



Migrant access to social security and healthcare: policies and practice

Luxembourg

Main Study 2013

University of Luxembourg

**EMN National Contact Point
P.O. Box 2
L-7201 Walferdange, Luxembourg**

www.emnluxembourg.lu

E-mail: coordination@emn.luxembourg.lu

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

PREFACE

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

The present report was drafted by Adolfo Sommaribas, staff member of the National Contact Point Luxembourg within the European Migration Network, under the overall responsibility of Ass.-Prof. Dr. Christel Baltes-Löhr. Continuous support was provided by the members of the national network of the National Contact Point Luxembourg: Sylvain Besch (CEFIS), Sylvie Prommenschenkel (Directorate of Immigration, Ministry of Foreign Affairs), Germaine Thill (STATEC), and Marc Hayot (OLAI Reception and Integration Agency, Ministry of Family and Integration).

MIGRANT ACCESS TO SOCIAL SECURITY: POLICIES AND PRACTICE IN LUXEMBOURG

Executive Summary

The social security system in Luxembourg is in principle a contributory-based system different to other countries, which have a residence-based system.

The social protection system is composed of three major branches:

- a) **Social security:** This branch comprehends healthcare, sick cash benefits, maternity and paternity leave benefits, accidents at work and occupational diseases, long-term care, invalidity benefits, old-age pensions, survivors' pensions and family allowances. The social security benefits are financed by contributions paid either by the employer, the employee or the State. We include in this branch unemployment because the employee contributes to the system. The only requirements that the beneficiary has to fulfill are the objective criteria for granting each one of the benefits.
- b) **Social assistance system:** This branch comprehends the guaranteed minimum income (RMG), which is financed by general taxation and is paid from the general budget of the State. The persons have to prove that they do not have sufficient means to live when their income does not reach a certain threshold.
- c) **Social aid:** This is considered the safety net of the system. This aid allows people in need and their families to have a life in dignity. As the social assistance system it is financed by general taxation and in principle any person residing in Luxembourg can benefit from it if s/he fulfills the criteria. This benefit is granted and distributed by the social assistance offices of the municipalities.

After the Law of 13 May 2008 establishing the single status for salaried workers of the private sector, the administrative organization of the social security system was revamped and regrouped according to the different branches of risk they were going to insure. The National Health Fund (CNS), the National Family Benefits Fund (CNPF), the Accident Insurance Association (AAA), the National Pension Insurance Fund (CNAP), the Mutual Insurance Fund of enterprises (MDE) and the Jointly Center of the Social Security (CCSS) are autonomous institutions with legal personality.

The social security institutions are placed under the supervision of the government, which exercises a control on the legality of the decisions issued by their boards. The statutory supervision, as well as the system's conception, is carried on by the General Inspectorate of the Social Security (IGSS).

The Luxemburgish system is a universal social security system based on the general principle of equality. However, when talking of TCNs the residence status or migration-specific conditions become relevant in regard to the extent to which social security benefits can take advantage of them. If the objective conditions to grant a benefit are fulfilled, the law will not make any difference between a Luxemburgish national, EU national and a TCN and the benefit will be granted. There are some specific rules, which apply for third country nationals:

The fact of having a work contract or benefiting from unemployment benefits allows the TCN salaried worker resident permit to be renewed. In the other cases (accidents at work and occupational diseases, invalidity benefits, long-term care, etc.) the law does not foresee any type of remedy.

In some cases the residence permit cannot be renewed or can be revoked if the unemployment period extends over a certain period of time (i.e. the blue card holder will not have his/her residence permit renewed or can be revoked if the unemployment period extends over 3 months).

For being granted certain benefits there are several minimum thresholds of contributions, independent of the nationality of the applicant (i.e. maternity leave, old-age pension, invalidity benefits, and unemployment). For other categories of benefits, the TCN must prove other conditions, such as the time of residence on the territory (i.e. to be granted the guaranteed minimum income (RMG) a TCN will have to prove that s/he has resided in the country for at least five years during the last 20 years). If a TCN is applying for family reunification and is touching the RMG, the application will be denied. Nevertheless, benefiting from the social security system will not have any effect in the case of naturalization.

Luxembourg had signed over the years a great number of bilateral agreements on social security with non-EU countries.

The law and the treaties establish the exportability of benefits derived from of the Social Security System based on contributions (i.e. old-age, invalidity, survivor pensions as well as replacement income from work related accidents, health insurance).

Exportability of family allowances is not allowed because it is financed by general taxation. Most of the bilateral agreements signed by Luxembourg had been renegotiated to exclude the exportability of these benefits.

Most of the bilateral treaties regulate the case of posted workers. The Luxemburgish position is clear that in principle the worker has to pay social security contributions according to the law of the country in which s/he works. The application of the law of the country of origin must be the exception. The normal accepted period in these cases is of 12 to 24 months. However, there are several countries who have pressed for longer periods (60 months).

Luxembourg defends always the principle of equality and tries to have a broader scope that covers all the resident population of the country. Nevertheless, there are conventions in which the personal scope of the agreement is limited to their own nationals.

In regards to the costs of TCNs access to social security it is important to signal that in a contributory system the TCN have to be residents in the country and have to pay their contributions to the system. The analysis of costs must be considered in the particular demographic and labour market structure of Luxembourg where the TCN population represents 6,1% of the global population and 5% of the salaried work force.

A clear look of the costs during the period 2008 and 2012 demonstrates:

- A) that the increase of the TCN migrant population during the period has an impact on the demand for social security benefits;
- B) that the TCN population in average is younger than the Luxemburgish and EU population residing in the country;
- C) that the increase in demand of long-term care and old-age pensions demonstrates that also the TCN migrant population is beginning to age;
- D) that the number of effectives who received invalidity benefits and accident at work and occupational disease benefits indicate that a great number of these TCN effectives work in economic sectors where the labour conditions are harsh and constringent.

1. INTRODUCTION: OBJECTIVES, METHODOLOGY AND DEFINITIONS

1.1 Objectives

The overall objective of the study is to map the policies and administrative practices that shape third-country nationals' access to social security, including healthcare. There is substantial variation in how third-country nationals experience the social security system in EU Member States, as complex administrative rules and practices related to nationality, periods of employment, contributions, residency or transferability shape the pattern of take up of social security, including healthcare among migrant groups. By investigating the policies and administrative practices that shape migrant access to social security and healthcare, this study represents a necessary first step towards understanding how social security, including healthcare policies work for third-country workers and their families, within a managed migration system. EU and Member State policymakers may use the resulting "snapshot" of access across the EU to find more effective ways of meeting the basic needs of migrant workers while ensuring that immigrants do not become a burden for the Member State.

The specific aims of the study are to:

- Outline the formal EU and national rules that shape entitlements to social security and healthcare for third-country nationals in EU Member States; the study shall build upon information available (primarily from DG EMPL) on the functioning of social security systems for MS and other EEA nationals;
- Examine how these entitlements compare to the entitlements of nationals of the Member State in which the third-country nationals reside;¹
- Investigate the administrative practices that determine how the formal rules on eligibility for third-country nationals are applied in concrete cases, especially when implementing the 'habitual residence test' and other eligibility rules that contain a discretionary element;
- Identify the circulars, guidelines and other forms of support (e.g. training) provided to government officials involved in processing social security and healthcare claims in order to ensure that the discretionary criteria (e.g. in relation to the 'habitual residence test') are implemented consistently in individual cases within a Member State;
- Review the reciprocal agreements that exist between EU Member States and third countries that affect the entitlement to social security and healthcare of certain groups of immigrants.

The study will focus on the rules, institutions and administrative practices that affect access to social security and healthcare of third-country nationals only. The issue of access is particularly relevant to third-country nationals who may be exposed to the double risk of losing entitlements to social security and healthcare benefits in their country of origin through absence, while facing restrictions to these benefits in their destination country. The issue of access can also interact in important ways with the mobility patterns of third-country nationals.

The study will concentrate on two over-arching categories of third-country nationals in particular: third-country nationals holding long-term residence permits², and third-country nationals holding

¹ The comparison does not extend to 'mobile' EU nationals i.e. EU citizens who move to and reside in a second EU Member State, whose entitlements are governed by the EU's social security coordination rules.

² Articles 4 to 7 of Council Directive 2003/109/EC and article 80 of the Law of 29 August of 2008 on free movement of persons and immigration.

fixed-term residence permits.³

Mobile third-country nationals, including cross-border workers and those who have been posted and transferred from one Member State to another, are excluded from the scope of the study. The social security and healthcare rights of mobile third-country nationals are covered by the EU's social security coordination rules, which [Regulation \(EU\) No 1231/2010](#) extended to third-country nationals in a cross-border situation, their family members and survivors. Also tourists, students and international protection applicants and beneficiaries are excluded from the scope of this study.

The outcome of this study is primarily intended for:

- Policymakers, including relevant Ministers and policy officers (at EU and national level) concerned with developing and implementing social security rules within a managed migration system;
- National experts, e.g. in Universities, research institutions and think-tanks, working on the interaction between migration and social security / welfare policy;
- Other stakeholders and practitioners, for example, non-governmental organisations (NGOs) and NGO networks;
- Members of the wider public with an interest in migrant access to social security benefits;
- The media.

1.2 Definitions

The following terms used in the study specifications are defined as follows:

'Benefits in respect of accidents at work and occupational diseases' refer to benefits that are provided to persons, or their survivors, who have conducted an economic activity which by its nature is likely to cause the said disease.⁴

'Cross-border worker' is someone who is employed in one (Member) State but resides in another, where he/she returns at least once a week.⁵

'Deciding officer' is the government official in charge of scrutinising and adjudicating benefit claims.

'Discretionary conditions' in this study refers to eligibility rules for particular social security benefits which cannot be easily defined. Eligibility rules that have a discretionary element require the deciding officer in charge of scrutinizing individual applications to make a judgement – usually by means of an interview – about whether the applicant has met the conditions, taking into account the applicant's particular circumstances. An example of a discretionary condition is the 'habitual residence test'.

'Employed persons' are persons aged 16-64, who during the reference week performed work, even for just one hour a week, for pay, profit or family gain, or, who were not at work but had a job or

³ In example, workers (including researchers, seasonal workers, cross-border workers and workers with any other type of time-bound or fixed term residence status), the self-employed, unemployed persons (also referred to as job-seekers in certain countries), and family members of third-country nationals and determine if the all the benefits or part of them apply to them.

⁴ European system of integrated social protection statistics (ESSPROS) Manual, 2008 Edition, Eurostat

⁵ Eurofound

business from which they were temporarily absent because of, e.g., illness, holidays, industrial dispute or education and training.⁶

'Family benefits' refer to benefits that provide financial support to households for bringing up children; provide financial assistance to people who support relatives other than children; and provide social services specifically designed to assist and protect the family, particularly children.⁷

'Family member' generally means persons married to a migrant, or having a relationship legally recognised as equivalent to marriage, as well as their dependent children and other dependants who are recognised as members of the family by applicable legislation.⁸

'Frontier worker' refers to someone who is employed in the frontier zone of a Member State but who returns each day or at least once a week to the frontier zone of a neighbouring (third-country) in which they reside and of which they are nationals.⁹

'Guaranteed minimum resources' refers to benefits provided to people with insufficient resources. It includes support for destitute and vulnerable persons to help alleviate poverty or assist in difficult situations.¹⁰

'Habitual residence test', in the context of social security claims, implies a close association between an individual applicant and the country from which a social security payment is claimed. The criteria for 'habitual residence' is deliberately not defined in EU nor national regulations, as it is understood that the precise definition should depend on each individual claimant's particular circumstance. However, the European Court of Justice has developed case-law that should be taken into account by deciding officers when applying a 'habitual residence test'.

'Healthcare' refers to medical care provided in the framework of social protection to maintain, restore or improve the health of the people protected.¹¹

'Inactive persons' are those who are not in the labour force so are neither classified as employed nor as unemployed. This category therefore does not include job-seekers.¹²

'Invalidity benefits' refer to benefits that provide an income to persons below standard retirement age as established in the reference scheme whose ability to work and earn is impaired beyond a minimum level laid down by legislation by a physical or mental disability; provide rehabilitation services specifically required by disabilities; provide goods and services other than medical care to disabled people.¹³

'Long-term care benefits' are cash allowances, which enable the standard of living of persons in the need of care to be improved as a whole, so as to compensate for the additional expense brought about by their condition. They cover additional costs for people who frequently need the help of another person due to their old-age or disability.¹⁴

⁶ Eurostat

⁷ European system of integrated social protection statistics ESSPROS, Manual, 2008 Edition, Eurostat

⁸ EMN Glossary 2.0

⁹ EMN Glossary 2.0

¹⁰ European system of integrated social protection statistics ESSPROS, Manual, 2008 Edition, Eurostat

¹¹ European system of integrated social protection statistics ESSPROS, Manual, 2008 Edition, Eurostat

¹² Eurostat

¹³ European system of integrated social protection statistics ESSPROS, Manual, 2008 Edition, Eurostat

¹⁴ European system of integrated social protection statistics ESSPROS, Manual, 2008 Edition, Eurostat

‘Long-term resident’ is any third-country national who has long-term resident status as provided for under Articles 4 to 7 of Council Directive 2003/109/EC or as provided for under national legislation. The study specifications distinguish between these two categories and EMN NCPs are asked to do the same in their national reports.

‘Maternity and paternity benefits’ refers to the compensation rates paid to female or male workers who take leave from work on the birth or adoption of a child.

‘Migrant worker’ refers to foreigners admitted by the receiving State for the specific purpose of exercising an economic activity remunerated from within the receiving country. Their length of stay is usually restricted as is the type of employment they can hold.¹⁵

‘Mobile third-country national’ refers to third-country nationals who move from one (Member) State to another (Member) State normally to stay for more than 3 months in the other (Member) State and principally for the purpose of work.¹⁶

‘Old-age pensions and benefits’ cover benefits that provide a replacement income when the aged person retires from the labour market; and guarantee a certain income when a person has reached a prescribed age.¹⁷

‘Researcher’ refers to a third-country national holding an appropriate higher education qualification, which gives access to doctoral programmes, who is selected by a research organisation for carrying out a research project for which the above qualification is normally required.¹⁸

‘Seasonal worker’ is a (third-country national) worker who is resident in a third country but is employed in an activity dependent on the rhythm of the seasons in the territory of a Member State on the basis of a contract for a specific period and for specific employment.¹⁹

‘Self-employed persons’ are persons who are the sole or joint owner of an unincorporated enterprise (one that has not been incorporated i.e. formed into a legal corporation) in which he/she works, **unless** they are also in paid employment which is their main activity (in that case, they are considered to be employees). Self-employed people also include unpaid family workers; outworkers (who work outside the usual workplace, such as at home); and workers engaged in production done entirely for their own final use or own capital formation, either individually or collectively.²⁰

‘Sickness cash benefits’ refer to cash benefits that replace in whole or in part loss of earnings during temporary inability to work due to sickness or injury.²¹

‘Student’ refers to a third-country national accepted by an establishment of higher education and admitted to the territory of a Member State to pursue as his/her main activity a full-time course of study leading to a higher education qualification recognised by the Member State, including diplomas, certificates or doctoral degrees in an establishment of higher education, which may cover a

¹⁵ OECD Glossary of Statistical Terms

¹⁶ EMN Intra-EU mobility study Advisory Group

¹⁷ European system of integrated social protection statistics ESSPROS, Manual, 2008 Edition, Eurostat

¹⁸ EMN Glossary 2.0

¹⁹ EMN Glossary 2.0

²⁰ Eurostat

²¹ European system of integrated social protection statistics ESSPROS, Manual, 2008 Edition, Eurostat

preparatory course prior to such education according to its national legislation.²²

'Survivors' benefits refer to benefits that provide a temporary or permanent income to people who have suffered from the loss of the spouse or a next-of-kin, usually when the latter represented the main breadwinner for the beneficiary.²³

'Third-country national' refers to any person who is not a citizen of the European Union within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union, and who is not a person enjoying the Union right to freedom of movement as defined in Article 2(5) of the Schengen Borders Code.²⁴

'Unemployment benefits' refer to benefits that replace in whole or in part income lost by a worker due to the loss of gainful employment; provide a subsistence (or better) income to persons entering or re-entering the labour market; compensate for the loss of earnings due to partial unemployment; - replace in whole or in part income lost by an older worker who retires from gainful employment before the legal retirement age because of job reductions for economic reasons; and contribute to the cost of training or re-training people looking for employment.²⁵

'Unemployed persons' are persons aged 16-64 who were without work during the reference week, but currently available for work, or who were either actively seeking work in the past four weeks or who had already found a job to start within the next three months.

'Unreasonable burden on the social assistance system' To determine if there is an unreasonable burden on the social assistance system the authorities take into consideration the total duration of the stay and the monthly and total income of the benefits received by the beneficiary.²⁶

1.3 **Methodology**

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

The EMN engages primarily in desk research, i.e. it collects and analyses data and information already available or published at the Member State or international level. The present report was produced by drawing upon a number of different sources of information, all of which are listed in the bibliography by type of document. This includes sources of national and EU legal documents which are referred to in the report.

1.3.1. **Literature review**

Initially, a research of academic-oriented literature as well as policy-related publications on social security policy in the national context was made. The basis of the information was found in the

²² EMN Glossary 2.0

²³ European system of integrated social protection statistics ESSPROS, Manual, 2008 Edition, Eurostat

²⁴ EMN Glossary 2.0

²⁵ European system of integrated social protection statistics ESSPROS, Manual, 2008 Edition, Eurostat

²⁶ Interpretation of article 24 (4) of the Law of 29 August 2008 on free movement of persons and immigration. Answer of the Directorate of Immigration, 22 January 2014.

publication of the Ministry of Social Security (Droit de la Sécurité Sociale, 2013), the Mutual Information System on Social Protection (MISSOC) and the Centre des Liaisons Européennes et Internationales de Sécurité Sociale (CLEISS).

1.3.2. Archival analysis

An archival analysis has been carried out to determine the national vision, policy and legislation in relation to social security policy. This involved the collection and analysis of relevant policy and legal documents, including government programmes, official speeches, opinions of different stakeholders on different bills, the minutes of the public parliamentary sessions, and responses to parliamentary inquiries. Also a compilation of the different annual reports of the different Ministries (Ministry of Foreign Affairs and Immigration, Ministry of Social Security, Ministry of Labour and Employment) as well as the reports of the different social security institutions involved.

To the best of our knowledge this is the first study that addresses the access of third country nationals to social security benefits.

1.3.3. Semi-structured interviews

Semi-structured interviews were conducted with ministerial authorities and social security officers. Also interviews with practicing lawyers were conducted. The main objective of these interviews was to obtain their point of view on the legal framework, procedures, restrictions and problems that the migration of third country national have to access social security benefits.

1.3.4. Jurisprudence research

A jurisprudence research was conducted on the database of the CCSS (www.ccss.lu/jurisprudence), and the administrative jurisprudence database of the Grand-Duchy of Luxembourg on migration and international protection (www.emn.lu).

1.3.5. Statistics

The Inspectorate General of Social Security in its website published a complete set of statistics on each of the branches of the social security system. Nevertheless, they are not disaggregated by citizenship when dealing with third-country nationals. LU EMN NCP had sent a statistical request to the principle statistical providers such as General Inspectorate of Social Security (IGSS), the Administration for the Development of Employment (ADEM) and the Central Service for Statistical and Economic Studies (STATEC). The data used in sections 7.2 and 7.3 came from the data provided by the IGSS and not from the service provider.

This national report will summarize information already available (i.e. MISSOC, CLEISS, IGSS, etc.) and complement it in regards with the legal framework that regulates the authorisation of entry and stay of third country nationals, including jurisprudence that is disseminated in different sources.

During the research of statistics we came across a very particular problem. The third country national population is very small (6%) in regards with the global national population. Having access to

anonymous data on the field of social security benefits, especially if disaggregated by citizenship, by age, sex and duration of affiliation, can cause problems of confidentiality of personal data of the beneficiary persons because in some cases there is only one person who fulfils the criteria and easily identifiable. To sort this problem the LU EMN NCP proposed the respective authority to provide the average age, continent of origin and average duration of affiliation to avoid the protection of data issues.

2. OVERVIEW OF THE NATIONAL SOCIAL SECURITY SYSTEM AND HOW IT APPLIES TO MIGRANTS FROM THIRD COUNTRIES

2.1. Overview of social security benefits and programmes and their financing mechanisms

The Luxemburgish social security system is based on the Convention n° 102 of the International Labour Organisation on the minimum standards of Social Security adopted in the 35th session of the ILO in Geneva on 28 June 1952 which entered into force on 27 April 1955.²⁷ This convention was ratified by Luxembourg by Law of 13 January 1964.²⁸

At the time, Luxembourg recognized which events will be qualified as social risks: a) healthcare; b) sickness cash benefits; c) unemployment; d) old-age; e) accidents at work and occupational disease; f) maternity; g) invalidity; h) death; i) family charges.²⁹

In Luxembourg these benefits are regrouped in 5 branches:

1. Sickness and Maternity insurance (dependency – long-term care – is administrated by the Sickness and Maternity insurance)
2. Accident at work and occupational disease insurance
3. Old age, invalidity and death insurance
4. Family benefits
5. Unemployment

This division is not only the result of links between the situations considered as “social risks” but also the result of an historical development.³⁰

The two major sources of financing of the compulsory schemes of social security are:

- Contributions paid either by the employee or/and the employer
- Financial contribution of the public authorities.

Contributions:

Contributions represent the classic financial source of social insurances and they are ‘paid by the employees and/or by the employers. They are calculated exclusively on the gross professional income of the individual by means of an uniform contribution rate independently of the particular situation of the individual (age, family situation, health status), but specific in regards with the insured risk.³¹ These contributions are particularly adapted seen that they have to cover benefits which constitute

²⁷ ILO, [Convention n° 102](#), 1952

²⁸ [Law of 13 January 1964](#), published in “Mémorial n° 6” of 23 January 1964.

²⁹ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 31

³⁰ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 32

³¹ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 393.

replacement income (pensions, rents, indemnities), that are proportional to the lost income and where contributions represent the links between the insured income and the benefits.³²

Financial contribution of the public authorities

This contribution can take different forms:

- 1) the cost of the benefits are covered by the public authorities from its budget;
- 2) a lump-sum contribution;
- 3) the coverage ex-post of a deficit in the current expenses of a scheme
- 4) allocation to reserves, etc.
- 5) special tax (i.e. solidarity tax)

These contributions are financed by taxes³³. The main difference in regards with personal contributions is that these contributions are made by the national community as a whole. They are justified especially in the case of uniformed benefits which are guaranteed to the largest part of the population and which do not depend on contributory income.³⁴

The financial system of the social security is a method which goal is to maintain a financial balance between the income and the expenses of the social security scheme. This mechanism allows to determine at any precise moment the amount of the financial premium and the level of needed reserves to maintain the balance. It is the result of the equivalence equation which must be applied in each social security scheme:

Reserves + Actual value of income generated by probable future premiums = Actual value of probable future expenses.³⁵

This formula has to be linked to a very precise risk pool.

In Luxembourg each scheme is financed in a different way.

1. Sickness and maternity³⁶:

The system is financed according the burden-sharing system with constitution of a reserve which cannot be inferior to 10% nor superior to 20% of the yearly normal expenses.

The sickness and maternity contribution is on all professional income of the individual (salary, benefits in kind, etc.),³⁷ excepting of the overtime premium.³⁸ It is also on all pension and rents of the

³² Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 393.

³³ Fiscalisation of social security resources. See Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 393.

³⁴ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 394

³⁵ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 394

³⁶ The financing of maternity benefits are financed by the sickness insurance in accordance with the Law of 17 December 2010 on the reform of the health care system.

³⁷ See <http://www.ccss.lu/salaries/remuneration/>

³⁸ Article 4 (3) of the grand-ducal regulation on the execution of article 115 n° 11 of the amended law of 4 December

insured person and any replacement income on which a withholding amount is allowed by the law.³⁹

The minimum contributable income is the monthly social minimum salary⁴⁰. The maximum contributable income is 5 times the monthly social minimum salary.⁴¹

It is important to mention that the Luxemburgish State takes in charge 40% of the contributions.⁴²

The contribution rate⁴³ is fixed in a way that it covers all the expenses of the sickness and maternity insurance including the contribution to the reserve fund and the reimbursement to the Mutual Insurance Fund of Enterprises for any salaries or other advantages advanced to the employee in regards with sick leave, family reasons leave, end-of-life support leave and the apprentices and trainees' and salaried workers' trial period foreseen by the Labour Code. Nowadays it also includes all expenses related to maternity leave.⁴⁴ This contribution rate is applied to all insured persons independent of their income and at the moment is fixed at 2,8% (for each one of the contributors: insured person and employer).⁴⁵

2. Long-term care benefits

The system is financed according the burden-sharing system with constitution of a reserve which cannot be inferior to 10% of the yearly normal expenses.⁴⁶ The system is financed by the contribution of the State (40% of the total expenses), a special contribution which comes from the tax on all electricity sales to final costumers⁴⁷, and a contribution paid by all insured persons.

The contribution rate is 1,4% on all professional income or replacement income as well as capital income. Different from the sickness insurance, the long-term care insurance does not have a minimum or maximum contribution threshold. Nevertheless, there are adjustments made in regards to replacement income or according to the number of hours that the person works.⁴⁸ The contribution is collected by the Social Security Common Centre if it comes from professional income and the Tax

1967 on Income Tax. See http://www.impotsdirects.public.lu/legislation/legi07/Loi_du_21_d_cembre_2007.pdf

³⁹ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 398

⁴⁰ Salaire social minimum mensuel. The monthly social minimum salary from 1 January 2013 is of 1.874,19 euros. See http://www.gouvernement.lu/salle_presse/communiqués/2013/01-janvier/07-ssm/ The Social minimum salary was modified for 2013 by the Law of 26 December 2012 modifying article L. 222-9 of the Labour Code. This amount is adjusted in certain cases depending of the age of the insured person.

⁴¹ This is 9.370,94 euros

⁴² Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 401. Outside of this contribution the State, as a transitional measure until 31 December 2014, allocates 20 million euros to the sickness, maternity insurance to compensate in a flat-rate basis the supplementary expenses covered by the National Health Fund with the assumption of the maternity benefits.

⁴³ The contribution rate is adjusted by the Board of Directors of the National Health Fund and enters into force the 1 January of the year when the reserves fall outside of the thresholds of 10% to 20% of the yearly annual expenses. If the Board of Directors has not adjusted the rate by 1 December it is the responsibility of the Minister to do it by ministerial decision. Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 403.

⁴⁴ This is due to the [Law of 17 December 2010 on reform of the healthcare system](#), published in Mémorial A-242 of 27 December 2010.

⁴⁵ The total amount is 5,6%.

⁴⁶ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 404.

⁴⁷ Consumption over 1 million Kwh.

⁴⁸ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 405

authority collects it if it comes from capital income and from complementary pension schemes.⁴⁹

This contribution is not deductible from the taxable income as special expenses.⁵⁰

3. Accident at work and occupational disease insurance

The system is financed according the burden-sharing system with the constitution of a reserve that cannot be less than the total yearly expenses of the biennium before last. The system is financed by the contributions made by the employers. The contribution rate is fixed on an annual basis according to the budget of the Accident Insurance Association (AAA). The minimum and maximum contribution incomes are determined in reference to the professional income in the framework of the old-age pension scheme.

The contribution rate is fixed at 1,1%.

The State reimburses the AAA the benefits paid to insured persons covered by special schemes and the correspondent administrative costs.

4. Old-age pension and benefits

The system is financed according the burden-sharing system by 10 years-coverage periods with the constitution of a compensation reserve which has to be at least 1,5 times of the total yearly expenses. The contribution rate is applied to all professional income included all benefits in kind.⁵¹ The minimum contribution income is the monthly minimum social salary⁵² and the maximum contribution income is 5 times the reference amount of 12 monthly minimum social salaries of a non-qualified individual.⁵³

The system is financed by an equal contribution of the employee, the employer and the State. The global contribution rate is fixed for the period 2012-2022 at 24% (each contributor pays 8%).

