¹ Ministerial point of view, 06/07/2011, lines 351-358.

¹¹² As defined by the Schengen Borders Code

¹¹³ European Migration Network-National Contact Point Luxembourg - Visa Policy as Migration Channel, 2011,

http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do;jsessionid=CEBBAB400D801408E3559BCC2A98EB49?entryTitle=02_VISA%20POLICY%20as%20a%20Migration%20Channel

¹¹⁴ Ministerial point of view, 06/07/2011, lines 351-358.

¹¹⁵ [Government Programme 2004-2009.](#)

¹¹⁶ <http://www.land.lu/index.php/printarchive/items/migrer-les-yeux-ouverts.html>

¹¹⁷ http://www.gouvernement.lu/salle_presse/communiqués/2008/06-juin/05-UE-Cap-vert/index.html

Likewise, the Partnership for mobility between the European Union (between Luxembourg, Spain, Portugal and France) and Cape Verde signed on 5 June 2008¹¹⁸ aims to facilitate legal migration on one hand and to fight irregular immigration on the other. Based on reciprocity, this partnership objective is to facilitate the legal migration of certain categories of people between Cape Verde and the signatory European countries by being based on a dialogue focusing on short-stay visa issues. At the same time the partnership has an additional objective, to prevent and fight trafficking of migrants and trafficking in human beings.

Lastly, a cooperation agreement was entered into force on 5 May 2011 between Luxembourg and Serbia¹¹⁹ to cope with an inflow of DPIs of Serbian origin, observed from the end of 2010. As a matter of fact, persons of Serbian origin are not in an irregular situation to start with because they no longer are required to have a visa to re-enter the Schengen territory. Once they submit their application for international protection, they have a right of stay during examination of their application. Only after rejection of their application can the persons become 'irregular'.

The cooperation agreement signed between Luxembourg and the Republic of Serbia aims to put into place information on the right to freedom of movement of Serbian nationals. National and Serbian authorities consider that information campaigns can prevent situations of irregularity, even more since the majority of international protection applications from Serbian (and Macedonian) nationals are rejected.

Apart from governmental initiatives, several ad-hoc initiatives were taken by national associations. The internet portal '<http://www.bienvenue.lu/>' put online by ASTI and co-financed by the Luxembourg Reception and Integration Agency (OLAI) and the European Integration Fund, brings together essential information on entry to and stay in the Grand Duchy of Luxembourg, thus facilitating access to information for third-country nationals who wish to settle in Luxembourg. The information can be downloaded in several languages and is accessible from any computer connected to the internet¹²⁰.

Another information project was put in place by the association "Amitié Luxembourg-Montenegro" (Friendship Luxembourg-Montenegro) with the support of the Ministry of Foreign Affairs. The

¹¹⁸ "The mobility partnership between the European Union and Cape Verde", 09/11/2010, <http://www.europaforum.lu>

¹¹⁹ 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, 05/05/2011, <http://www.europaforum.public.lu/fr/actualites/2011/05/schmit-serbie/index.html> ou encore <http://www.lequotidien.lu/politique-et-societe/23018.html> , <http://www.lequotidien.lu/politique-et-societe/23018.html>

¹²⁰ <http://www.bienvenue.lu/>

modified law of 29 August 2008 on the free movement of persons and immigration has been translated into Serbo-Croatian. The objective was to inform nationals of Montenegro of the terms and conditions of entry to and stay in Luxembourg. This initiative follows the more general observation of a lack of information or incorrect information on the rights and constraints of the free movement of third-country nationals in Luxembourg available in the country of origin¹²¹.

Generally, associations welcome this type of information and awareness-raising initiative. The option to set up an information office in the country of origin, where candidates for migration would be obliged to pass by, was mentioned during an interview that we conducted¹²².

3.1.2. The legislative framework

The modified law of 29 August 2008 presents the conditions of entry to and stay on the territory of Luxembourg¹²³. It is necessary to mention right away that the law establishes the distinction between different types of entry and stay authorisations depending on the duration (more or less than three months)¹²⁴ and the purpose of the stay (in particular family visit, studies, paid or independent work etc.)¹²⁵. A distinction is also made between the third-country national short-term and long-term resident¹²⁶.

For stays of less than three months, the third-country national must fulfil the conditions stipulated by article 34, particularly having a valid passport, not being the subject of a ban on entry to the territory or not being considered as constituting a threat to public order¹²⁷. The person must make a declaration of arrival to the municipal administration of the place where s/he intends to stay within three working days from his/her entry to the territory. A detainee status serves as a declaration in all cases where the third-country national is staying in the country for touristic reasons¹²⁸.

For stays longer than 3 months, the third-country national must fulfil the conditions stipulated in Article 34, i.e., they must have a temporary residence permit for a paid or independent worker, a highly qualified worker, an athlete, a student, a trainee or volunteer, researcher, family member or

¹²¹ This lack of information may furthermore be a source of irregular migration. This is also the case of third-country nationals who hold a residence permit issued by another Member State. A residence permit issued by another EU Member State only confers the right to free movement in Luxembourg for up to 3 months. After this period, a residence permit is required, otherwise the person may find him/herself in an irregular situation.

¹²² Point of view of NGOs, 11/06/2022, lines 802-804.

¹²³ [Modified law of 29 August 2008](#).

¹²⁴ [Modified law of 29 August 2008](#), Chapter 3, Sections 1 and 2.

¹²⁵ [Modified law of 29 August 2008](#), Chapter 3, Sub-sections 1, 2, 3, 4, 5, 6, 7.

¹²⁶ [Modified law of 29 August 2008](#), Section 3.

¹²⁷ [Modified law of 29 August 2008](#), Article 34.

¹²⁸ [Modified law of 29 August 2008](#), Article 36.

even for reasons of a private nature in particular humanitarian reasons¹²⁹. In these cases, the application for obtaining an authorization to stay must be presented by the third-country national before his/her entry to the territory, under penalty of inadmissibility¹³⁰. Moreover, the third-country national in possession of his/her authorization to stay must make a declaration of arrival in the municipality within three working days of his/her entry to the territory¹³¹. Before the expiry of a period of three months, the third-country national must request the issue of a residence permit by presenting a medical certificate¹³² and sufficient proof of accommodation.

The limitations to entry and stay are for their part established in section 5 of chapter 3 of the modified law of 29 August 2008¹³³. More precisely, Article 100 defines the conditions according to which a person is considered staying irregularly. The law considers the third-country national residing without an authorisation to stay if s/he does not fulfil or no longer fulfils the conditions of entry to and stay in the territory as stipulated by the law¹³⁴.

To verify if the entry and stay conditions of foreigners are fulfilled, the Minister can at any time conduct specific controls or have them carried out when presumptions of fraud exist or if marriage, partnership or adoption has been entered into for the sole purpose of entry and stay on the territory¹³⁵. In particular, the "Airport Control Department (SCA)" of the Grand Ducal Police is responsible for checking people at the airport¹³⁶ and "the Labour Inspectorate (ITM)" for monitoring observation of the clauses regarding residence permits with a view to a paid activity¹³⁷.

The Minister may even access, via a direct computer system, processing of data of a personal nature¹³⁸.

Lastly, the law again stipulates sanctions for irregular entry and stay. Any third-country national who does not respect or who no longer respects the conditions established by the law on entry to the territory¹³⁹ or who has knowingly made false declarations or produced falsified documents to enter the territory is likely to be punished by a prison sentence¹⁴⁰. Help with irregular entry and stay is also punished with fines and imprisonment¹⁴¹.

¹²⁹ [Modified law of 29 August 2008](#), Article 38.

¹³⁰ [Modified law of 29 August 2008](#), Article 39.

¹³¹ [Modified law of 29 August 2008](#), Article 40.

¹³² [Modified law of 29 August 2008](#), Article 41.

¹³³ [Modified law of 29 August 2008](#), Section 5.

¹³⁴ [Modified law of 29 August 2008](#), Article 100.

¹³⁵ [Modified law of 29 August 2008](#), Article 133 (3).

¹³⁶ [Modified law of 29 August 2008](#), Article 135.

¹³⁷ [Modified law of 29 August 2008](#), Article 137.

¹³⁸ [Modified law of 29 August 2008](#), Article 138.

¹³⁹ [Modified law of 29 August 2008](#), Article 140.

¹⁴⁰ [Modified law of 29 August 2008](#), Article 141.

¹⁴¹ [Modified law of 29 August 2008](#), Chapter 7, Section 3.

In order to prevent refusal of entry to the territory, airlines are obliged to send the Grand Ducal Police information relating to passengers they are going to transport¹⁴². The company which disembarks a passenger onto national territory who does not respect the entry conditions, is obliged to escort or have escorted the person in their country of origin¹⁴³ and is punished with a fine if necessary¹⁴⁴.

3.1.3. Prohibition of entry to the territory

The law of 29 August 2008 stipulated prohibition of entry to the territory against any person in an irregular situation who was the subject of a removal decision. This situation was however modified with the adoption of the Law of 1 July 2011 modifying the law of 29 August 2008. As a matter of fact, Article 96(3) of the modified law of 29 August 2008 stipulates that the removal decision cannot be coupled with prohibition of entry to the territory in the following cases¹⁴⁵: if the person had not respected the obligation to return within the stipulated period or if s/he represents a danger to public order, public safety or national security. In these cases, prohibition on entry to the territory can be declared for 5-year duration¹⁴⁶, either simultaneously to the return decision, or by a subsequent separate decision¹⁴⁷. The introduction of this subsequent decision¹⁴⁸ aroused discussion prior to adoption of the law, in particular by the LFR and the CCDH. Criticisms generally focused on the problems linked to the rights of defence of the person concerned by prohibition of entry on the territory, particularly on the concrete impossibility of contesting a decision of prohibition of entry made subsequently to removal from the territory and on the problems linked to the international protection seeker's right¹⁴⁹. Legal practitioners also expressed their concerns regarding

¹⁴² [Modified law of 29 August 2008](#), Article 106

¹⁴³ [Modified law of 29 August 2008](#), Article 107

¹⁴⁴ [Modified law of 29 August 2008](#), Articles 147 and 148

¹⁴⁵ <http://www.legilux.public.lu/leg/a/archives/2011/0151/a151.pdf>

¹⁴⁶ This five-year period may be exceeded if "the foreigner constitutes a serious threat to public order, public safety or national security" (Article 112(1)). The law stipulates a prison sentence of six months to three years and a fine between 251 and 3000 euros for any person expelled or removed who returns to Luxembourg despite a prohibition of entry to the territory (Article 142).

¹⁴⁷ The persons involved may submit an application, well-founded, for lifting the entry prohibition only after a period of at least three years (Article 112 (1)).

¹⁴⁸ Article 112 of the Law of 29 August 2008 stipulated that "prohibition of entry to the territory of a maximum duration of five years may be declared simultaneously by the Minister for reasons of public order, public safety or public health".

¹⁴⁹ "It is stipulated in the new Article 112 (1) of the law on immigration of 2008 (1st Article (16°) of the Bill) that decisions on return may be combined with prohibition of entry to the territory with a maximum duration of five years declared either simultaneously to the decision of return, or by a subsequent separate decision. Beside the consideration holding that neither the present wording nor the Directive stipulated the possibility for the Minister to decide on a prohibition of entry to the territory by a decision separated from the return decision, respectively to the decision declaring illegal stay by a third-country national, the LFR estimates contrary to the interest of the latter to not be immediately set regarding any prohibition of entry to the territory, respectively of having to wait for a subsequent

the registrations of prohibitions of entry with the SIS, the use of alerts referring to Article 96 of the Schengen Agreement¹⁵⁰ and their direct implications for the persons concerned. More specifically, the concerns focused on the danger of existence of a type of administrative practice of ‘almost automatic’ renewal of the prohibition of entry¹⁵¹.

3.1.4. "Insecurity" of residence permits

decision being made without any period stipulated within which the latter should intervene. It would be more compliant with the Directive than any prohibition of entry to the territory either decided on simultaneously to the return decision, without any other possibility to notify of it subsequently. The LFR therefore requests the legislator to stipulate that any prohibition of entry to the territory is decided on simultaneously to the return decision, without any other possibility to notify of it subsequently. Moreover, the LFR is concerned that the legislator had omitted to transpose Article 11, paragraph 5, of the return directive which reiterates the basic right to international protection and points out that prohibition of entry must be applied without prejudice of this right. By transposing this paragraph into the law, the legislator will ensure that a prohibition of entry to the territory will not give rise to a violation of Article 14 of the Universal Declaration of Human Rights: "Faced with persecution, any person has the right to seek asylum and to receive asylum in other countries", and Article 18 of the European Charter of Fundamental Rights which guarantees the right to seek asylum in the European Union. In the absence of transposition of this paragraph of the directive, the three-month period necessary according to the present legislation before being able to present an application for lifting of a prohibition of entry, and the six-month period for obtaining a response to this application, could constitute obstacles to the basic right of persons to seek asylum in case of persecution", http://chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/071/969/097608.pdf

So the Council of State made a declaration against this clause by saying: « It results however implicitly from the wording of Article 11, 1st paragraph b) insofar as where non-respect of the obligation of return may obviously only be observed at the end of the period initially granted, and not at the time of the decision of removal itself. It is still the case that a decision of prohibition of entry declared after execution of the removal renders any possibility of appeal hypothetical." »

http://chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/089/938/098387.pdf

¹⁵⁰ Article 96:

1. The data relating to foreigners who are alerted for purposes of non-admission are integrated into a database of national alerts resulting from decisions made, respecting the rules of procedure stipulated by the national legislation, by the administrative authorities or the competent jurisdictions.

2. The decisions may be based on the threat to public order or to national security which the presence of a foreigner on national territory may constitute.

As may be the case in particular:

a) of a foreigner who has been sentenced for a criminal offence by a sentence depriving him/her of his/her liberty for at least one year;

b) of a foreigner with regards to which there are serious reasons to believe that s/he has committed serious criminal offences, included those set out in Article 71, or with regard to which there are genuine indices that s/he envisage committing such offences on the territory of a Contracting Party.

3. The decisions may be founded on the fact that the foreigner has been the subject of a removal, return or expulsion order not deferred or suspended comprising or coupled with prohibition of entry, or, if need be, of stay, founded on non-respect of the national regulations relating to the entry or stay of foreigners.

¹⁵¹ "...there is a practice for which prohibition of entry is practically renewed automatically, without informing the person who is....It is renewed automatically." Point of view of NGOs 11/07/2011, lines 125-128)... "So after five years, if they wish to re-enter the European Union, if they wish to work and therefore at the external border, well no, look, you're still in the system. But how this is done, for over six years now you've already been enrolled there. And if you ask, they are already very reluctant to give information if they have it. Lastly, if you have no files, the practice is the police for foreigners, the police officer has your file which will flag up every five years, which will ask the civil servant responsible to helping with a form, a simple form, check the extension box then check the non-extension box. And systematically he checks the extension box. And so the police officer goes into the system and extends it for three more years. There is no individual examination, no notification, although, a notification because you try..."