5. Family benefits

The system is based on the burden-sharing system with the constitution of a reserve. The contribution rate is adjusted by grand-ducal regulation. This adjustment only occurs if the budget of the National Family Benefits Fund exceeds 15% of the yearly expenses of the previous year.⁵⁴ It will only enter into force on January 1st of the following year.

The contribution has to be paid by:

⁴⁹ Idem.

⁵⁰ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 406

⁵¹ Excluding the supplementary income coming from working overtime. See [Grand ducal regulation of 16 December 2008](#).

⁵² See footnote 38. It is important to mention that there are some reductions foreseen by the law.

⁵³ It is the average of the 12 months during which the individual was insured in the scheme.

⁵⁴ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 414.

- 1) For the public sector, the employer pays a contribution of 1,7% of the professional income (up a threshold limit) to the National Family Benefits Fund.
- 2) The State pays the contributions of all the private sector employees, farmers and self-employed workers.⁵⁵ The contribution rate is of 1,7% of the professional income. The State contributes the same amount than that of contribution. The childbirth, maternity and the back-to-school allowances are exclusively at the charge of the State.

6. Unemployment benefits:

The employment fund is financed by a “solidarity tax” that is paid by individuals and it represents 7% of the adjustable taxable income up to 150.000 euros (for class 1 and 1a taxpayers) or 300.000 euros for class 2 taxpayers. Over this threshold the tax rate is 9%.⁵⁶

A tax on corporation is fixed on 5% of the adjustable tax income.

7. Minimum resources benefits:

The Guaranteed minimum income (GMI) is a social and financial assistance that the State provides to the residents which resources are inferior to the minimum social salary established by law. This financial assistance is established in the annual budget of the State each year.⁵⁷

Collection of social contributions

The total amount of social attributions can be described in the [table below](#):

Table n° 2.1: Contribution rate from 1 January 2013

Risk	Insured person	Employer	Monthly threshold
Sickness & Maternity			
- Income	2,80%	2,80%	9 370,94 ⁵⁸
- Benefits in kind	0,25%	0,25%	9 370,94
Mutual Insurance Fund of enterprises ⁵⁹	-	Between 0,42% and 2,64% ⁶⁰	-

⁵⁵ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 416.

⁵⁶ [Law of 21 December 2012 which amends article 6 paragraph 1 of the Law of 30 June 1976 creating the Employment Fund](#). This article reads: « Pour les années d'alimentation du fonds pour l'emploi, l'impôt sur le revenu des personnes physiques est porté à 107% du montant qui se dégage de l'application des dispositions des articles 118, 120, 120 bis, 121, 131 et 157 à 157ter de la loi modifiée du 4 décembre 1967 concernant l'impôt sur le revenu. Le même impôt est porté à 109% pour la tranche de revenu imposable ajusté dépassant respectivement 150.000 euros en classes 1 et 1a ou 300.000 euros en classe 2. »

⁵⁷ For 2013 the authorised budget for the FNS is of 229.040.384 euros. From that amount only 5.115.650 are destined to human resources and operational costs (2,2%). See [Law of 21 December 2012](#) (Budget of the State 2013), pp. 166-167.

⁵⁸ This amount is the equivalent of 5 times the minimum social salary.

⁵⁹ See below Section 2.1.1, under Administrative organization point 2.

⁶⁰ This depends in the foreseen class of risk (there are four classes: 1 = 0,42%, 2 = 1,33%, 3 = 1,83% et 4 = 2,64%) and the financial absenteeism rate of working during the previous year. See <http://www.mde.lu/?p=300>

Surcharge ⁶¹	0,0% ⁶²	-	-
Old age, invalidity, survivor	8%	8%	9 370,94
Long-term care	1,4%		Gross income
Accident at work	-	1,10%	9 370,94
Occupation disease	-	0,11%	Gross income

The employer must pay the total amount of the monthly social contributions (employees and employer) to the Joint Center for Social Security. The amount is calculated based on the gross monthly salaries declared by the employer through the salary lists.

The State contributes 1,7% for the employees of the private sector to the National Family Benefits Fund.

2.1.1 Please provide a narrative overview of the social security system in your Member States including a description of the institutional framework, key institutions involved, their main responsibilities and how they are coordinated.

The social security system in Luxembourg is characterized as a range of efforts destined to repair the consequences of certain events qualified as “social risks”.⁶³

The objective is to sufficiently protect any person against a certain number of situations which can reduce or suppress its professional activity, impose additional burdens, leave him/her in a situation of need or to reduce him/her to a situation of dependence.⁶⁴

The structure of the social security system is integrated by three different levels⁶⁵:

- a) Compulsory and complementary social security scheme.
- b) Financial public assistance. This scheme is based on the solidarity principle and the benefits that are granted do not imply a counterpart from the beneficiary.
- c) Social aid.

The Luxemburgish social security system covers compulsorily its beneficiaries against all the risks: sickness, dependence (long-term care), maternity, old-age, invalidity, survivor's rights, labour related accidents and occupational diseases, family benefits and unemployment.⁶⁶

⁶¹ This surcharge is to finance the Mutual Insurance Fond of employer. It was paid by the “manual” workers for a transitional period until the 31 December 2013. Until 2011 the surcharge rate was of 2,1% it was lower to 1% in 2012 and it will disappear on 2014.

⁶² Even though the transitional period ended on 31 December 2013 it brought to 0% by [Law of 21 December 2012](#) (Budget of the State 2013). See also, http://www.ccss.lu/fileadmin/file/ccss/PDF/Avis_public/AF012013_80_99.pdf

⁶³ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 31

⁶⁴ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 31

⁶⁵ Interview with an expert of the IGSS on 21 October 2013

⁶⁶ CLEISS (Centre des Liaisons Européennes et Internationales de Sécurité Sociale), [Le régime luxembourgeois de sécurité sociale](#), 2012, p. 1

Next to the basic system there are complementary pension regimes established by the employers.⁶⁷

Also in case that the persons residing legally in Luxembourg do not have sufficient means to live, they can benefit of a financial public assistance, when their income does not reach a certain threshold.⁶⁸

Finally there is a safety net which completes the system. This safety net is called social aid.⁶⁹ This aid allows people in need and their families to have a life with dignity. In principle any person residing in the Grand Duchy of Luxembourg can benefit of this aid if s/he fulfills the criteria.

Administrative organization:

Until 2008, the Luxemburgish social security system was organized according to the different professional status⁷⁰. With the enter into force of the Law of 13 May 2008 establishing a unique status for salaried workers of the private sector⁷¹ this organization became superfluous and unnecessary. This situation provoked the grouping of the social security system around four national insurance funds according to the different branches of risks they were going to insure: the National Health Fund⁷², the National Family Benefits Fund, the National Accident Insurance Fund and the National Pension Insurance Fund⁷³ and the Jointly Center of the Social Security was created.⁷⁴

The different institutions of the social security system are public bodies having legal personality. As they are autonomous bodies they have their own assets which guarantee their liabilities. These institutions establish their own budget separately from the budget of the State and they have to do a financial statement at the end of the fiscal period.

The social security institutions are administrated by organs composed of elected representatives of the employers, insured salaried workers and self-employed insured persons. Their designation is made by the different professional chambers. These representatives are elected for a 5 years period except when they are designated to finish the period of a predecessor.⁷⁵ The Luxemburgish State is represented by a public servant who acts as president of the board⁷⁶ of each institution.⁷⁷

⁶⁷ Even if these institutions are financially autonomous they are regulated by the Inspectorate General of the Social Security under the authority of the Ministry of the Social Security. See CLEISS, op.cit., p. 1

⁶⁸ See CLEISS, op.cit., p. 1

⁶⁹ See articles 1, 2 and 4 of the [Law of 18 December 2009 organizing social aid](#)

⁷⁰ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 424

⁷¹ [Loi du 13 mai 2008 portant introduction d'un statut unique pour les salariés du secteur privé](#)

⁷² The National Health Fund fusioned the « Union des caisses de maladie (Sickness Funds Union) », the salaried worker sickness funds of the private sector and the self-employed sickness funds. Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 424

⁷³ This Fund regrouped the existing four pension insurance funds. However, the Compensation Fund was kept as a distinct juridical entity.

⁷⁴ The CCSS took over the agencies of the Worker Sickness Fund and transformed them in local agencies for the whole social security system as a multifunctional one-stop-shop. Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 424

⁷⁵ These representatives are liable for their actions according to civil law and they fulfill their duties without any salary retribution, with the exception of the reimbursement of the actual expenses incurred and an allowance. Also they are granted administrative leave to fulfill their duties. Ibid. p. 425.

⁷⁶ For more information on the functioning of the board of directors, see Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 425

⁷⁷ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg](#),

The social security institutions are placed under the supervision of the government, which exercises a control on the legality of the decision issued by the boards of the directors of the institutions.⁷⁸

The General Inspectorate of the Social Security⁷⁹, under the authority of the Ministry of the Social Security⁸⁰, ensures the system's conception and the statutory supervision of the social security institutions.⁸¹ It is the surveillance authority of the other social security institutions.

Its main functions are to:

1. contribute to elaborate normative measures on social security;
2. control all the social institutions involved in the system⁸²;
3. establish the actuarial statement of the pensions' schemes in collaboration with all the institutions concerned;
4. collect data at the national and international level in accordance with a uniform code of accounts and statistics for all social institutions;
5. prepare projects on social programming at middle and long term following the guidelines set by the government;
6. contribute at international level in the elaboration of EU regulations and directives and the bi or multilateral conventions on social security of migrant workers and supervise its implementation in the country;
7. assist social security institutions in the elaboration of administrative procedures based on a common methodological framework.⁸³

The Assessment and Orientation Unit (Cellule d'évaluation et orientation - CEO), which is a special multidisciplinary agency, assesses the need and decides upon the duration of the necessary services for dependent persons (long-term care insurance).⁸⁴ The CEO is attached, from an administrative point of view, to the IGSS. Its mission is to:

- recognize the dependency status and to determine the necessary aids and care required;
- issue the opinions concerning the attribution of benefits in cash or kind, necessary productions for aid and care, devices and housing adjustments as well as the decision withdrawing, reducing or revoking these benefits;

[avril 2013](#), p. 425

⁷⁸ The law establishes a certain number of decisions of these organs which require approval from the Ministry of the Social Security.

⁷⁹ [Inspection général de la sécurité sociale](#).

⁸⁰ [Ministère de la Sécurité Sociale du Grand-Duché du Luxembourg](#)

⁸¹ MISSOC, [Your social security rights in Luxembourg](#), p. 5

⁸² This control is not only limited to the legal requirements but also to the regularity of the financial operation of the institutions. This allows the IGSS to control any social security institution at any time and the institutions are compelled to provide the books, documents, assets and any other documentation required by the IGSS to fulfil its supervision duty. It is also important to mention that if any decision of a social security institution is against the law the IGSS by motivated decision can suspend its execution until a decision of the Ministry of Social Security occurs declaring the nullity of the decision. If the decision does not occur in a period of 40 days the suspension is lifted. Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), pp. 425-426.

⁸³ See <http://www.mss.public.lu/acteurs/igss/> For more information see Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 426

⁸⁴ http://www.mss.public.lu/acteurs/org_ceo/

- propose measures of reeducation and rehabilitation;
- establish a network for assuring the aids and care required by the beneficiary either at home or in an institution;
- take a decision on a split plan of aids and care required between the entourage of the patient and the external network put into place for that effect;
- advice the responsible authorities on the necessary adapted infrastructure of the dependent population, which must be of quality and economically viable;
- control the quality of the services rendered to the beneficiaries⁸⁵;
- control the adaptation of the services effectively rendered and the needs of the dependent person;
- provident expert advices to other public services.⁸⁶

The CEO can conclude partnership agreements with other specialized services except if they already have agreements signed with the National Health Fund (CNS).⁸⁷

There are ten public institutions, which deal with social security benefits. These institutions are financially autonomous and managed by social partners (employers and employees).

1. National Health Fund (CNS)

The National Health Fund (Caisse nationale de santé ou Gesondheetskées) is responsible to handle sickness insurance for all employees of the private sector.⁸⁸ It has general competence for sickness insurance, maternity and long-term care benefits.⁸⁹ In relation with the long-term care benefits the Assessment and Orientation Unit⁹⁰, assesses the need and decides upon the extent of the necessary services for dependent persons.

In the public sector, three funds continue to exist:

- a) The Sickness Fund for Civil Servants and State Employees (Caisse de maladie des fonctionnaires et employés publics);⁹¹
- b) The Sickness Fund for Civil Servants and Employees of local authorities (Caisse de maladie des fonctionnaires et employés communaux);⁹²

⁸⁵ The employees of the CEO can perform this duties between 6 :30 and 20 :00. Also for fulfilling its duty the CEO can required from any person subject to professional secret the information required to execute its mission. Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 443

⁸⁶ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 442

⁸⁷ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), pp. 443.

⁸⁸ It was created by the fusion in 2009 of all the private health funds (Health Funds Union and the six private health funds of the private sector – CMEP, CMO, CMEA, CMOA, CMA and CMPI). This was the result of the [Law of 13 May 2008](#) introducing the single statute for private employees. The CNS has 17 agencies on the country.

⁸⁹ CLEISS, op.cit., p. 2

⁹⁰ [Cellule d'évaluation et d'orientation](#) created by article 385 of the Social Security code ([law of 19 June 1988 introducing the long-term care benefits](#))

⁹¹ The insure person must have a professional activity as civil servant or state employee. Also are affiliated persons who receive a pension which is paid from a non-contributory scheme. See <http://www.guichet.public.lu/citoyens/fr/organismes/caisses-maladie-secteur-public/caisse-maladie-fonctionnaires-employes-publics/index.html>

⁹² The insured persons employees from the municipalities or retirees benefiting from a pension paid from an insurance fund for municipal civil servants and employees. <http://www.guichet.public.lu/citoyens/fr/organismes/caisses-maladie->

- c) The Mutual Sickness Fund for Railway Employees (Entraide médicale des chemins de fer luxembourgeois).⁹³

The CNS is under the responsibility of a Steering committee (comité directeur) which is composed by a president, who is a public servant appointed by the Grand-Duke, five representatives of the salaried workers from the public sector appointed by the Chamber of Private Employees (Chambre des Salariés), a representative appointed by the Railway Employees group of the Chamber of Private Employees, a representative of public sector employees chosen by the municipal employees group by the Chamber of the Functionaries and public employees (Chambre des fonctionnaires et employés publics- CFEP), a representative of the public sector chosen by the public sector employees group of the CFEP, a representative by the Chamber of Commerce, another chosen by the Chamber of Trades (Chambre de Métiers), an appointee of the Chamber of Agriculture and five representatives of employers chosen by the Chamber of Commerce and the Chamber of Trades.⁹⁴

When dealing with cases related to the long-term care benefits the Steering Committee decides without the representatives of the employers.⁹⁵

The main attributions of the Steering committee are to⁹⁶:

- establish the annual budget for the sickness-maternity insurance taking into consideration the budget of the public sector sickness funds;
- establish a multiannual program;
- adjust the contribution rates;
- decide on the financial statements of the sickness-maternity insurance;
- establish the status concerning all the different types of benefits granted;
- establish the regulations concerning the function of the CNS;
- prepare the negotiations with the care service providers and to pronounce on the result of the negotiations;
- administrate the real estate assets of the fund;
- take all the decisions concerning the fund's personnel

In regards with the long-term care insurance the Steering Committee's main attributions are⁹⁷ to:

- establish the annual budget for the long-term care insurance to be approved by the Minister of Social Security upon the advice of the IGSS;
- prepare the negotiations with the care service providers and to pronounce on the result of the negotiations;
- take individual decisions for granting all the different types of benefits.

2. Mutual Insurance Fund of enterprises (MDE)

secteur-public/caisse-maladie-fonctionnaires-employes-communaux/index.html

⁹³ The members must be agents, employees and trainees from the CFL as well as the retirees from the company. See <http://www.guichet.public.lu/citoyens/fr/organismes/caisses-maladie-secteur-public/entraide-medicales-cfl/index.html>

⁹⁴ There are the same number of deputy appointed members. The representative of the employees and of the employers designated the two vice presidents who will fill in for the president in different internal organs of the fund. Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, *Droit de la sécurité sociale, Luxembourg, avril 2013*, pp. 426-427 For a better understanding of the composition and voting rights of the Steering Committee for Sickness insurance see table on *Droit de la sécurité sociale*, 2013, p. 427.

⁹⁵ Ibid.

⁹⁶ Ibid., pp. 428-429

⁹⁷ Ibid. p. 429

The Mutual Insurance Fund of Enterprises⁹⁸ offers employers reinsurance to manage the risk in respect of their obligation to continue to pay wages in the event of sickness of their employees.⁹⁹ During the statutory conservation period it will reimburse the full amount of wages and other advantages (employer's contributions) advanced by the employer for family reasons leave¹⁰⁰, end-of-life support leave¹⁰¹ and the apprentices and trainees' and salaried workers' trail period¹⁰² foreseen by the Labour Code.

The administration of the MDE is done by a board of directors composed by:

- six representatives appointed by the Chamber of Commerce and by the Chamber of Trades;
- a representative appointed by the Chamber of Agriculture;
- a representative of the liberal self-employed workers appointed by the Ministry of Social Security upon proposition of the professional organizations;
- the presidents of the CNS and the CCSS representing the State.¹⁰³

The board of directors is responsible for:

- establishing and modifying the by-laws of the mutuality;
- deciding on the annual budget;
- establishing the contribution rate;
- deciding on the financial statements of the mutuality;
- establishing and modify the regulation concerning the operation of the mutuality;
- taking all the decisions concerning the mutuality's staff.¹⁰⁴

To fulfill its mission, the Mutuality uses the administrative services of the CNS and of the CCSS.

3. Accident Insurance Association (AAA)¹⁰⁵

The Accident Insurance Association (AAA) is responsible for managing the accidents at work and occupational diseases.

The AAA is under the responsibility of a steering committee composed by a president and representatives of the employers and the employees. The number of representatives is the same for employers and employees. The employees' representatives can vote on benefits and prevention matters. The employers' representative and the president can vote on all matters.¹⁰⁶

The attributions of the steering board are to:

⁹⁸ [Mutualité des Employeurs](#), created by the law of 13 May 2008 above mentioned, which entered into force on 1 January 2009.

⁹⁹ Article 52 paragraph 2 of the [Social Security Code](#)

¹⁰⁰ Congé pour raisons familiales. Article 234-50 [Labour Code](#).

¹⁰¹ Congé d'accompagnement. Article 234-65 [Labour Code](#).

¹⁰² See CLEISS, op. cit., p. 2

¹⁰³ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 431

¹⁰⁴ Ibid, p. 432

¹⁰⁵ [Association assurance accident](#).

¹⁰⁶ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 436

- establish the by-laws and its modifications;
- decide the budget and fix the contribution rate;
- verify and approve the financial statements;
- establish the recommendations on prevention.¹⁰⁷

4. National Pension Insurance Fund (CNAP)¹⁰⁸

The National Pension Insurance Fund is the responsible institution to run the single contributory pension system. It is competent for granting old-age, invalidity and survivor's pensions.

The CNAP is under the responsibility of a steering board. It is composed by a president who is appointed by the Grand-Duke, eight members appointed by the private sector chosen by the Chamber of Private Employees; a representative of the self-employed group chosen by the Chamber of Commerce, a representative of the self-employed group chosen by Chamber of Trades, a representative of the self-employed chosen by the Chamber of Agriculture, four representatives of the employers chosen by the Chamber of Commerce and one representative of the employers chosen by the Chamber of Trades. The decisions are taken by majority of votes. As in the case of the sickness-maternity insurance the different groups have a different number of votes.¹⁰⁹

The main responsibilities of the steering board are to:

- establish the internal regulations of the fund;
- decide on the annual budget;
- decide on the financial statements;
- decide on the benefits that the fund grants according to the law and regulations;
- take all the decisions concerning the fund's personnel.¹¹⁰

A Compensation Fund (Fonds de compensation)¹¹¹ administers the financial reserves of the pension insurance. The compensation fund is under the responsibility of a board of directors¹¹². The board of directors is composed by the president of the CNAP and three members designated by the government council; four members appointed by the employees and 4 members appointed by the employers. The president of the Compensation Fund is the president of the CNAP. Its decisions are taken by majority and in case of a tie the president has the decisive vote.

The main functions of the board of directors are to:

- establish the by-laws of the compensation fund;

¹⁰⁷ Ibid.

¹⁰⁸ [Caisse nationale d'assurance pension](#)

¹⁰⁹ For more information on the composition and voting rights of the steering board of the CNAP see table in [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 433

¹¹⁰ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 433

¹¹¹ This reserve is built on the surplus of the balance between the revenues and expenses of the National Pension Insurance Fund. These funds are placed through one or different collective investment undertakings which are created by the Compensation Fund. See <http://www.mss.public.lu/acteurs/fdc/index.html>

¹¹² Pour en savoir plus sur les obligations spéciales des mandataires du Fonds et ses pouvoirs sont décrits voir: , [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 435

- establish the directives concerning the principles and rules of administration of the assets;
- decide on the annual budget;
- decide on the financial statement.¹¹³

However, all the decisions taken by the board are subject to the approval of the Ministry of Social Security (MSS) upon advice of the IGSS.

5. National Family Benefits Fund (CNPF)¹¹⁴

The National Family Benefits Fund is the only institution to handle all the different family benefits (family, birth, maternity, schooling allowances and parental leave allowances and the boni for children).

The CNPF is administrated through a steering committee. It is composed by:

- a representative of the Ministry of Family who is the president,
- four representatives of the most representative workers' unions more at the national level,
- three representatives of the employers' professional chambers, and
- one representative of the self-employed workers.¹¹⁵

The main attributions of the steering committee are to:

- present to the Ministry of Family a budgetary proposal and the financial statements attaching the advice of the IGSS;
- decide on the short term investment of the Fund's reserves;
- establish on the contribution rate and penalties;
- take the decision concerning the Fund's personnel.¹¹⁶

6. Agency for the Development of the Employment (ADEM)¹¹⁷

The ADEM is the institution that handles all the unemployment benefits.

ADEM guarantees the administration of unemployment benefits¹¹⁸ and earlier retirement. It is under the authority of the Ministry of Labour, Employment and Social and Solidarity economy.¹¹⁹ Its principle mission is to:

- supervise the situation and development of the labour market;
- balance the offers and demands of employment;

¹¹³ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 434

¹¹⁴ [Caisse nationale de prestations familiales](#). Since its creation, after the merger of the different family allowances funds in 1985, it is the only institution responsible for managing the different family benefits including the “boni” for children. It is placed under the authority of the Ministry of Family. It handles 150.000 files and has a budget of 1,2 billion euros.

¹¹⁵ They are elected for a period of 5 years. Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 437

¹¹⁶ Ibid.

¹¹⁷ [Agence pour le développement de l'emploi](#)

¹¹⁸ Article 622-22 (2) of the Labour Code.

¹¹⁹ Article L-621-1 of the Labour Code amended by [Law of 18 January 2012](#) and article 1 (20) of [Grand ducal decree of 24 December 2013](#), published in Mémorial A-226 of 27 December 2013.

- organize the recruitment of TCN salaried workers;
- organize and assure the professional orientation of young and adults with the objective to integrate/reintegrate them into the labour market;
- guarantee the application of the law on prevention and reabsorption of unemployment;
- grant unemployment benefits;
- assure the training, reeducation and professional integration of disable people.¹²⁰

Also it is in its competences participating in the internal or external reclassification of an employee that is incapable to perform the duties of its last work position. The staff of the ADEM must assist to the reclassification joint commission.¹²¹

This joint commission is composed by:

1. two representatives of the insured persons;
2. two representatives of the employers;
3. an appointee of the Contrôle médical de la sécurité sociale (CMSS);
4. an appointee made by the Directorate of Health, health at work service;
5. an appointee made by the Minister of Labour and Employment;
6. an appointee of the ADEM.¹²²

The ADEM is divided in services that cover the following domains¹²³:

1. Support counsel, orientation and training of job seekers;
2. Relations with the employers and the employment prospects;
3. Unemployment;
4. Professional orientation;
5. Handicap salaried workers;
6. Reduced capability workers;
7. Retention in employment;
8. Study and Research;
9. Legal questions and litigation;
10. Administrative, budget and informatics organization;
11. Management of human resources.

7. The Joint Center for Social Security (CCSS)¹²⁴

The CCSS is an informatics center, which manages the membership and the receipt of contributions for all branches of social security.

It is responsible for:

- organizing the information, collection and treatment of informatics data for all the different social security institutions, FNS, ADEM, IGSS the Medical Control Service and of the Administration of Personnel of the State;

¹²⁰ Article L-621-1 (1) to (16) of the Labour Code amended by [Law of 18 January 2012](#)

¹²¹ This commission can delegate certain competences in the treatment of the files to the functionaries of the ADEM.

¹²² Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 444

¹²³ Article 621-2 (2) 1 – 10 Labour Code.

¹²⁴ [Centre commun de la sécurité sociale](#). It computerizes the collection and treatment of data for all the social security.

- the affiliation of insured persons;
- the determination, perception and recovery of contributions, and subsequent accounting and distribution to the different institutions;
- the creation of a social security database and implementing its exploitation by the different institutions;
- the liquidation of remuneration and pensions of the personnel of the different social security institutions;
- rendering common services to the different institutions as well as making studies requested by one or more institutions;
- forcing collection and recovering of contributions due by the professional chambers as well as the administrative expenses; Collaboration with the Administration of Personnel of the State as well with other competent administrations link to special pension schemes;
- providing data to the Ministry of Labour and Employment on affiliation, determination, collection and recovery of contributions;
- establishing a national identification number for all insured person and issuing a social security card.

The CCSS is under the responsibility of a steering board composed by the presidents of the CNS, CNAP, AAA, CNPF and the FNS, five representatives of the employees chosen by the CSL, a representative of the CFEP, five representatives of the employers chosen by the Chamber of Commerce and the Chamber of Trades and one representative chosen by the Chamber of Agriculture. The president of the steering board is the president of the AAA who has the deciding vote in case of a tie.

The main functions are to:

- decide the annual budget;
- decide over the financial statement;
- establish the operating rules of the organs of the Center;
- establish the master informatics scheme of the Center;
- take the decisions concerning the Center's personnel.¹²⁵

The operation expenses of the Center must be distributed between the different institutions in accordance with a grand-ducal regulation.¹²⁶

8. The Medical Control Service (Contrôle médical de la sécurité sociale - CMSS)¹²⁷

It is responsible for making decisions and producing assessment in the medical field for all the social security institutions. Its main functions are:

- the recognition of the incapacity to work;
- recognition of invalidity;
- recognition of physiological harm and establish the definitive rate ;
- to issue opinions and perform the medical examinations in regards with the loss of income in accident insurance cases, the reclassification procedures or the professional reconversion measures;

¹²⁵ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 438

¹²⁶ Ibid.

¹²⁷ <http://www.mss.public.lu/acteurs/cmss/index.html>

- to issue opinions and perform the medical examinations to determine the physical pain suffered and the esthetic harm;
- to perform the control periodical medical examinations in regards with the incapacity to work, hospitalization and treatment;
- to authorize taking financial responsibility of the medical, dental or paramedical treatment;
- to provide its opinion on regulations to define the abusive consumption of health treatment by the beneficiaries;
- the verification through the activities' reports of doctors and dentists established by the CNS by informatics means with the collaboration of the CCSS, AAA of any unjustified professional deviation of the service provider;
- to study, exam and recommendation of the appropriated measures in rehabilitation and prevision issues;
- to authorize and take financial responsibility of prosthetics, orthotics and cranio-facial ephithesis of all kind, the supervision and the proper implementation of a control protocol;
- to verify and periodical control of diseases or disabilities which generate the right to compensation or subventions at burden of the social security institutions or social services.
- to provide medical opinions and examinations that will be used to grant priority and disability cards to the applicants;
- to produce statistics concerning the health status of protected persons;
- to promote information and participate in the long-life learning of the medical corps in regards to social security legislation;
- to provide opinions to the CNS regarding medication and treatment;
- the recognition of the right to palliative care;
- to assist the CNS in the control of the medical fees established by the service providers;
- to submit to the nomenclature committee the introduction of new texts, the precision of wording disputed texts or the revision of the existing ones.¹²⁸

The opinions of the CMSS are considered as medical opinions and must be respected by the social security institutions.¹²⁹

9. The National Solidarity Fund (FNS)¹³⁰ and the municipalities social offices

These institutions are responsible for handling financial public assistance benefits. The FNS is a public body with legal representation and financial autonomy. It is subject to the authority and supervision of the Ministry of Family and Integration.

The principle objective of the FNS is to execute the obligation established by the law of Minimum Guaranteed Income (RMG).¹³¹

The FNS pays also:

1. the income for the persons with severe disabilities;

¹²⁸ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), pp. 440-441

¹²⁹ ¹²⁹ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), pp. 441.

¹³⁰ [Fonds national de la solidarité.](#)

¹³¹ [Law of 29 April 1999 on the creation of a minimum guaranteed income right.](#)

2. special allowances for the persons with severe disabilities;
3. alimony advances;
4. the cost-of-living allowance;
5. education lump-sums;
6. the participation in the gerontology reception expenses.¹³²

The Fund is administrated by a steering committee composed by a president and seven members appointed by the Government.¹³³ It must decide on the benefits that the FNS grants by law and of the restitution applications.

Social aid is granted and distributed by the social assistance offices of the municipalities. Each office has legal personality.¹³⁴ Each application is treated by a social worker who will present the files to the board of directors of the social assistance office which must decide on them.¹³⁵

10. The Council of Arbitration of Social Security¹³⁶ and the High Council of Social Security¹³⁷

These are special jurisdictions which are competent to settle disputes in the field of social security.

The Council of Arbitration is competent to judge in first instance the disputes concerning memberships, social security liability, contributions, fines and services rendered.¹³⁸

The High Council of Social Security is competent in appeal of all the disputes related to membership, liability, contributions, fines and services which object passes the threshold of 1.500 euros.

The final decisions of the High Council of Social Security are subject to appeal to the Court of Cassation (pourvoi en cassation).¹³⁹

¹³² Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), pp. 447.

¹³³ The Fund is composed by representatives of the Directorate of Immigration of the Ministry of Foreign Affairs, Administration de l'Enregistrement et Domaines (Luxembourg Registry), Inspectorate of Finances, CNAP, Ministry of Housing, National Service of Social Action and the ADEM. [Ministry of Family and Integration, Activity Report 2012](#), p. 268.

¹³⁴ Article 5 of the [Law of 18 December 2009 on social aid](#)

¹³⁵ Normally the board of directors is composed by at least five members elected by the municipal council. See article 10 (1) and (2) of the [Law of 18 December 2009 on social aid](#).

¹³⁶ Conseil arbitral de la sécurité sociale. Article 454 of the Social Security Code.

¹³⁷ Conseil supérieur de la sécurité sociale. Article 454 of the Social Security Code.

¹³⁸ <http://www.justice.public.lu/fr/organisation-justice/juridictions-sociales/index.html>

¹³⁹ Article 455.4 of the Social Security Code.

Table 2.1. Overview of the national social security system presented in the MISSOC national guides as it applies to third-country nationals (benefits and programmes available, financing mechanisms and accessibility).

The Luxemburgish social security system is a labour-based system and it is based in the principle of equality independently of nationality. In principle all benefits coming from compulsory contributions will be paid to the beneficiary if the applicant fulfils the required general conditions independent of its nationality. In consequence all salaried TCNs (salaried, highly qualified, self-employed¹⁴⁰, transferred, long-term residents workers even those who are cross-border workers) will be covered and will receive the same benefits as any Luxemburgish national or EU/EEA national if they fulfil the general conditions (See section 3).

In regards with benefits which are financed by general taxation there is a residence requirement (i.e. family allowance) that will be applied to TCN as well as to Luxemburgish and EU/EEA nationals (with the exception of cross-border workers).

In the case of solidarity benefits such as the minimum guaranteed income (RMG) TCNs will not only have to fulfil the general conditions, the residence requirement but also a trial period requirement (5 years residence period).

‘Branch’ of social security	Benefits and programmes included in each branch <i>(rows to be added if required)</i>	Financing mechanisms <i>(contributory/ non-contributory/ mixed)</i>	Accessibility by third-country nationals <i>(please list the categories of third-country nationals that are eligible, where possible making use of the categories specified above)</i>
I. Healthcare	Sickness -Medical and dental treatment; -paramedical treatment; -laboratory analyses and investigations; -dental, orthopaedic and other prostheses; -visual aids -medical devices and various appliances; -hospital care; -therapeutic and convalescent cures; -general and occupational rehabilitation; -travel and transport expenses incurred in connection with such care	Contributory (it is calculated as a certain percentage of earnings of the salaried or self-employed worker). Contributions are paid equally between workers and employers.	Yes.
	Maternity Insurance	Contributory	Yes.

¹⁴⁰ High Council of Social Security, [Decision of 29 February 2012](#) (Reg. N° 2011/0063). In this case the High Council decided that a manager of different corporations resides in the Member State without exercising a professional activity but in the condition of a simple investor he is not compelled to be affiliated to the Luxemburgish social security system.

	Long-term care insurance	Contributory	Yes.
II. Sickness cash benefits	1. Incapacity of Work: employer will continue to pay salary until the end of the month in which falls the 77 th day after ceasing work. Afterwards, the National Health Fund will pay a cash benefit equal to the normal salary up to 52 weeks in a reference period of 104 weeks.	Contributory	Yes.
	2. Funeral Grant: when the person dies the sickness insurance institution will pay a lump-sum funeral grant for funeral services	Contributory	Yes.
	3. Vocational rehabilitation measures. If the incapacity of work is such that the person is recognised disabled, then an invalidity pension will be granted. If the medical officer ¹⁴¹ considers that the person is not disable but unfit only for its last job, then an occupational rehabilitation procedure will begin: a) find another post in the same enterprise; or b) look for a post in the labour market by registering the person as a job seeker claiming unemployment benefits.	Contributory	Yes.
III. Maternity and paternity benefits	Medical costs: childbirth, assistance by doctor and midwife, stay at the hospital and medicines are covered by sickness insurance (See I)	Contributory	Yes.
	Cash maternity allowance: It is given to a woman who is pregnant or has given birth and has been released from work because her post poses a risk to her health. Allowance corresponds to her normal earnings if she was working.	Contributory	Yes. ¹⁴²

¹⁴¹ The person has to go through a medical examination practiced by the Medical Control Service (Contrôle médical de la sécurité sociale)

¹⁴² In regard to the general conditions the cash allowance is subject to a trial period. See section 3.3.

	It is also granted in case of a child who has been adopted and it is given to the parent who has been granted adoption leave.		
IV. Invalidity benefits	Invalidity pension: It is composed of flat rate amounts and special increases based on the number of years that the person has been insured and of proportional and special increases based on the earned income during these years.	Contributory.	Yes. ¹⁴³
V. Old-age pensions and benefits	Pension consists in: flat rate amounts based on the duration of the insurance and the proportional increases are granted according to the earned income.	Contributory. ¹⁴⁴	Yes.
VI. Survivors' benefits	Survivor's pension: full amount of the flat rate pension amount and special flat-rate payment to which the insured person was or could have been entitled and of the total amount of the end of the year allowance. ¾ of the proportional pension supplements and special proportional supplements.	Contributory.	Yes. ¹⁴⁵
	Orphan's pension: 1/3 of the flat-rate pension amount and special flat rate payment, which the insured person was or could have been entitled and 1/3 of the amount of the end of the		Yes.

¹⁴³ In regard with the general conditions the benefit is subject to a trial period. See section 3.3.

¹⁴⁴ The contributions are paid in three equal parts of 8% by the employee, the employer and the State.

¹⁴⁵ TCN beneficiaries must be a family member of the Survivor (widow, widower, registered partner, orphan, divorced spouse, formerly registered partner) of a person covered by an old-age pension scheme or who have died under certain conditions. See CLEISS (Centre des Liaisons Européennes et Internationales de Sécurité Sociale), Le régime luxembourgeois de sécurité sociale, 2012

	<p>year allowance. $\frac{1}{4}$ of the proportional pension supplements and special proportional supplements. Pension is only awarded up to the age of 18 but it continues to be paid up to age 27 if the beneficiary is studying.</p> <p>Note: if both parents have died the orphan's pension rate is doubled.</p>		
VII. Benefits in respect of accidents at work and occupational diseases	<p>Insurance covers accidents sustained while at work or while travelling to its work or occupational diseases.</p> <p>Benefits in kind:</p> <p>Healthcare: Under Sickness insurance (See I). In this case the difference is that the person does not have to advance the costs. The benefits are always paid in full.</p> <p>Dependency benefits: These benefits are advanced by the CNS on behalf of the Accident Insurance Association (Association assurance accident) -compensation for material damage and damage cause to prostheses; -compensation to certain limits for damage to beneficiary motor vehicle.</p>	Contributory.	Yes ¹⁴⁶
	<p>Cash benefits:</p> <p>-as long as the person is incapable to work s/he is entitled to continued payment of salary and to cash allowances (same conditions as for persons</p>		

¹⁴⁶ Other groups are also covered: students, lecturers, union and employer representatives, persons participating in rescue operations or voluntary work, officers, etc. Also persons who perform unimportant or occasional tasks, who are excluded from health insurance and old pension insurance. See CLEISS (Centre des Liaisons Européennes et Internationales de Sécurité Sociale), Le régime luxembourgeois de sécurité sociale, 2012

	<p>unable to work through illness)</p> <p>-after the period of entitlement expires, the person will receive until the consolidation of injuries a full accident benefit (rente complète = earnings subject to social security contributions over the previous 12 months before the accident).</p> <p>If the person is capable to resume work, s/he can receive a partial accident benefit (rente partielle) if the permanent disability rate had decreased by at least 10%.</p> <p>If a salaried worker presents a disability to fulfil his last working position or to maintain its working conditions, s/he will benefit from a professional reclassification from the ADEM. The person will then benefit from a tide-over-benefit during the period that the professional reclassification is not possible. The tide-over-benefit (rente d'attente) is amounting to 85% of the full accident benefit.</p>		
	<p>Benefits for non-financial prejudice:</p> <p>If after consolidation, a person remains fully or partially incapable of working, s/he may receive an allowance for physiological prejudice according to a fixed scale and an allowance for aesthetical damage.</p>		
	<p>Survivor's benefits:</p> <p>-accident benefit for the surviving spouse or partner (rente de survie). It is equal to $\frac{3}{4}$ of 1,85% of the annual</p>		

	<p>professional income that the deceased would have earned in the remainder of his professional life up to the age of 65 (taking account that the death occurred after or before 55).</p> <p>-orphan benefit (rente d'orphelin).</p> <p>-allowance for psychological prejudice.</p> <p>-final lump-sum settlement: if the surviving spouse or partner remarries or enters a new partnership, an automatic final lump-sum settlement applies.</p>		
VIII. Family benefits	<p>General child benefit: Standard family allowance (varies according to the number of children in the household).</p> <p>Note: General rule, the child receives the benefits up to the age of 18. However, it is paid up to the age of 27 for children who are still pursuing secondary studies and for disabled children.</p>	Non-contributory. General taxation.	Yes.
	<p>Supplementary allowance: The amount of the allowance is determined in regards to the composition of the family group (number of children) and the age of the children. A supplementary allowance is foreseen for children from age 6 and from age 12.</p>		
	<p>Special supplementary allowance:</p> <p>This benefit only applies to minors who suffer from an insufficiency or permanent diminution of at least 50% of their mental and physical capacity in comparison to a child of the same age. This allowance is equivalent to the monthly general allowance.</p> <p>Note: The child will</p>		

	continue to benefit of this allowance beyond its 18 th birthday when: - the child is incapable to support himself/herself due to its chronic disease; or - the child follows an adapted formation in an specialized or differentiated educational institution.		
	Schooling allowance: payable at the beginning of the school year and it varies according to the child's age and the number of children in the household. It is paid on 31 August of each year.		Yes.
	"BONI" for child: It replaces a tax deduction for the household adjusted taxable income. 922,50 € per year paid monthly (76,88 € per month)		Yes.
	Maternity allowance: It is due to the expecting mother or to the adopting parents domiciled in Luxembourg and who do not benefit of maternity benefits (See III). It is composed of a prenatal tranche and of a postnatal tranche.		Yes. ¹⁴⁷
	Birth grant (allocation de naissance): It becomes due at the birth of the child. It is paid partly as a: a) Prenatal allowance, b) Childbirth grant; and c) Postnatal allowance. It consist of 580,03 € per		Yes. ¹⁴⁸

¹⁴⁷ TCN pregnant women, or TCN women who have given birth and who are not self-employed or employed, or who have a low income. The maternity allowance is given to TCN women resident in Luxembourg who have a long-term or fixed term residence permit.

¹⁴⁸ Any TCN resident woman who has a long-term or fixed term residence permit can benefit. Nationality per se is not a criteria for refusing to grant the right. The TCN must fulfil the same conditions as a national or EU resident and must have a valid residence permit. Written response of the President of the CNPF, 20 February 2014.

	part.		
	Parental leave benefit: It is six months for each child. In case of part-time parental leave this may be extended up to a period of 12 months. It entitles the beneficiary to a lump-sum benefit paid in monthly instalments for the entire duration of the leave (no subject to tax or social security contribution, other than healthcare and long-term care insurance). Pension insurance contributions are paid by the State. ¹⁴⁹		Yes.
	Child raising allowance: Allowance: 485,01 € per child, independent of the number of children (it can be reduced according to the income if one of the parents has not completely stopped its professional activity.		Yes.
IX. Unemployment benefits	Unemployment benefits: It is equal to 80% of the person's previous earnings. It is increased to 85% if the person has dependent children. In principle ¹⁵⁰ , the duration of the indemnity paid is equal to the duration of the work performed during the last 12 months before the inscription date as job seeker. The indemnity cannot exceed 250% of the social minimum salary. If unemployment lasts for more than 6 months in any	Non-contributory. Specific tax. « Solidarity tax ». ¹⁵¹	Yes.

¹⁴⁹ One of the parents must take this leave following on immediately from the mother's maternity leave.

However, part-time parental leave, may be divided between both parents so the child is being continuously care for.

¹⁵⁰ Every job seeker who fulfils the admission conditions will be taken care for a maximum duration of 365 days in a 24 months period. However, it is possible to obtain an extension based on the age and affiliation period of the applicant.

¹⁵¹ The official name is contribution to the Employment Fund. The tax is equivalent to 7% of the adjustable tax income and 9% for any tax payer class 1 or 1a who has an income greater than 150.000 € or tax payer class 2 with an income greater than 300.000 €). See <http://www.guichet.public.lu/citoyens/fr/actualites/2013/01/09-changements-impots-2013/index.html>

	12 months period, the benefit cannot exceed an amount equal to 200% of the social minimum salary. If extended after 12 months, the threshold is reduced to 150% of the minimum social salary.		
	<p>Early retirement benefits¹⁵²:</p> <p>The remuneration is calculated on the basis of the average gross remuneration in the 3 months preceding the period in which the benefit is paid or on the basis of the last 12 months if it is more favourable.</p> <p>There are four types:</p> <ul style="list-style-type: none"> -under solidarity scheme¹⁵³ -gradual early retirement¹⁵⁴ -“adjustment” early retirement¹⁵⁵ -early retirement for shift workers and night workers¹⁵⁶ 	Contributory by the employer. However, if the employer is confronted with major financial problems the benefit is paid by the Employment Fund. ¹⁵⁷	Yes. ¹⁵⁸
X. Guaranteed minimum resources	Revenu minimum garanti: intended to ensure sufficient means for a decent standard of living and measures of professional and social integration.	Non-contributory. General taxation.	Yes. Third-country nationals are only entitled if they have resided in Luxembourg for at least 5 years out of the last 20 and are at least 25 years

¹⁵² The benefit is paid in advance by the employer but if the employer cannot do so it is paid by the Employment Fund (Fonds pour l'emploi).

¹⁵³ TCN salaried worker has to be at least 57 and have concluded a special agreement with the employer. This can be as part of a collective agreement or a special agreement with the Ministry of Labour and Employment. This allows the possibility to retire 3 years before the applicant will fulfil the conditions entitling to an old age pension or an early retirement pension at the age of 60.

¹⁵⁴ TCN salaried worker must agree to have a full time position into a part-time one.

¹⁵⁵ It is intended for people aged 57 working for companies which are closing down or being restructured, bankrupt or under administration or receivership.

¹⁵⁶ TCN salaried worker must have worked at least 20 years in these type of shifts.

¹⁵⁷ CLEISS (Centre des Liaisons Européennes et Internationales de Sécurité Sociale), [Le régime luxembourgeois de sécurité sociale](#), 2012

¹⁵⁸ Only for TCN salaried worker.

	<p>It consists of:</p> <p>-integration allowance (“indemnité d’insertion”): it is linked to an integration activity¹⁵⁹ and it is paid to applicants who fulfil certain conditions and are capable of performing a professional activity.</p> <p>-supplementary allowance: compensates the difference between the RMG and the household income.</p>		old.
XI. Long-term care benefits	<p>It includes:</p> <p>-personal hygiene: washing, brushing the teeth, skin care, visit to toilet</p> <p>-nutrition: preparing adequate meals, eating and drinking</p> <p>-mobility: moving around</p> <p>Benefits in kind: a professional from a care assistance network provides the person with support and advice at home</p> <p>Cash benefits: If a friend or relative takes care of the beneficiary the benefit in kind can be replaced by cash benefits.</p> <p>Note: Cash benefits do not apply when the person lives in an establishment providing care and assistance.</p> <p>Lump sum for care products, equipment or alteration in the home can be covered.</p>	Contributory. Special contribution (Dependence insurance – Contribution dépendance). This contribution is 1,4% of the annual gross income)	Yes. ¹⁶⁰

¹⁵⁹ Help to find a job or a measure for employment

¹⁶⁰ TCN must be affiliated to the CNS and must require regularly assistance from another person in order to carry out basic day-to-day tasks owing to illness or physical, psychological or mental disability.

2.1.2. Please list any additional social security benefits that are not included in the MISSOC national guide, specifying their financing mechanism and whether they are accessible by third-country nationals.

Social Housing:

If the third country national is a legal resident, s/he can apply if the conditions are fulfilled, based on the general principle of equality and not based on nationality. Third-country nationals have to be legal residents and fulfill the criteria for each benefit.

Different criteria for the access to social housing are fixed by the modified grand-ducal regulation of 16 November 1998 on housing aid. Article 4 of the regulation established that households in order to have access to social housing cannot be owners nor have any property rights on housing and cannot benefit of a right of housing in another property. Also article 13 of the regulation establishes that if the promoter is a municipality, the application of priority criteria can be reserved to households which have their domicile in the territory since at least three years, as well as households in which one of the members has a professional activity in its territory. Based on this article the Municipality of Luxembourg City applies its criteria.

The « Fonds pour le développement du logement et de l'habitat » rents under certain conditions, properties in all the territory to modest income households.

Complete applications that have been filed in due time are examined in the order they are filed and are subject to a social investigation in case it is required. The rent of this social housing is calculated in function with two parameters, household net annual income and the useful habitable surface of the rented property.

The actual regulation on attribution of social housing (letting) does not foresee an exhaustive criteria list to take into consideration neither a listing of priorities of these criteria. It is up to the public promoters (municipalities, la Société nationale des habitations à bon marché and the Fonds pour le développement du logement et de l'habitat) in the specific case taking into consideration all the particularities presented by the person.

Social aid:

The law of 18 December 2009 organizing social aid which entered into force 1 January 2011 creates the right to social aid for people in need and their family. This aid allows these people to have a life with dignity. Any person residing in the Grand-Duchy of Luxembourg, in principle has the right to social aid. However, it excludes the following groups:

- a. Persons benefiting of international protection status and who benefits of special regime due to their status.
- b. Persons who benefit from an authorization of stay that have being sponsored by a third party who is responsible for their needs.
- c. The foreign pupil/student, who is granted an authorization of stay to do its studies or internship.

- d. EU, EEA or Swiss national or a member of their family, independent of its nationality, during the first three months of residence in the Grand-Duchy of Luxembourg or during the period in which this person is looking for a job. This disposition is not applicable to salaried or non-salaried workers or to persons who benefit from this status or to their family members independent of their nationality.
- e. Persons in temporary residence in Luxembourg. This situation is actually in debate in regards to third-country nationals with an authorization of stay for medical reasons.¹⁶¹

The First instance administrative Court had stated that the right to social aid in Luxembourg is indirectly related to the right of stay.¹⁶²

2.2. Has a link or nexus between policies in relation to social security and to immigration been established by policymakers in your (Member) State?

Yes. Luxembourg has a universal social security system. The system is based on the general principle of equality. Equal treatment is part of the integration policy of the Grand-Duchy of Luxembourg.¹⁶³

However, one important issue to be taken into consideration for a third-country national in regard to social security issues is its residence status. The possibility of benefiting of the benefits will depend on the residence status and the validity of its residence permit.¹⁶⁴ Article 43 (4) of the amended law of 29 August 2008 on free movement of persons and immigration only foresees the renewal of the residence permit in case of unemployment when the person is receiving unemployment benefits¹⁶⁵. As the principle of legality applies this legal disposition cannot be extended to the rest of the social security benefits.

People deprived of the residence permit, in principal, are excluded from health insurance benefits.

However, the CCSS does not undertake a check to verify if the conditions for stay or residence of a foreigner on Luxembourg territory are fulfilled.¹⁶⁶

¹⁶¹ See decision of the Council of Arbitration of Social Security of 19 April 2013. This decision was overturned by a decision of the High Council of Social Security of 23 January 2014. However, at the deadline of this study the deadline for appealing before the Cour de Cassation is still running.

¹⁶² See decision of the First instance administrative Court, 3rd Chamber, [n° 31721 of 8 October 2013](#).

¹⁶³ The equal treatment principle is guaranteed by article 3 of the [Law of 16 December 2008 on Reception and Integration of Foreigners](#) and it is one of the four key elements on which the [National Action Plan for Integration and Against Discrimination 2010-2014](#) is based (see page 22). It is important to indicate that this policy is consolidated in the implementation of the Common Basic Principles of the European Union's integration policy for immigrants, especially CBP-3 (Employment), CBP-4 (provide newcomers with information on health and the health system), CBP-6 (Access to goods and services – facilitate access to housing, facilitate access to health care). See pp. 34-35.

¹⁶⁴ In the case of family benefits, some TCNs have been refused the benefits because they have not a valid residence permit. However, the CNPF is flexible enough in circumstances that the TCN is obtaining or renewing his/her residence permit. The right will be granted from the date they filed the application and not the date of reception of the residence permit. Written response of the President of the CNPF, 20 February 2014.

¹⁶⁵ Answer of the Directorate of Immigration, Foreigners Unit, 22 January 2014.

¹⁶⁶ Answer to the Parliamentary Query no. 1399 of 14 November 2006 of the Deputy Ben Fayot.

http://www.chd.lu/wps/portal/public!/ut/p/b1/04_SjzQyMDE1MrcwszTTj9CPyKssy0xPLMnMz0vMAfGjzOJdjFzCgixNjAzcZQNNDIy8XL3MQ4P9jC0sQBoikRVYOFsaGXi6B_p4OxuaGrgHGxOn38jCljjI3dHX1dly1MnA08DZMNg10AlokhFx-g1wAEcDQvr9PPJzU_Vzo3Lc3CwcFQHahSfJ/dl4/d5/L0lDU0lKSWdrbUEhIS9JRFJBQUlpQ2dBek15cXchLzRKQ2lEb01OdEJqdEJZmxDRUEhL1o3X0QyRFZSSTQyMDg5SkYwMk4xU1U4UU8zSzE1LzA!/?PC_Z7_D2DVRl42089

2.3. Are there recent/planned changes to the eligibility rules for any of the social security benefits and programmes listed in the second column of the table above that may have an effect on access by third-country nationals?

No.

3. NATIONAL RULES ON ACCESS TO SOCIAL SECURITY BY THIRD-COUNTRY NATIONALS

Luxembourg has a universal social security system and it follows the work-based system and not the residence-based system.¹⁶⁷ The general rule is that if the person works in Luxembourg and pays his/her contributions the person is covered independent of its nationality.¹⁶⁸ Also, the system is based on the principle of equality, so if the third country national fulfils the objective and general criteria s/he is entitled to obtain the social security benefits in the same conditions as a Luxembourgish national, a EU cross-border worker or an EU or EEA national legally residing in Luxembourg.

The affiliation to the different social security schemes is compulsory because the person has a wage-earner professional occupation. This principle has two aspects:

- 1) social security legislation subordinates every professional occupation to the insurance;
- 2) the organisation rules of social security expect that the persons concerned must be compulsory insured at the competent institutions by their professional occupation and according to the risk that is being insured.¹⁶⁹

The conditions that apply to third-country nationals in order to qualify for the benefits under the following categories are:

1. Health care Insurance (sickness-maternity):

In Luxembourg any third country national can register at the CCSS for health care insurance purposes independently of its migration status¹⁷⁰. The CCSS will not undertake a check to verify if the conditions for stay or residence in the territory are fulfilled.¹⁷¹ Nevertheless in the case of voluntary insurance a residence certificate is required.

For analysis the access to health care insurance we have to analyse four categories of TCN migrants:

1. Salaried workers

[JF02N1SU8QO3K15019404_secondList=&PC_Z7_D2DVRI42089JF02N1SU8QO3K15019404_action=document&P_C_Z7_D2DVRI42089JF02N1SU8QO3K15019404_selectedDocNum=3#Z7_D2DVRI42089JF02N1SU8QO3K15](#)

¹⁶⁷ Interview with an expert of the IGSS on 21 October 2013

¹⁶⁸ Interview with an expert of the IGSS on 21 October 2013

¹⁶⁹ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 59

¹⁷⁰ [Answer to the Parliamentary Query no. 1399 of 14 November 2006](#) of the Deputy Ben Fayot.

¹⁷¹ See LU EMN NCP, [Practical measures for reducing irregular migration](#), 2011, p. 26

In this category are included all third country nationals who have the right to work and are on a hierarchical relationship in accomplishment of the work¹⁷² independently of their qualifications. This includes “salaried” workers, Blue Card workers, researchers, transferee workers and posted workers.

There is no minimum residence period. The only condition foreseen in the law is that the employer has to verify that the TCN has a valid residence permit or authorisation to stay.¹⁷³

The employer must fulfil all required formalities to register its employees for social security purposes in the 8 days following the day when the employee began working.¹⁷⁴ The employee does not have to do anything except if s/he is a self-employed worker. Also, in the next three days when the employee began working the employer must inform the Directorate of Immigration that the TCN is working for him/her.¹⁷⁵

Insuring his/her employees is compulsory for the employer.¹⁷⁶

A TCN who has a valid “salaried worker” residence permit will be insured by his/her employer and will be benefiting from the health insurance immediately. However, in the declaration of entry (affiliation du salarié) which has to be made by the employer before the CCSS it is not required to attach a certificate of residence. The family members of the TCN salaried workers will be covered by his/her insurance and the CCSS will issue an individual insurance card for each family member (even for the children under the age of 16).

The minimum age requirement for being insured is 16 years old as a salaried worker.¹⁷⁷

2. Self-employed workers:

If a third-country national has obtained a self-employed worker residence permit, s/he must register at the CCSS in the 8 days following the day s/he began its economic activity.¹⁷⁸

Coverage will be automatically. There is no waiting period.¹⁷⁹

¹⁷² 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>

¹⁷³ Article 572-3 (1) 1 of the Labour Code modified by the [Law of 21 December 2012. However, it can happen that an employer affiliates an employee without verifying the regularity of his/her migration status.](#)

¹⁷⁴ <http://www.cns.lu/?p=262>

¹⁷⁵ Article 572-3 (1) 3 of the Labour Code.