According to various NGO representatives in Luxembourg, the subject of issuing, and renewing of residence permits, and more specifically what they describe as the increasing "insecurity"¹⁵² of residence permits, particularly in other Member States, was raised on several occasions as a potential source of irregular migration. On several occasions, persons having (had) a residence permit in another Member State found themselves in an irregular in Luxembourg. NGOs mentioned in this respect the political emphasis on reinforcing the temporary nature of residence permits, leading to long delays when renewing permits¹⁵³.

3.2. Entry: practical measures undertaken to identify and detect irregular migrants at borders

3.2.1. External border controls

Border controls undertaken at the Luxembourg Airport are done with the particular aim of contributing to fight irregular immigration and trafficking in human beings. Complying with the Schengen Borders Code, controls are conducted at border crossing points by members of the Police Airport Control Unit (UCPA) to ensure that travellers are authorised to enter or leave the territory of the Grand Duchy of Luxembourg.

This unit, comprised of the Airport Control Department¹⁵⁴ (SCA), the Border Control Department (SCF) and the Detention Control Department at the airport (SGA), counts 60 people (police officers

¹⁵² The association representative interviewed referred to the temporary nature of and the administrative practice of renewal of residence permits.

¹⁵³ Point of view of NGOs, 22/06/2011, lines 101-104: It happens. The majority of people whom we encounter in our work, it's perhaps also people who have a residence permit in another European country, with that they travel for the first three months and do not stay for more than three months in Luxembourg. So we see this more often".

Point of view of NGOs, lines 129-135 : «And then, regardless of the case, there are perhaps many people who also have the right in France, people who become in an irregular situation who did not have a residence permit for one or two years and who for one reason or another no longer have one... No, I place all this within the framework of a wider context which is nevertheless the weakening of residence permits, it's really not easy to have a residence permit for one year and to have to have it renewed, er, constantly, there are long waiting periods and, well, all of these waiting periods increase irregularity".

Point of view of NGOs, 22/06/2011, lines 71-80: "Yes, I think that the policy is nevertheless rather formal. If I take another example, we had a family who is not in the system of asylum seekers, who had a residence permit in another European country, who came to Luxembourg for three months. During this period they found work, they made an application for our centre, for stay for paid workers which was initially refused because the people had not made the application from the country where they resided, so the other European country. So at times there are things like that, it is nevertheless complicated and difficult, people have the right to move around for the three months, but they must return home".

¹⁵⁴ The SCA is divided into two sections: 1. The Border Control Section (SCA-SCF) and 2. The Document Assessment Section (SCA- SED).

and personnel from private security firms), 30 of which look after border control¹⁵⁵. While the unit underwent major reinforcement of its human resources in 2006 and from 21 May 2008 with the opening of a new "Terminal A" (the SCF was reinforced with 2 elements). No reinforcements are planned for the years to come¹⁵⁶.

Another department, the Travel Documents Department (SDV) was also reinforced with 2 additional police officers. The SDV is presently comprised of 5 specialists in the domain of false documents. They undertake called 'second line' control, i.e. a more in-depth analysis than the identity control undertaken by the first line officials and an in-depth study of the travel documents shown by the traveller. These police civil servants, due to their expertise, make up the national skills centre in assessments for all official documents. In this way they undertake a part of the on-going internal training of members of the SCF. They manage and update databases like FADO and look after statistics relating to the external border.

All passengers and teams passing through terminal A and GAT (General Aviation Terminal) coming from or going to "Non-Schengen" countries must pass the border control before entering or leaving Luxembourgish territory. The control procedures are comprised of¹⁵⁷:

- prior verification of the "APIS"¹⁵⁸ lists for all flights coming from "Non-Schengen" countries;
- verification of the validity and authenticity of the travel documents by using specialist equipment available at the counters ;
- consultation of computer databases (SIS, Interpol, etc) by using the "*Passport reader*" and, for biometric passports, the "*chip verifier*";
- comparison of the photo of the document with the physiognomy of the traveller, analysis "*imposter*"» ;
- different assessments of the traveller depending on the purpose of their stay (touristic visit, student, business trip, traveller in a group or alone);
- the use of the "*profiling*" method which consists of asking questions, checking linguistic skills, checking the "*routing*", verifying the plane ticket as to the place of depart and the destination, observing the traveller's behaviour¹⁵⁹.

¹⁵⁵ 30 people are responsible for the 'security' section.

¹⁵⁶ Meeting with the UCPA, 11/09/2012.

¹⁵⁷ European Migration Network-National Contact Point Luxembourg- 2009 Political report on migration and asylum, Point 3.1.6, <https://www.emnluxembourg.lu/type-documentation/rapport-politique-2009-sur-les-migrations-et-lasile>

¹⁵⁸ Advanced Passenger Information System

¹⁵⁹ Meeting with the UCPA, 11/09/2012.

The SCA possesses two "Dokucenter" type devices, model 4500 which can verify the authenticity of an official document. To conduct this analysis, several technologies (oblique illumination, detection of invisible security marks, and analysis of printing technique) are implemented¹⁶⁰.

Complying with the Schengen Border Code, all the counters operational in Terminal A are fitted with a "passport reader" document reader by the "Bundesdruckerei" enabling to verify the following details:

- reading of the MRZ (machine readable zone);
- reading of the integrated chip and its contents - comparison of the content of the integrated chip with the data registered on the travel document.

At the same time, a number of actions were undertaken to implement the tools necessary for the connection to the European systems SIS II and VIS. Furthermore, the extension of the SIS for integration of new Member States within the "SISone4all" context and implementation of the border control tools fitted with biometric technologies and biometric information capture tools must be mentioned.

The border control includes not only verifications of persons who present themselves at the counters, but also risk analyses as regards irregular immigration. The SCA is the unit responsible for this risk analysis at the Airport of Luxembourg and for drawing up bi-monthly reports based on the FRAN of the Frontex statistics and reports¹⁶¹, and intended for all members of the department.

The "profiling" method, used by officials of the SCA in Luxembourg, also focuses on flights coming from and bound for Schengen and non-Schengen countries and is based on risk analysis originating from Frontex monitoring. With the same goal in mind, members of the SCA make sure they undertake regular and random controls at strategic areas of Luxembourg airport, in particular near the departure and arrival gates and at the "check-in" counters. According to the people questioned, the controls of passengers are done unannounced, are not systematic, not discriminatory and are undertaken in the respect of human rights.

3.2.2. Verification of means of subsistence

¹⁶⁰ The purchase of these two devices which the Grand Ducal Police have at present, goes back to the year 2001 respectively 2005. Given the technological evolution in this domain, it is practical to replace at least the oldest model with a new device with state-of-the-art technology. After so many years of use it will be necessary to replace it with a new model. The purchase of this equipment, the price of which amounts to €100,000, should take place in 2012/2013.

¹⁶¹ Frontex has a data collection system enabling to generate large trends and forecasts as regards irregular migration, for example, source of falsified papers, irregular migration routes identified, age group of the persons concerned. The control officials at the Luxembourg Airport border rely on this 'objective and classified' data.

According to the entry conditions registered in the Schengen Borders Code, border officials have the right to verify the means of subsistence (financial resources) of persons entering the territory¹⁶². Although the Code stipulates that the national authorities set the reference amounts required for crossing their external borders, these amounts remain to be defined by the competent Luxembourgish authorities¹⁶³. The lack of a specific amount for evaluation of the means of subsistence may nevertheless pose problems of objectivity for officials of the SCA who allocate a broad margin of interpretation¹⁶⁴. This has had as a result that no refusals of entry have been issued based on insufficient means of subsistence at Luxembourg's external border over the last few years.

3.2.3. *Commitment in the context of FRONTEX*

Cooperation and good relationships with the airport managers in the adjacent regions (Hahn, Liege, Metz, Zaventem) is of obvious importance to ensure on-going cooperation with regard to migration¹⁶⁵.

Moreover, participation in seminars or training courses organised by FRONTEX is considered an indispensable source of skill acquisition on irregular immigration networks within the context of border control.

¹⁶² Article 5(3). Assessment of the means of subsistence (for the envisaged duration of the stay as well as for the return to the country of origin or transit to a third-country) is done depending on the duration and purpose of the stay and by reference to the average prices as regards housing and food in the Member State or Member States concerned, for moderately-priced accommodation, multiplied by the number of days of stay. Assessment of sufficient means of subsistence can be based on the possession of cash, traveller's cheques and credit cards by the third-country national. Declarations of payment, when they are stipulated by national law, and letter of guarantee as defined by national law, in the case of third-country nationals housed with an inhabitant, may also constitute proof of sufficient means of subsistence, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R0562:FR:NOT>
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R0562:FR:NOT>

¹⁶³ "The third-country national who seeks entry to the territory of the Grand Duchy of Luxembourg complying with Article 34 of the law must justify that s/her has sufficient personal resources for the duration of the stay as well as for return to the country of origin or transit to another country. Justification of the resources required is done in particular by presentation of cash, traveller's cheques or credit cards as well as by presentation of a document attesting the possibility of legally obtaining the necessary means. Justification of the required resources may also be done by the production of letters of credit issued by a banking establishment or a confirmation of payment in the cases stipulated by Article 34, paragraph (3) of the law.

(2) The accompanying documents listed in paragraph (1) preceding, are assessed taking into account the duration and purpose of the stay. Article 3(1) of the coordinated text of the modified Grand Ducal regulation of 5 September 2008 defining the criteria of resources and accommodation stipulated by the Law of 29 August 2008 on the free movement of persons and immigration, in: Mémorial A, Issue 180 of 22 August 2011.

¹⁶⁴ Meeting with the UCPA, 12/09/2011.

¹⁶⁵ Rencontre avec l'UCPA, 12/09/11: échange temporaire d'agents de frontière entre l'aéroport du Luxembourg et l'aéroport de Bruxelles Zaventem.

At the same time, the national police authorities participated in a number of FRONTEX operations and activities. As with all FRONTEX activity, the joint operations are based on risk analyses. In general, three types of situations may lead to a joint operation:

- a) the FRONTEX agency proposes a joint operation on the basis of facts identified during a risk analysis,
- b) proposal of a joint operation or a pilot project originating from a Member State¹⁶⁶ or
- c) a request for a joint operation is presented by a Member State facing a particular situation. In the second hypothetical case, the proposal is assessed by FRONTEX and the joint operation or pilot project may be co-financed by the Agency in the form of a subsidy¹⁶⁷.

In particular, Luxembourg took part in the following operations/activities and training:

In 2010:

- Operation NEPTUN: 1 participation
- NIGERIA 2010: 1 participant
- RABIT Mission Greece: 3 participations¹⁶⁸

Trainings:

- RABIT¹⁶⁹ (basic training): 2 participations
- Mid-level course: 1 participation
- False document specialist courses: 1 participation

Working parties

- FRONTEX Risk Analysis Network (FRAN): 2 participations
- European training day: 2 participations

Management:

- Board meetings : 2 participations
- Management board working group: 1 participation

¹⁶⁶ Frontex, 2011, http://www.frontex.europa.eu/structure/operations_division/joint_operations/
http://www.frontex.europa.eu/structure/operations_division/joint_operations/

¹⁶⁷ E.g. an operation at the airport: controls of planes coming from country X. Therefore during the operations we are not armed and we only assist countries we are told to help or those which Frontex are told to help, there could be a problem in the future with countries X, Y and Z (informal interview I: 53-55)

¹⁶⁸ http://www.frontex.europa.eu/examples_of_accomplished_operati/go:flt/

¹⁶⁹ Rapid Border Intervention Team

In 2009¹⁷⁰, Luxembourg took part in the following operations/activities and training:

Operations:

- Joint operation HAMMER (phases 4 and 5): 2 participations
- Operation NEPTUN: 1 participation

Trainings:

- RABIT (basic training): 5 participations
- Mid-level course: 1 participation
- False document specialist courses: 2 participations

Working parties:

- FRONTEX risk analyses network: 4 participations
- European training day: 4 participations

Management:

- Board meetings : 4 participations
- Management board working group: 1 participation

Besides the operations, training courses and work meetings summarized verbatim above, the Grand Ducal Police participated in a number of seminars organised by FRONTEX in different domains, such as biometry and new developments with regard to border control. Moreover, since 2009 the Police have been putting together monthly statistical sheets and analyses within the context of the FRAN risk analysis project.

Luxembourg has committed to make available to FRONTEX, if needed, various items of technical equipment, such as equipment related to the in verification of travel documents. In addition, a CESSNA 208 GRAND CARAVAN type plane is regularly made available to FRONTEX, especially during joint operations (JO HERA, JO NAUTILUS, JO POSEIDON, JO JUPITER, JO NEPTUN, JO SATURN) having as mission the surveillance of the land and maritime borders. The mission flying hours are for the most part financed by the Grand Duchy.

¹⁷⁰ 2009 Activity report of the Grand Ducal Police, p. 48,
http://www.police.public.lu/actualites/statistique/rapport_stat_2009/index.html

To strengthen FRONTEX, Luxembourg seconded a senior executive there and participated in the following operations and activities (2007-2008):

- POSEIDON
- NAUTILUS
- HAMMER
- HERA III (Canary Islands): a plane for aerial surveillance and observation for two months; two officials from the Ministry of Foreign to undertake identification of irregular migrants
- HERA 2007¹⁷¹: a plane for aerial surveillance and observation for two months
- DRIVE IN (Slovenia): a police officer for fighting irregular immigration and trafficking in stolen cars
- Common Core Curriculum (training manual): participation in drawing up the general section and the section regarding aerial borders
- CRATE (central file of technical equipment): signing of a Memorandum of Understanding relating to the equipment made available (3 planes, 11 technical devices)
- RABIT (rapid intervention teams): notification to the Frontex pool (1 police officer and 1 official from the Directorate of Immigration), and implementation of a national pool (12 police officers and 3 officials from the Directorate of Immigration)
- FRAN (risk analysis): contributions to applications within the context of the risk analysis network.
- 2006-2007: JO Torino ¹⁷²

3.2.4. Training courses (outside of the FRONTEX framework)

Besides the training courses offered by FRONTEX, a number of training courses on border control exist, in Luxembourg and abroad¹⁷³. The special training course "Policing of the Borders" is mandatory for all police officers allocated to the UCPA, whether in SCA or in SGA. Following a 6 months' secondment which acts simultaneously as a period of preparation for the admission examination, the new border guards, having passed the examination, are allocated to the Airport police. It is necessary to specify that the basic training for future border guards complies with the

¹⁷¹ This operation was focused on the influx of illegal immigrants coming from Africa, passing through the Canary Islands.