¹⁷⁶ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 60

¹⁷⁷ This is because article 7 of the Law of 6 February 2009 on compulsory schooling fixed the duration of compulsory schooling in 12 years between the ages of 4 and 16. Nevertheless, article L-341-1 of the Labour Code establishes that a young worker (teenager) is the individual who is at least 15 years old and is not subject to compulsory schooling. Accordingly with the Inspectorate of Labour and Mines the minimum age for young workers is 16 years old. See <http://www.itm.lu/home/faq/ddt/faq4/la-remuneration253.html#anchorde691065-7a06-48d1-b4fd-d71c67f8caed>

¹⁷⁸ <http://www.cns.lu/?p=262>

¹⁷⁹ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 156.

For obtaining a self-employed worker residence permit the TCN must follow the following procedure¹⁸⁰ :

- a. The applicant must fulfil the same professional qualifications and integrity criteria than any EU citizen. S/he has to prove that s/he has the required qualifications to practice the activity s/he wants to develop.
- b. The applicant must prove that s/he has adequate resources to be able to practice this activity.
- c. The activity must serve the interests of the country.
- d. The applicant must prove that s/he has adequate living facilities.
- e. Once the examiner considers that the application is completed, the Ministry will ask the opinion of the Consultative Commission of Independent Workers (CCTI).¹⁸¹
- f. The residence document is granted for a maximum duration of three years, and renewable upon request for the same length of time.¹⁸²

It is important to mention that for social security purposes there are three kind of self-employed workers: a) independent professions; b) skilled trades; c) agriculture.¹⁸³

However, self-employed residence permit can be granted to an investor if s/he fulfils the conditions mentioned above.¹⁸⁴

3. Third-country nationals who benefit of a replacement income and the beneficiaries of the RMG

This category should not benefit of insurance under other scheme.¹⁸⁵ These third country nationals are compelled to be registered at the CCSS.¹⁸⁶

There is no minimum period of residence and coverage will be automatically.¹⁸⁷

4. Third country nationals who reside on the territory but under another type of residence status

In this situation, the TCN can register voluntarily¹⁸⁸. There are two types of voluntary insurance:

¹⁸⁰This procedure also applies to any person that demands an authorization of establishment or a ministerial accord to establish an independent artisanal, industrial, commercial or agricultural from the Ministry of Middle Classes.

¹⁸¹Article 51 of the modified Law of 29 August 2008.

¹⁸²Article 52 of the modified Law of 29 August 2008.

¹⁸³Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 59

¹⁸⁴See LU EMN NCP, Attracting highly qualified and qualified third country nationals, 2013, p. 14.

¹⁸⁵This will be the case of a retiree who gets a supplementary allowance of RMG. Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 60

¹⁸⁶Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 60

¹⁸⁷Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 156.

¹⁸⁸[Article 2 al. 1 of the Social Security Code](#). See also [grand-ducal regulation of 8 December 2011 on optional insurance](#).

Continued insurance: It is required that the minor residing in Luxembourg aged 18 years old or more who loses its condition as insured person as family member after having benefit for at least a continuous 6 months period previously to the loss can apply for the continuity of the insurance.¹⁸⁹

In the continued insurance the contributions are due after three months of the last month when the individual was insured.¹⁹⁰

Optional insurance: This insurance is open to any person residing in the Grand-Duchy that cannot obtain any sickness insurance¹⁹¹, 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), which cannot be obtained without a valid residence permit.

However, there will be a waiting period of three months during which the TCN cannot access the health care benefits.

The contributions are fixed accordingly to the minimum contribution income and they are due from the day of the application.

In case of termination of the insurance the benefits of the health care insurance are maintained for the current month and the next three months, if the person had been insured continuously for the last six months before the termination occurs.¹⁹²

In Luxembourg all third country national legally residing in the country who are salaried workers (all categories including cross-border worker) or self-employed workers¹⁹³ and long-term residents have access to these benefits.

Family member of an insured person TCN residing in Luxembourg are also covered.¹⁹⁴

The beneficiaries will continue to be covered in case of termination of the affiliation for the rest of the month and the following three months under the condition that the insured person has been insured for a continuous period of six period immediately before the disaffiliation.¹⁹⁵ In consequence, TCNs who are job seekers and have not been insured for the last six months of their work are excluded.

2. Maternity benefits (maternity leave, maternity cash allowance and childbirth allowance)

¹⁸⁹ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 62

¹⁹⁰ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 62

¹⁹¹ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 62 Are included in this category the TCN who has a « private reasons » residence permit, the TCN with a student residence permit.

¹⁹² Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 156. In case of ongoing treatment for diseases the beneficiary has to send to the CMSS a medical certificate proving that the disease has been treated before the termination of the insurance occurred so that the beneficiary can profit of this extension period.

¹⁹³ High Council of Social Security, [Decision of 29 February 2012](#) (Reg. N° 2011/0063). In this case the High Council decided that a manager of different corporations resides in the Member State without exercising a professional activity but in the condition of a simple investor he is not compelled to be affiliated to the Luxembourgish social security system.

¹⁹⁴ Spouse, registered partner, minor child or dependent child under the age of 30. However, in this last case income must be below certain limit. See CLEISS (Centre des Liaisons Européennes et Internationales de Sécurité Sociale), [Le régime luxembourgeois de sécurité sociale](#), 2012.

¹⁹⁵ See CLEISS (Centre des Liaisons Européennes et Internationales de Sécurité Sociale), [Le régime luxembourgeois de sécurité sociale](#), 2012, p. 1

Even though maternity and sickness are two different concepts, the similarities between the benefits that they grant are sufficient to regroup them legally and administratively in one branch: sickness-maternity insurance.

The two events trigger in a temporary disruption of work and the insurance in both cases generate similar benefits.¹⁹⁶

1) Maternity leave and maternity cash benefits

A woman subject to insurance because of her professional activity can benefit from the maternity benefits (maternity cash benefits) if she has been insured at the compulsory sickness and maternity insurance for at least 6 months during the year before her maternity leave. This means there is a waiting period of 6 months.

The cost for care in connection with childbirth, assistance by the doctor and midwife, the stay in hospital and with medicines are assumed applying the rules of the sickness insurance. Also it guarantees the payment of the loss of income that this disruption will cause (replacement income). Different from the sickness cash benefits there is no obligation from the employer side of paying the loss of income during the maternity leave.

There is no difference in treatment between a TCN salaried or self-employed worker with a valid residence permit and a Luxemburgish national.

Also the women have to submit to the CNS a medical certificate stating the expected date of confinement in order to obtain the cash maternity allowance.

2) Maternity allowance

The maternity allowance is only reserved to housewives (without professional activity) or as complementary to the maternity cash benefits if the amount does not reach a certain limit.

The condition for obtaining the maternity allowance is to have a legal domicile in Luxembourg at the moment of the opening of the benefit. This will happen at the beginning of the 8th week before childbirth for the first payment. The second payment will be made at childbirth.

3) Birth allowance

The birth grant is granted to women who prove using medical examinations and medical certificates that they have had supervision and a medical follow-up of their pregnancy and subsequently of the child until the age of 2 years.

This birth grant is paid in three statements:

- 1) Prenatal allowance: the mother must have had undergone a medical examination (by a gynaecologist) as well as a dental examination (by a dentist) who is informed of the pregnancy.¹⁹⁷

The administration will grant the prenatal allowance to the mother that has her legal domicile in Luxembourg. In case of a CBW, she must be insured at the moment of the last medical examination.

¹⁹⁶ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 193

¹⁹⁷ Articles 2 to 6 and 9 of the [Grand-ducal regulation of 8 December 1977 on the implementation of the medical examination and the dental examination of pregnant women and the postnatal examination of the mother and the maternity booklet](#)

- 2) Childbirth allowance: to obtain this allowance a postnatal medical examination must be performed to the mother by a gynaecologist not earlier than the next day of the delivery and during the 8 weeks following the delivery.¹⁹⁸
The status of salaried worker of the father does not grant access nor open the right to the prenatal or childbirth allowance.
- 3) Postnatal allowance: the child must have undergone the six medical examinations foreseen by the grand-ducal regulation¹⁹⁹ in the specific dates foreseen. The child must have undergone two perinatal examinations and four follow-up medical examinations until the age of 2. The dates fixed by article 3 of the regulation must be respected. The benefits of this allowance are extended to non-residents under the condition that they are affiliated in Luxembourg and that they do not already benefit of a similar benefit in their country of residence.

3. Sickness cash benefits

1. Incapacity to work

In the case of incapacity to work, the TCN has to fulfil the criteria of health care (especially categories A 1, 2 and 3).

There is no qualifying period for sickness cash benefits. However, the TCN must have a valid residence permit all along the period in which s/he will be incapacitated to work.²⁰⁰ In principle, the employer who hires a TCN is compelled by the law to verify that the TCN has an authorisation of stay or a valid residence permit.

However, as every salaried or self-employed worker in Luxembourg, the cash benefits will only be paid by the CNS after the end of the month when the 77th day after ceasing work falls. This sickness cash benefit is equal to the salary of the beneficiary and it is paid during 52 weeks in a reference period of 104 weeks.

The beneficiary must submit a medical certificate from his/her treating doctor. The CNS will continue paying subject to the positive advice of the CMSS.²⁰¹

There are some formalities that the insured person must fulfil for declaring the incapacity for work. For the first two days of absence a medical certificate is not required. However, the employee must inform the employer that s/he is unfit to work those days. The benefits will be paid from the day on which the incapacity to work was notified.²⁰²

¹⁹⁸ Article 11 of the [Grand-ducal regulation of 8 December 1977 on the implementation of the medical examination and the dental examination of pregnant women and the postnatal examination of the mother and the maternity booklet](#).

¹⁹⁹ Grand-ducal regulation of 8 December 1977 on the implementation of the medical examination of children of an early age, the periodicity of the medical examinations and of the model of the health booklet

²⁰⁰ The Immigration law does not foresees any renewal of residence permit in this circumstances and article 43 (4) of the Law of 29 August 2008 cannot be applied because it is limited in scope to unemployment benefits. Answer of the Directorate of Immigration, Foreigners Unit, 22 January 2014.

²⁰¹ MISSOC, [Your social security rights in Luxembourg](#), 2012, p. 10

²⁰² MISSOC, [Your social security rights in Luxembourg](#), 2012, p. 11

The beneficiary is required to undergo periodical medical checks to which he/she is invited by the medical control doctor. In case that the beneficiary does not attend those appointments the right can be suspended.

Other sickness cash benefits are:

- 1) Two days leave per year if you have a sick child under the age of 15 (leave for family reasons);
- 2) Five days leave if a member of the family or registered partner of the beneficiary is terminally ill.²⁰³

In those cases the employee must notify the absence to the employer and submit a medical certificate.

2. Funeral grant

When an insured person or a member of their family dies, the CNS pays the person paying for the funeral expenses a lump-sum funeral grant upon submission of the invoices and the deceased person's death certificate.²⁰⁴

3. Vocational rehabilitation measures

A TCN is entitled to vocational rehabilitation measures if the person is unfit to work for an extended period of time and the Medical Control Service (CMSS) has decided that the sick leave should be extended.

If the person is recognized as disabled it will be granted an invalidity pension (See Section 3.D), otherwise the medical file is sent to the medical officer of the CMSS to decide whether the person is unfit to execute his/her last position. In this last case, the rehabilitation procedure starts within the employer's company to find another post in which the employee can use its remaining skills or in the labour market by registering the beneficiary as a job seeker claiming unemployment benefits.

"If at the end of the unemployment benefit the person has not been redeployed, s/he will receive a tide-over allowance, equal to the invalidity pension, with the obligation to remain available for work."²⁰⁵

4. Old age pension and invalidity benefits

1. Old age pension

Are compelled to be insured against the risk of old age and invalidity every person who practices in Luxembourg a professional occupation against a remuneration, a wage-earner or independent professional activity or that can justify assimilated periods to these professional activities.²⁰⁶

Any TCN who, is affiliated by the employer after having verified that the TCN has a valid residence permit or an authorisation of stay and is working in Luxembourg, is insured in the old age pension

²⁰³ See CLEISS (Centre des Liaisons Européennes et Internationales de Sécurité Sociale), [Le régime luxembourgeois de sécurité sociale](#)

²⁰⁴ This allowance is reduced to half for a child aged less than 6 years and by 4/5 in case of a stillborn child.

²⁰⁵ MISSOC, [Your social security rights in Luxembourg](#), 2012, p. 11

²⁰⁶ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 60

insurance scheme.²⁰⁷ In the case of TCN self-employed workers²⁰⁸, they have to affiliate themselves at the CCSS directly filing a [declaration of entry for self-employed workers](#). In this form the applicant must write down his/her national identification number.²⁰⁹ If the person does not have the national identification number s/he must indicate the date of birth and attach a copy of an official identification document such as passport or identification card.²¹⁰ In the case of a third country national without a valid national ID number besides the passport s/he must join the authorisation of stay or the residence permit.

This excludes other TCN who do not have a salaried or self-employed occupation.

The conditions for being granted the benefits are the same as the Luxembourgish nationals with the exception of the valid residence permit.

The minimum contributable age is 16 years old and the maximum contributable age is 64 years old.

In order to qualify for an old-age pension, the person must fulfil the following two conditions:

- 1) Have been insured for at least 120 months;
- 2) Have reached the age of 65.²¹¹

Any period completed in another Member State of the European Union are taken into account. The person will not have right to the benefits if when s/he arrived at the age of 65 the two conditions are not fulfilled. In that case the premiums paid will be rendered to the person.²¹²

As one of the conditions *sine qua non* is to be insured for at least 120 months and be working in Luxembourg there is a minimum residence period (10 years) for being able to take advantage of the benefits.

2. Invalidity insurance

Invalidity insurance is a notion that derives from the old-age pension and is a replacement benefit granted to a person whose health conditions prevent him/her of working normally or support himself/herself.²¹³ This health condition can be provoked by: a) an accident, b) premature body wear or c) a long-term or incurable disease.

²⁰⁷ It is important to signal that in the hypothetical case in which a TCN is an irregular migrant during a part or the total insurance period, in principle the CCSS will not proceed to do a retroactive adjustment to avoid granting the benefit. The IGSS has not been confronted until now with a similar situation. Normally if an anomaly is detected in an affiliation, a retroactive adjustment with limited effects can be made and a retroactive affiliation can be ordered, but the CCSS avoids to the maximum to do these type of retroactive adjustments or disaffiliations. Also the IGSS has always rejected to play to role of immigration police even if there have been demands in this sense. Interview with an expert of the IGSS on 21 October 2013

²⁰⁸ Any person authorised to practice a liberal (lawyers, doctors, notaries, architects and engineers), commercial or crafts professional activity. See <http://www.ccss.lu/non-salaries/independant/>

²⁰⁹ This number is assign when the person is registered for the first time in the national registrar of physical and moral persons. See <http://www.aed.public.lu/tva/generalites/matricule.html>

²¹⁰ <http://www.ccss.lu/fileadmin/file/ccss/PDF/Formulaires/ETI021.pdf>

²¹¹ In some cases and according to the length of the insurance period may allow that the pension be awarded earlier between 57 and 60 years of age. MISSOC, [Your social security rights in Luxembourg](#), 2012, p. 15

²¹² MISSOC, [Your social security rights in Luxembourg](#), p. 15

²¹³ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 267

A TCN can benefit from the invalidity insurance benefits (invalidity pension) if the person is a salaried or self-employed worker and is an apprentice, receiving cash benefits under a sickness, maternity, or occupational accident or disease insurance scheme; receiving unemployment benefits, taking parental leave and a disabled employee working in a sheltered workshop.²¹⁴

In order to qualify for an invalidity person the TCN must fulfil the following conditions:

- 1) The person must complete a 12 months trial period of compulsory, continued or voluntary insurance over a three-year period before the onset of invalidity or from the period of expiration of the sickness allowance²¹⁵;
- 2) The invalidity has to be recognized by the CMSS²¹⁶;
- 3) The person must expressly renounce to do any professional activity, not only in Luxembourg but also abroad except if is insignificant.²¹⁷

The 12 months trial period does not apply in case of an accident (whether it was sustained at work or not) or because of an occupational disease, which was contracted during the insurance period.²¹⁸

Once the pension is granted the beneficiary is compelled to follow, until the age of 50, every rehabilitation or reconversion measures that are proposed to him/her by the CNAP upon advice of the CMSS.²¹⁹

5. Family benefits

In Luxembourg the family benefits are not related to the parents but to the children. All children who are brought up in Luxembourg and have their legal domicile²²⁰ - this means that the person must be authorised to reside in the territory, be registered at the municipality and have established the principle place of residence²²¹ - in the country qualified for family allowance.²²² A TCN child having a valid

²¹⁴ MISSOC, [Your social security rights in Luxembourg](#), 2012, p. 13

²¹⁵ It is important to mention that this period is extended in the case the applicant have been receiving the RMG .Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 267

²¹⁶ The CMSS must determine that the person is incapable of working in its last occupation in accordance with its physical capacities and skills. MISSOC, [Your social security rights in Luxembourg](#), 2012, p. 13

²¹⁷ This means that the income from the activity does not amount a third of the minimum social salary. Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 268

²¹⁸ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 267

²¹⁹ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 268

²²⁰ The condition of legal domicile is fulfilled by a TCN child when the child is registered in the civil registrar and has a valid residence permit. It can be easily proven with a residence certificate issued by the municipality and if necessary a valid authorisation to stay. Written response of the President of the CNPF, 20 February 2014.

²²¹ However, they are paid to the parent who has legal custody over the minor and lives with him. See judgment of the Administrative Court, [n° 32288C of 3 October 2013](#). The Court states: « C'est cependant à juste titre que la partie étatique rétorque que la convention de divorce invoquée par les appelants prévoit expressément que « les enfants auront cependant leur lieu de résidence habituel auprès de leur mère ». Partant, l'autorité ministérielle a respecté la situation de fait créée par les parents d'... et ... et le ministre, en retenant que les deux enfants issus d'un premier mariage ne peuvent être pris en considération pour le calcul de la tarification du « chèque-service-accueil » de l'enfant ..., ne saurait encourir le reproche de ne pas avoir respecté le choix des deux parents signataires de ladite convention. »

²²² Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 322

residence permit is entitled to the same rights as any other resident child.²²³ It is important to mention that the condition that the child must live effectively and continuously in the territory, means that he cannot absent himself/herself for a period longer than three months. These two conditions: legal domicile and effective residence²²⁴ must be fulfilled to open the right to family benefits.²²⁵ This residence presumption is fulfilled also in the following situations²²⁶:

- 1) The child has the status of family member of a person who makes higher education, university or professional studies or training recognized by the Luxemburgish authorities;
- 2) One of its parents is a posted worker in another country but s/he is subject to the Luxemburgish law on social security;
- 3) One of the parents works for a Luxembourgish diplomatic mission abroad;
- 4) One of the parents work as an agent of the Luxembourgish cooperation and development abroad;
- 5) One of the parents is a volunteer in the volunteer context.²²⁷

A TCN cross-border worker who works in Luxembourg is also entitled to claim for family allowance if his/her children are being brought up in another EU Member State.²²⁸

Family allowance is not considered an extra pay. As it was extended to all the children residents in the country it is considered as a process of redistribution of national income made in the interest of children based on the principle of social solidarity²²⁹. This is why the law considers family allowance as a personal right of children because they must be used in their benefit.²³⁰

In principle the family allowance are paid for children up to the age of 18. However, they are paid up to the age of 27 for children who are still pursuing secondary studies, and for disabled children.²³¹

Resident children who are pursuing higher education studies receive a special grant of 6.500 euros per year. However, there is a dispute after the decision C-20/12 of 20 June 2012 of the European

²²³ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), pp. 322-323

²²⁴ The effective residence can be proved with a school certificate. The CNPF has control mechanisms to verify if the child effectively lives in the Grand-Duchy of Luxembourg or not. Written response of the President of the CNPF, 20 February 2014.

²²⁵ Written response of the President of the CNPF, 20 February 2014.

²²⁶ These situations are « *numerus clausus* ». Written response of the President of the CNPF, 20 February 2014.

²²⁷ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 323

²²⁸ See Article 1 of [Regulation No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation No 883/2004 and Regulation No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality](#). See motivation (10). This based on the principle of equality in treatment between an EU CBW and a TCN CBW. This is also due to the principle of affiliation which applies in cross-border cases (the principle of residence applies for national residence cases). Written response of the President of the CNPF, 20 February 2014.

²²⁹ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 322

²³⁰ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), pp. 322-323

²³¹ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), pp. 322-323

Court of Justice²³² on the conditions that CBW are entitled to these benefits.²³³ The Ministry of Higher Education answering a parliamentary question of the MP Serge Urbany said that it will be required a minimum working period of 5 years for a CBW to claim these benefits.²³⁴

Some benefits require that the parents of the TCN child residents or cross-border have to be salaried workers or self-employed, such as parental leave benefits²³⁵

The TCN child of a TCN-CBW will have access to the general child benefit, the age supplements as any children of a CBW. However, there are two situations (Cape Verde and Brazil) in which a TCN child from TCN worker (salaried or self-employed, independently if the person is long-term or fixed term) and residing in Luxembourg living in a non-EU country can benefit from the family allowances, but this is due to bilateral agreements (See Section 5.2. point iii).

As it was mentioned before, the family benefits are a right of the children and not of the parents.

However for benefiting of certain of these benefits there are additional requirements from the general conditions that have to be fulfilled:

- 1) Schooling allowance: The TCN child must be at least 6 years old. It is paid ex-officio in favour of the children who are beneficiaries of family allowance.
- 2) "BONI" for child: At least one of the TCN parents has to be a Luxemburgish tax payer.
- 3) Parental leave benefit: Any TCN resident or TCN CBW bringing up in their household one or more children aged under 5 for whom family allowance is paid. The TCN can be an employed or self-employed worker. It is important to mention that the parental leave benefit is opened to all EU-CBWs.

-Salaried worker must have to be employed with the same employer for at least a year prior to the commencement of the parental leave. Any salary worker with an open-term contract or a fixed term contract can apply but in the case of the fixed term contract, its duration must cover the entire period of parental leave benefit.²³⁶ In principle, it is required that the applicant is domiciled in Luxembourg and must reside effectively. However, EU-CBW and TCN-CBW can benefit of this right even though they do not reside in the territory.²³⁷

²³²

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=138699&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=3064045>

²³³ See L'Essentiel, Bourses: le bras de fer avec l'Etat se poursuit, 28 August 2013, p. 3

²³⁴ See Europaforum.lu, [Aide financière pour études supérieures – L'OGBL dénonce "un certain mépris de la loi qui continue à régner" au Ministère de l'Enseignement supérieur qui veut appliquer rétroactivement le critère de la période de cinq ans de travail ininterrompu](#), 24 July 2013. « La ministre a indiqué dans sa réponse au député de déi Lénk qu'elle entend appliquer les nouveaux critères de la réforme adoptée le 9 juillet 2013, conditionnant l'octroi d'une aide pour études supérieures à des travailleurs frontaliers à une période de travail ininterrompu au Luxembourg supérieure à 5 ans, de façon rétroactive aux étudiants qui ont introduit des recours devant le tribunal administratif sur base de la loi de 2010. » See also [answer to the parliamentary question of Serge Urbany](#).

²³⁵ In this case at least one of the parents has to be a tax payer in Luxembourg. See <http://www.cnpf.lu/prestations-familiales/boni-pour-enfant/>

²³⁶ Article 6 of the [Law of 12 February 1999 on the creation of the parental leave](#), published in Mémorial A-13 of 23 February 1999 and article L-337-2 of the [Labour Code](#) (Law of 31 July 2006 published in Mémorial A-149 of 29 August 2006).

²³⁷ See Article 1 of [Regulation No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation No 883/2004 and Regulation No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality](#).

4) Child raising allowance: TCN nationals residing in Luxembourg or TCN CBW can benefit from this allowance if they fulfil any of the following conditions:

- bringing up one or more children for whom family allowance is paid
- principally occupied in bringing up their children and are not employed or self-employed, except if the income of the applicant combined with the spouse's income does not exceed a fixed limit (3 times the minimum wage for 1 child; 4 for 2 and 5 for 3)
- reduce their working hours by at least a half in order to bring up one or more children (in this case the person receives ½ the allowance)

In principle all the family benefits with the exception of the childbirth allowance are extended to CBWs.²³⁸ In principle the legality of the residence is a prerequisite to the application of the European coordination regulations.²³⁹

6. Unemployment

In Luxembourg, TCN with a valid residence permit²⁴⁰ can register as a job-seeker at the Employment Development Agency (ADEM).

However a TCN cannot register if the applicant is:

- 1) a seasonal worker;
- 2) a posted or transferred worker;
- 3) the holder of a residence permit which its validity is formally limited;
- 4) residing on the territory for studying of professional training.²⁴¹

The TCN can claim unemployment benefits if s/he fulfils the following conditions. He/she must

- have lost his job through no fault of its own
- be fit for work and prepared to accept any employment commensurate with its abilities
- be aged between 16 and 64
- not be recipient of an old-age or invalidity pension, or an employment injury annuity at full rate
- be registered as a job seeker²⁴² at the (ADEM)²⁴³
- fulfil the qualification period: having worked in Luxembourg for at least 26 weeks in the 12 months before becoming unemployed. If this period includes periods of incapacity for work

²³⁸ [Regulation 883/2004 of the European Parliament and the Council of 29 April 2004 on the coordination of social security systems.](#)

²³⁹ Regulations 883/2004 and Regulation 1231/2010.

²⁴⁰ It can be a long-term residence permit or a valid residence permit. However, TCNs under article 80 (2) of the Law of Immigration cannot be registered with the exception of beneficiaries of international protection. Written answer of ADEM to LU EMN NCP questionnaire of 11 February 2014.

²⁴¹ Article L. 622-5 (1) and 2 of the Labour Code modified by Law of 18 January 2012 creating the Employment Development Agency. Article L. 622-5 (1) and (2) of the Labour Code was modified to adapt the Labour Code with all the different categories of residence permits foreseen by the Law of Immigration. Written answer of ADEM to LU EMN NCP questionnaire of 11 February 2014.

²⁴² It is important to mention that the applicant must have lost his/her job involuntarily. If the termination of the contract was generated by the employee without a valid reason, or that the termination of the contract had been done by mutual agreement or by serious misconduct of the employee, the employee does not have any right to collect unemployment benefits.

²⁴³ See <http://www.adem.public.lu/demandeur/placement/index.html>

it will be extended accordingly.²⁴⁴

Once the formalities have been completed, unemployment benefit will be paid to the applicant from the first day of unemployment.²⁴⁵

The possibility of claiming unemployment benefits will depend on the validity or the non-expiration of the residence permit in regards to the availability criteria on the labour market. This means that if the residence permit expires the TCN cannot continue to be registered as a job seeker at the ADEM and cannot claim any more unemployment benefits. If the residence permit expires during the period the holder is receiving unemployment benefits, the payment is suspended until the job seeker presents to ADEM a new residence permit. Once s/he presents the new residence permit the job seeker will continue receiving the benefits for the rest of the period.²⁴⁶

Example: A salaried worker obtained a 1 year valid residence permit.²⁴⁷ The person worked for the first 12 months with his/her employer. His/her contract was renewed by his/her employer and the Directorate of Immigration renewed its residence permit for one additional year.²⁴⁸ After five months into the second year, the employer decides to terminate the TCN contract. The TCN registered himself/herself as a job seeker at the ADEM and claim for unemployment benefits. Theoretically the TCN will have right to claim the benefits during a period equal to the work duration (17 months). However, taking into consideration that its residence permit expires in 7 months the indemnities will stop after 7 months because s/he is not available for the labour market. S/he would have to present a new residence permit to ADEM to continue receiving the benefits.

A TCN self-employed worker can register as a job seeker at the ADEM and claim for unemployment benefits if s/he fulfils the following conditions. He/she must:

- be registered as a jobseeker
- have ceased activities because of economic and financial reasons, caused by a third party or “force majeure”;
- be domiciled in Luxembourg at the time of the occurrence of unemployment;
- be aged between 16 and 64;
- not be a beneficiary of a retirement pension or disability, or a monthly disability allowance or a plenary pension accident;
- be able to work, available for the labour market and ready to accept any suitable employment
- complete the qualifying period: having worked as an independent for at least six months before registering as unemployed and prove compulsory affiliation with Luxembourg social security institutions (as an employee or independent) of at least 2 years.