¹⁷² Frontex Press Pack, 05/2011, http://www.frontex.europa.eu/newsroom/press_pack/

¹⁷³ 2007 Activity report of the Grand Ducal Police, www.police.public.lu

requirements of the Common Core Curriculum (CCC) drawn up by FRONTEX. The special training course "Policing at the Borders" is also open to all police officers interested in the subject.

Abroad, the Criminal Police Department (SPJ) participated in courses of specialisation at foreign police training schools such the 'Akademie der Polizei Baden-Württemberg', 'BKA Wiesbaden' and 'Landespolizeischule Rheinland-Pfalz' on topics such as trafficking of narcotics, protection of minors, economic and financial crime, sexual offences, terrorism, clandestine immigration and cyber criminality.

3.3. Stay: practical measures undertaken to control irregular migration in the (Member) State's territory

As already previously mentioned, the Immigration Minister may conduct controls or have controls carried out to verify if the conditions set for entry and stay of foreigners are fulfilled. This verification, however, cannot be systematic¹⁷⁴.

The Labour Inspectorate (ITM)¹⁷⁵, placed under the political authority of the Ministry of Labour, Employment and Immigration, is the competent national authority as regards application of the clauses concerning secondment of workers. Its role is to ensure application of all of the legislation relating to working conditions and the protection of workers having a work contract. The ITM is responsible for checking working conditions, and particular employees, working hours and holidays and cross-border secondment of employees. Accordingly, routine control and inspection visits are organised throughout the year in every activity sector. The ITM must ensure that the standards relating to illegal or illegal work are respected including the stipulations regarding work permits for workers from third-countries who are not nationals of a Member State of the European Economic Area¹⁷⁶. Labour inspectors¹⁷⁷ have access to any work place without notice and can undertake checks, inspections or inquiries at any time of the day or night (questioning of any employer included) enabling to establish if the legislation is respected or not. They can demand communication from any paper, register, file or document relating to the working conditions and the display of the information stipulated by the legislation concerned.

Faced with the conclusions of the controls, the inspectors may issue an order requiring to remedy within a given period the faults or shortcomings arising from non-respect of the clauses of the concerned legislation. The director and deputy directors have the power to issue an order of immediate cease of work and evacuation of the premises.

In particular, between 2007 and 2010, the secondment and illegal work department (SDTI) of the ITM took on the tasks of fighting illegal work in general, thus ensuring a driving and organisational function within the framework of the inter-administrative cell against illegal work which also forms part of the Customs Administration. This cell can mobilise over 200 officials from 6 to 8 Ministries or administrations. It contributes actively to "high-impact" actions organised on work sites or in

¹⁷⁴ [Modified law of 29 August 2008 on the free movement of persons and immigration](#), Article 133.

¹⁷⁵ There are three regional head offices, in Diekirch, Luxembourg City and Esch-sur-Alzette, each placed under the responsibility of a technical engineer and the management. These officials are assisted by fifteen controllers, designated by the unions and appointed by the Labour Minister.

¹⁷⁶ [Modified law of 29 August 2008 on the free movement of persons and immigration](#), Article 137.

¹⁷⁷ ITM, 2011, <http://www.itm.lu/itm/fonctionnement/pouvoirs-des-inspecteurs-du-travail/>

companies, as well as "after work" actions, i.e. controls between 5pm and 9pm, having as the principal target illegal/clandestine work as well as provision of additional hours.¹⁷⁸ During the year 2010, the SDTI merged with the 'Luxembourgish Liaison Secondment Bureau (BLLD).¹⁷⁹ Generally, the high-impact actions of a broad scope took place with controls of a smaller size over the years.

In 2007, 11 major actions, 3 specific actions against illegal work, approximately 35 medium-size actions and 181 small-scale controls were conducted.¹⁸⁰

In 2008, 7 major actions, 6 specific actions against illegal work on the basis of denunciations, approximately 23 medium-size actions, 15 control actions as regards "organised illegal work" during weekends and 367 small-scale controls were carried out.

In 2009, 2 major actions, 30 specific actions against illegal work (of a proactive nature or based on external information), approximately 28 medium-size actions, 15 control actions as regards "organised illegal work" during weekends and 271 reduced size controls were carried out.

In 2010, the emphasis was put on the fight against illegal work. With this in mind, 17 control actions on 'organised illegal work' were conducted during weekends, as well as 3 'after work' actions, i.e. between 5pm and 9pm during the week with the target being illegal/clandestine work as well as control of additional work hours.

The officials of the ASCAB Division¹⁸¹ (the Customs and Excise Administration) actively participated in planning and coordination of control rounds and high-impact actions in several domains, in particular: - health and safety of work sites; - secondment of foreign companies; - control of authorisations of classified, unsanitary or inconvenient establishments; - stable establishments; - illegal work. Activities of the ASCAB Division in 2010: 390 controls linked to illegal work. Reports regarding illegal work in 2010: 48.

ASCAB Division 2009 controls: illegal work: 515; illegal work on Saturdays: 83; sanctions/ reports for illegal work: 49.

In consultation with the administrations concerned, like for example the ITM, the Grand Ducal Police conducts controls as regards illegal work/social dumping.

¹⁷⁸ ITM, 2010 Annual Report, p. 63, <http://www.itm.lu/itm/rapport-annuel>

¹⁷⁹ ITM, 2010 Annual Report, p. 63, <http://www.itm.lu/itm/rapport-annuel>

¹⁸⁰ ITM, 2007 Annual Report, p. 65, <http://www.itm.lu/itm/rapport-annuel>

¹⁸¹ Security allocations and Cabaretage Division.

3.3.1. Placement in detention

Until the opening of the new Detention Centre, people in an irregular situation were detained in a separate section of Luxembourg Penitentiary Centre in Schrassig. Faced with the limited capacity and the impossibility of arranging separate sections, a maximum of 25 individuals of the masculine gender could be placed there. Families waiting to be removed were placed in the AIDA centre, located within the airport, for a stay which could be from 24 to 72 hours¹⁸².

Placement of migrants in an irregular situation in a section, even separate, of the Penitentiary Centre was criticized on a number of occasions by institutions, national, international¹⁸³ and associations for the protection of human rights¹⁸⁴. The legitimacy and detention conditions of foreigners in a situation of irregular stay were therefore raised on several occasions in 2010. A decision by the Administrative Court¹⁸⁵ ordered the immediate release of a person detained given that the complainant was detained in the Detention Centre for persons in an irregular situation installed in Luxembourg Penitentiary Centre in Schrassig and the anticipated time limit by decree of the Administrative Court of 2 April 2009 to close the Detention Centre at the CPL had expired¹⁸⁶. The Government appealed against the decision of the Administrative Court by assessing that placement of persons within the Penitentiary Centre in a unit separate from that of the detainees responded to the clauses of Article 16.1 of the "returns directive". The Administrative Court, in an extraordinary public hearing of 15 October 2010 (decree 27345), finally reformed the decision in the first instance by declaring that the Residential Centre for persons in an irregular situation, located in Luxembourg Penitentiary Centre in Schrassig, responded in principle to the requirements of Article 120 (1) of the law of 29 August 2008 on the entry and stay of foreigners, therefore stating that the government was correct¹⁸⁷.

The new Detention Centre is a closed structure with the mission to accommodate persons who are subject to a placement in detention with a view to their removal to their country of origin or the country they came from. The centre is placed under the authority of the Minister of Immigration

¹⁸² Asti (2010) 'Asti: Un centre contesté' (A contested centre), Le Quotidien, 21/07/2010, <http://www.lequotidien.lu/politique-et-societe/13727.html>

¹⁸³ Report to the Grand Duchy of Luxembourg relating to the visit conducted in Luxembourg by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 22 to 29 April 2009, <http://www.cpt.coe.int/documents/lux/2010-31-inf-fra.pdf>, <http://www.cpt.coe.int/documents/lux/2010-31-inf-fra.pdf>

¹⁸⁴ Consultative Commission of Human Rights, 2007 Annual report, <http://www.ccdh.public.lu/fr/publications/rapports-activite/rapport-2007.pdf>, <http://www.ccdh.public.lu/fr/publications/rapports-activite/rapport-2007.pdf>

¹⁸⁵ First Chamber hearing of 4 October 2010 (Roll 27321).

¹⁸⁶ Decision of 2 April 2009 (Roll 25559C)

¹⁸⁷ Administrative Court, extraordinary public hearing of 15 October 2010, decree 27345.

which constitutes in itself a major change compared to the former situation. The former centre was under the responsibility of the Minister of Justice since the latter was situated within the Penitentiary Centre. This situation has not always facilitated processing of the cases of detained persons. While the centre responded hierarchically to the Minister of Justice, detention came under the authority of the Minister of Immigration.

The new Detention Centre is located near the airport enclosure. Domestic security is the responsibility of the Centre officials and external security is undertaken by the Grand Ducal Police¹⁸⁸. It has separate sections for families and women.

Different associations have welcomed the building of a detention centre separate from the penitentiary enclosure, as well as fixing the detention regime by law. They have also hailed the references made to respecting the human dignity and basic rights of the person as well as the desire to put in place psychosocial supervision¹⁸⁹.

The negative criticisms during the legislation process have focused in particular on the powers conferred to the director and the absence of precise means of recourse, in particular against disciplinary sanctions¹⁹⁰. In addition, the specific requirements of vulnerable groups have not been sufficiently taken into account according to different published opinions (Council of State, LFR, CCDH)¹⁹¹. The Parliamentary Commission responsible for the case had the intention of responding to the different criticisms by introducing in particular a number of amendments. However, the different amendments have not sufficed to silence the critics, especially after a visit of the premises conducted by different representatives of civil society, journalists and MPs¹⁹². They focused in

¹⁸⁸ Article 23(1) of the Modified Law of 28 May 2009.

¹⁸⁹ Recueil "Pratiques de l'enfermement en Europe et droits de l'Homme: Doit-on toujours répondre par l'exclusion ?" (Practices of enclosure in Europe and human rights: Should we always respond with exclusion), 30/09/2011, (the quotation does not answer the criticism. Search source http://www.ldh.lu/html/actualites_2011.html

¹⁹⁰ Opinion on the bill modifying the modified law of 29 August 2008 on the free movement of persons and immigration and the modified law of 5 May 2006 relating to the right of asylum and to additional forms of protection from 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 stipulated for the director in the initial bill were reduced in the law as it was adopted.

¹⁹¹ We observe that the Council of State and the CCDH opinions take into account directives and directive proposals. The Council of State therefore notes that Article 17 of the return directive regarding guarantees of privacy for families during planning of accommodation should be taken into consideration by the Grand Ducal regulation setting the practical terms and conditions of the detention regime. The CCDH is guided for its part by Article 11 of the directive proposal reforming the Reception Directive to request the adoption, prior to any detention measures, of a mechanism for examination of the individual situation of persons for whom detention would deteriorate their state of physical, emotional and mental health, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=6218>

¹⁹² LFR, LDH, CCDH, the MPs - <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=6218#> Opinion of the LFR on the Bill of 3 November 2010 aiming to transpose the European Union return directive into the Luxembourgish legislation, <http://www.caritas.lu/Files/AvisDirective%20Retour.pdf>

particular on:

- the architecture and layout of the Detention Centre which is considered sterile and with a functionality barely respectful of privacy (for example the need to go through the living rooms to access the showers);
- the increase in the maximum duration of the administrative detention which can be up to 6 months;
- the lack of alternative measures to placement in detention, the legislator only holding a compulsory residence order;
- the definition of the ‘risk of absconding’, considered as being too ‘broad’ from the viewpoint of the LFR¹⁹³, especially bearing in mind that this notion remains the essential criterion within the context of a decision of placement in detention. According to the LFR, the legislator, by assuming a risk of absconding of a foreigner¹⁹⁴ who stays on the territory over and above the duration of his/her visa or right to stay, assimilates de facto the situation of a person in an irregular situation with that of a person presenting a risk of absconding. This broad definition, combined with the large hosting capacity of the new centre (maximum of 87 persons), has left the NGOs to assume that detention is becoming the rule and compulsory residence order the exception¹⁹⁵.

Finally, the LFR believes that the resort to the use of force during forced removals should not be allowed except in the case of *force majeure*. The Collective defends the idea of the presence of independent observers not only during the trip itself but also during the phase preceding boarding¹⁹⁶.

David Marquez, ‘Le centre de rétention fortement critiqué’, Le quotidien, 25/05/2011.

David Wagner, ‘Ne l’appellez surtout pas «prison»’, Woxx Nr. 1113, 02/06/2011.

¹⁹³ Comments by the LFR regarding the Bill of 3 November 2010 modifying the law on immigration of 2008 and the law relating to the right of asylum of 2006, 22/12/2010.

¹⁹⁴ Article 111 of the Law of 01 July 2011.

¹⁹⁵ Point of view of NGOs, 11/07/2011, lines 546-548.

¹⁹⁶ Opinion of the Luxembourgish Refugees Collective on the bill modifying the Modified law of 29 August 2008 on the free movement of persons and immigration and the Modified law of 5 May 2006 relating to the right of asylum and to additional forms of protection, 22/12/2010,

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

3.4. Pathways out of irregularity

3.4.1. 'Voluntary' or forced return

According to the government, the fight against irregular immigration must be based on a consistent return (voluntary or not) policy of irregularly staying persons. Return policy remains an indispensable addition to a consistent immigration and asylum policy¹⁹⁷.

The Directorate of Immigration is the public administration responsible for arranging forced returns of irregularly staying persons. Forced returns are carried out by regular commercial flights or by national or European charter flights and receive support from the European Return Fund. As regards European flights, Luxembourg is involved in flights organised by FRONTEX.

In parallel, the Directorate of Immigration is trying to promote voluntary returns of refused DPIs and persons in an irregular situation.¹⁹⁸

In order to make concrete and stimulate voluntary returns, the Ministry signed a cooperation project with IOM relating to assistance with voluntary return and reintegration for third-country nationals their country of origin. The first programme which covered the period from 1 August 2008 to 15 March 2009 was limited to rejected international protection seekers who were nationals of Kosovo, and for whom tolerance measures were no longer extended. The second programme, which initially covered the period from 1 August 2009 to 31 December 2009, was extended for the year 2010. It is no longer applied to a particular group of people or to a defined geographical zone, but to all foreigners in an irregular situation. It focuses on, besides rejected international protection seekers, third-country nationals who have been in an irregular situation in Luxembourg for at least 12 months and who have not submitted an application for international protection¹⁹⁹.

Return support comprises return assistance (during the departure from Luxembourg, transit and arrival in the country of origin), reintegration assistance which covers the immediate needs of the people, in particular housing and clothing costs up to a maximum limit of €1500. Return assistance

¹⁹⁷ Foreign Affairs Ministry, 2009 Annual Report.