²⁴⁴ The applicant must fill a claim (the form is given by the agent) and must present the introductory letter of the placement service of the ADEM, the last six salary slips, the employer certificate, the tax card and the letter of dismissal (See <http://www.adem.public.lu/demandeur/indemnites/index.html>). This has to be done in the agency of the place of residence of the applicant

²⁴⁵ MISSOC, [Your social security rights in Luxembourg](http://www.adem.public.lu/demandeur/indemnites/salarie/inscription_salarie.html), p. 24 See also http://www.adem.public.lu/demandeur/indemnites/salarie/inscription_salarie.html.

²⁴⁶ There is no impact in the duration of the benefits of the job seeker. Written answer of ADEM to LU EMN NCP questionnaire of 11 February 2014.

²⁴⁷ Article 43 (1) of the [Law of 29 August 2008 on free movement of persons and immigration](#).

²⁴⁸ According to the amendment made by [Law of 19 June 2013](#) to article 43 (4) of the [Law of 29 August 2008](#) the salaried worker residence permit can be renewed to a maximum duration of three years.

7. Guaranteed minimum income (RMG)

The Guaranteed minimum income is part of the financial public assistance. It is based on the principle of solidarity and is “intended to ensure sufficient means for a decent standard of living”.²⁴⁹ The goal of the Luxemburgish State is to come to help to the Luxemburgish residents whose income are lower than the threshold fixed by the law.²⁵⁰

The RMG consists in an insertion allowance, a complementary allowance or both allowances paid at the same time. The benefits are not only financial but also social, because the idea behind the RMG is to avoid social exclusion of these people.²⁵¹

The TCN is entitled to RMG if s/he has resided in Luxembourg for at least 5 years in the last 20 years²⁵², is at least 25 years old, has an income below the threshold established by the law and is prepared to exhaust all possibilities not yet used in the Luxembourg law or abroad in order to improve its financial situation.²⁵³ The third country national has to have a valid residence permit. This means that it can be a fixed-term residence permit (salaried worker, self-employed, family member, and researcher) or a long-term residence permit. The condition of continued residence is not needed.

3.1. Is a minimum residence period attached to any of the benefits that are accessible by third-country nationals under the seven categories listed above?

Yes. Only for the guaranteed minimum income (RMG).

If yes, please indicate:

- what the minimum residence period is in respect of each of the benefits. (If this minimum residence period varies for each category of migrant identified in Table 2.1 please state this is the case and identify the minimum residence period for each category in respect of each of the benefits);

The third-country national is entitled to the RMG if s/he has resided legally in Luxembourg for 5 years out of the last 20 years. There is not difference in treatment in regards to the category of migrant (See point 3.G)

- whether the minimum residence period applies to third country nationals only, or also to nationals of your (Member) State. (If the minimum residence period applies to nationals of your (Member) State too, please state what the minimum residence period is for nationals in respect of each of the benefits).

In regards to the RMG, which is part of the social assistance system, this minimum residence period only applies to third-country nationals who are residents excluding the TCN family members of an EU citizen. Nationals and their family members can apply right away. In the case other Member States nationals and their family members must reside at least three

²⁴⁹ MISSOC, [Your social security rights in Luxembourg](#), 2012, p. 26.

²⁵⁰ Chambre de Salariés, Droit de la sécurité sociale, Le revenu minimum garanti (RMG), Septembre 2012, p. 7

²⁵¹ Chambre de Salariés, Droit de la sécurité sociale, Le revenu minimum garanti (RMG), Septembre 2012, p. 7

²⁵² See article 2 (2) of the [Law of 29 April 1999 on the creation of the Guaranteed minimum income](#)

²⁵³ See article 2 (1) a – d of the [Law of 29 April 1999 on the creation of the Guaranteed minimum income](#)

months in the country before accessing this rights until the moment when the authorities consider that they become an unbearable charge for the social security system.²⁵⁴

3.2. Are any of the benefits that are accessible by third-country nationals under the seven categories listed above exportable once the third country national returns to his/her country of origin?

Yes.

Since the 1870's, Luxembourg has depended on foreign workers to satisfy the internal labour demand of its economy.²⁵⁵ Seen the geographical dimensions of the country and the fact that Luxembourg is part of the Greater Region which is the second largest economic-political transnational space in Europe and counts almost 25% of the total number of CBWs in the EU-28, only outnumbered by Switzerland²⁵⁶, the Luxemburgish legislation has not put into place any restriction to the export of benefits abroad coming from contributions. The export of these benefits is made to any country even if there is not a bilateral treaty with this specific country. The only requirement is that the beneficiary fulfils all the requirements to grant the benefit.²⁵⁷

The only benefits that are not exportable are:

- a) Family benefits: The reason is that the financing of family benefits is made through general taxation and the personal beneficiary of the benefit is not the parents but the children. In this case the residence clause applies. Before, family benefits were a normal branch of the social security system and the workers contributed directly to the system. That was the reason why these benefits could be exported at the time (even if the amounts were reduced in accordance with certain bilateral treaties).²⁵⁸ Nowadays, with the change in the source of the financing and the philosophy in regards to the access to family benefits the new political order is to no more export this category of benefits.²⁵⁹

- b) The RMG

It is important to mention that in regard to health insurance, medical expenses of a Luxemburgish insured person, independently of their nationality, incurred in a country outside of the EU, EEA and Switzerland, or not linked by a bilateral agreement with Luxembourg, are reimbursed by the CNS in accordance with the Luxemburgish percentages and tariffs based on the paid invoices.²⁶⁰

If yes, please indicate:

²⁵⁴ Chambre de Salariés, Droit de la sécurité sociale, Le revenu minimum garanti (RMG), Septembre 2012, p. 11

²⁵⁵ LU EMN NCP, Visa Policy as a migration channel, Luxembourg, 2011, pp. 13-15.

²⁵⁶ The Greater Region, formed by Luxembourg, Saarland and Rhineland-Palatinate (Germany), Lorraine (France) and Wallonia (Belgium), See LU-EMN-NCP, [Individual profiles and migration trajectories of the third-country nationals cross-border workers: The case of Luxembourg](#), September 2012, p. 15

²⁵⁷ Interview with an expert of the IGSS on 21 October 2013

²⁵⁸ Interview with an expert of the IGSS on 21 October 2013

²⁵⁹ The old bilateral agreements signed by Luxembourg which foreseen the exportability of family benefits were renegotiated to exclude the exportability of these category of benefits, with the exception of the one signed with Cape Verde. At the moment there is no political will to renegotiate this agreement and there are no plans to do it in the near future. Interview with an expert of the IGSS on 21 October 2013

²⁶⁰ Interview with an expert of the IGSS on 21 October 2013

- which benefits are exportable once the third country national returns to his/her country of origin. (If the 'exportability' of the benefit varies for each category of migrant identified in Table 2.1, please state this is the case and describe which categories of migrant can benefit from this right in respect of each of the benefits);

There is an exportability of benefits derive of the Social Security System coming from contributions (i.e. old-age, invalidity, survivor pensions as well as replacement income from work related accidents, health insurance)

Exportability of family allowances is only foreseen in the convention signed with Cape Verde.²⁶¹ Also there is a large interpretation made by the CNPF to continue exporting these benefits to Brazil, taking into consideration that the amounts involved are not significant however a new agreement is currently under negotiation.²⁶²

- whether the rules regarding the 'exportability' of the benefits are the same for nationals of your (Member) State who move to a third country. (If the rules regarding the 'exportability' of the benefits vary between third-country nationals and nationals of your (Member) State, please specify what the rules are for nationals of your Member State in respect of each of the benefits).

Yes.

3.3. Is a minimum employment period/ minimum contribution period attached to any of the benefits that are accessible by third-country nationals under the seven categories listed above?

Yes.

If yes, please indicate:

- what the minimum employment period / minimum period of insurance contributions is in respect of each of the benefits. (If the minimum employment period / minimum period of insurance varies for each category of migrant identified in Table 2.1, please state this is the case and identify the minimum employment period/minimum period of insurance contributions for each category in respect of each of the benefits).
 - Healthcare: In regards to healthcare if there is an obligatory contribution the access is immediately. However, if it is a voluntary contribution there is a three months trial period.

Maternity leave and cash benefits: For benefiting of maternity leave and cash benefits the employee must have been working for the employer for at least 6 months during the year before her maternity leave (confinement). This requirement is for all employees independently from their nationality. There is no minimum employment period for the maternity allowance and the birth grant.

²⁶¹ In the conventions with Bosnia-Herzegovina, Macedonia, Moldavia, Montenegro, Serbia and Turkey, foreseen that family benefits are granted in accordance with the law of the country of residence of the child. There is no exportability. Until last year the old convention signed with Tunisia foresee the exportability of family benefits. However, when the new convention entered into force in 2013 it excluded the exportability of these benefits. Interview with an expert of the IGSS on 21 October 2013 and see [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 532

²⁶² Interview with an expert of the IGSS on 21 October 2013

- Old age pension schemes: For benefiting of these benefits the employee must have to contribute at least 120 months (10 years).²⁶³ In case it has not done so, the contributions will be reimbursed to the applicant.²⁶⁴
 - Invalidity benefits: For benefiting of invalidity benefits the applicant must have completed 12 months of insurance over a three-year period before the onset of invalidity²⁶⁵, or from the period of expiration of the sickness allowance except if the invalidity is due to an accident (whether or not it was sustained at work) or to an occupational disease which the applicant contracted while insured, s/he is entitled to an invalidity pension even if s/he did not complete the 12 month insurance period normally required.²⁶⁶
 - Unemployment: The employee must have worked continuously for a period of 26 weeks in a reference period of the last 12 months.
- whether the minimum employment period / minimum period of insurance contributions applies to third country nationals only, or also to nationals of your (Member) State. (If a minimum employment period / minimum period of insurance contributions applies to nationals of your (Member) State as well, please specify what the minimum employment period / minimum period of insurance contributions is for nationals in respect of each of the benefits).

The same minimum employment period / minimum period of insurance contributions applies not only for Luxemburgish nationals, EU and EEA nationals but also to TCNs. For the minimum periods required see paragraph above.

3.4. Are migration-specific conditions (e.g. requirement to hold a particular residence permit, authorisation of stay or visa, a fixed domicile,²⁶⁷ requirement to participate in an integration course, etc.) attached to any of the benefits that are accessible by third-country nationals under the seven categories listed above?

Yes.

If yes, please indicate:

- what the migration-specific conditions are in respect of each of the benefits. (If the migration-specific conditions vary for each category of migrant identified in Table 2.1, please state this is the case and identify the migration-specific conditions for each category of third-country national in respect of each of the benefits).

As mentioned above, the condition of holding a valid residence permit during the period in which the third country national apply and will receive the benefits is a sine qua non requirement. As the jurisprudence had stated that the right to social assistance in Luxembourg is indirectly linked to the right of stay.²⁶⁸

²⁶³ [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 250

²⁶⁴ [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 265

²⁶⁵ MISSOC, [Your social security rights in Luxembourg](#), p. 13

²⁶⁶ MISSOC, [Your social security rights in Luxembourg](#), p. 13

²⁶⁷ This refers to any method that your Member State may have to register an individual's place of residence.

²⁶⁸ See judgment of the First instance administrative Court, 3rd Chamber, [n° 31721 of 8 October 2013](#)

The Law of 29 August 2008 established the different categories of residence permits issued by Luxembourg²⁶⁹ to third country nationals:

- a) salaried worker²⁷⁰;
- b) highly qualified worker²⁷¹;
- c) transferred worker²⁷²;
- d) posted worker²⁷³;
- e) self-employed worker²⁷⁴;
- f) sportsmen²⁷⁵;
- g) student, pupil, trainee, volunteer, “au pair”²⁷⁶;
- h) researcher²⁷⁷;
- i) Family member²⁷⁸;
- j) Private or particular reasons²⁷⁹

In order to obtain a residence permit in Luxembourg, the third country national must apply for an authorisation of stay from his/her country of origin before entering the country.²⁸⁰ The applicant must fulfil the criteria of the category of authorization of stay that s/he applied for. Once the Ministry in charge of Immigration grants the authorization of stay²⁸¹, the applicant must apply in the next 90 days for a long-term visa (D-visa), if required, at the Luxemburgish diplomatic representation or at the diplomatic representation of the Member State which represents Luxembourg²⁸². Once on the territory the applicant must declare its arrival at the municipality in which s/he is going to reside²⁸³, pass a medical examination and obtain appropriated housing.²⁸⁴ Not later than three months after arriving on the territory the TCN must apply for a residence permit attaching the declaration of arrival, the medical examination and proof of having appropriated housing and paid the issuing fee.²⁸⁵

²⁶⁹ Articles 38 and 45 of the Law of 29 August 2008. We do not include the long-term residence because it presuppose that the individual already has a residence permit and has lived continuously more than 5 years.

²⁷⁰ Articles 42 to 44, 46 of the Law of 29 August 2008.

²⁷¹ Article 45 of the Law of 29 August 2008.

²⁷² Article 47 of the Law of 29 August 2008.

²⁷³ Articles 48 and 49 of the Law of 29 August 2008.

²⁷⁴ Article 51 to 53 of the Law of 29 August 2008.

²⁷⁵ Article 54 of the Law of 29 August 2008.

²⁷⁶ Articles 55 to 62bis of the Law of 29 August 2008.

²⁷⁷ Articles 63 to 67 of the Law of 29 August 2008.

²⁷⁸ Articles 68 to 76 of the Law of 29 August 2008.

²⁷⁹ Article 78 of the Law of 29 August 2008.

²⁸⁰ Article 39 (1) of the Law of 29 August 2008. The only exceptions when the applicant can applied inside the territory are the ones foreseen in articles 78 (3) (authorisation of stay for private reasons issued because of humanitarian reasons) and article 89 (authorisation of stay for exceptional motives).

²⁸¹ The delays in which the Ministry in charge of Immigration has to respond vary from 3 months in cases like salaried workers, students, researchers, athletes, transferred and posted workers, to 9 months in cases of family reunification when the resident is a non-EU citizen. In exceptional cases, linked to the complexity of the application's investigation, this period may be extended. See LU-EMN-NCP, Visa policy as a migration channel, 2011, p.55

²⁸² See LU-EMN-NCP, Visa policy as a migration channel, 2011.

²⁸³ This has to be made in the three days following its arrival in Luxembourg. Article 40 (1) of the Law of 29 August 2008.

²⁸⁴ Article 40 (2) of the Law of 29 August 2008.

²⁸⁵ Article 40 (2) of the Law of 29 August 2008.

A certain type of residence permit²⁸⁶ is required to be registered as a job-seeker (salaried worker, highly skilled worker, self-employed worker, long-term resident, international protection or family member of one of the categories mentioned before).²⁸⁷

3.5. Are any other conditions (not already listed above), e.g. minimum or maximum age, means-tests, etc. attached to any of the benefits that are accessible by third-country nationals under the seven categories listed above? In this question, please only identify any other conditions that are applied to third-country nationals (and not to nationals of your (Member) State).

No.

²⁸⁶ In regards to the cost-of-living allowance and of social aid as well a certain type of residence permit is required but these two benefits do not fall into the scope of this study.

²⁸⁷ In regards with TCN-CBWs the extension is done through Regulation n° 1231/2010 but they have to be long-term residents or family member of an EU national. See articles 12 and 50 of the Law of 29 August 2010.

4. ADMINISTRATIVE PRACTICES THAT AFFECT THIRD-COUNTRY NATIONALS ACCESS TO SOCIAL SECURITY

4.1. Are discretionary criteria applied within the administrative law / rules when assessing an individual claim for social security in any of the seven branches of social security in your Member State? (for example a habitual residence test)?

No.

In principle the application of social security legislation is objective. The deciding officer will check if the applicant fulfils the criteria required for each benefit and if it was made in the legal deadline.²⁸⁸ If the applicant fulfils the criteria s/he will be entitled to obtain the benefits. In case it is negative the application will be refused.

In regard to family benefits the only discretionary power that the CNPF is the possibility to make derogations to one of the conditions that has to be fulfilled under extraordinary circumstances foresee by article 269 (4) of the Social Security Code. However, the CNPF cannot and would not use this discretionary power frequently to avoid lapsing into arbitrariness.²⁸⁹

However, there are extraordinary cases which are not foreseen by the law and it is in this type of cases that the discretionary criteria can apply. This is to guarantee the principle of legal certainty to people covered by the social security system.²⁹⁰

The only branch of the social security system in general that the discretionary principle will apply is in the social aid²⁹¹, which is outside of the scope of this study.

If yes, please indicated:

- the benefits, under each of the seven branches of social security, where discretionary criteria apply;
- the nature of the discretionary criteria (e.g. habitual residence tests); and,
- who the deciding officers are that must apply their discretion.

N/A

4.2. Please identify the factors which a deciding officer must take into account when judging whether an applicant has met the above-listed discretionary criteria (e.g. habitually residence test). If these factors differ for individual benefits, please specify.

N/A

4.3. Please describe any written circulars or guidelines that deciding officers receive in order to ensure the consistent implementation of the discretionary criteria (e.g. ‘habitual residence test’)

²⁸⁸ See [Decision of 10 November 2005](#) of the Arbitration Council of the Social Security

²⁸⁹ Written response of the President of the CNPF, 20 February 2014.

²⁹⁰ [Decision of 11 December 2006](#) of the High Council of the Social Security. In this case the employer was not correctly registered in Luxembourg but had affiliated his employees to the social security system and continued paying the contributions. Even if the legal status of the employer was nor regular to avoid legal uncertainty the affiliation of the employees during the period was maintained.

²⁹¹ Interview with an expert of the IGSS on 21 October 2013

to individual claimants within your (Member) State. Please also state whether deciding officers receive specific training to support their work.

N/A

4.4 Might claiming social security affect a third-country national's access to a residence permit renewal, application for naturalisation, or for family reunification, where these aspects are dependent on an individual's ability to be self-supporting?

Yes.

The Law of 29 August of 2008 is very clear that an authorisation of stay is only granted (with the exception of humanitarian reasons and international protection beneficiary) if the TCN does not constitute a charge for the Luxemburgish State.²⁹²

If yes, please list those aspects that can be affected by a social security claim and identify the statutory provisions that specify this.

1. Blue Card Holders: In the case of Blue Card holders, the fact of claiming unemployment benefits does not trigger the withdrawal of the residence permit, except if the unemployment is extended more than three months or it happens more than once during the validity of the residence permit.²⁹³
2. Salaried workers: During the renewal of the residence permit of the salaried worker, if the renewal occurs during the period in which the person receives unemployment benefits the residence permit will only be renewed for a maximum duration of one year.²⁹⁴
3. Family reunification: For applying for family reunification the TCN applicant must fulfil the criteria established by article 69 (1) of the Law of 29 August 2008:
 - hold a residence permit valid for at least one year, has been living in Luxembourg for at least twelve months and has reasonable prospects of obtaining the right to long-term residence;
 - provide proof of stable, regular and sufficient resources to cover his/her own needs and those of dependent family members without using the social aid system;
 - he/she has adequate housing for the family member(s);

²⁹² Article 34 (2) 5, 42 (1) 4, 45 (1) 3, 47 (4), 48 (4), 51 (1) 2, 54 (1) 2, 56 (1) 3 and 4, 60 (1) 5, 61 (1) 3, 62 (1) 2, 62bis, 63 (1), 69 (1) 1 and 78 (2) of the Law of 29 August 2008.

²⁹³ Article 45-1 (3) of the Law of 29 August 2008.

²⁹⁴ Article 43 (4) of the Law of 29 August 2008. The First instance administrative Court, 2nd Chamber, in the decision [n° 31448 of 7 October 2013](#) clearly stated that the Ministry in charge of immigration has the discretionary power to revoke the right of stay of an EU national if s/he becomes an unreasonable burden for the social security system. The First instance administrative Court states: « Le ministre dispose partant d'un pouvoir discrétionnaire pour apprécier si le ressortissant d'un état membre de l'Union Européenne constitue une charge déraisonnable pour le système d'assistance sociale. ...En ce qui concerne la la vérification des critères énoncés à l'article 24 (3) et (4) précité, force est au tribunal de constater que loin de faire une application « automatique » de son droit de retrait d'une carte de séjour en raison du recours par le demandeur au système d'assistance sociale, le ministre, dans sa motivation du 24 mai 2012, a dûment pris en compte la nature et la durée des prestations sociales non contributives accordées au demandeur pendant l'intégralité de son séjour sur le territoire luxembourgeois, ainsi que la durée dudit séjour, en application du paragraphe (4) de l'article 24 de la loi du 29 août 2009. Le ministre a ainsi mis en évidence que le demandeur s'est vu accorder une autorisation de séjour en qualité de travailleur salarié le 12 septembre 2008, et qu'à partir du mois de septembre 2009, jusqu'au jour de la décision, il était à charge du système d'assistance sociale en touchant le revenu minimum garanti, dont le montant est fixé par la loi.... »

- he/she has health insurance cover for him/herself and family members.

In the case of family reunification if the applicant loses his/her job, in principle it does not affect the possibility of family reunification.²⁹⁵ However, there are two major problems:

- a) s/he cannot fulfil the “reasonable prospects of obtaining the right to long-term residence²⁹⁶”; and
- b) depending if he/she has children or not, the person will receive between 80 and 85% of its previous salary. If this amount does not fulfil the minimum threshold established by the Grand-ducal regulation of 11 August 2011²⁹⁷ in principle the family reunification will not be accepted.²⁹⁸ For the determination of the income, the authorities take into consideration the income coming from the salaried or independent activity (including the replacement income and capital income). Outside of the personal income of the applicant, the income from the spouse or partner, which complete in a stable manner the family budget also are taken into account. In the case of unemployment the income coming from the unemployment benefits as well as family allowances will be taken into consideration for granting the family reunification.

In the case that the TCN applicant is benefiting from the RMG the family reunification is excluded because it will be considered an unreasonable burden for the social assistance system.²⁹⁹

4. Long-term resident: According to article 80 (1) of the Law of 29 August 2008 a TCN can apply for a long-term residence permit after 5 years of leaving continuously in Luxembourg. According to article 81 (1) 1 the TCN who applies for this permit has to prove that s/he has stable, regular and sufficient resources to cover his/her needs and those of his/her family without applying to the social aid system.

As it was mentioned above the TCN can apply for the guaranteed minimum income (RMG) if s/he had lived 5 consecutive years of the last 20 years in Luxembourg. However, in this case (RMG), the long-term residence permit will not be granted.

5. Naturalisation: In relation with the naturalisation, claiming social security benefits does not have any incidence on applying for the naturalisation.³⁰⁰

4.5. Please indicate whether translation, interpretation or other forms of support are available to third-country nationals wishing to access a social security benefit or programme in your country.

Yes.

²⁹⁵ Answer of the Directorate of Immigration, 22 January 2014.

²⁹⁶ See article 81 (1) 1 of the Law of 29 August 2008.

²⁹⁷ [Grand-ducal regulation of 11 August 2011](#) on defining the criteria of resources and housing foreseen by the Law of 29 August 2008 on free movement of persons and immigration, published in Mémorial A-180 of 22 August 2011. According to article 6 (1) this amount is the equivalent of average gross monthly minimum social salary during the last 12 months.

²⁹⁸ Article 6 (2) of the [Grand-ducal regulation of 11 August 2011](#) If the amount falls below, it is discretionary to the Ministry to accept the family reunification but taking into consideration between other elements, the evolution of the economic situation, especially in relation with its labour stability.

²⁹⁹ Answer of the Directorate of Immigration, 22 January 2014.

³⁰⁰ Article 6.2 of the [Law of 23 October 2008 on Luxembourgish nationality](#).

To access healthcare in Luxembourg the hospital used translators to communicate with foreigners in their own language. Often the migrants choose the doctors or medical staff based on their language skills.

In Luxembourg, three non-profit organisations ASTI (Association de Soutien aux Travailleurs Immigrés) and Caritas and the Luxembourgish Red Cross, provide a translation service for foreigners (including beneficiaries from international protection) that does not talk properly any of the three official languages (French, Luxembourgish and German).

The mission of the “Intercultural Translation Service (Le Service Interprétariat Interculturel) provided by the Luxembourgish Red Cross, is to make available to public administrations and the medical, aid or assistance institutions a professional translation assistance in cases where the communication with the foreigners or the cultural difference are difficult.³⁰¹ These translators are held by professional secrecy and have to respect a deontological code³⁰². The service is co-financed by the Ministry of Health and the Luxembourgish Reception and Integration Office (OLAI).³⁰³

Caritas offers since approximately ten years a social translation service by telephone in Serbian-Croatian, Albanian, Arabic, Portuguese and Russian. This service is available for public institutions, hospitals included, and doctors who find difficulties in communicating with foreigners.

³⁰¹ <http://www.croix-rouge.lu/interpretariat-interculturel-2/>

³⁰² Translations are possible in the following languages : albanais, amharique, anglais, arabe, chinois, créole capverdien, kurde, lingala, macédonien, persan, filipino, portugais, russe, serbo-croate, tchiluba, turc, swahili et wolof.

³⁰³ The hospital or doctor who needs a translator, can apply for it by telephone, fax or online. In this case an appointment is fixed and the translator will accompany the foreigner to the hospital or doctor office. In case of an emergency the service will contact the translator and the translation can be made by telephone. See LU EMN NCP answer to SI EMN NCP Ad-hoc query on medical service for persons with international protection, launched 24 January 2012.

5. EXTERNAL DIMENSION OF SOCIAL SECURITY

Luxembourg has always depended on foreign workforce to cover the needs of its labour market. At the end of Second World War the increase in the mobility of workers between countries was significant and triggered the need to look into the social protections of these foreign workers. The problem was that when a person moved to another country, s/he was no longer protected by the social security system of his/her country of origin. This situation was aggravated by the fact that they were subject to the social security system of the host country but they found obstacles to receive the benefits because of restrictive rules of residence or nationality, having to pass a new trial period of work or of contributions or losing the coverage for their family members who were under their responsibility. The international conventions on social security have as principal objective to coordinate national legislation on this subject and to eliminate obstacles in its application so that migrant workers can benefit from a continued and complete coverage.

All the conventions signed by Luxembourg do not try to harmonize legislation according to a common model but to coordinate national legislation.³⁰⁴ The bilateral agreements signed by Luxembourg provide an added-value especially in regards to the aggregation of the insurance periods in case of triangular relations³⁰⁵. Also in the case that the legislation of the other country will introduce in the future restrictions to the export of benefits, the bilateral agreement will constitute a protection in this respect.³⁰⁶

It is important to mention that the conventions signed by Luxembourg are regulated by the following fundamental principles:

1. Equality of treatment

The principle of equality of treatment establishes that migrants are subject to the social security legislation and have the benefits in the same conditions as the nationals of the host country.³⁰⁷ In both countries of the convention, a migrant worker must have the same rights and obligations that a national worker of the same age, sex and civil status in regards to the social security system. This principle eliminates any discrimination based on nationality, citizenship or residency because the right derives directly from the payment of contributions.

2. Determination of the applicable legislation

The objective of this principle is to guarantee legal certainty to the migrant worker on which law rules its obligations and rights in regards to social security benefits.³⁰⁸ This principle allows the migrant worker, before s/he even migrates, to know under which law s/he will be protected, avoiding any type

³⁰⁴ Ministère de la Sécurité Sociale, *Droit de la Sécurité Sociale* 2013, p. 477. However, it is important to mention that the coordination have its effects in the content of the legislation and promotes the active cooperation between the parties involved.

³⁰⁵ This is the case when the countries which are parties to a bilateral agreement have at the same time a bilateral agreement (individually) with a third country (i.e. France and Luxembourg in relation with Algeria). Interview with an expert of the IGSS on 21 October 2013

³⁰⁶ Interview with an expert of the IGSS on 21 October 2013

³⁰⁷ Ministère de la Sécurité Sociale, *Droit de la Sécurité Sociale* 2013, p. 478.