¹⁹⁸ Government Programme 2009-2014, <http://www.gouvernement.lu/gouvernement/programme-2009/programme-2009/programme-gouvernemental-2009.pdf>, <http://www.gouvernement.lu/gouvernement/programme-2009/programme-2009/programme-gouvernemental-2009.pdf>

¹⁹⁹ Between August (date of effective launch of the project) and the end of December 2009, the IOM entered 61 requests for information into the programme. 39 people have enrolled in the programme all of whom have returned: 36 people in 2009 and three in January 2010. The great majority of persons returned come from Kosovo and other Balkan countries. The persons returned received help with reintegration to cover their immediate needs after their return, especially as regards housing. Furthermore, the IOM gave in 24 cases assistance with setting up a micro-business and on two occasions help with looking for work. Two medical cases received additional assistance for vulnerable people. However, all of the people were not repatriated at the same time. The Government decided to remove as a priority people not having children at school as well as people not receiving authorisation for temporary occupation.

may also include financial support in the form of additional assistance (maximum value of €1500) for putting in place an income-generating activity or in the form of help finding a job (value of €600). Follow-up help by IOM in the countries of origin may extend over 6 months after the return.²⁰⁰

Besides the "voluntary" or forced return, the national legislation stipulates alternatives for people for whom (well-defined) reasons cannot be removed. In fact, the modified law of 29 August 2008 on the free movement of persons and immigration stipulates three options which justify prevention of removal²⁰¹. The first one establishes that a person in an irregular situation and simultaneously being the subject of an extradition request cannot be removed²⁰². A second hypothetical case is that where prevention of removal is justified, if the foreigner establishes that his/her life and/or liberty are gravely threatened in the country to which s/he has to be removed or even if s/he runs the risk of being exposed to treatment contrary to Article 3 of the European Convention on the Protection of Human Rights and Fundamental Liberties²⁰³. Lastly, Article 130 of the modified law of 29 August 2008 stipulates that "on condition that s/he does not constitute a threat to public order or to public safety, the foreigner may not be removed from the territory if s/he establishes at least by medical certificates that his/her state of health necessitates medical treatment the lack of which would result in consequences of exceptional gravity for him/her, and if s/he provides proof that s/he cannot receive appropriate treatment in the country to which s/he is likely to be removed"²⁰⁴. Removal may in these cases be postponed by six months for medical reasons following receipt of a medical certificate justified by the Immigration Medical Department (SMI - Service Médical de l'Immigration)²⁰⁵. This certificate enables him/her to remain on the territory without being authorised to stay and confers on him/her the right to medical treatment and social assistance. The suspension is renewable, not exceeding the duration of two years²⁰⁶. Furthermore, the Minister may

²⁰⁰ European Migration Network-National Contact Point Luxembourg- 2010, Political report on migration and asylum, Point. 5.2.3, <https://www.emnluxembourg.lu/type-documentation/rapport-politique-2010-sur-les-migrations-et-lasile> , <https://www.emnluxembourg.lu/type-documentation/rapport-politique-2010-sur-les-migrations-et-lasile>

²⁰¹ Modified law of 29 August 2008, Section 4.

²⁰² Modified law of 29 August 2008, Article 128.

²⁰³ Modified law of 29 August 2008, Article 129.

²⁰⁴ Modified law of 29 August, 2008 Article 130.

²⁰⁵ This department, created in 2008, is a department dependent on the Health Ministry, attached to the Health Management/Health at Work Division. It applies the clauses of the Modified law of 29 August 2008 on the free movement of persons and immigration and the Grand Ducal regulation of 3 February 2009 relating to medical checks of foreigners. The applicant of a residence permit (third-country national) must undergo a mandatory medical examination from entry to the country, aiming to screen for infectious diseases, in particular tuberculosis. In 2010, 1366 consultations took place among these people, coming from 87 different countries.

²⁰⁶ If, on expiry of the two-year period mentioned in paragraph (1) preceding, the foreigner provides evidence that his/her state of health as described in Article 130 persists, s/he can obtain a residence permit for medical reason for the duration of the treatment, without which this duration cannot exceed one year. If necessary this authorisation can be renewed, after re-examination of his/her situation. The Minister may, if need be, extend reception of the measures

grant the recipient provisional occupation authorisation for a maximum period of six months, renewable for an identical duration which may not however exceed the duration of the suspension of removal. In 2010, 259 medical certificates were issued²⁰⁷. The principal groups of migrants concerned were mainly nationals of Kosovo (108 medical certificates in 2010), followed by nationals of African countries (81 medical certificates in 2010) and countries of the former Yugoslavia with the exception of Kosovo (46 medical certificates in 2010). 143 of these medical certificates, which correspond to a rate of 55%, gave rise to suspension of removal in 2010. Among the diseases which were the basis of motivations of medical certificates issued and therefore suspension of removal, were particular psychiatric (34.7%), cardiologic (9.2%), infectious (8.9%) and neurological (8.5%) problems²⁰⁸.

*3.4.2. Measures of tolerance – Removal postponements*²⁰⁹

With the law of 1 July 2011 which modifies the modified law of 5 May 2006, the measure of tolerance stipulated by the former article 22 was repealed and replaced by a measure of postponement of removal for justified purposes.

The former text stipulated granting a declaration of tolerance for persons for whom concrete execution of removal proved impossible due to circumstances of fact, therefore authorising him/her to remain provisionally on the territory up until the point when these circumstances of fact have ceased²¹⁰. The municipal administration of the place of residence of the interested party had to focus on the declaration. The declaration did not however give the right to issue a residence certificate²¹¹ but conferred the right to social assistance²¹².

This declaration may be followed by an authorisation for temporary occupation, valid for a determined employer and for a single profession and issued by the Minister for the declaration validity period.²¹³

stipulated in paragraphs (1) and (2) preceding, to members of the family accompanying the foreigner who are also likely to be removed from the territory, for a duration identical to that granted to the principal recipient.

²⁰⁷ Immigration medical department, internal document 2011.

²⁰⁸ Immigration medical department, internal document 2011.

²⁰⁹ Report by the Commission of Foreign and European Affairs for Defence, Cooperation and Immigration, 16/5/2011, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=6218#>

²¹⁰ Law of 18 December 2009 organising social assistance, Mémorial A Issue 260 of 29.12.2009, <http://www.legilux.public.lu/leg/a/archives/2009/0260/2009A5474A.html>

²¹¹ By derogation, the declaration made of residence certificate for the required formalities with a view to celebration of marriage accordance to the clauses of the Civil Code.

²¹² Modified law of 5 May 2006 relating to the right of asylum and additional forms of protection, Article 6 (7)

²¹³(6)Granting and renewing temporary occupation authorisation may be refused **for** reasons relating to the situation,

Article 125a of the modified law of 29 August 2008 replaces the measure of tolerance with the measure of postponement of removal. Under the terms of this Article, the Minister may postpone removal for a determined period while the foreigner can justify the impossibility of leaving the territory for reasons outside of his/her control or if the removal violates the principle of non-return as stipulated by Article 129. So, the foreigner can remain provisionally on the territory, without being authorised to stay there. As for the tolerance status, it is not a provisional type of residence permit, but an authorised to stay on the territory while awaiting the possibility of removal. The recipient of the postponement decision may furthermore be granted humanitarian assistance or even temporary occupation authorisation for the duration of the removal postponement²¹⁴.

Access to education for minor of an age to attend the education system is stipulated, likewise with taking into account the specific needs of vulnerable persons²¹⁵, the definition of which was integrally resumed by Article 3, paragraph (9), of the 2008/115/EC Directive²¹⁶. The decision to postpone the removal may be combined with a compulsory residence order²¹⁷.

The conditions linked to granting a tolerance measure, particularly evidence as to the physical impossibility of execution of the removal, have been called into question in the last few years. In practice, several decisions by the Ministry reject an extension of the tolerance due to a lack of evidence as to the impossibility of physical execution of the removal. The administrative jurisdictions also claim that it is up to the interested party to demonstrate the existence of circumstances of fact preventing physical execution of his/her removal. The Administrative Court regularly reiterates that the reference to the general situation in the country of origin would not be of a kind to render impossible the physical execution of the removal order²¹⁸.

So, the LFR asked the MAE and the administrative jurisdictions to reconsider their approach regarding the burden of proof for obtaining a status of tolerance²¹⁹.

the evolution or organisation of the labour market, taking into account the recruitment priority which European Union citizens enjoy, citizens of States linked by the agreement of the European Economic Area, third-country nationals by virtue of specific agreements as well as third-country nationals staying regularly who receive unemployment benefit.

²¹⁴ Article 125a of the modified Law of 29 August 2008

²¹⁵ *ibid.*

²¹⁶ Directive 2008/115/EC of the European Parliament and Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:FR:PDF>

²¹⁷ See Article 125a of the Modified law of 29 August 2008

²¹⁸ European Migration Network-National Contact Point Luxembourg - 2010 Political report on migration and asylum, Point 5.2.2, p 71, <https://www.emnluxembourg.lu/type-documentation/rapport-politique-2010-sur-les-migrations-et-lasile>

²¹⁹ Report by the LFR on application of the Law of 5 May 2006 relating to the right of asylum and to additional forms of protection, 30/06/2011, <http://www.caritas.lu/actualites/rapport-du-letzebuenger-flchtlingsrot-sur-lapplication-de-la-loi-du-5-mai-2006-relative-au-droit-dasile-et-des-formes-complmentaires-de-protection/121>

If, from a legislative point of view, return decisions appear clear, it remains nevertheless to emphasize that in practice, more complex situations exist. The legislation certainly stipulates measures for certain concrete cases, particularly in the case of postponement of removal or suspension of removal for medical reasons. Moreover it must be specified that these measures are temporary and may only be renewed after an assessment of evolution of the personal situation of the concerned parties or of the situation in the country of origin²²⁰.

If beforehand the suspension of removal as stipulated by the law with the objective of maintaining the dignity of the migrant by avoiding putting in danger the life of the person concerned, the temporary and uncertain nature of these suspensions plunges the concerned parties into "grey areas" between non-regularisation and non-return, which raises a number of questions as to access and enjoyment of a certain number of basic rights. It is equally true that suspension of removal may result in granting of a temporary authorisation to stay for medical reasons²²¹.

As regards return, concrete situations were cited by NGOs working in the field in Luxembourg. In the case of unaccompanied minors, applicants of international protection, cases are known for which processing of the files were extended until the age of legal majority of the individual concerned²²². If no return decision can be made against an unaccompanied minor unless this is in the greater interest of the child²²³, once adults, the same individuals risk being considered as migrants without the right of stay and become "irregular migrants".

In other cases, return, be it forced or voluntary, proves impossible for physical reasons. This situation concerns in particular nationals of countries like Somalia, Eritrea and Sudan because travel documents and personal or administrative documents such as birth certificates are lacking²²⁴. To respond to these concrete situations the Luxembourgish NGOs demand regularisation alternatives, clearly defined, while taking into account the diversity of living situations of the people concerned²²⁵.

3.4.3. Regularisations – different options

²²⁰ Modified law of 29 August 2008, Articles 125bis and 131.

²²¹ Modified law of 29 August 2008, Articles 131 et 132 .

²²² Point of view of NGOs, 22/06/2011, lines 812/813.

²²³ Article 103 of the Modified law of 29 August 2008.

²²⁴ Ministerial point of view, 06/07/2011, lines 231-233.

²²⁵ Point of view of NGOs, 22/07/2011, lines 603-605.

The Grand Duchy of Luxembourg does not have a generalised practise of regularisation but rather regularisations are done on a case-by-case basis, with three exceptions: the general regularisation campaign conducted in 2001 and regularisations of Bosnian refugees and workers of Portuguese origin, in 1995 and 1985 respectively²²⁶.

The 2001 regularisation operation was moreover a reaction to the large number of asylum seekers coming from the former Yugoslavia (75% of the immigrants regularised were people natives of the former Yugoslavia)²²⁷. Furthermore, the 2001 regularisation was conducted taking into account the lack of labour force in certain economic sectors.

It should also be noted that the Minister of Immigration, before the new law on asylum of 5 May 2006 and the law on the free movement of persons and immigration of 29 August 2008 regularly granted, on a case-by-case basis, residence permits for humanitarian reasons to persons without the right of stay. These authorisations to stay were in particular issued for the following reasons: risk of inhuman or degrading treatment in the case of return to their country of origin, family life in Luxembourg, serious illness²²⁸.

In 2009, the Minister of Immigration decided to regularise on the basis of their case a certain number of rejected international protection seekers by granting them a temporary residence permit after obtaining a work permit (75 individuals)²²⁹. In 2010, 347 people, the majority of them natives of Kosovo, were regularised by the mission. During presentation of the assessment as regards asylum and immigration relating to 2010, the Minister of Immigration estimated that this regularisation by the mission "constitutes[d] the right route to follow". He stressed within this context the need to "put in place a specific department within ADEM which could offer work to these populations"²³⁰.

Article 89 of the modified law of 29 August 2008 stipulates the possibility for the Minister in charge of immigration to grant an authorisation to stay as a special case to people residing without

²²⁶ Luxembourg Caritas Confederation asbl, Diocesaine Caritas and Diaconie Commission, Diocesaine Commission for Intercommunity Pastorale, Luxembourgish Justice and Peace Commission, LCGB, Document on awareness raising « Personnes en situation administrative irrégulière », May 2000, pp. 32/33, http://w3.restena.lu/sesopi-ci/PDF/Document_de_base_Francais.PDF

²²⁷ News Article, Marie-Josée Jacobs, Francois Biltgen and Luc Frieden provide information on the regularisation of undocumented persons, 09/05/2001, www.gouvernement.lu/salle_presse/actualite/2001/05/09_biltgen/index.html

²²⁸ SESOPI-Inter-Community Centre, "Asylum in a few words and figures", Exposé within the context of the conference-discussion The right of asylum in Luxembourg, 16 March 2006 within the context of the Festival of migration

²²⁹ European Migration Network-National Contact Point Luxembourg- 2009 Political report on migration and asylum, <https://www.emnluxembourg.lu/type-documentation/rapport-politique-2009-sur-les-migrations-et-lasile>

²³⁰ Article d'Actualité. Bilan 2010 en matière d'asile et d'immigration (News Article, 2010 Report on asylum and immigration): "Afflux de demandes d'asile émanant de ressortissants de la Serbie", 01/02/2011, http://www.gouvernement.lu/salle_presse/actualite/2011/02-fevrier/01-schmit/index.html

authorisation in Luxembourg in cases where they fulfil well-defined conditions²³¹. Applicants for regularisation must provide in particular evidence of continuous residency and have exercised a habitual occupation in Luxembourg for at least eight years²³².