³⁰⁸ Ministère de la Sécurité Sociale, *Droit de la Sécurité Sociale* 2013, p. 478.

of legal conflict. This principle has two consequences: a) the migrant worker will be protected in any case but b) s/he will be only protected by one legislation.³⁰⁹

A practical consequence is the principle of the “uniqueness” of the applicable legislation³¹⁰.

The principal criteria for determining the applicable law is the place of work.³¹¹

3. Maintenance of rights in course of acquisition

This principle guarantees the reconstruction of the applicant’s carrier for social security purposes, independently of the successive submission to different legislations. The principle allows that if a migrant worker has contributed in one country, and s/he must fulfil in the host country a trial period of work or contributions, the periods that he has already performed in the other country will be taken into consideration.³¹² So the migrant will have access to the benefits in a normal and continued fashion when s/he moves from one country to the other.

4. Maintenance of acquired rights

This principle eliminates all obstacles related to the territoriality of rights (residence or stay in the host country) in obtaining access to social security benefits. This principle is quite important to guarantee migrant workers’ rights relation with long-term eventualities such as invalidity, old-age and survivors’ pensions as well as allowances for a work-related accident or occupational diseases³¹³, especially if they do not reside or they stop residing on the territory of the competent State, especially if they decide to return to their country of origin. It also applies to short-term benefits such as healthcare, sickness, maternity or invalidity cash benefits, death allowance, unemployment benefits, family allowances, especially when the beneficiary or its family resides outside of the competent State.³¹⁴

This principle guarantees the maintenance of acquired rights to immediate or future benefits or benefits in another country linked by the convention.³¹⁵

³⁰⁹ Ministère de la Sécurité Sociale, *Droit de la Sécurité Sociale* 2013, p. 478. See also Council of Arbitration of the Social Security, [Decision of 5 June 2007](#), [Decision of 5 April 2007](#).

³¹⁰ This principle is guaranteed by article 13 paragraph (1) of the Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community

³¹¹ The migrant worker is subject to the law where s/he performs his/her professional activity on a seasonal or regular way, even if the worker still resides in his/her country of origin or s/he plans to return to it after his/her professional carrier abroad. The same principle applies for self-employed workers. There are certain exceptions made for posted workers or highly movable workers (such as international transportation workers and seamen). Self-employed workers performing their activities in different countries will be ruled by the law of the country of residence (See [Decision of 17 October 2006](#) and [Decision of 2 March 2006](#) of the Arbitration Council of Social Security). Ministère de la Sécurité Sociale, *Droit de la Sécurité Sociale* 2013, pp. 479-480

³¹² The procedure called “aggregation of insurance periods” consists in adding the contribution periods made by the worker in both countries. Ministère de la Sécurité Sociale, *Droit de la Sécurité Sociale* 2013, p. 480. It allows to take into consideration all the contribution periods in regard with the foreign legislation to open the right to access social security benefits, even if those periods are of different nature (subject to rules of equivalence and conversion). In regards with pensions the more generalized system for calculating them is the proportional calculation method.

³¹³ Ministère de la Sécurité Sociale, *Droit de la Sécurité Sociale* 2013, p. 481.

³¹⁴ Ministère de la Sécurité Sociale, *Droit de la Sécurité Sociale* 2013, p. 481.

³¹⁵ This principle makes the territoriality conditions inapplicable. Ministère de la Sécurité Sociale, *Droit de la Sécurité Sociale* 2013, p. 482. It is important to mention that the cash benefits acquired under the national legislation cannot be reduced, modified, suspended, suppressed, nor confiscated based on the simple fact the beneficiary resides in other country where the paying institution is located.

5. Provision of benefits abroad (exportability)

The principle means that the provision of benefits to which the migrant worker has acquired the right in a country must be ensured in any other country bound by the Convention.

Originally it was organized in the case of old-age pensions and other similar pensions. Nowadays the principle has been extended to the provision of short-term benefits (i.e. sickness, maternity or unemployment) as well as for benefits in kind.³¹⁶

6. Collaboration between institutions

This principle establishes that social security institutions of the countries which are part in the convention must provide mutual assistance. Normally most of the conventions establish: the transmission of notifications or advices to the competent institutions located in the place of residence in regard to the provision of benefits; administrative and medical controls needed for the continuity and the revision of invalidity pensions and work related accidents or professional disease; the treatment of pension applications by the institution that is charged and responsible for accomplishing the different formalities.

In general, this principle allows the competent authority of a signatory state to require any information needed from any institution in the other contracting State.³¹⁷

Finally as most of the social security systems are complex and involve a large number of different institutions, it is necessary to establish a liaison body responsible to facilitate the relations with the institutions of the other country.³¹⁸

5.1. Have bi-lateral agreements on the co-ordination of social security been reached by your (Member) State with any third countries?

Yes.

If yes, please [list](#) the third countries with which such bi-lateral agreements have been reached and provide information on the date of signature and ratification.

Table 5.1: List of bi-lateral agreements signed with third countries signed by Luxembourg

Country	Type of agreement	Place of signature	Date of signature	Law of approval	Entry into force
Argentina	Convention	Alcala de Henares	13.05.2010	07.04.2011	-
Brazil	Convention	Rio de Janeiro	16.09.1965	12.07.1966	01.08.1967
Brazil ³¹⁹	Convention	Luxembourg	22.06.2012	30.07.2013	-
Bosnia-	Convention	Luxembourg	08.04.2011	13.04.2012	01.12.2012
Herzegovin	Administrative	Luxembourg	08.04.2011	-	01.12.2012

³¹⁶ Ministère de la Sécurité Sociale, Droit de la Sécurité Sociale 2013, p. 482.

³¹⁷ Ministère de la Sécurité Sociale, Droit de la Sécurité Sociale 2013, p. 482. In certain conventions this principle allows that the institutions of the contracting parties shall lend one another their good offices and act as though implementing their own legislation. Normally both States must do it on a gratuitous manner but in certain cases they can be reimbursed by the other country for expenses incurred in implementing the convention.

³¹⁸ They function as intermediaries between different institutions at the national level and as an information center for migrants and for the general public and the institutions.

³¹⁹ This convention has not entered into force because it has not been ratified by Brazil, so the old one continues to apply. Interview with an expert of the IGSS on 21 October 2013

a	agreement				
Canada	Convention	Ottawa	22.05.1986	24.05.1989	01.04.1990
	Amendment	Ottawa	06.02.1992	08.07.1993	01.01.1994
	Administrative agreement	Ottawa	22.05.1986	-	01.04.1990
Cape Verde	Convention	Luxembourg	24.05.1989	28.04.1992	01.08.1992
	Administrative agreement	Luxembourg	24.05.1989	-	01.08.1992
Chile	Convention	Luxembourg	03.06.1997	06.04.1999	01.06.1999
	Administrative agreement	Santiago de Chile	04.12.1998	-	01.06.1999
India	Convention	Luxembourg	30.09.2009	18.04.2010	01.06.2011
	Administrative agreement	Luxembourg	30.09.2009	-	01.06.2011
Macedonia	Convention	Luxembourg	28.11.2006	19.12.2008	01.05.2009
	Administrative agreement	Luxembourg	28.11.2006	-	01.05.2009
Moldavia	Convention	Luxembourg	14.06.2010	28.04.2011	01.01.2012
	Administrative agreement	Luxembourg	25.01.2012	-	25.01.2012
Montenegro	Convention	Luxembourg	19.02.2008	19.12.2008	01.05.2009
Canada (Quebec)	Agreement	Quebec	22.09.1987	24.05.1987	01.04.1990
	Amendment	Quebec	02.04.1992	08.07.1993	01.11.1993
	Administrative agreement	Quebec	22.09.1987	-	01.04.1990
Serbia Montenegro	Convention	Belgrade	27.10.2003	08.04.2005	01.09.2005
	Administrative agreement	Not signed	-	-	-
Tunisia	Convention ³²⁰	Tunis	30.11.2010	16.03.2012	18.03.2013
Turkey	Convention	Luxembourg	20.11.2003	08.04.2005	01.06.2006
	Administrative agreement	Luxembourg	08.12.2004	-	01.06.2006
Uruguay	Convention	Luxembourg	24.12.2012	30.07.2013	-
USA	Convention	Luxembourg	12.02.1992	08.07.1993	01.11.1993
	Administrative agreement	Luxembourg	12.02.1992	-	01.11.1993
	Amendment	Belgrade	28.05.1970	27.07.1971	01.10.1971
	Administrative agreement	Luxembourg	14.03.1972	-	01.10.1971

5.2. Please provide more information about the bi-lateral social security agreements that have been concluded by your (Member) State, indicating whether the agreements:

³²⁰The [convention](#) between Luxembourg and Tunisia on social security of 23 April 1980 was abrogated except the transitory disposition of article 58.

i) allow a worker from a third-country to work in your (Member) State while remaining subject to the social security legislation of the sending state;

Yes. All the conventions signed by Luxembourg have provisions covering the posted workers. It is important to mention that Luxemburgish authorities considered the social security coverage of posted workers by the country of origin as the exception and not as the general rule. However, certain industrialized countries put pressure for obtaining longer periods of social security coverage on their posted workers³²¹ in order to avoid paying the social security contributions for longer periods.

If yes, please summarise the provisions

The general rule of all the conventions is that a salaried worker is covered by the law of the country where the professional activity is carried on, independently if he resides in the territory of this country.³²² However, if the salaried worker is posted in the other country to develop its professional activity ordered by his/her employer he/she will be covered by the law of the hosting state, only if the duration of the posting does not exceed a certain duration foreseen in the convention.

This duration can be extended for a certain period foreseen by the convention if the competent authority of the hosting country approves it before the expiration of the normal deadline.³²³

The [table below](#) shows that the duration of the posting varies from country to country:

Table 5.2.: Duration of posting disaggregated by country

Country	Duration of posting	Supplementary period
Bosnia-Herzegovina	12 months	12 months
Brazil	24 months	12 months
Canada	24 months	To be agreed
Cape Verde	12 months	12 months
Chile ³²⁴	12 months	12 months
Ex-Yugoslavia	24 months	12 months
India	60 months	24 months
Macedonia	12 months	12 months
Moldavia	12 months	12 months
Montenegro	12 months	12 months
Quebec	24 months	To be agreed
Serbia	24 months	12 months
Tunisia	12 months	12 months
Turkey	12 months	12 months
United States	60 months	-

³²¹ In example USA and India have negotiated 60 months. Japan and China want the same treatment but until now there has not been any bilateral agreement signed with these two nations. Interview with an expert of the IGSS on 21 October 2013

³²² See article 8 of the Convention with Brazil.

³²³ See i.e. article 9.c of the Convention with Brazil.

³²⁴ The convention with Chile foresees that the persons subject to Luxemburgish law and sent to Chile as agent of the Luxemburgish cooperation, will continue to be subjected to the Luxemburgish social security system. [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 531

Source: IGSS, 2013

ii) guarantee equal treatment in the system of the host state in respect of particular benefits (e.g. reciprocal healthcare arrangements);

Yes. Most of these agreements incorporate the rules of customary international coordination of social security rights, such as equal treatment of nationals of the States concerned, the aggregation of insurance periods, the export of cash benefits.

Luxembourg always requires in the negotiations of bilateral agreements that these instruments will be based on the principle of equality of treatment. This is a fundamental principle for Luxembourg that always demands to apply the same rules to every insured person independently of its nationality.³²⁵

Some countries limit the personal scope of the agreement only to their own nationals (i.e. USA).³²⁶

If yes, please summarise the provisions

All the bilateral conventions are ruled by the principles of equality of treatment, aggregation of insurance periods and the exportability of benefits.

The bilateral agreements signed by Luxembourg cover sickness insurance and accident at work and occupation disease insurance, with the exception of the conventions with Canada, Chile, United States, India and Moldavia which do not regulate health services nor benefits derives from accidents at work and occupation disease.³²⁷

In regards to unemployment benefits, the instruments only foresee the aggregation of the periods for the opening of the right (not exportability of the benefits).³²⁸

iii) allow social security benefits (e.g. state pensions) to be exported to the territory of the other state;

Yes, with some exceptions.

If yes, please summarise the provisions

As it was mentioned in Section 3.2., the Luxemburgish legislation has not put into place any

³²⁵ Interview with an expert of the IGSS on 21 October 2013

³²⁶ Interview with an expert of the IGSS on 21 October 2013

³²⁷ Almost all of the conventions with the exceptions of Canada, Cape Verde and Tunisia foreseen the possibility that the beneficiaries can subscribe a continuous voluntary medical insurance in favour of the pension beneficiaries who are not cover by the by the debtor country which has to provide the medical services.

³²⁸ Some conventions take into account the family members residing abroad for the increase of the percentage of unemployment benefits when the benefit is responsible for a child. [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 532

restriction to the export of benefits abroad coming from contributions. In principle, all the social security benefits that derive from contributions are exportable. This includes all type of pensions (old age, invalidity, survivor pensions). The bilateral conventions signed by Luxembourg facilitate the exportability of social security benefits. The only requirement is that the beneficiary fulfils all the requirements to grant the benefit.

The only benefits that are not exportable are:

a) Family benefits:

The main reasons for the non-exportability are: a) the financing of family benefits is made through general taxation; and b) the personal beneficiaries are not the parents but the children. Before, family benefits were a normal branch of the social security system and the workers contributed directly to the system. That was the reason why these benefits could be exported at the time even though if the amounts were reduced in accordance with certain bilateral treaties. Nowadays, with the change in the source of the financing and the philosophy in regards to the access to family benefits the new political order is to no more export this category of benefits and most of the bilateral agreements that foreseen this exportability have been renegotiated to exclude it.³²⁹

Exportability of family allowances is only foreseen by the conventions signed with Cape Verde and Brazil.³³⁰

b) The RMG:

The main reason is because this benefit is derived from the principle of solidarity and it is financed by general taxation and for benefiting from it, the person has to legally reside in the country.

iv) contain any other provisions of relevance to the coordination of social security systems with third countries.

Yes

If yes, please summarise the provisions

The coordination rules foreseen by the conventions are the same as those foreseen by the Regulation 883/2004³³¹, with some exceptions:

All the conventions cover the following benefits for all persons subject to the social security system of both states independent of their nationality: old-age, invalidity and survivor pensions, with the exceptions of the conventions with Brazil, Cape Verde and Tunisia that only apply to the nationals of

³²⁹ Interview with an expert of the IGSS on 21 October 2013

³³⁰ In the conventions with Bosnia-Herzegovina, Macedonia, Moldavia, Montenegro, Serbia and Turkey, foreseen that family benefits are granted in accordance with the law of the country of residence of the child. There is no exportability. [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 532. With the new bilateral agreement with Tunisia the exportability of family benefits was excluded. Interview with an expert of the IGSS on 21 October 2013

³³¹ [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 531

the signatory parties.³³²

Most of the conventions (excepted conventions with Brazil, Chile, United States, and Tunisia) apply the aggregation of the insurance periods accomplished in a third country with which one of the signatories' parties is bound by a bilateral or multilateral agreement on coordination of social security and they have rules on aggregation of insurance pensions.³³³

Also they cover sickness insurance and work related accident and occupation disease insurance, with the exception of the conventions with Brazil, Canada, Chile, United States, Uruguay, India and Moldavia which do not regulate health services nor benefits derived from accidents at work and occupation disease.³³⁴ The reason justifying this approach is that these countries have a health system totally different from the Luxemburgish system in the sense that they are not used to advance medical expenses rendered to foreign nationals in their territory.³³⁵

In regards to unemployment benefits, the international instruments only foresee the aggregation of the periods for the opening of the right (not exportability of the benefits).³³⁶

All the conventions are applicable to salaried workers and self-employed workers³³⁷ independently of their nationality, with the exceptions mentioned above.

Some of them also allow taking into account insurance periods completed in a third country with which both Contracting States are bound by an agreement for the opening of entitlement to a pension.

Taxation. With regard to the tax treatment of pensions that are exported, the taxation of the pension income shall be in principle taxed at the source in the country that is paying it (withholding tax at the source) unless the tax authorities decide to do otherwise in accordance with bilateral tax agreements signed by both countries. This is the case with the United States.³³⁸

The issue does not have a great impact seen the income derived from pensions.

5.3. Please provide any information available on the extent to which third-country nationals have invoked their rights under the bi-lateral social security agreements reached between your (Member) State and third-countries. It is recognised that this information may not be available in all countries.

N/A

³³² [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 531

³³³ This situation is not foreseen by the conventions signed with Brazil, Chile, United States and Tunisia. [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 531

³³⁴ Almost all of the conventions with the exceptions of Canada, Cape Verde and Tunisia foresee the possibility that the beneficiaries can subscribe a continuous voluntary medical insurance in favour of the pension beneficiaries who are not covered by the debtor country of the pension.

³³⁵ Interview with an expert of the IGSS on 21 October 2013

³³⁶ Some conventions take into account the family members residing abroad for the increase of the percentage of unemployment benefits when the benefit is responsible for a child. [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 532

³³⁷ With the exception of the Convention with India that only applies to salaried workers but only from the Indian side. [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 531

³³⁸ [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 533

6. CASE-STUDIES

In order to better understand the entitlements and access to social security by third-country nationals arriving for the first time, for each of the case-studies below, please describe the decision making procedure, and whether the social security claims made by the third-country nationals concerned would ultimately be successful in your (Member) State. It is recognised that, in order to determine eligibility for the specific benefits in accordance with the rules of your (Member) State, additional information about the particular circumstances of each case may be required. EMN NCPs are asked to identify the circumstances that would make it possible for the individuals concerned to access the benefits.

Case-study 1: Tho and Lien, a married couple holding Vietnamese citizenship, aged 28 and 30, moved to your (Member) State 10 years ago. They hold long-term residence permits. Tho has worked in a car manufacturing company for the last 8 years, paying obligatory insurance contributions throughout this time. Lien has worked as a chef in the restaurant of a large hotel, also paying obligatory insurance contributions, for the last 2 years. Tho and Lien are expecting the birth of their first child in 6 weeks' time. Last week, the car manufacturing company where Tho works announced that they were making him redundant. Faced with the loss of Tho's income at a time when Lien would need to take time off work, following the birth of their child, Tho decided to apply for unemployment benefits while Lien applied for maternity benefits.

Answer: Tho and Lien are considered long-term residents in accordance with article 80 of the modified Law of 29 August 2008 on free movement of persons and immigration. In consequence the fact that Tho lost his job does not affect its residence status in the country (the long-term residence permit only can be revoked for the causes established in article 83). Seen that Tho lost his job involuntarily (it was not his fault) he has to register in the ADEM as a job seeker. Once Tho is registered as a job seeker he can claim the unemployment benefits. He must fulfil the conditions mentioned in section 3.F. Normally, the unemployment cash benefit is 80% of the gross salary gained by the Tho during the last year of employment. However, once his son/daughter will be born in the next six weeks he will be entitled to 85% of his gross salary. Also he will be entitled to orientation and training courses in case he needs to be recycled in another sector. The cash benefit will be paid during a maximum period of 365 days in a 24 months period.³³⁹

In the case of Lien, seen that she has been working for the last two years continuously, she can apply maternity benefits because she has been insured at the compulsory sickness and maternity insurance for at least 6 months during the year before her maternity leave. She must have notified her employer that she is pregnant³⁴⁰ and she must send a medical certificate established at least 12 weeks prior to the presumed date of confinement (childbirth) to the employer and the CNS.³⁴¹ As we mentioned above, she will be entitled to maternity cash benefits (allowance corresponds to her normal earnings if she was working). Also she is entitled to the birth grant (allocation de naissance) when the child is born. This grant is paid in three instalments of 580,03 each: a) prenatal allowance, b) childbirth allowance and c) postnatal allowance. They will only be paid if Lien follows all the medical controls required. Lien will benefit of maternity leave (8 weeks prior to childbirth and 8 weeks after the date

³³⁹ See <http://www.csl.lu/questions-reponses/99-questions-indemnisation-en-cas-de-chomage#Q2>

³⁴⁰ The notification of the pregnancy to the employer triggers the protection of the woman, in case she requires under certain circumstances the adaptation of the working station or the relocation to another position.

³⁴¹ <http://www.guichet.public.lu/entreprises/fr/ressources-humaines/conges/situation-perso/grossesse-maternite/index.html#panel-10!>

of childbirth, which can be extended 4 weeks more in the following cases: a) premature childbirth – before the 37th week of pregnancy; b) multiple childbirth; c) breast feeding³⁴²).

Case study 2: Jasmine is a single parent, aged 29, holding Filipino citizenship, who moved to your (Member) State 2 and a half years ago. She has a 2-year old child (also holding Filipino citizenship) that lives with her and another child aged five that lives in the Philippines with Jasmine's mother. She holds a temporary/salaried worker residence permit that has been renewed once. Jasmine has worked as a nurse in a residential day-care unit in your (Member) State for 2 and a half years. She sends a small amount of money every month to the Philippines to help support her daughter. Last month, Jasmine's employer announced significant cuts in staff salaries in response to budget reductions. Faced with a significantly reduced income, Jasmine has moved into a hostel as she can no longer afford to rent private accommodation. She has also been forced to halve the amount of money she sends to her family in the Philippines every month. She has decided to apply for family benefits and guaranteed minimum resources.

Answer:

Jasmine has been working for 2 and a half years. We have to presume that Jasmine has obtained a salaried worker residence permit under article 43 (1) of the Law of 29 August 2008. Also we have to presume that her residence permit was renewed for a duration of three years under article 43 (4). It is important to mention that in Luxembourg the employer cannot reduce unilateral the salary of an employee without putting the employee in a position in which the employee can demand the termination of the contract. Finally, we have to presume that the employer cut the possibility of working overtime and that her income was significantly reduced.

The fact that Jasmine had to leave her apartment and move to a hostel does not have legal consequences because in Luxembourg she can do it but she will be compelled to register at the Municipality³⁴³, so the hostel will become her legal residence as well as her daughter's.

In regard with the guaranteed minimum resources she is not entitled to apply for it because she has not been living legally in Luxembourg for five consecutive years in a twenty year period in accordance with article 2 (2) of the Law of 29 April 1999.

In reference to the family benefits she can apply to family benefits for her child who is residing with her in Luxembourg. The daughter residing in Luxembourg was entitled for family allowance since the first day of the following month when she arrived and was declared in Luxembourg. In principle the family allowance will be granted until the age of 18. As a result she has to apply to the CNPF and as the family group is composed by Jasmine and her daughter and she is only 2 years old she will be entitled to an allowance of 185,60 € per month³⁴⁴. Also she will be entitled to receive 76,88 € monthly for concept of "Boni" for children that will be paid in conjunction with the family allowance.

³⁴² In this case the employee must send to the employer and to the CNS a medical certificate of breast feeding establish from the 29th day after childbirth.

³⁴³ In Luxembourg a person is considered to have its legal domicile if s/he is authorized to stay and reside, has legally registered it and has fixed in Luxembourg its principal place of residence. Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), pp. 322. See also [Decision of 5 February 2007](#) of the Arbitration Council of Social Security. This decision says : « La résidence au Luxembourg est établie à suffisance par un certificat de résidence délivré par la commune. » See also [Decision of 9 June 2006](#) of the Arbitration Council of Social Security. This decision says that a foreigner who works in different countries but subject to the service of an employer established in Luxembourg and disposes of a residence permit with a legal address fulfils the conditions to be registered at the social security system.

³⁴⁴ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), pp. 325.

She cannot claim any family benefits for her daughter in the Philippines because, as it was mentioned above, the family benefits can only be claimed for children residing legally and continuously in the Grand-Duchy of Luxembourg and who have its legal domicile in Luxembourg.³⁴⁵ There is no bilateral treaty with the Philippines on this issue.³⁴⁶

Case study 3: Senghor is a high-skilled worker from Senegal. He arrived in your (Member) State six years ago with a temporary residence permit arranged through the IT Company that employed him. Senghor is single and does not have children, but has recently succeeded in bringing his elderly mother to the country on the basis of family reunification. Aged 80, his mother is entirely dependent on Senghor's income. Last week, Senghor suffered an accident at work that left him incapable of carrying out the work for which he was employed for a period of 3 years. He decided to apply for invalidity benefits, sickness benefits and family benefits.

Answer:

Senghor entered into Luxembourg with an authorisation of stay under article 4 of the amended Law of 28 March 1972 on entry and stay of foreigners. As he entered the country 6 years ago (November 2007) the category of highly qualified worker did not exist.

For the analysis of the present case, we will presume that Senghor received an authorisation of stay for 12 months and an identity card for foreigner issued in December 2007 for one year (at that moment the discussion of the bill n° 5802 on free movement of persons and immigration was on discussion) according to the article 6 of the Grand-ducal regulation of 28 March 1972 establishing the formalities that foreigners have to fulfil for reside in the country.

Before the expiration of the identity card, the Law of 29 of August 2008 entered into force. Seen that he was hired as a highly qualified worker and presuming that he fulfilled all the requisites established by article 45, he was granted a "highly qualified worker" residence permit for three years on January 2009. This residence permit expires on January 2012 and presuming he fulfilled the criteria of the modified article 45³⁴⁷ he was granted an European Blue Card residence permit for two years according to article 45-1 (2).³⁴⁸

The family reunification was made possible under articles 4, 69 and 70 (5) of the amended Law of 29 August 2008 and article 6 of the Grand-ducal regulation of 5 September 2008 defining the criteria of income and housing foreseen on the Law of 29 August 2008 on free movement of persons and immigration. According to article 69 (1) 1 of the Law of 29 August 2008 Senghor must have proven that he had stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the Luxembourgish social assistance system. This is a sine-qua-non requirement for the family reunification. Also, he must have proven that his mother was under his financial responsibility³⁴⁹ before applying for the family reunification.

³⁴⁵ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), pp. 322. In this case the legal domicile is fulfilled because article 108 of the Civil Code presumes that is the same domicile as the person who she lives with.

³⁴⁶ There are only several international conventions signed with Cape Verde, Tunisia and the former Yugoslavia which foreseen the waiving of residence conditions. Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), pp. 322.

³⁴⁷ Modified by Law of 8 December 2011 which entered into force on 3 February 2012.

³⁴⁸ It is important to mention that if the applicant has justified 5 years of residence in Luxembourg, he can apply for long-term residence status. See article 80 of the Law of 29 August 2008

³⁴⁹ The applicant must provide evidence, i.e., that he made regular money transfer over a certain period of time to his mother's overseas address. See document "[Autorisation de séjour du membre de famille ressortissant de pays tiers](#)".

As Senghor has been working for the last six years he has healthcare insurance and invalidity insurance (he has been insured for more than 12 months, even though in the present case it is irrelevant because the invalidity is due to an accident -whether or not it was sustained at work-). His medical expenses will be covered by the CNS and he will be receiving his sickness benefits until the CMSS determines that the person is incapable of working in its last occupation in accordance with its physical capacities and skills. In this case depending on the level of invalidity (in this case we can assume it is very high because he cannot perform his work) he can apply for an invalidity pension, which will be covered by the invalidity insurance.³⁵⁰ Once the pension is granted the Senghor is compelled to follow until the age of 50 all the rehabilitation or reconversion measures that are proposed to him/her by the CNAP upon advice of the CMSS.³⁵¹

In regards to family benefits Senghor cannot claim family benefits because he does not have children. Seen that he is a highly qualified worker, his invalidity pension will be in consequence so he will not receive any other benefit for his mother because she is dependent of him and he does not fall under the threshold for applying for RMG or for social aid.

His mother cannot apply independently for RMG because she has not resided in the country for at least five years.

The only problem that Senghor can have is that according to article 46 (2) of the Law of 29 August 2008 the renewal of his residence permit as an EU Blue Card Holder can be refused if he does not have sufficient resources to maintain himself and the members of his family, without having recourse to the social assistance system, because outside of the unemployment benefits, the invalidity benefits will fall into the social assistance system.³⁵²

³⁵⁰ As it was mentioned above if the employee is in the incapacity to fulfil his/her work position, they will try to transfer him to another position inside the same company. If not he will be placed as a job seeker and he will follow the reconversion measures proposed by the CNAP upon the advice of the CMSS.

³⁵¹ Ministère de la Sécurité Sociale, Inspection générale de la sécurité sociale, [Droit de la sécurité sociale, Luxembourg, avril 2013](#), p. 268

³⁵² Answer of the Directorate of Immigration, 24 January 2014.

7. STATISTICS ON SOCIAL SECURITY PAYMENTS RELATED TO MIGRATION

7.1. Please present any available data on numbers or persons employed, unemployed and inactive by national group. If data on persons employed, unemployed and inactive is not disaggregated by national group in your (Member) State but by another level of disaggregation that could serve as a proxy for national group (e.g. country of origin), please provide this data.

Employment:

Luxembourg's demographic composition is different from other Member States. In 2013 the national population represented only 55,5% and the foreigners 44,5%. The foreigner resident population is mainly composed of EU citizens (86,3%). TCNs only represent 13,7% of the foreigner resident population and 6,1% of the entire population of the country.³⁵³

The active working population was composed of 354.244³⁵⁴ workers on 31 March 2012 from which around 44% were cross-borders workers, coming from Belgium, France and Germany.

The active resident population was at the same date 243.167 persons. It is disaggregated in 228.852 workers (salaried (209.187) and non-salaried (19.341)) and 14.639 unemployed persons. The unemployment rate at the moment was 6,0%.

The TCN resident salaried population (10.365) only represented 5% of the salaried workers in Luxembourg.

As we can see from Annex I "Number of persons employed" this TCN resident salaried population is composed of 134 different nationalities.

Between the period 2007 and 2012 the Top-ten nationalities represented between 68,8% and 76,6% of the total TCN resident salaried population, as we can see from the [table below](#). These top-ten nationalities include Switzerland, which benefits of freedom of movement and Croatia, which during this period was candidate to become a Member State.

³⁵³ See Statec, Population et emploi.

http://www.statistiques.public.lu/stat/TableViewer/tableView.aspx?ReportId=384&IF_Language=fra&MainTheme=2&FldrName=1

³⁵⁴

http://www.statistiques.public.lu/stat/TableViewer/tableView.aspx?ReportId=5785&IF_Language=fra&MainTheme=2&FldrName=3 Last accessed on January 13, 2014.

Table n° 7.1.1: Top-ten nationalities of the TCN resident salaried workers in Luxembourg 2007-2012

Nationality	2007	2008	2009	2010	2011	2012
Former Republic of Yugoslavia	2'747	2891	2736	2410	2246	2535
Cape Verde	1082	1138	1102	1182	1244	1282
Bosnia-Herzegovina	1170	1173	1160	968	889	854
Brazil	304	357	439	512	556	586
China	374	409	430	457	513	576
USA	311	326	353	340	365	382
Russia Federation	145	185	206	221	224	264
India	85	133	169	180	217	245
Switzerland	213	227	232	212	210	207
Croatia	224	211	215	200	187	195
Morocco	141	161	167	163	178	188
Total Top-10 nationalities	6'796	7'211	7'209	6'845	6'829	7'314
% of TCN employed persons	76.6%	75.8%	74.2%	71.5%	68.8%	70.6%

Source: IGSS, 2013 © LU EMN NCP

Even though the nationals from the Former Republic of Yugoslavia are the most significant group if we disaggregate them in the different nationalities, the Montenegrins become the most important group, as we can see from of the [table below](#).

Table n° 7.1.2: Disaggregation of Yugoslavs by their actual nationality

Nationality	2007	2008	2009	2010	2011	2012
Montenegro		5	509	953	1175	1229
Serbia		35	32	261	433	559
Kosovo						376
Serbia-Montenegro	1'801	2236	1928	1040	520	252
Macedonia	134	142	127	115	108	111
Former Republic of Yugoslavia	812	473	140	41	10	8
Total	2747	2891	2736	2410	2246	2535

Source: IGSS, 2013 © LU EMN NCP

As the political situation of the Balkans has developed the new nationalities were introduced in the disaggregation. The decrease in the number of persons employed of the Former Republic of Yugoslavia nationals, which began in 2008, can be explained not only because of the crisis but also because of the entry into force of the Law of 23 October 2008 on the Luxemburgish nationality, which allowed a significant number of this population to obtain the Luxemburgish nationality. Nevertheless, as a methodological note it is important to mention that it is very difficult to measure the precise effects of this law and to take into account the change of nationality in the variation of the work population of a specific national group. There are no studies yet that determine a profile of the persons that change the nationality in a specific national group.

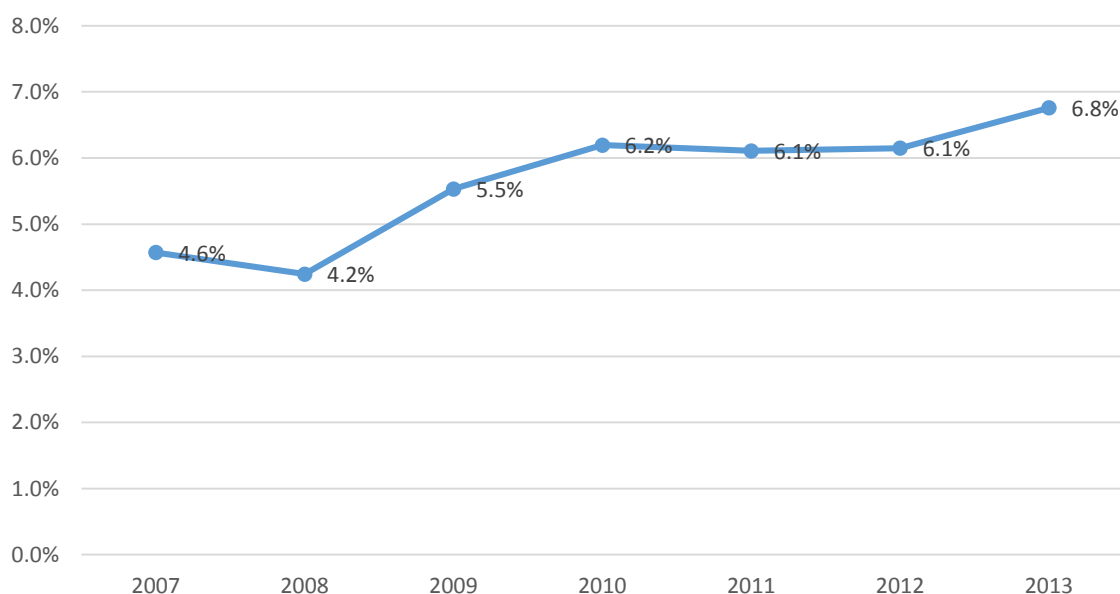
In the top-ten nationalities we see an increased trend of nationals coming from the Brazil, Russia, India and China (BRIC countries) to work in Luxembourg. In 2007 they represented only 908

employed persons which contrast with the 1671 persons in 2012 (84% increase) and which shows the global importance that these countries have for Luxembourg. This trend contrasts with other traditional groups of employed population such as the Americans that only have an increase of 22,8% or the Swiss nationals which have a decrease of 2,8% in the same period.

Unemployment

In regards, to unemployment, the situation is totally different. In the 2007 to 2013 period unemployment has risen in Luxembourg since the beginning of the crisis in 2008 as we can see from the [graph below](#).

Graph n° 7.1.1: Evolution of unemployment rate in Luxembourg (2007-2013)



Source: STATEC, 2013 © LU EMN NCP

However, the unemployment has affected differently the different groups which composed the active resident working population as we can see from the [table below](#).

Table n° 7.1.3: Number of job seekers by nationality (2007-2013³⁵⁵)

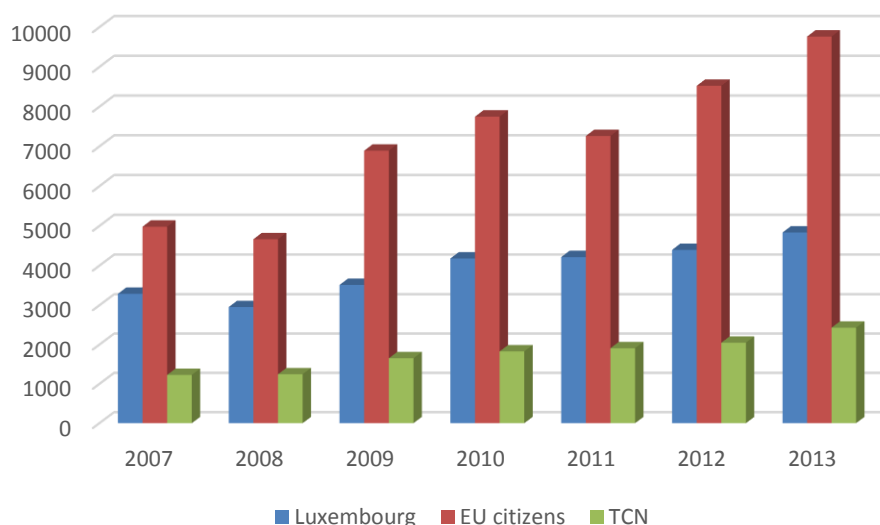
	2007	%	2008	%	2009	%	2010	%	2011	%	2012	%	2013	%
Luxembourg	3293	34.7%	2955	33.3%	3516	29.1%	4181	30.4%	4216	31.5%	4397	29.4%	4835	28.4%
EU nationals	4981	52.4%	4666	52.6%	6893	57.1%	7751	56.3%	7263	54.3%	8526	57.0%	9765	57.3%
TCN	1228	12.9%	1245	14.0%	1653	13.7%	1827	13.3%	1908	14.3%	2048	13.7%	2431	14.3%
Total	9502	100%	8866	100%	12062	100%	13759	100%	13387	100%	14971	100%	17031	100%

Source: ADEM, 2013 © LU EMN NCP

The largest group unemployed in Luxembourg are the EU nationals. This group has always fluctuated between 52,4% in 2007 and 57,3% in 2013. The third-country nationals have represented during this period only 12,9% and 14,3% of the unemployed persons as we can see from the [graph below](#).

³⁵⁵ All data is established on 31 March of each year.

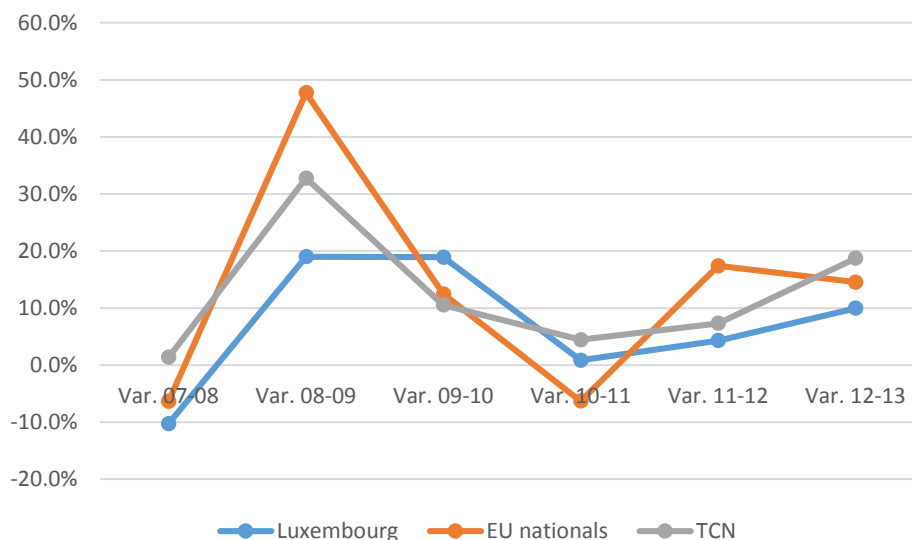
Graph n° 7.1.2: Number of job seekers by nationality (2007 – 2013)



Note: The data is up to the 31 March of each year
Source: ADEM, 2013 © LU EMN NCP

Nevertheless, it is important to mention that the percentage variations are more important in the EU nationals group during the periods 2008-2009 and 2011-2012 than in the other two groups (Luxemburgish citizens and TCN) as we can see from the [graph below](#).

Graph n° 7.1.3: Variations on the number of job seekers by nationality (2007-2013)



Note: The data is up to the 31 March of each year
Source: ADEM, 2013 © LU EMN NCP

From this [graph](#) we can conclude that TCNs are not the ones who have suffered the most from the unemployment even at the peak of the crisis. However, it is important to mention that the access for TCNs to the labour market is more restricted than for the other two groups.

Between 2007 and 2008 unemployment was reduced significantly in the EU nationals (-6,3%) and Luxemburgish citizens (-10,3%). There was a small increase for the same period in the TCN group (1,4%). However, the situation changed when the financial crisis started. Unemployment

skyrocketed between 2008 and 2009 (it increased 47,7% for EU nationals, 32,8% for TCN and 19% for Luxemburgish citizens). During the period 2009 – 2010 the number of job seekers had increased less significantly in the EU nationals and TCN group. However, during the same period, the variation in unemployment among Luxemburgish citizens remained stable (18,9%). During the period 2010-2011, the variation on unemployment was the lowest in the period 2007-2013 having even negative values (-6,3%) for EU nationals. From 2011 the variation in job seekers had increased in a parallel pattern between Luxemburgish nationals (4,3% in 2011-2012 and 10% in 2012-2013) and TCN (7,3% in 2011-2012 and 18,7% in 2012-2013). The variation in regards to EU nationals behaves in a different way and tends to decrease on the period 2012-2013.

In regard to unemployment by nationality we can observe some interesting developments during the period 2007-2013. For the purposes of comparison, in the [table below](#), we sorted the top-ten nationalities in descending order using 2012 as the sorting element.³⁵⁶

Table n° 7.1.4: Number of Third-country national job seekers disaggregated by nationality (2007-2013)

Nationality	2007	2008	2009	2010	2011	2012	2013
Cape Verde	156	154	223	224	221	266	315
Yougoslavia	261	256	282	285	280	269	296
Serbia-Montenegro	113	131	183	206	176	174	233
Bosnia-Herzegovina	123	122	134	137	144	134	170
Brazil	51	45	80	91	98	106	143
Montenegro	0	0	17	47	70	104	128
Morocco	50	50	74	73	69	75	86
Kosovo	0	0	4	13	20	55	74
Cameroon	18	17	31	43	33	43	61
Russia	36	36	44	47	58	44	50
Total Top-10	808	811	1072	1166	1169	1270	1556
Total Unemployed TCN	1228	1245	1653	1827	1908	2048	2431
% of Total Unemployed TCN	65.8%	65.1%	64.9%	63.8%	61.3%	62.0%	64.0%

Note: The data is up to the 31 March of each year

Source: ADEM, 2013 © LU EMN NCP

The top-ten nationalities represent during the period 2007-2013 almost 2/3 of the unemployed TCN population in Luxembourg. It is important to notice how the number of unemployed Cape Verdean nationals has doubled in the last 6 years and the Brazilian unemployed population almost tripled during the same period. These two groups are part of the growing TCN nationals groups in Luxembourg attracted by the fact that there is a large Portuguese population (16,4% of the resident population³⁵⁷). Also if we regroup the “Yugoslavs” (Yugoslavia, Serbia-Montenegro; Montenegro and Kosovo)³⁵⁸ the unemployed “Yugoslav” population has almost doubled in the last 6 years. Interesting is the case of the Cameroonian nationals in which the unemployed population had suffered a significant increase (the numbers more than tripled).

The other national groups have less suffered from unemployment in the same period: Morocco nationals (72%) and the Russian Nationals (38%).

³⁵⁶ The entire data for unemployment disaggregated by nationality can be found in Annex 1.

³⁵⁷ According to the population on 1 January 2013. Statec, 2013.

³⁵⁸ We are only including the 4 nationalities in the top-ten nationalities. If we include the Macedonians the results almost remain the same (93,2% increase).

However, if we compare employment and unemployment in these groups the trends are statistically different according to the national groups. In the case of the “Yugoslavs” there has been a decrease in the employed population of -7,8% (See table:). However, the unemployed Yugoslav population has almost doubled (93,2% increase) in the same period.

In regards to the Cape Verdean, there was an increase of 18,5% of the employed population which contrasts with an increase of 102% of the unemployed population in the same period.

The Brazilian employed population almost doubled in the period 2007-2012 (92,8% increase) but the unemployed population almost tripled.

Inactive population:

In regards to the inactive population the only statistics that we can provide are the ones that come from the National Census of 2011, which are more comprehensive and detailed but only comprehend the resident population in Luxembourg (see Annex 1 “Number of persons inactive).

This category includes:

- homemakers (housewife/husband)
- pupils and students
- pensioners
- owner-annuitants,
- another situation
- without indication but aged under 15 years
- people that do not work but without any indication and without indication of age.

In 2011, the Census established that there were 17730 TCN inactive people.³⁵⁹ If we take the Top-10 nationalities, they represent 68,1% of the total TCN inactive population. The inactive population shows almost the same composition that we have found in the previous sections as shown in the [table below](#).

Table n° 7.1.5: Third country national inactive population disaggregated by nationality (2011)

Nationality	2011
Former Yugoslavia	5531
Bosnia-Herzegovina	1262
Cape Verde	1230
China	975
United States of America	853
Brazil	620
Russian Federation	609
India	365
Switzerland	328
Island	308
Total	12081
% of the total TCN population	68.1%

Source: STATEC, 2011 © LU EMN NCP

As it was done in the employment table the Former Yugoslavs are disaggregated in the following manner:

³⁵⁹ See Annex 1 « Number of persons inactive.

Table n° 7.1.6: Disaggregation of Yugoslavs by their actual nationality

Nationality	2011
Montenegro	2460
Serbia	1475
Kosovo	921
Yugoslavia	435
Macedonia	240
Total	5531

Source: STATEC, 2011 © LU EMN NCP

In the top-ten nationalities we found again the Bosnian and the Cape Verdean nationals who represent the largest groups after the former Yugoslavs. These groups are followed by the countries of the BRIC. Also the American and Swiss nationals are represented.

In the disaggregation we found that the principal identifiable categories are the “pupil/student” who represent 32,5% of the inactive population, followed by the “housewife/househusband” (17,1%), pensioners (5,5%) and the owner-annuitant (0,1%), as it is shown in the table below.

There is a large group of TCN inactive group without any indication of what they do: 4090 people who did not mention any occupation, 1301 people who mentioned that they did not work but did not give any indication and 993 minors who did not give any indication of what they do. This population represents 36% of the inactive population. There are 1564 people (8,8%) who mentioned “another situation” but did not further specify.

In the top nationalities there are no significant changes of the structure that we describe in the identifiable categories with the exception of the category of “owner-annuitant” in which the Chinese (7) and Russian (5) nationals represent 53,8% of the group followed by the Swiss nationals (11,5%).

Table n° 7.1.7: Disaggregation of the TCN inactive population

	Housewife/ husband	Pupil/ Student	Pensioner	Owner- annuitant	Another situation	Without indication (under 15 years)	Does not work but without any indication	Without indication	Total
Total	3025	5758	973	26	1564	993	1301	4090	17730

Source: STATEC, 2011 © LU EMN NCP

7.2. Statistics/research on the take up of social security benefits among third-country nationals (by type of payment by national group, by duration in country, age, sex, for last five years)

In regards to the take up of social security benefits among TCNs, seen that the samples reported on the LFS study are not representative, we have collected information on the social security benefits from the IGSS paid to TCNs.

For the statistical section, we are only including the social security benefits which derive from contributions paid either by the employee, the employer and the State (i.e. Healthcare, sick cash benefits, maternity and paternity leave, long-term care, accidents at work and occupational diseases, old-age pensions, survivors' pensions and invalidity benefits). We are not taking into consideration the ones which derive from general taxation such as family allowances and RMG.

For methodological reasons we are going to present the statistics by continent of origin, sex, average age and average duration of contribution. The cost of each benefit will be discussed in section 7.3.

The number of effectives showed in some of the tables comprehends the insured as well as the co-insured individuals because each group generates a cost.

The first five tables (Healthcare, sick cash benefits, maternity and paternity leave, long-term care, accidents at work and occupational diseases) only take into consideration TCNs who are residents in Luxembourg. The last three tables (old-age pensions, survivors' pensions and invalidity benefits) take into consideration resident and non-resident third country nationals, but their costs are clearly separated.

Another methodological remark is that in the columns of effectives (persons) we took into consideration the TCNs who have access to social security benefits. This means that an effective is counted only once even if the TCN had made several times use of the same service during the same year.³⁶⁰

The summary tables for the period 2008 – 2012 which show the average age and the average insured years, added the effectives year by year. In example, a TCN who had been recurring to long-term care during the period will be counted 5 times, because s/he will be counted once per year.

A last remark is the fact that the data we received from the IGSS included in the group "Others" not only the people coming from Oceania (Australia and New Zealand), but also the stateless and persons with unknown nationality.

A. Healthcare

Healthcare is the most significant group of the social security benefits received by TCNs, accounting for more than two thirds of the cost of the system (67,8% in 2008, 74,1% in 2009, 74,3% in 2010 and 74,1% in 2011), as we can see from the [Table n° 7.3.1](#) below.

Table n° 7.2.1: TCN population benefiting from healthcare disaggregated by continent and gender (2008 – 2012)

³⁶⁰ This means that the same TCN who has access to the same benefit several times is counted as one effective but the costs refer to the total costs of the services rendered to this effective because each service rendered had an actual cost. Methodological explanation from the IGSS, 29 January 2014.

Origin	2008		2009		2010		2011		2012	
	No.	% of women	No.	% of women	No.	% of women	No.	% of women	No.	% of women
Africa	3683	53,2%	4090	53,7%	4486	53,5%	5003	53,3%	5494	53,5%
America	2301	62,2%	2585	62,0%	2932	62,4%	3211	62,0%	3484	62,7%
Asia	2835	58,7%	3178	58,3%	3467	57,7%	3819	57,3%	4161	56,8%
Europe non-EU	10506	52,1%	11073	52,6%	11402	53,1%	12515	53,0%	13760	53,0%
Others	690	49,1%	706	48,7%	699	47,6%	695	45,9%	687	45,6%
Total	20015	54,3%	21632	54,6%	22986	54,9%	25243	54,7%	27586	54,7%

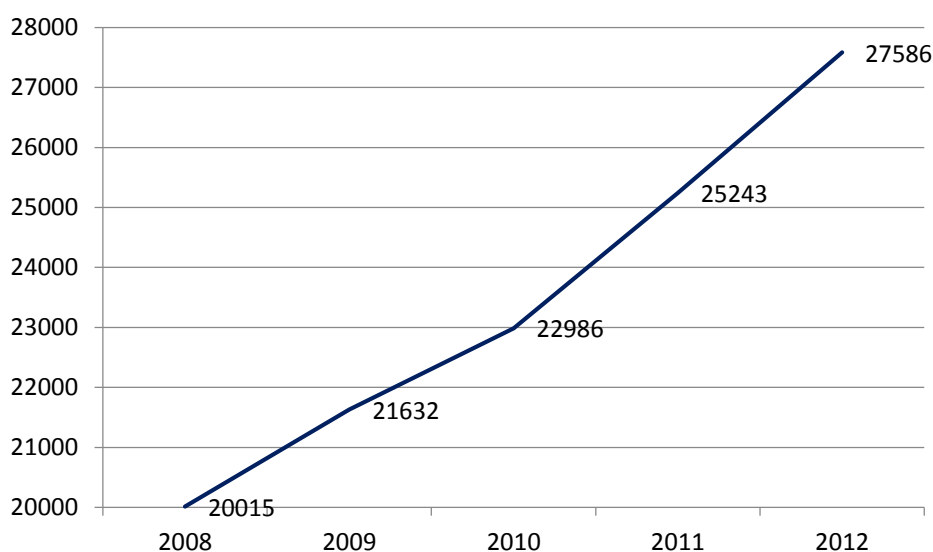
Source: IGSS, 2014 © LU EMN NCP

The [table above](#) demonstrates that the TCNs' demand for healthcare have been increasing over the last 5 years. This is one of the consequences of the increase of non-EU migration during the period. The table also shows that women are the principal users of the system. With the exception of the group "Others", in the other groups the demand had been over 52% and the behaviour of the group has almost been stable over the period.

During the period 2008 – 2012 women represented, in average, 54,6% of the beneficiaries of the healthcare services.

There has been an increase for healthcare benefits of 37,8% between 2008 and 2012, with a steady increase since 2010 as we can see from graph n° 7.2.1.

Graph n° 7.2.1: Evolution of TCN demand on healthcare (2008 – 2012)



Source: IGSS, 2014 © LU EMN NCP

Table n° 7.2.2: TCN population benefiting from healthcare benefits by continent (2008 - 2012)

Origin	Women			Men			Total
	No.	Avg. Age	Avg. Insurance (years)	No.	Avg. Age	Avg. Insurance (years)	
Africa	12157	32	6	10599	30	6	22756
America	9041	35	4	5472	33	8	14513
Asia	10071	34	4	7389	31	6	17460
Europe non-EU	31273	31	7	27983	30	9	59256
Others	1648	34	6	1829	27	8	3477
Total	64190	32	6	53272	30	8	117462

Source: IGSS, 2014 © LU EMN NCP

As we can see from the [table above](#) a total of 117.462 TCNs³⁶¹ have had access to health care during the period 2008 – 2012, meaning 23492 persons per year. From this amount 54,6% of the users were women and only 45,4% were men.

The largest group are the European non-EU nationals that account for 48,7% of women and 52,5% of men. It is important to know that European non-EU nationals represented on 1 January 2013 39,6% of the TCN population in Luxembourg.³⁶²

In the case of women the average age was 32 years and the average years of contribution were 6 years. In contrast, for the same period the average age was 30 years and the contribution average period was of 8 years for the men. We can ask if the longer average insurance age for men than for women reflects the traditional immigration model in which women will join their husband in Luxembourg after the husband has already established in the country.³⁶³

In the women group we can see that the average age is less in the case of European non-EU nationals (31) but this group has contributed for more years to the system (7 years). This contrasts with the group that comes from the Americas which has an average age of 35, but has only contributed an average of 4 years.

In the men group the conclusion is almost the same. The European non-EU group is one of the youngest groups with an average age of 30 years and a contribution average of 9 years. The oldest population is the American group with an average age of 33 years and a contribution average of 8 years. In the group “Others” the average age is the lowest with 27 years in the case of men and 34 years for women.

B. Sick cash benefits

Different from healthcare benefits, sick cash benefits do not have co-insured persons taken into account. It only comprehends the insured persons as we can see from [table n° 7.2.3](#).

³⁶¹ This does not mean that this number represents different persons. If one person had received services in 2008, 2009 and 2011 s/he will be counted 3 times.

³⁶² STATEC, 2013

³⁶³ See the requirements for family reunification for salaried workers in articles 42 and 69 (1) of the Law of 29 August 2008.