Article 89 and the conditions of continuity were strongly criticised by the NGOs and associations. These conditions are deemed too restrictive and as a result do not enable reasonable use of the disposition. Particular the obligation of proof of residence and of a habitual professional occupation for 8 years was called into question. People in an irregular situation not only encounter practical difficulties in presenting the necessary evidence which arises directly from their situation of irregularity (lack of employment contract, no certificate of affiliation, difficulty in documenting the number of hours worked or remuneration). On the other hand, the law penalises and stipulates sanctions for moonlighting and illegal work relationships²³³. Potential applicants for regularisation but also bosses are rather reluctant to start such a procedure for fear of reprisals. Lastly, still according to a certain number of associations, the assessment of the evidence provided (testimonial declarations) would be too subjective. Thus, declarations from employers would often be analysed as simple confirmations and would not be considered as proof of work²³⁴.

The NGOs suggest that granting a residence permit is linked to future prospects of finding a job rather than to evidence of clandestinity in the past and also propose reducing the period by at least two years (from eight to six).

By virtue of the principles of transparency and equality of treatment, the Ombudsman recommended clarification and publication of the criterion on which the decisions of the Minister are based²³⁵.

From a ministerial point of view, Article 89 remains a political compromise, a transitory provision introduced during adoption of the law of 29 August 2008 enabling regularisation on a case-by-case basis²³⁶ and following up the request of the NGOs to undertake a general regularisation (which was not accepted).

²³¹ Article 89 of the Modified law of 29 August 2008 on the free movement of persons and immigration.

²³² *ibid.*

²³³ Article 571 of the Labour Code.

²³⁴ Asti, Caritas, CEFIS, CLAE, Reform of Article 89- proposals for removing evidence of having a regular job for at least 8 years and reduction in the reference period to prove an ongoing stay, 13/01/2011. CLAE, Forum A Citoyenneté Égale, p. 4, 07/11/2010, CLAE Services asbl, Luxembourg, 2011.

²³⁵ Ombudsman, Activity report from 01/10/2008 to 30/09/2009, p 23.

http://www.ombudsman.lu/doc/doc_accueil_52.pdf ; Point of view of NGOs, 05/07/2011, lines 817-821. Activity report from 1st October 2008 to 30 September 2009, <http://www.ombudsman.lu/index.php>, In its 2008/2009 activity report, the mediator asked the Minister to specify and make public the criteria which guide it in decision-making on regularisation applications, based on Article 89 of the law on immigration.

²³⁶ Ministerial point of view 06/07/2011, lines 216-222.

Over and above Article 89, the legislator stipulated the issue of a residence permit for private reasons based on humanitarian motives of exceptional gravity²³⁷. Relaxation of the conditions of granting a residence permit for humanitarian reasons were hailed during adoption of the modified law²³⁸ insofar as where the applicant for such a permit does not have to demonstrate the existence of sufficient resources or even that s/he has suitable accommodation. On the other hand, different organisations have criticized the restrictive transposition of the directive: actually the legislator maintains the formulation according to which the interested party may obtain a residence permit for humanitarian reasons of exceptional gravity while Article 6(4) of the directive stipulates that a Member State can regularise a person for charitable, humanitarian or other reasons.

The criteria of interpretation on situations which constitute humanitarian reasons of 'exceptional gravity' were for their part the subject of strong criticisms²³⁹.

²³⁷ Modified law of 29 August 2008, Article 78 (3).

²³⁸ Opinion of the Consultative Commission of Human Rights, 10/05/2011, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=6218#>

²³⁹ Point of view of NGOs, 11/07/2011, lines 287-293 "Let's take the example of the residence permit for private reasons or one of the opening cases; these are humanitarian circumstance of exceptional gravity. So it is for them a lever to do a case-by-case assessment. You can't really generalise by country, because it's not possible, already, we have insufficient knowledge of all of the cases processed, but we see that for cases of exceptional gravity it is very low and we skip it with no problems, and for the other it is at the maximum, you'll never get there". In its 2008/2009 activity report, the mediator requests that the Minister specifies and makes public the criteria which guide it in its decision making on applications for regularisation based on Article 89 of the law on immigration. Regarding the claims of Kosovo nationals for which the measure of tolerance has not been extended, the mediator suggests to the Ministry to let itself be guided by the criteria set out in Article 103 of the aforementioned law, even if this Article does not apply to these people. Ombudsman, Activity report from 1 October 2008 to 30 September 2009.

4. TRANSNATIONAL COOPERATION FOR REDUCING IRREGULAR MIGRATION

4.1 Cooperation agreements

On 27 May 2005 Luxembourg signed the Prüm treaty²⁴⁰, which aims to intensify trans-border police cooperation and exchanges between agencies of the Member States responsible for ensuring respect of the legislation to fight organised crime, terrorism and irregular immigration.

Over and above signing of the Prüm treaty, a police and customs cooperation agreement²⁴¹ was signed on 24 October 2008 between Germany, Belgium, France and Luxembourg, with a view to reinforcement of the trans-border cooperation between their respective police and customs authorities. The latter follows the principles already adopted for agreements signed between France and Luxembourg in 2001 and creating the "Police and Customs Cooperation Centre (CCPD)" and between Germany, Belgium and Luxembourg setting up a "Police Cooperation Bureau (BCCP)", creating in this way the first cooperation centre in Europe in which the competent authorities from four different countries are brought together. The cooperation agreement aims to better guarantee security in the border zones and to reinforce the resources to fight the diverse forms of serious crime: trafficking in human being, drug trafficking, irregular immigration and serious attacks on property.

Located in Luxembourg and with a total labour force of 30 people (14 for France, 5 for Germany, 6 for Luxembourg and 6 for Belgium), the centre is authorised in particularly to:

- a) collect, analyse and exchange the information necessary for police and customs cooperation, including periodical common evaluation of the border situation;
- b) facilitate the preparation and execution of trans-border police and costumes missions

²⁴⁰ The Prüm treaty or agreement was signed by seven EU Member States: Austria, Belgium, France, Germany, Luxembourg, the Netherlands and Spain. Bulgaria, Finland, Italy, Portugal, Romania, Slovakia, Slovenia and Sweden must still adhere to it. The clauses of the Prüm treaty focusing on police cooperation and on exchanges of information on DNA profiles and digital fingerprints were transposed within the legal framework of the European Union and following a decision of the Council dated 23 June 2008 (Council decision 2008/606/JHA).

²⁴¹ Grand Ducal Police Press Release, 27.10.2008,

http://www.police.public.lu/actualites/a_connaitre/administration/2008/10/20081027-sign_ac_coop_pol_doua/index.html ; BCCP Press Release, http://www.police.public.lu/PoliceGrandDucal/mission_organigramme/description/direction-generale/CCPD/dossierpressebccp.pdf

4.1.1. Readmission agreements

Generally, the readmission agreements aim to facilitate the removal "of persons who do not fulfil, or no longer fulfil the conditions of entry, presence or stay in the applicant State"²⁴². They are considered as an essential means to reduce irregular immigration, whether it is at the bilateral, intergovernmental or Community level. Since the entry into force of the treaty of Lisbon, the European Parliament has been authorised to approve Community readmission agreements²⁴³.

Luxembourg has neither negotiated nor signed the bilateral readmission agreement. The agreements applicable to Luxembourg were negotiated either with the partners of Benelux, or within the framework of the Schengen Area or they are agreements negotiated by the European Commission on approval granted by the Council of the European Union.

a) *Benelux readmission agreements*

The "Benelux" readmission agreements initially concern agreements with other European Union Member States. Whereas some go back to the period of the start of European construction and integration²⁴⁴, others are more recent and were in general (but not always) negotiated before EU membership of these countries²⁴⁵. Nothing excludes the possibility of negotiating an agreement with another European Union Member State or renegotiating the existing agreements. Thus, the agreement entered into between France and Benelux in 1964 is actually subject to a new negotiation, in order to adapt the form and content to the present standards²⁴⁶.

Within the context of return policy, Benelux more recently signed (on 3 June 2009) a readmission agreement with Armenia.

The return and readmission agreement signed between the Ministers of BENELUX responsible for immigration and the Kosovar Minister of the Interior on 12 May 2011 has the objective of defining

²⁴² European Commission, 2002, Communication from the Commission to the Council and the European Parliament on a Community return policy on illegal residents COM (2002)564 final, p. 26, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0564:FIN:FR:PDF>

²⁴³ Article 218 TFUE, p 13-Readmission agreement doc.

²⁴⁴ France, signed on 16 April 1964, ratified on 16 May 1964, Austria, signed on 15 February 1965, ratified on 1 April 1965, Germany, signed on 17 May 1966, ratified on 1 July 1966

²⁴⁵ Slovenia, signed on 16 November 1992 and ratified on 29 April 2004; Romania, signed on 6 June 1995 and ratified on 29 April 2003; Bulgaria, signed on 7 October 1998 and ratified on 30 May 2002; Estonia, signed on 3 February 1999 and ratified on 30 May 2002; Latvia, signed on 9 June 1999 and ratified on 22 March 2006; Lithuania, signed on 9 June 1999 and ratified on 30 May 2002; Croatia, signed on 11 June 1999 and ratified on 22 July 2004; Hungary, signed on 23 January 2002 and ratified on 26 March 2003; Slovakia, signed on 21 May 2002 and ratified on 17 March 2004; (former) Yugoslavia, signed on 19 July 2002 and ratified on 29 April 2004; Switzerland, signed on 12 December 2003 and ratified on 15 February 2006; Macedonia (ARYM), signed on 30 May 2006 and ratified on 18 September 2008; Bosnia-Herzegovina, signed on 19 July 2006; Armenia, signed on 3 June 2009; Kosovo, signed on 12 May 2011

²⁴⁶ Answer from Mr Nicolas Schmit, Labour, Employment and Immigration Minister, to Parliamentary query No. 1207 of 31 January 2011, www.chd.lu

practical terms and conditions for the readmission of people residing without authorisation who have to leave the territory. The Netherlands, Belgium and Luxembourg agreed on the need to negotiate such an agreement with Kosovo in order to, on one hand, improve cooperation with this country, and on the other, provide a precise legal framework for the return measures. Finally, another sought goal is to facilitate as far as possible the issue of travel documents with a view to return. The clauses of the return and re-admission agreement apply on one hand to all citizens of Benelux, and on the other, to nationals of the Republic of Kosovo, whatever their ethnic origin. They apply moreover to third-country nationals having transited through the territories of the Contracting Parties²⁴⁷.

b) Schengen readmission agreements

Luxembourg signed a single Schengen readmission agreement on 29 March 1991, in this particular case with Poland.

c) Community readmission agreements

Several readmission agreements²⁴⁸ were negotiated by the European Commission on the Authority of the European Council. The latter are substituted by bilateral agreements in cases where such agreements exist.

The readmission agreements and their application protocols have the purpose of defining the obligations and clear procedures to be respected by the Contracting Parties, particularly by indication of time periods and terms and conditions of return of persons staying irregularly. Due to their highly specific nature, clauses in relation to readmission rarely form an integral part of other forms of agreements. As a result of the preceding clauses, Luxembourg, on the bilateral basis, has not signed such mixed agreements.²⁴⁹

4.2 Other forms of international cooperation (non-legislative)

²⁴⁷ Answer from Mr Nicolas Schmit, Labour, Employment and Immigration Minister, to Parliamentary query No. 1421 of 4 May 2011, www.chd.lu

²⁴⁸ Hong Kong, signed on 27/11/2002, ratified on 01/03/2004; Macao, signed on 13/10/2003, ratified on 01/06/2004; Sri Lanka, signed on 04/06/2004, ratified on 01/05/2005; Albania, signed on 11/04/2005, ratified on 01/05/2006; Russia, signed on 25/05/2006, ratified on 01/07/2007; Bosnia-Herzegovina, signed on 18/09/2007, ratified on 01/01/2008; Macedonia (ARYM), signed on 18/09/2007, ratified on 01/01/2008; Montenegro, signed on 18/09/2007, ratified on 01/01/2008; Serbia, signed on 18/09/2007, ratified on 01/01/2008; Ukraine, signed on 18/06/2007, ratified on 01/01/2008; Moldavia, signed on 10/10/2007, ratified on 01/01/2008; Pakistan, signed on 26/10/2009, ratified on 1/12/2010; Georgia, signed on 22/11/2010

²⁴⁹ A readmission protocol with the Russian Federation should be signed in the next few months.

At present Luxembourg has just one liaison officer with Europol. The liaison officer is responsible via the national unit for representing the interests of the latter at Europol complying with national law and respecting the applicable clauses in the functioning of Europol. In this way, the liaison officer contributes to the exchange of information between the national units in Luxembourg and Europol ('mutual police assistance')²⁵⁰.

However, based on the common use of the network of BENELUX liaison officers, Luxembourg can resort to Belgian or Dutch liaison officers allocated to one or more accredited Member States, or even to one or more international organisations²⁵¹.

5. IMPACT OF THE EUROPEAN POLICY AND LEGISLATION ON IRREGULAR MIGRATION

5.1.1. "Returns directive"

The "returns directive" was transposed by the Law of 1 July 2011.

5.1.2. 'Sanction directive'

Transposition of Council Directive 2009/52/EC (called the "sanctions directive" of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals has not yet been done, even though Luxembourg had partially anticipated transposition of the same directive in the Law of 29 August 2008 focusing on the free movement of persons and immigration stipulating sanctions relating to irregular migration (Articles 139 to 148). The bill having to transpose the directive has not yet been submitted to the Council of Government²⁵².

²⁵⁰ Mémorial A, Issue 208, of 30 December 2004, Law of 21 December 2004 approving the Treaty between the Kingdom of Belgium, the Kingdom of the Netherlands and the Grand Duchy of Luxembourg as regards police transborder intervention, <http://www.legilux.public.lu/leg/a/archives/2004/0208/a208.pdf>

²⁵¹ European Migration Network-National Contact Point Luxembourg- 2010 Political report on migration and asylum, p6.

²⁵² It is important to point out that up until 2 December 2011 no bills had been introduced before the Council of Government. See http://www.gouvernement.lu/salle_presse/conseils_de_gouvernement/2011/09-September/23-conseil/index.html http://www.gouvernement.lu/salle_presse/conseils_de_gouvernement/2011/10-octobre/07-

Furthermore, the Minister emphasized that the present law already contains provisions for sanctions of a pecuniary type against employers resorting to illegal work²⁵³. However, a large part of the directive remains to be transposed, particularly regarding exclusion of reception of services or public subsidies and participation in procedures of execution of public contracts and the recovery of public subsidies granted to the employer.

5.1.3. *EU readmission agreements*

See also 4.1.1

Between 2009 and 2010, 74 persons were removed from Luxembourg on the basis of Community agreements (39 out of a total of 59 persons removed in 2009, and 35 out of a total of 52 persons removed in 2010)²⁵⁴.

5.1.4. *The European External Borders Fund (EBF) and Luxembourg*²⁵⁵

The pluri-annual programme of implementation of the External Borders Fund (EBF) 2007-2013, adopted by the European Commission, was presented by Luxembourg on 18 December 2008.

This Fund is one of the four financial instruments of the general programme "Solidarity and management of migratory flows"²⁵⁶ which encourages equal division between the Member States of the responsibilities arising from the establishment of integrated management of the external borders of the EU, and implementation of Community policies regarding asylum and immigration. The Fund therefore creates a financial support mechanism for the Member States

http://www.gouvernement.lu/salle_presse/conseils_de_gouvernement/2011/10-octobre/14-conseil/index.html http://www.gouvernement.lu/salle_presse/conseils_de_gouvernement/2011/10-octobre/21-conseil/index.html http://www.gouvernement.lu/salle_presse/conseils_de_gouvernement/2011/10-octobre/28-conseil/index.html http://www.gouvernement.lu/salle_presse/conseils_de_gouvernement/2011/11-novembre/11-conseil/index.html http://www.gouvernement.lu/salle_presse/conseils_de_gouvernement/2011/11-novembre/18-conseil/index.html http://www.gouvernement.lu/salle_presse/conseils_de_gouvernement/2011/11-novembre/25-conseil/index.html http://www.gouvernement.lu/salle_presse/conseils_de_gouvernement/2011/12-decembre/02-conseil/index.html

²⁵³ Ministerial point of view, 07/07/2011, lines 251-254: "Ok, we have this directive that we're going to transpose at the end of the year in the coming months. But it has to be said that we already have a clause in our legislation on immigration. So we already have penalties. In fact, we transpose something at the margin which we complete then we already have it

²⁵⁴ Answer from Mr Nicolas Schmit, Labour, Employment and Immigration Minister, to Parliamentary query No. 1207 of 31 January 2011, www.chd.lu

²⁵⁵ Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013 as part of the General programme Solidarity and Management of Migration Flows.

²⁵⁶ The other funds are the European Fund for the Integration of third-country nationals, the European Return Fund and the European Refugee Fund.

which bear a long-lasting and heavy financial load linked to the implementation of common standards as regards control and surveillance of external borders²⁵⁷.

For its 2007-2013 pluri-annual programme²⁵⁸, Luxembourg decided to implement four of the five EBF objectives: 1. To undertake gradual implementation of the common system of integrated management of the borders. 2. Support for issuing visas and the fight against irregular immigration by the consular departments of the Member States in third-countries. 3. Implementation of the computer systems required by the Community regulation regarding external borders and visas (VIS and SIS). 4. Application of the Community regulations regarding external borders and visas, and in particular the Schengen Border Code of the European Code on Visas²⁵⁹. These objectives were selected according to the immediate and priority requirements regarding control at Luxembourg's external borders:

1. Purchase of equipment enabling to detect fake travel documents and falsified documents;
2. Improvement of the conditions of issuing visas;
3. Necessity to adapt the control devices and the computer systems in order to make them compatible with the statutory requirements imposed by implementation of the SIS and the VIS;
4. Training of the personnel responsible for border control.

Action projects which are the subject of financing by the EBF programme are submitted to the General Management of the Police and to the Justice Ministry for agreement. In practice, the responsibility of integrally managing the Fund and putting the actions into application is that of the Grand Ducal Police.

In more detail and for the year 2007, the following actions were retained²⁶⁰ :

- Extension of the SIS for integration of the new Member States (SISone4all)²⁶¹.

²⁵⁷ European Commission, Representation in Luxembourg, Press Release, 18/12/2008, http://ec.europa.eu/luxembourg/docs/press/2008/585-2008_fr_fonds_luxembourg_ip2022.pdf

²⁵⁸ http://ec.europa.eu/luxembourg/news/frontpage_news/585_fr.htm; Grand Duchy of Luxembourg, European External Borders Fund (EBF), 2007 Annual programme, http://www.police.public.lu/PoliceGrandDucale/mission_organigramme/description/services-centraux/UCPA/Fonds_europ_front_ext/programme-pluranniel-2007-2013.pdf

²⁵⁹ 1. To undertake gradual implementation of the common system of integrated management of the borders. 2. Support for issuing visas and the fight against irregular immigration by the consular departments of the Member States in third-countries. 3. Implementation of the the computer systems required by the Community regulation regarding external borders and visas (VIS and SIS). 4. Application of the Community regulations regarding external borders and visas, and in particular the Schengen Border Code of the European Code on Visas.

²⁶⁰ Grand Duchy of Luxembourg, European External Borders Fund (EBF), 2007 Annual programme, http://www.police.public.lu/PoliceGrandDucale/mission_organigramme/description/services-centraux/UCPA/Fonds_europ_front_ext/

This action falls within implementation of the SISone4all. The aim of this action was to prepare extension of the SIS in order to integrate the nine new Member States within the SISone4all framework. The works undertaken within this context essentially consisted of restructuration of the database and modification of the programmes enabling the presentation of data, adaptation of the search screens and consultation for the SIRENE bureau and the end-users. The quantified expected results and indicators stipulated by this action were initially access to alerts and data from the nine new Member countries and secondly the increase of positive *hits*.

For the year 2008, the following actions were retained²⁶² :

- Development and installation of programmes for reading the data supplied by the document readers at Luxembourg airport²⁶³.

This adaptation was deemed necessary in order to avoid border guards having to manually input the information contained in the travel documents presented to them in order to consult the SIS database.

Following this adaptation, the travel document is then scanned and the national SIS database is automatically consulted. The information is sent instantaneously to the user with negative or positive results for the categories of information concerned.

The works consisted of computer services (development and purchase of software) to extract the data from the document reader and present the results to the end-user.

This enables to propose an integrated solution for the end-user who no longer has to input any information manually and accelerates control of passengers at the same time.

The quantified expected results are connected initially to the increase in the number of *hits* and to the quality of the responses by the deletion of manual input errors and secondly reduction of the waiting time for passengers checked at the external border.

For the year 2009, the following actions were retained²⁶⁴ :

²⁶¹ Costs: 61,487€ with a Community subsidy of 75%.

²⁶² Grand Duchy of Luxembourg, European External Borders Fund (EBF), 2008 Annual programme, http://www.police.public.lu/PoliceGrandDucal/mission_organigramme/description/services-centraux/UCPA/Fonds_europ_front_ext/

²⁶³ Costs: 58,440€ with a Community subsidy of 75%. See the reference above.

²⁶⁴ Grand Duchy of Luxembourg, European External Borders Fund (EBF), 2009 Annual programme, http://www.police.public.lu/PoliceGrandDucal/mission_organigramme/description/services-centraux/UCPA/Fonds_europ_front_ext/

- Installation of document readers at Luxembourg Airport connected to SIS.

This action was rendered necessary in order to fit all of the border control counters installed in Terminal A of Luxembourg Airport with a document reader complying with the Schengen Borders Code.

Although the former terminal had 3 operational counters, i.e. two counters in arrivals and one counter in departures; with the opening of the new terminal, this number increased to 3 counters in arrivals, 3 counters in departures and 2 transit counters available to the Grand Ducal Police. To ensure verification of documents complying with the Schengen Borders Code "SBC" and to undertake a control at the border complying with all of the European clauses in force, these new counters must be fitted with a document reader²⁶⁵. As occupation of all the counters (with border guards) is indispensable for the future in order to reduce in particular passengers' waiting time, the Grand Ducal Police at the airport needed 5 new additional document readers, purchased from the "Bundesdruckerei" in Germany enabling to verify the following details:

- reading of the MRZ (machine readable zone);
- reading of the integrated chip and its contents;
- comparison of the contents of the integrated chip with the data written on the travel document;
- use of different lights to analyse the security elements: normal, infrared and ultraviolet;
- comparison of the document with different SIS and INTERPOL databases.

The new document readers enable moreover to avoid the border guards having to manually input the information contained in the travel documents while consulting the SIS database. Once the travel document is scanned, the SIS and INTERPOL databases are automatically consulted and the information is sent instantaneously to the border guard with the negative or positive results for the information categories concerned.

For the year 2010, the following actions were retained²⁶⁶ :

- Putting into application a portable digital fingerprint reader connected to SIS, AFIS and VIS
- Although it was not scheduled in the 2007-2013 pluri-annual programme, this project was considered a priority by the General Management of the Grand Ducal Police in order to supply the

²⁶⁵ Counters not yet fitted with the devices remained unoccupied.

²⁶⁶ Grand Duchy of Luxembourg, European External Borders Fund (EBF), 2010 Annual programme, http://www.police.public.lu/PoliceGrandDucale/mission_organigramme/description/services-centraux/UCPA/Fonds_europ_front_ext/

ground units and more particularly the Section for Foreigners of the Criminal Police Department (SPJ) with an effective tool with state-of-the-art technology, to fight irregular immigration and trafficking in human beings. Actually, the purchase of a mobile terminal enables members of the police force to undertake verifications of identification and authentication on the ground. Protected in a case, this device can be easily transported and moved by the forces of order and may as a result be used during controls in cafes, restaurants, supper clubs, construction sites, bus stations, railway stations and in the lobby of the airport terminal building. These controls focus mainly on irregular immigration, the fight against trafficking in human beings and travel documents fraud. In more concrete terms, the mobile stations comprise a portable PC fitted with different software applications, terminals for inputting digital fingerprints and/or portraits.

The device enable searches in large-scale biometric databases like AFIS ("Automated Fingerprint Identification System"), SIS and VIS to be undertaken, and to use different biometric methods (digital fingerprints or portraits) depending on the data available to provide the best identification results.

The mobile computer enables the contact details and digital fingerprints of a person on the ground to be captured and to communicate with AFIS.

With regards to the E-passport comprising biometric data, the system enables members of the Grand Ducal Police to conduct identification searches in order to eliminate multiple applications by international protection seekers or refugees complying with the Dublin convention based on the "*Eurodac*" system. Likewise it is possible to ensure that the person who is checked is not listed in a list of wanted or disappeared persons. The primary objective is to ensure that the holder of the document is indeed the person s/he claims to be. As regards biometric visas, the new system enables to input digital fingerprints of the person checked and to compare them with the data in the VIS. This procedure enables to verify that the person concerned is authorised to hold a VISA in his/her passport.

6. ESTIMATIONS AND STATISTICS ON IRREGULAR MIGRATION

Firstly, it is necessary to mention that the statistics available in Luxembourg relating to irregular migration are very limited and partial. At times, differences can be observed between the figures exist between the different bodies, whereas they are supposed to cover the same situation.

On one hand, the sensitive nature of the subject of irregular migration, and on the other, the "clandestine" status of the persons concerned means that irregular migration widely escapes conventional data collection methods. People in an irregular situation who have never presented themselves to the authorities are not recorded in the official administrative registers like migrants receiving a residence permit²⁶⁷. As a result, public registers in no case enable to determine the total number of illegally staying in Luxembourg.

In addition, in Luxembourg, no centralised practice of collection and processing of data exist with regards to statistics on migration, with the exception of statistics on the working population, a task which is under the responsibility of STATEC²⁶⁸. However STATEC, which receives data from the administrations, does not include migrants in an irregular situation as they are not listed anywhere. Collection of figures relating to various aspects of migration is done by numerous institutions, in accordance with their mandate. In cases where the raw figures (e.g. on apprehensions) are collected by one actor (the police), the responsibility of follow-up (process, final decision) falls on another actor (the Directorate of Immigration). Different administrations intervene at the level of control of different situations of irregularity, particularly as regards to work, without which all of the figures on offences observed within the scope of these actions are centralised, processed and compiled. At the same time, a lack of coordination between different institutions may hinder the flow of information. The same concern applies to the breakdown of figures. While the total figures are sometimes available, often breakdown by gender, age, nationality or country of origin is missing.

As mentioned in the introductory chapter, situations of irregularity can be grouped into two main categories, which themselves can be sub-divided into sub-groups:

a) irregular or undocumented persons, i.e. people who have no residence permit and who have never been registered with the national institutions as well as person who have no residence authorisation or residence permit and/or work permit while being registered with Social Security;

²⁶⁷ IOM, Migrations and statistical data, New challenges, <http://www.iom.int/jahia/Jahia/developing-migration-policy/new-challenges/lang/fr>. For example, data on applications and allocation of residence permits, applications for international protection, figures on cross-border commuters etc.

²⁶⁸ Statistics of the population in general and the labour market are available at the STATEC website. See <http://www.statistiques.public.lu/fr/population-emploi/index.html>

b) persons who legally entered the country but who find themselves in an irregular situation in Luxembourg for various reasons (they have exceeded the time of stay authorised by their visa, or if they are exempt from a visa obligation, they have decided to stay beyond the legal stay duration of three months, or even they remained in the country without their residence permit being renewed for one reason or another, etc.)

A particular group is comprised of rejected international protection applicants. Failure to obtain an authorisation to stay or a residence permit, for example for humanitarian reasons, rejected persons are considered legally as persons without the right of stay. As mentioned on several occasions in this study, the various migratory routes of persons (irregular/regular entry, then introduction or not of an application for international protection) may cross and do not often enable a clear differentiation between persons in an irregular situation and rejected international protection seekers. The same person may even have a route scattered with different situations of irregularities; as is the case for example of an applicant refused international protection, who remained initially in the country without the right of stay before being removed from the territory and who then returns clandestinely to Luxembourg without making him/herself known to the authorities.

The problem of differentiation is also illustrated with regards to removals. Although the Directorate of Immigration holds statistics relating to decisions to grant or refuse applications for international protection (number of persons refused, by country of origin and gender), the statistics relating to removals make no distinction between migrants in an irregular situation and applicants for international protection rejected.²⁶⁹

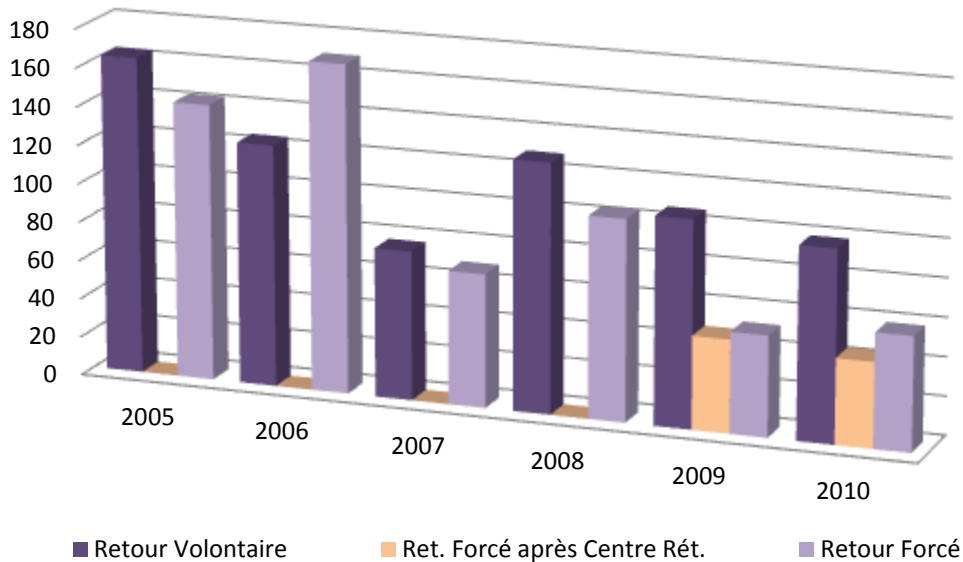
6.1.1. Removals and voluntary returns

The table below gives information on the total number of persons removed from Luxembourg, by country of origin, for the period between 2005 and 2010. We note that certain nationalities appear regularly in these data: persons native of the Balkan countries (Kosovo, Montenegro, Albania, Serbia) occupy the first positions, followed by Nigerians, Brazilians and Belarusians.

The graph below shows the evolution of removals from 2005 to 2010:

²⁶⁹ See Annex.

Returns 2005 - 2010



Source: Directorate of Immigration, 2005-2010 © EMN NCP LU

When we make the comparison between voluntary returns and forced returns (including returns after transit through the detention centre), we observe that Luxembourg's policy in terms of removals gives priority to voluntary returns, particularly since the signing of the agreement between the Directorate of Immigration and IOM in 2008. It must however be specified that data on forced returns with passage through the detention centre are not available for the years 2005 to 2008, which is illustrated on the graph by red columns with zero value.

In 2009, IOM assisted 36 persons during their removal, a figure which tripled the following year (103 persons in 2010) which represents a proportion of 51% compared with the total number of removals. This increase is explained, as we have already specified above by the fact that the first agreement between the government and the IOM which covered the year 2009, was focused only on Kosovar nationals refused international protection, whereas since renewal of the agreement, all migrants in an irregular situation can receive this assistance with voluntary return, independently of their country of origin.

6.1.2. Refusal of entry

Luxembourg Airport being the sole external border and Luxembourg not being a HUB (Hub Airport²⁷⁰) or connection platform, the quantity of flights from third-countries is very reduced and therefore also the number of third-country nationals. To this is added the lack of reliable data on the exact number of controls focusing on third-country nationals. The statistics provided by the SCA include under the heading entitled "passengers outside of Schengen", nationals of EU Member States that are not part of the Schengen Area (the United Kingdom, Ireland, Romania, and Bulgaria).

Year	Smugglers	Falsification / Counterfeiting	Refusals	Passengers outside the Schengen Area	Total passengers
2004	1	19	28	372,030	1,829,604
2005	1	12	55	455,932	1,564,078
2006	2	14	25	478,260	1,583,863
2007	1	9	13	538,935	1,626,183
2008 up until 01/10/08	0	2	6	390,660	1,279,479

Source: Grand Ducal Police, 2004-2008 Annual reports²⁷¹ © EMN NCP LU

By analysing the following table, it appears that the percentage of passengers outside the Schengen Area represents nearly a third of the total number of passengers (except for 2004 where the latter represented a rate of 20.3%) who transit annually via Luxembourg International Airport.

The table also enables to observe that the number of falsifications/counterfeiting of documents reduced between 2004 and 2008 (they went from 19 in 2004 to 9 in 2007) and that the number of refusals clearly reduced since 2005 (they went from 55 in 2005 to 13 in 2007). An attempt at explanation of these figures could be that migrants supplied with false documents use other migratory routes

The figures are not always consistent however. We therefore see data coming from the MAE which does not correspond to the data from the Grand Ducal Police.

²⁷⁰ The term *hub* covers two concepts: 1) administrative and technical, this is an airport or a company concentrated for the most part on its management activities and where it undertakes maintenance of its planes; 2) commercial, this is the principal destination airport of its flights and therefore *a connection platform*. For this study the second concept is the right one.

²⁷¹ Data for the whole of 2008 and 2009 are not available.

The number of refusals of entry, accordance to the data given by the MAE was 7 and 8 for the years 2006 and 2007 respectively. By contrast, the statistics given by the police for the same years are 14 and 9 respectively. These differences could be explained by the fact that the former law of immigration must be taken into consideration²⁷² in its Article 12, it stipulated that foreigners could "be removed from the territory by public force, with no other form of procedure than the simple observation of the fact by a report to be sent to the Minister with Immigration and Asylum as part of his/her duties".

The reasons for refusal of entry were based firstly on non-possession of a visa or an authorisation to stay (4 in 2007 and 3 in 2008) and then on the lack of sufficient means of subsistence (1 case in 2008).

It is important to point out that the number of removals from the territory greatly reduced since the entry into force of the Law of 29 August 2008, because the procedure of removal from the territory is stricter and the police do not have the same discretionary power that it had previously.

²⁷² Law of 28 March 1972 regarding 1. the entry and stay of foreigners; 2. medical checks of foreigners; 3. employment of foreign labour force, Mémorial A, Issue 230, <http://www.legilux.public.lu/leg/a/archives/2006/0230/2006A4104A.html>

Reasons for refusal of entry by type and year

	2005	2006	2007	2008	2009	2010
No valid travel document	/	/	/	/	/	/
False/counterfeit/forged travel document	/	/	/	/	/	/
No valid visa or residence permit	/	/	4	3	/	/
False visa or residence permit	/	/	/	/	/	/
Purpose and conditions of stay not justified	/	/	/	/	/	/
Person already stayed 3 months in a 6-months period	/					
No sufficient means of subsistence	/	/	/	1	/	/
An alert has been issued	/	/	/	/	/	/
Person considered to be a public threat	/	/	/	/	/	/

Source: Directorate of Immigration © EMN NCP LU

Regarding the second reason (lack of means of subsistence), there are no indications relating to evaluation of means of subsistence. As a result, this decision remains entirely at the discretion of the police authority on shift at the time of the evaluation.²⁷³

As to the nationalities of the persons concerned by the decisions of refusal of entry, it is difficult to establish any conclusion as the figures are so low and the origins are different. In 2007, nationals

²⁷³ The Grand Ducal regulation of 11 August 2011 modifying the Grand Ducal regulation of 5 September 2008 defining the criteria of resources and accommodation stipulated by the Law of 29 August 2008 on the free movement of persons and immigration establishes the requirement of sufficient means of subsistence and that they must be proved with cash or bank cards, but it does not set a specific amount. Likewise the Modified law of 29 August 2008 in its Article 34(3) requires the person wishing to stay in Luxembourg to justify sufficient personal resources, for the envisaged duration of stay as well as for the return to the country of origin, without for all that giving an indication of the specific amount, <http://www.legilux.public.lu/leg/a/archives/2011/0180/2011A3218A.html?highlight=>; <http://www.legilux.public.lu/leg/a/archives/2011/0151/a151.pdf>

from Trinidad and Tobago, the Russian Federation, the People's Republic of China and Sri Lanka were concerned whereas in 2008 three (3) South African citizens and one (1) national of Togo were concerned²⁷⁴.

Orders of refusal of entry, stay, expulsion

Number of orders of refusal of entry, stay, expulsion

Year	Number of refusals of entry at the external border ²⁷⁵	Number of orders of refusal of entry and of stay	Number of deportation orders	Number of persons subject to a detention order by the Government
2005		431	27	490
2006	7	267	8	308
2007	8	290	1	244
2008	5	233	2	200
2009	/	183	/	/
2010	/	/	/	/

Source: Ministry of Foreign Affairs, Annual reports 2006-2010 © EMN NCP LU

As illustrated by the table above, the number of orders of refusal of entry and of stay decreased since 2005. The number fell by 58%, from 431 in 2005 to 183 in 2009. These figures represent only refusals of entry and of stay followed by an order to leave the territory relating to third-country nationals. The number of deportation orders also decreased, going from 27 in 2005 to 2 in 2008.

The last column in the table shows the number of persons subject to a detention order by the government (placed in detention). It is difficult to interpret these data, as being subject to a detention order may involve various situations: this could be persons subject to a detention order to be removed or those of persons subject to a detention order by the Parquet General (Public Prosecutor) as they had committed an offence²⁷⁶. No information has been found as to the significance of this column in the MAE reports.

The following table gives us information on the principal nationalities that have experienced the largest number of refusals of entry and of stay combined with an order to leave the territory for the year 2009. The majority of these persons (except for the Brazilians) come from the Balkans and the African continent.

²⁷⁴ Directorate of Immigration, Ministry of Foreign Affairs, Statistics for 2009.

²⁷⁵ At Luxembourg Airport, which is the only external border in Luxembourg. The control comes from the UCPA.

²⁷⁶ See Articles 9, 9-1, 9-2, 12 and 24 of the Code of Criminal Procedure.

Refusals of entry and of stay by nationality for 2009 (descending order)

2009		
Position by country	Country of nationality	Total
1	Kosovo	32
2	Nigeria	22
3	Algeria	14
4	Brazil	13
5	Guinea	9
6	Albania	8
7	Tunisia	8
8	Burundi	6
9	Cape Verde	6
10	Egypt	6

Source: Directorate of Immigration, 2009 © EMN NCP LU

6.1.3. Persons arrested on the territory for irregular stay

The number of third-country nationals arrested on the territory for irregular stay is very low compared to the number of irregulars approached by government civil servants and associations²⁷⁷. In 2007, the authorities recorded 202 persons in an irregular situation, 162 persons in 2008 and 260 in 2009. The annual variations rely for the most part on routine or random controls conducted by the Police on foreigners and the Grand Ducal Police.

	2005	2006	2007	2008	2009	2010
Total number of third-country nationals found to be illegally present	/	/	202	162	260	/

Source: Directorate of Immigration © EMN NCP LU

It is important to point out that the great majority of persons in an irregular situation arrested are mainly men (for example in 2009 of the 260 persons arrested there were 196 men, which is 75.4%). The majority of persons arrested, both sexes combined, are rather young adults aged between 18 and

²⁷⁷ Government Point of View, 06/07/2011, lines 207-209. Point of view of NGOs, 22/06/2011, lines 200-212.

34 years (156 persons which represents 60% of the total). The second group is comprised of persons over 35 years of age (28.1%).

Number of persons in an irregular situation arrested broken down by age in 2009

	2005	2006	2007	2008	2009	2010
Fewer than 14 years	/	/	/	/	28	/
From 14 to 17 years	/	/	/	/	3	/
From 18 to 34 years	/	/	/	/	156	/
35 years or over	/	/	/	/	73	/

Source: Directorate of Immigration © EMN NCP LU

Number of persons in an irregular situation arrested broken down gender in 2009

	2009
Male	196
Female	64

Source: Directorate of Immigration © EMN NCP LU

The fact that the number of persons who receive an order to leave the territory does not coincide with the number of persons effectively returned, is explained in part by the fact that the removal procedure is not automatic, particularly due to the procedural guarantees, but also certainly because a certain number of them "escape" the authorities after having received the order to leave the territory. The table below shows us that the total number of persons returned was 172 in 2007, 142 in 2008 and 94 in 2009²⁷⁸.

With regards to the nationality of the persons being the subject of the return, we logically see the same nationalities as in the table resuming the nationalities of persons with an order to leave the territory (see below): nationals of the Balkan countries (Kosovo, Montenegro, Albania), Nigerians and Brazilians, which shows nevertheless a certain consistency in this domain. We can still observe that Brazilian nationals went from 10th place in 2007 to 3rd place in 2009.

²⁷⁸ Figures for the year 2010 are not available on this date.

Persons effectively returned

Position by country of origin	2007		2008		2009	
	Country	Total	Country	Total	Country	Total
1	Kosovo	40	Kosovo	87	Kosovo	24
2nd	Montenegro	37	Nigeria	25	Nigeria	12
3	Bosnia-H.	21	Montenegro	17	Brazil	9
4	Nigeria	8	Serbia	14	Albania	7
5	Albania	8	Macedonia	10	Egypt	6
6	Serbia	7	Guinea	9	Guinea	5
7	Russia	7	Albania	8	Cape Verde	4
8	Macedonia	6	Brazil	7	Montenegro	3
9	Guinea	5	Russia	7	Tunisia	3
10	Brazil	2	Bosnia-H.	5	Belarus	3

Source: Directorate of Immigration © EMN NCP LU

Rejected applicants for international protection constitute another category of persons without a right of stay. Following refusal of their application without obtaining another residence permit, these persons, if they do not leave the country thus become de facto migrants in an irregular situation²⁷⁹. The data on the negative decisions on their application for international protection enables their number to be evaluated.

Since 2005 the number of rejected applications for international protection is on the decrease. In 2006 the number of third-country nationals who saw their application rejected went up to 507, a number which fell progressively to 425 in 2007, 339 in 2008 and 362 in 2009. An explanation informs of the reduction in applications for international protection up until the end of 2009. We must take into consideration that the number of applications for international protection went from 523 in 2006, to 426 in 2007, 463 in 2008, 505 in 2009 and increased significantly in 2010 to 786 (55.6% compared to 2009). This situation can be explained by three phenomena: the economic crisis in general, elimination of visas for Serbian nationals from 17 December 2009 (the number of applications went from 17 in 2009 to 148 in 2010, i.e., an increase of 870.6%) and the increase in the violence in Iraq (applications went from 65 to 95 – 46.1%) and in Somalia (from 8 applications in 2009 to 30 in 2010)²⁸⁰. From January 2011 the number of applications nevertheless experienced a spectacular increase, to the point that at the end of September 2011, 1586 applications had been

²⁷⁹ 2006-2010 figures on applicants for international protection. Directorate of Immigration, Ministry of Foreign Affairs.

²⁸⁰ These three nationalities represent 65% of the total increase in applications for international protection. See table Evolution of asylum/international protection applicants by country of origin (applicant numbers) 2006-2010 by the Directorate of Immigration, Foreign Affairs Ministry. <http://www.mae.lu/fr/Site-MAE/Immigration/Chiffres-cles-en-matiere-d-asile>

registered²⁸¹. That is to say, an increase of 101.8% in 9 months compared with 2010. The vast majority of applications were submitted by nationals of the Republic of Serbia and the former Yugoslavian Republic of Macedonia. This increase is explained in part by the lifting of the visa requirement to enter the Schengen Area for these countries, but also by the economic conditions of the countries of origin and especially by the discriminations suffered by these persons in their country of origin. It must be specified that the great majority of applicants belong to minorities of their countries of origin, particularly the Roma community. The rates of recognition or non-recognition must also be put into relation with the region of origin of the international protection seekers.

We can conclude that there is no homogenous mechanism for gathering statistical information on all migrants in an irregular situation. It is clear that the clandestinity factor renders the task nearly impossible.

The government is aware of the extent of the phenomenon²⁸². The interviews conducted with different associations leave it to be believed however that the largest groups of migrants (in number) in an irregular situation are nationals of Cape Verde and Brazil²⁸³. For the Cape Verdeans, family reunification plays an important role²⁸⁴. This facilitates settlement and the search for work. Often Cape Verdean nationals emigrate with a tourist visa, and, the moment they arrive in Luxembourg, they make an application for family reunification. Brazilian nationals do not need a visa to enter the Schengen Area.²⁸⁵

6.1.4. Figures on regularisation of persons in an irregular situation

Regularisation represents the sole means of obtaining a legal status for any person in an irregular situation in Luxembourg. Moreover, we don't have precise data in Luxembourg on how many

²⁸¹ Article d'actualité, Statistiques concernant les demandes de protection internationale au Luxembourg jusqu'au mois de septembre 2011, (News Article, Statistics regarding application for international protection in Luxembourg up until September 2011) 14/10/2011, p. 2, http://www.gouvernement.lu/salle_presse/communiqués/2011/10-octobre/14-statistiques/stat.pdf

²⁸² Government Point of View, 06/07/2011, lines 208-209.

²⁸³ "Me, the others, the large groups of undocumented persons are Cape Verdeans, Brazilians, well Brazilians don't need a visa, so there are no controls, you can't check anything at all, so, well, at a pinch, they come and go as they like. But it's the two large groups of undocumented persons that we encounter here." Interview 3, 22/06/2011.

²⁸⁴ Point of view of NGOs, 11/07/2022, lines 327-335.

²⁸⁵ Government Point of View, 06/07/2011, lines 172-183. Point of view of NGOs, 11/07/2022, lines 528-532.

persons were regularised on the basis of Article 89 or Article 42 (privacy) of the Law of 29 August 2008. However, a few figures on regularisations conducted in the past are available²⁸⁶.

In 2001, the government conducted the last large-scale regularisation programme. The report of this regularisation provides a spatio-temporal perspective of the situation at the beginning of the decade 2001 – 2010.

Regularisation applications submitted in 2001²⁸⁷: (Result on 31 December 2002)

Persons concerned	2,894
Provisional residence permits granted	1839 (63.5%)
Provisional work permits²⁸⁸	31 (1.07%)
Decisions of refusal	650 (22.46%)
Applications classed as not applicable or sent to the Ministry of Justice for a decision²⁸⁹	297 (10.26%)

Source: Labour and Employment Ministry, 2002 © EMN NCP LU

With regards to the origin of the undocumented persons who made a regularisation application, the majority were natives of countries of the former Federal Republic of Yugoslavia (2041), followed by persons natives of Cape Verde (182), Albania (75), China (66), Bosnia-Herzegovina (67), Algeria (41), Poland (41), Macedonia (41) and Brazil (40)²⁹⁰.

The great majority of applicants and persons regularised were asylum applicants registered with and known to the authorities.

The majority of the decisions of refusal were justified by the insufficiency of means of subsistence assessed for residing in Luxembourg. This information is summarized in the table below.

²⁸⁶ It is therefore a case of partial figures.

²⁸⁷ Government of the Grand Duchy of Luxembourg, News Article, ‘MM. Biltgen and Frieden present a new analysis of the regularisation procedure for undocumented persons’, http://www.gouvernement.lu/salle_presse/actualite/2002/01/21regularisation/index.html

²⁸⁸ Persons fulfilling the conditions of regularisation, having a stable job and justifying an application for a passport from the competent authorities.

²⁸⁹ Of these 297 persons, 201 obtained a provisional residence permit, 25 obtained a foreign identity card, 17 went abroad, 1 was deceased and 53 were waiting for a decision.

²⁹⁰ On 26 July 2001, date of closure of the first results of the operation of regularisation of undocumented persons..

Decisions of refusal of regularisation applications submitted in 2001 by country of origin

Nationality	Number
Total	601
Former Yugoslavia	454
Algeria	24
Macedonia	16
Albania	14
Tunisia	14
China	13
Morocco	13

Source: Labour and Employment Ministry, 2001 © EMN NCP LU

For 49 persons, refusal of regularisation was justified because they were considered as being a potential danger to public order (see below).

Refusals of regularisation for reasons of public order

Nationality	Number
Total	49
Former Yugoslavia	16
Cape Verde	9
Brazil	8
Guinea-Bissau	5

Source: Labour and Employment Ministry, 2001 © EMN NCP LU

After 2001, no regularisation operations of a collective nature were conducted by the government. On the other hand, regularisations on a case-by-case basis and based on the specified conditions were done by application of Article 89 of the Law of 29 August 2008.

So in 2009, the Minister of Immigration decided to regularise a certain number of rejected international protection applicants by granting them a provisional residence permit after obtaining a work permit. There were 35 cases in total, corresponding to 75 persons. These persons were able to demonstrate that, among other things, they had lived in Luxembourg for several years continuously.

Persons regularised on a case-by-case basis in 2009

Country	Cases	Persons
Kosovo	9	33
Nigeria	8	8
Somalia	4	4
Bosnia	2	8
Liberia	2	3
Albania	1	4
Russia	1	4
Burundi	1	3
Ethiopia	1	2
Afghanistan	1	1
Algeria	1	1
Brazil	1	1
Ghana	1	1
Iraq	1	1
Cameroon	1	1
Total	35	75

Source: Directorate of Immigration, 2009
© EMN NCP LU

In 2010, 347 persons were regularised by the mission, the majority of them were natives of Kosovo²⁹¹.

7. CONCLUSIONS

This aim of this study is to analyse the phenomenon of irregular migration and more particularly the practical measures implemented to reduce it in Luxembourg. It has become clear, however, that various situations must be taken into account, following which a person may find him/herself in an irregular situation, and the close relationship which exists between the status of "irregular migrant" and the legislative policies and provisions of a Member State must be mentioned. Actually, it is the legislative and statutory conditions as well as the specific administrative practices which define situations of irregularity. Whereas politically, the difference is often made between certain situations of irregularity (e.g. differentiation between irregular persons who entered the territory irregularly and persons refused international protection), in practice, this differentiation often proves very difficult to maintain. There is no single "route to irregularity" and the tipping point between persons in a regular situation and persons in an irregular situation is often blurred. Let's take by means of illustration applicants for international protection. During the procedure, the persons enjoy a particular legal status and a right of stay, whereas from the refusal of their application – failing obtaining another residence permit – the same people become irregular persons.

Concrete and global figures do not exist on the number of persons finding themselves in an irregular situation in Luxembourg. According to Ministerial estimates, the phenomenon has increased. Other figures available on persons refused, removals or even arrests or regularisations conducted in the past may therefore give a partial overview of the situation but do not enable conclusions to be drawn on the number of persons in an irregular situation. On the basis of figures on removal and work on the ground by various associations, the groups most involved in irregular stay in Luxembourg are nationals of Brazil, Cape Verde and Balkan nationals. According to the associations encountered, many persons who are nationals of Brazil and exempt from the visa obligation or nationals of Cape Verde subject to the visa obligation, initially enter Luxembourg legally but remain beyond the authorised period of stay of 3 months. Nationals of countries of the Balkans find themselves in another case scenario. As previously explained, often nationals from the Balkans submit an application for international protection, of which the chances of a positive decision from the authorities is practically nil. These persons may potentially find themselves in an irregular situation if they refuse to return to their country of origin after having been refused the right to asylum.

At the national level, the 2004-2009 governmental programme refers for the first time to (the fight

against) irregular migration. At the time of this legislature, two laws connected with the issue raised came into force: on the one hand, the law of 29 August 2008 focusing on the free movement of persons and immigration redefining the entry and stay conditions, the conditions of removal from the territory, and transposing related EU directives; on the other, the law of 5 May 2006 relating to the right of asylum and to additional forms of protection transposing the European directives as regards asylum. National policy and legislation is thus closely linked to European policy. The 2009-2014 governmental programme continues with this approach by mentioning the close connection between the promotion and organisation of legal immigration and the effective fight against immigration and illegal work. The emphasis is placed on the development of a consistent return and in particular the promotion of voluntary returns. This political emphasis resulted in the approval of the Law of 1 July 2011 which modifies the two laws mentioned above. From the ministerial point of view, this law transposes the "return directive" and represents an indispensable element for the development of a genuine national policy on irregular migration. The detention of persons in an irregular situation remains a controversial subject. With the creation of the first Detention Centre in Luxembourg, independent from the penitentiary centre enclosure, there have been endless criticisms on the legitimacy, proportionality, conditions and duration of detention.

Like the Detention Centre, readmission agreements represent another element of national policy on coping with irregular migration. While Luxembourg has signed no bilateral readmission agreements, several agreements, negotiated either with the Benelux partners, or within the Schengen framework, are applicable in Luxembourg. These readmission agreements aim to facilitate the removal of irregular persons by defining the practical terms and conditions and the legal framework of the removal, but also the issue of travel documents. The signing of a Memorandum of Understanding (MoU) between Luxembourg and Nigeria in a period when Luxembourg has experienced a great number of Nigerian nationals in an irregular situation, demonstrates moreover that even in the absence of a written readmission agreement, Luxembourg attempted cooperation with the authorities of the countries of origin concerned in order to cope with a concrete situation deemed problematic. The contacts with the authorities of Kosovo in order to organise return of Kosovar nationals may be mentioned.

Also, the inclusion of Serbia on the list of safe countries of origin, the re-establishment of the use of the accelerated procedure (which already existed) constitutes a political response and resources for containing "migratory flows", just as at the same time as talks with the Serbian authorities.

While national policy focused on the return of persons, regularisation remains a limited alternative for a person who finds him/herself in an irregular situation and who wishes to get out of the

irregularity. The national legislation stipulates the possibility for the Minister in charge of immigration to grant a residence permit as a special case to persons residing without authorisation in Luxembourg if they fulfil well-defined conditions. However, in practice, the clauses of Article 89 prove difficult to apply and the conditions for regularisation come into contradiction with other provisions, in particular those focusing on the fight against illegal work. Actually, Article 89 requires proof of residence and of occupation in Luxembourg. However, providing this proof is at least equivalent to acknowledging the existence of illegal work and encouraging it to a certain extent. Over and above the provisions of Article 89, regularisations are possible in highly exceptional cases, linked to very serious humanitarian circumstances or to the family situation of the person concerned. Granting an autonomous residence permit or another authorisation conferring a right of stay for humanitarian or other reasons to a national residing without authorisation (residence permit for private reasons), is stipulated and the conditions of granting the authorisation have been relaxed with the modification of the law on the free movement of persons and immigration.

Moreover, the legislation stipulates alternatives for persons who for (well-defined) certain reasons cannot be returned: *suspension of removal* for medical reasons (necessitating medical treatment which cannot be undertaken in the country of return) and *postponement of removal* (replacing the *measure of tolerance*) which can be granted in situations where physical execution of the removal proves impossible due to circumstances of fact.

As regards practical measures implemented to reduce irregular migration, different measures are applied at the various stages of the irregular route.

As Luxembourg has no external borders with the exception of its airport and only has a limited diplomatic network, the country puts the emphasis on European cooperation and assumes its Community responsibility by contributing human, material and financial resources to FRONTEX operations.

In terms of measures, Luxembourg is concentrating on several initiatives and programmes which focus on the prevention of irregular migration, in particular by making available information on opportunities and constraints as well as on the legal framework of immigration to Luxembourg.

Control of persons, with the objective of identifying and detecting irregular migrants, is the responsibility of the Police Airport Control Unit. Systematic controls, undertaken at border passage points, are done in compliance with the Schengen Borders Code and comprise numerous procedures of verification of travel documents, consultation of computer data and assessment of travellers. To enable acquisition and monitoring of the necessary skills, the

members of the UCPA take part in various training courses, organised at the national and international level, as regards border control.

Controls conducted on Luxembourg territory as regards irregular migration and more particularly the fight against illegal work, are the responsibility of the Labour Inspectorate (ITM) in collaboration with the Grand Ducal Police. The ITM must ensure that the standards relating to clandestine or illegal work are respected including clauses on work permits for third-country nationals from a Member State of the European Economic Area. In the period 2007-2010, the Inspectorate organised several high-impact actions on work sites and in companies. Moreover no information on the follow-up of the reports was available.

Lastly, measures can be put in place to counter irregular migration, however none of these measures will be sufficient to cope with the determination of those who wish to or who are even obliged to leave their country of origin. Irregular migrants that the legislative provisions declare as such and produce are alone

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- European Migration Network, National Contact Point Luxembourg, www.emnluxembourg.lu
- IOM, Migrations and statistical data, New challenges, <http://www.iom.int/jahia/Jahia/developing-migration-policy/new-challenges/lang/fr>.

9. ANNEX

		2005			2006			2007			2008			2009				2010							
		RET. VOL	RET. FORCE	TOTAL	RET. VOL	RET. FORCE	TOTAL	RET. VOL	RET. FORCE	TOTAL	RET. VOL	RET. FORCE	TOTAL	RET. Centre de rét	dont assit. OIM	TOTAL	RET. VOL	RET. Centre de rét	RET. FORCE	dont assit. OIM	TOTAL				
CONTINENT																									
AFRIQUE																									
Guinée			5	5	1	5	6	1	4	5	5	2	7			13	4			17	11	3	6		
Nigéria			1	6	6	3	9	2	6	8			AFRIQUE						AFRIQUE				14		
EUROPE																									
Biélorussie			4	7	1	1	4	3	1	4	3	22	9				4		4	Algerie	1	5	3	6	
Russie			1	7	1	4	Russie	4	3	7			EGYPTE				5	2	7	Cape Vert	5	1	3	6	
BALKANS																								10	
Albanie			6	18	14	28	42	3	2	5			EUROPE			3	3	2	1	8	Biélorussie	6	2	6	8
Bosnie			4	9	10	35	Bosnie	13	7	20			BALKANS							BALKANS					
Kosovo			59	128	36	39	75	20	20	40	4	1	5			6	3	6	3	15	Bosnie	2	3	5	
Macédoine			7	13	4	7	Macédoine	2	1	3	56	31	87			52	7	23	19	82	Kosovo	51	3	35	89
Monténégro			40	81	15	40	55	17	16	33	1	9	10			8	2	4	10	Macédoine					
Serbie			7	14	10	26	36	4		4	8	9	17			4	1	1	5	Monténégro	9	1	4	10	
TOTAL		164	143	307	125	170	295	77	69	146	129	104	233	107	48	52	36	207	99	44	59	103	202		

Source: Direction de l'immigration @ EMMI MCP LU



The objective of the European Migration Network (EMN) is to provide up-to-date, objective, reliable and comparable information on migration and asylum to Community Institutions, Member States' authorities and institutions, and the general public, with a view to supporting policy-making in the European Union in these areas.



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