Table n° 7.2.3: TCN population benefiting from sick cash benefits disaggregated by continent and gender (2008 – 2012)

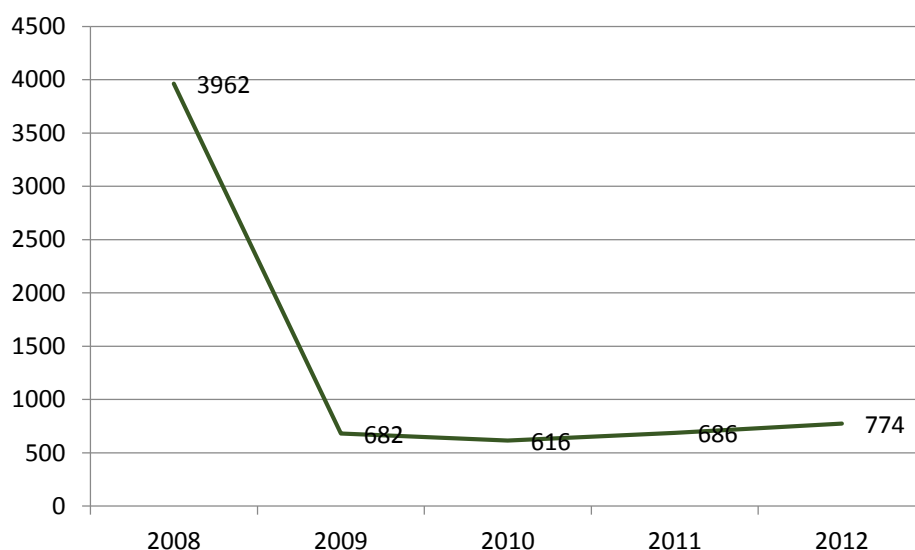
Origin	2008		2009		2010		2011		2012	
	No.	% of women	No.	% of women	No.	% of women	No.	% of women	No.	% of women
Africa	1040	46,3%	135	74,1%	128	65,6%	138	67,4%	154	70,8%
America	340	63,5%	97	92,8%	104	88,5%	129	82,9%	143	88,1%
Asia	200	43,5%	27	74,1%	22	68,2%	27	59,3%	31	61,3%
Europe non-EU	2355	35,6%	410	55,1%	341	50,1%	380	53,2%	438	56,8%
Others	27	40,7%	13	61,5%	21	33,3%	12	50,0%	8	25,0%
Total	3962	41,3%	682	65,1%	616	59,9%	686	61,8%	774	65,2%

Source: IGSS, 2014 © LU EMN NCP

The [table above](#) demonstrates that the TCNs' demand for sick cash benefits has changed over the last 5 years. The strong variation in the effectives between 2008 and 2009 indicates the introduction of the Single Status on the private sector, eliminating the difference between manual and non-manual worker (employee) and the average period of access of the two ancient categories (see explanation on Section 7.3.). It also shows that women have benefited more from the sick cash benefits (since 2009) than men. With the exception of the group "Others" in 2010 and 2012, women demand is over 50% but the behaviour of each origin group is not uniform from year to year. During the period 2009 – 2012 women demands accounted in average 63% of the sick cash benefits.

There has been an increase of the demand of sick cash benefits in the period 2009 – 2012 since 2010 as we can see from [graph n° 7.2.2](#).

Graph n° 7.2.2: Evolution of TCN demand on sick cash benefits (2008 – 2012)



Source: IGSS, 2014 © LU EMN NCP

Table n° 7.2.4: TCN population benefiting from sick cash benefits by continent (2008 - 2012)

Origin	Women			Men			Total
	No.	Avg. Age	Avg. Insurance (years)	No.	Avg. Age	Avg. Insurance (years)	
Africa	868	38	9	727	38	9	1595
America	631	39	5	182	41	9	813
Asia	157	42	7	150	45	10	307
Europe non-EU	1687	42	9	2237	42	12	3924
Others	34	42	12	47	39	10	81
Total	3377	40	8	3343	41	11	6720

Source: IGSS, 2014 © LU EMN NCP

The distribution of this population is almost the same between women and men (50,3% and 49,7%), and the average age between women and men is almost the same (40 and 41). However, the average time of contribution differs: 8 years for women and 11 years for men.

C. Maternity and Paternity leave benefits

In the case of maternity and paternity leave benefits the beneficiary is only the insured person. Co-insured individuals are not comprehended into these benefits.

Table n° 7.2.5: TCN population benefiting from Maternity and Paternity leave benefits disaggregated by continent and gender (2008 – 2012)

Origin	2008		2009		2010		2011		2012	
	No.	% of women	No.	% of women	No.	% of women	No.	% of women	No.	% of women
Africa	292	86,3%	331	84,0%	310	87,7%	382	82,7%	382	81,2%
America	144	87,5%	155	88,4%	176	89,8%	183	88,5%	212	87,7%
Asia	62	90,3%	85	83,5%	81	77,8%	116	83,6%	150	84,7%
Europe non-EU	503	77,9%	471	79,4%	403	73,4%	403	73,7%	466	75,5%
Others	7	85,7%	14	42,9%	27	55,6%	22	59,1%	11	90,9%
Total	1008	82,5%	1056	82,0%	997	80,6%	1106	80,0%	1221	80,7%

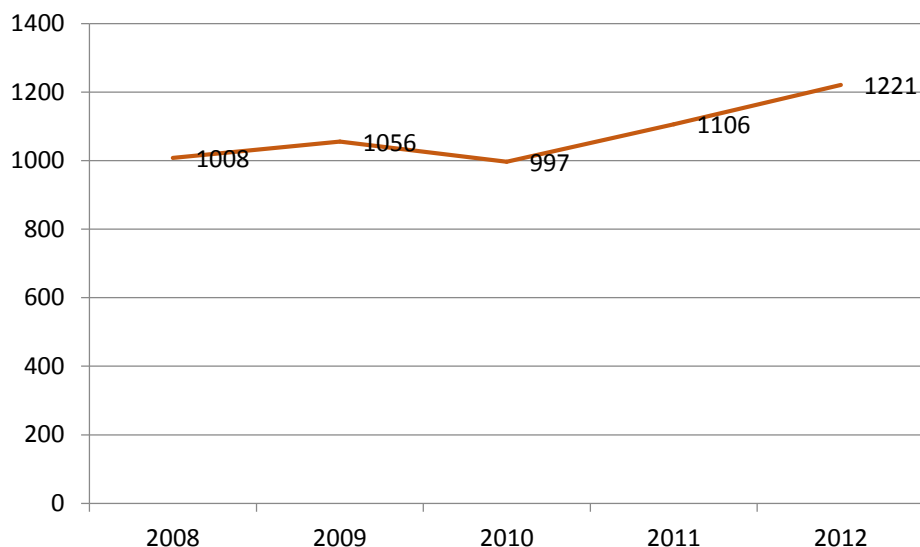
Source: IGSS, 2014 © LU EMN NCP

It is not a surprise that women represent the largest consumer of the maternity and paternity leave benefits: over 80% each year between 2008 and 2012. The main female group that average more than 80% are the African, the American and the Asian groups. Even though the European non-EU group is the biggest group (in absolute figures), women demand only represents, in average, 76% during the period 2008 – 2012.

As we can see from the [graph 7.2.3](#), the evolution of maternity and paternity leave benefits has decreased slightly between 2009 and 2010 and since then it has increased at a normal pace (an average

of 10-11% per year).

Graph n° 7.2.3: Evolution of TCN demand on Maternity and Paternity leave benefits (2008 – 2012)



Source: IGSS, 2014 © LU EMN NCP

Table n° 7.2.6: TCN population benefiting from Maternity and Paternity leave benefits by continent (2008 - 2012)

Origin	Women			Men			Total n° persons
	No.	Avg. Age	Avg. Insurance (years)	No.	Avg. Age	Avg. Insurance (years)	
Africa	1428	34	7	269	36	8	1697
America	769	34	5	101	37	7	870
Asia	414	32	5	80	38	8	494
Europe non-EU	1711	32	7	535	36	10	2246
Others	50	35	5	31	40	9	81
Total	4372	33	7	1016	36	9	5388

Source: IGSS, 2014 © LU EMN NCP

The largest group in both sexes were the European non-EU nationals who amounted 41,7% of the entire population (39,1% of the women and 52,6% of the men). The second largest group in women and men were the African group. It represents 31,5% of the entire population (32,7% of the women and 26,5% of the men).

The average age of the population is of 34 years for women and 36 years for men. However, the average time of contribution is higher for men than for women (9 versus 7 years).

D. Accidents at work and occupational diseases benefits

Table n° 7.2.7: TCN population benefiting from accident at work and occupational diseases benefits disaggregated by continent and gender (2008 – 2012)

Origin	2008		2009		2010		2011		2012	
	No.	% of women	No.	% of women	No.	% of women	No.	% of women	No.	% of women
Africa	342	28,9%	281	37,0%	315	31,4%	372	32,5%	384	39,3%
America	96	36,5%	99	48,5%	128	45,3%	124	52,4%	131	39,7%
Asia	83	24,1%	67	35,8%	70	45,7%	115	37,4%	104	43,3%
Europe non-EU	1180	19,5%	1206	23,8%	1228	23,2%	1319	25,5%	1399	25,9%
Others	31	16,1%	19	42,1%	40	10,0%	52	32,7%	28	53,6%
Total	1732	22,5%	1672	28,2%	1781	26,8%	1982	29,4%	2046	30,5%

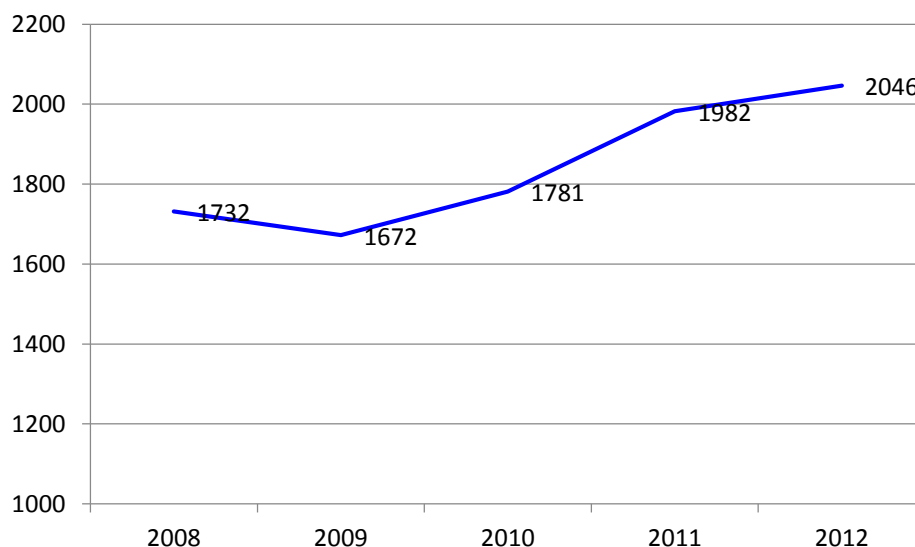
Source: IGSS, 2014 © LU EMN NCP

The [table above](#) demonstrates that men are more concerned than women by this kind of benefits. These data must be interpreted in regards to the economic activity sectors of men and women, but this falls outside of the scope of this study. The evolution for the demand of accidents at work and occupational diseases has not been steady in the period 2008 – 2012. First, there had been a decrease between 2008 and 2009, followed by a steadily increase until 2012. The relative share of women demand had almost increased steadily during the entire period (with the exception of 2010).

In regards to the relative share in women demand that there is not a uniform behaviour in the demand from year to year in the different origin groups.

We can observe a continuous increase of demand since 2009: it grew steadily just until 2011 (6,5% in 2010 and 11,3% in 2011 in regard to 2009), but the increase began slow in 2012 (3,2%).

Graph n° 7.2.4: Evolution of TCN demand on accidents at work and occupational diseases benefits (2008 – 2012)



Source: IGSS, 2014 © LU EMN NCP

Table n° 7.2.8: TCN population benefiting from accident at work and occupational diseases benefits by continent (2008 - 2012)

Origin	Women			Men			Total
	No.	Avg. Age	Avg. Insurance (years)	No.	Avg. Age	Avg. Insurance (years)	No. Beneficiaries
Africa	574	36	7	1120	34	7	1694
America	258	34	5	320	30	6	578
Asia	164	29	4	275	30	7	439
Europe non-EU	1500	36	7	4832	38	10	6332
Others	49	36	5	121	27	5	170
Total	2545	35	7	6668	37	9	9213

Source: IGSS, 2014 © LU EMN NCP

The women who were beneficiaries of these benefits represent only 27,6%. In contrast, men represent 72,4%, almost three times as much.

The women population has an average age of 35 years and a contribution period of 7 years. The men population is older (37 years) and has also been contributing longer (9 years).

The most significant group is the non-EU TCN group which represents 68,7% of the entire beneficiary population followed by the African TCN group that only represents 18,4% of the entire beneficiary population.

E. Long-term care

In the long-term care we obtained only the data between 2008 and 2011. The data for 2012 was not available, as we can see from the [table n° 7.2.9](#).

[Table n° 7.2.9](#) shows the evolution of the beneficiary population disaggregated by continent. The percentage of women during all the period is superior to 60% and it averages 61,3%.

Meanwhile the African, American and European non-EU group demonstrate periodical fluctuations in the relative share of female beneficiaries into a certain scale (i.e. the African group between 50% and 56%; the American group 66,7% - 70,4% and the European non-EU group between 60% - 63,3%) while the Asian group had a steady and significant increase (36,4% to 62,5%).

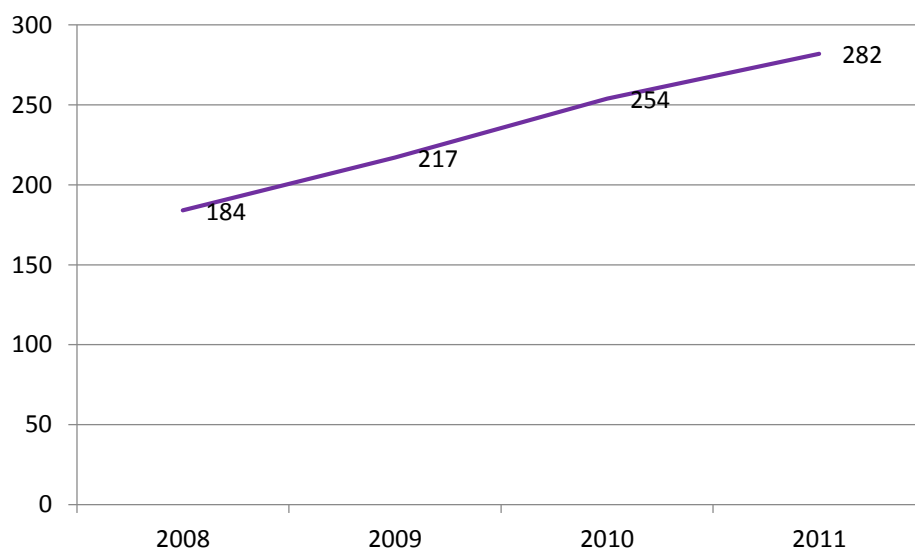
Table n° 7.2.9: TCN population benefiting from Long-term care benefits disaggregated by continent and gender (2008 – 2011)

Origin	2008		2009		2010		2011	
	No.	% of women	No.	% of women	No.	% of women	No.	% of women
Africa	25	56,0%	33	51,5%	40	50,0%	45	51,1%
America	30	66,7%	27	70,4%	32	68,8%	33	69,7%
Asia	11	36,4%	14	42,9%	20	55,0%	24	62,5%
Europe non-EU	83	60,2%	109	63,3%	125	60,8%	145	60,0%
Others	35	71,4%	34	70,6%	37	64,9%	35	71,4%
Total	184	61,4%	217	62,2%	254	60,2%	282	61,3%

Source: IGSS, 2014 © LU EMN NCP

Even if there had been fluctuations in the percentage of women, it is a fact that the demand for long-term care has increased significantly during the period 2008 – 2011 as we can see in the [graph n° 7.2.5](#) which shows an increase of 53,3% between 2008 and 2011 (an average increase of 17,8% per year).

Graph n° 7.2.5: Evolution of TCN demand of long-term care benefits (2008 – 2011)



Source: IGSS, 2014 © LU EMN NCP

Table n° 7.2.10: TCN population benefiting from long-term care benefits by continent (2008-2011)

Origin	Women			Men			N° of beneficiaries
	No.	Avg. Age	Avg. Insurance (years)	No.	Avg. Age	Avg. Insurance (years)	
Africa	74	64	2	69	39	9	143
America	84	72	3	38	56	17	122
Asia	36	58	1	33	37	4	69
Europe non-EU	282	59	4	180	45	6	462
Others	98	85	7	43	61	23	141
Total	574	66	4	363	46	11	937

Source: IGSS, 2014 © LU EMN NCP

Long-term care is a benefit that is being more solicited by TCNs in the last years. However, the number of TCNs who benefit from it still relatively low (937 in the last 5 years, less than 200 per year). From this population 574 were women (61,3%) and only 363 men (38,7%). This can be due to the socio-demographic profile of migration that is younger than the Luxemburgish population. The growing demand for long-term care also demonstrates that migration does not remain eternally young.

The average age for women was 66 years during the period 2008 – 2012. This data contrasts with the average age of men that was 46 years. We can only suppose that this is due to the fact that these men, who have applied for long-term care benefits were forced to leave the labour market earlier because they suffered of a handicap (physical or psychological).

Another contrast can be found in the average time of insurance: for the women it is of 4 years and for the men it is of 11 years.

The European non-EU nationals are the main beneficiaries: 49,3% of the total population. This group is followed by the African TCN group, which represents only 14,9% of the entire population. The American TCN group only represents 13% of the population.

F. Survivors' pensions

In the survivors' pensions we are confronted with a different kind of benefit which is exportable. In the tables below the number of effectives not only related to the residents in Luxembourg, but also to the non-residents.

As we can see from the [table n° 7.2.11](#) there has been a steady increase in all the different beneficiaries disaggregated by continent with the exception of the "Others" group. It is significant to mention that the survivors' pensions' beneficiaries are mainly women representing for each year 83% of the TCN population benefiting from this type of pension (only the African group and the Asian group are below this percentage).

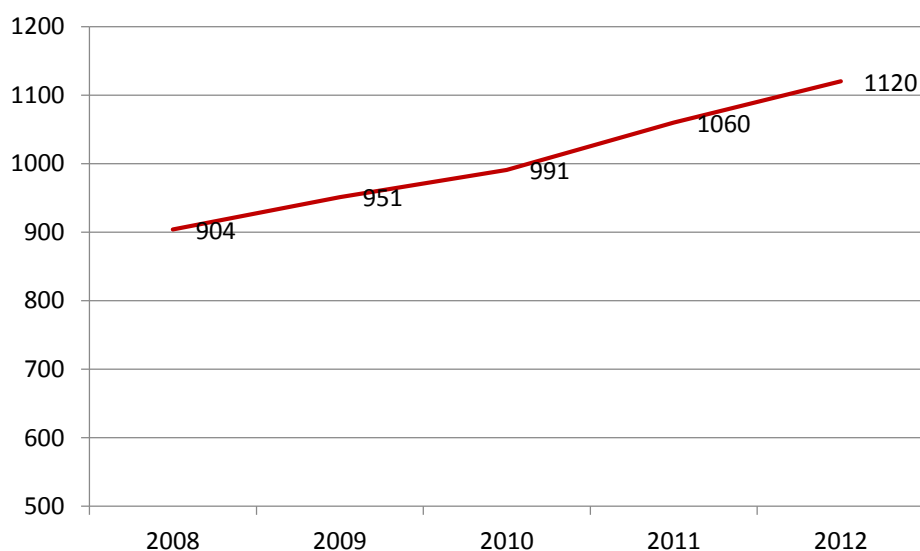
Table n° 7.2.11: TCN population benefiting from survivors' pensions disaggregated by continent and gender (2008 – 2012)

Origin	2008		2009		2010		2011		2012	
	No.	% of women	No.	% of women	No.	% of women	No.	% of women	No.	% of women
Africa	114	74,6%	126	74,6%	138	75,4%	161	75,2%	161	75,2%
America	106	86,8%	110	87,3%	118	91,5%	122	91,0%	133	89,5%
Asia	66	66,7%	76	67,1%	79	69,6%	84	72,6%	96	78,1%
Europe non-EU	449	82,4%	473	82,5%	500	82,2%	534	82,4%	567	82,2%
Others	169	94,7%	166	94,0%	156	93,6%	159	93,1%	163	93,9%
Total	904	83,1%	951	82,8%	991	83,1%	1060	83,1%	1120	83,4%

Source: IGSS, 2014 © LU EMN NCP

As we can see from [graph n°7.2.6](#) the evolution of the TCN demand on Survivors' pensions had increased steadily in 23,9% between 2008 and 2012.

Graph n° 7.2.6: Evolution of TCN benefiting from survivors' pensions (2008 – 2012)



Source: IGSS, 2014 © LU EMN NCP

Table n° 7.2.12: TCN population benefiting from survivors pensions by continent (2008 - 2012)

Origin	Women			Men			Total Beneficiaries
	No.	Avg. Age	Avg. Insurance (years)	No.	Avg. Age	Avg. Insurance (years)	
Africa	525	46	17	175	22	13	700
America	526	66	15	63	36	19	589
Asia	286	42	17	115	28	15	401
Europe non-EU	2077	58	16	446	27	12	2523
Others	763	76	20	50	47	15	813
Total	4177	60	17	849	28	13	5026

Source: IGSS, 2014 © LU EMN NCP

A big contrast exists on the average age between women and men: 60 years for women and 28 for men.

The average insured period was 17 years for women and only 13 years for men.

The main beneficiary group is the European non-EU group, which represents 50,2% of the entire population.

G. Invalidity benefits

The invalidity benefits, as the survivors' pensions and old-age pensions are paid to TCNs who are residents and non-residents.

As we can see from the [table n° 7.2.13](#), even though the number of effectives has increased during the period 2008 – 2012 the relative share of women has remained almost stable fluctuating between 33% and 34% during the period. This means that almost 2/3 of the invalidity benefits are received by men. This phenomenon must be put into perspective in regard to the economic sectors and working conditions in which a large majority of the TCNs work.

The behaviour of the percentage of women is interesting in the American group because it is the only one that has significant fluctuations during the period passing from 23,2% in 2008 to 21,4% in 2010 and rebounds to 30,9% in 2011 and then to 35% in 2012.

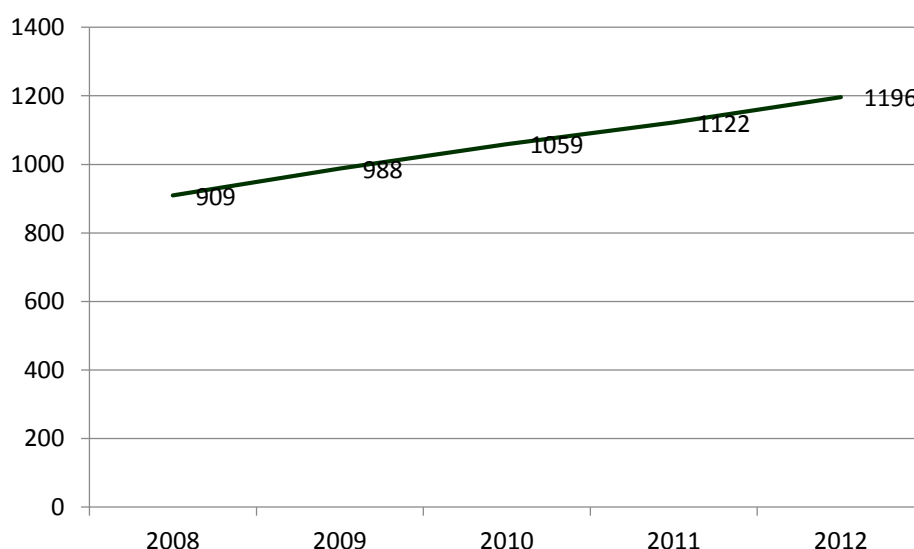
Table n° 7.2.13: TCN population benefiting from invalidity benefits disaggregated by continent and gender (2008 – 2012)

Origin	2008		2009		2010		2011		2012	
	No.	% of women	No.	% of women	No.	% of women	No.	% of women	No.	% of women
Africa	121	31,4%	122	32,8%	124	33,9%	128	34,4%	144	34,0%
America	56	23,2%	58	22,4%	56	21,4%	55	30,9%	60	35,0%
Asia	17	35,3%	21	38,1%	22	40,9%	25	40,0%	24	37,5%
Europe non-EU	629	33,5%	706	34,1%	781	34,7%	840	33,8%	895	34,0%
Others	86	36,0%	81	34,6%	76	34,2%	74	36,5%	73	37,0%
Total	909	32,9%	988	33,4%	1059	34,0%	1122	34,0%	1196	34,3%

Source: IGSS, 2014 © LU EMN NCP

The number of effectives has continuously increased during the period 2008 – 2012 passing from 909 in 2008 to 1196 in 2012, which represent a global growth rate of 31,6% for this period.

Graph n° 7.2.8: Evolution of TCN demand on invalidity benefits (2008 – 2012)



Source: IGSS, 2014 © LU EMN NCP

Table n° 7.2.14: TCN population benefiting from invalidity benefits by continent (2008 - 2012)

Origin	Women			Men			Total Beneficiaries
	No.	Avg. Age	Avg. Insurance (years)	No.	Avg. Age	Avg. Insurance (years)	
Africa	213	59	12	426	68	20	639
America	76	64	12	209	67	15	285
Asia	42	59	11	67	62	13	109
Europe non-EU	1311	60	14	2540	60	16	3851
Others	139	73	14	251	68	19	390
Total	1781	61	14	3493	62	17	5274

Source: IGSS, 2014 © LU EMN NCP

Different from the survivors' pensions the main group by gender are men (66%). The average age for women is 61 years and for men 62 years. However, there is a difference in the contribution periods: women contributed in average 14 years. Instead, men did it for 17 years.

In regards with the origin the principal group is the European non-EU group, which represents 73% of the entire population.

H. Old-age pensions

Old age pensions are becoming a greater concern in Luxembourg because we are confronted with an aging population also within migrants. As the last two benefits they are exportable.

As in all the other social security benefits the amount of benefits paid to individuals on old-age pensions has increased over the last five years at a steady pace. If we cheque from the actual numbers the largest group is composed by the European non-EU nationals, followed by the American group and then by the "Others" group. The African and Asian group during the entire period does not arrive to cross the barrier of 5% of the total number of beneficiaries. The effectives of the African group have almost doubled the number of effectives during the period (they passed from 3,7% in 2008 to 5% in 2012. The same conclusion is valid for the Asian group which doubled the number of effectives but has not passed the 5% barrier (it passed from 2,6% in 2008 to 3,9% in 2012).

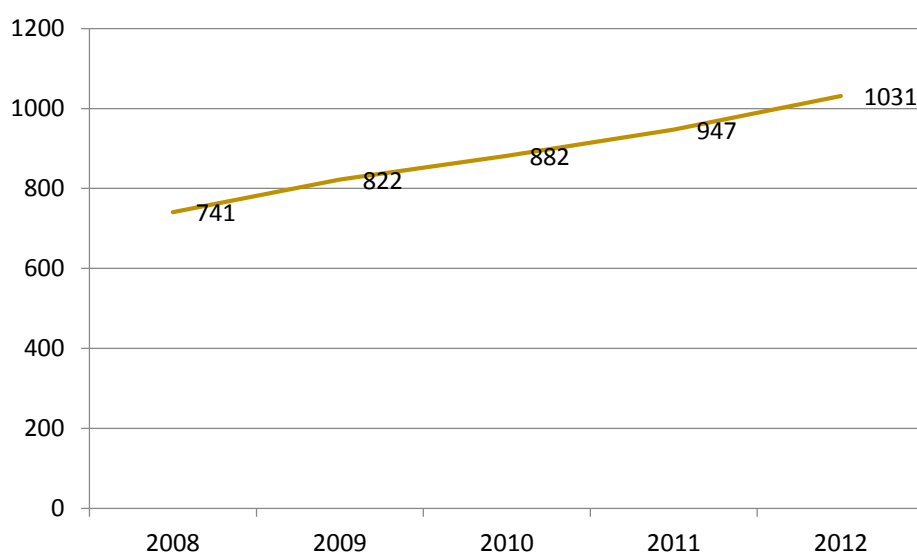
Table n° 7.2.15: TCN population benefiting from old-age pensions disaggregated by continent and gender (2008 – 2012)

Origin	2008		2009		2010		2011		2012	
	No.	% of women	No.	% of women	No.	% of women	No.	% of women	No.	% of women
Africa	28	7,1%	32	9,4%	38	10,5%	45	11,1%	52	15,4%
America	256	21,9%	275	21,5%	288	21,5%	290	23,1%	308	22,4%
Asia	19	26,3%	26	26,9%	33	27,3%	34	23,5%	40	25,0%
Europe non-EU	343	23,9%	394	24,6%	429	24,0%	479	23,4%	531	23,5%
Others	95	28,4%	95	28,4%	94	29,8%	99	29,3%	100	33,0%
Total	741	23,2%	822	23,5%	882	23,4%	947	23,3%	1031	23,8%

Source: IGSS, 2014 © LU EMN NCP

The evolution of the TCNs benefiting from old age pensions had during the period 2008 to 2012 a steady and continuous increase of 39,1% between 2008 and 2012 as we can see from [graph n° 7.2.8](#).

Graph n° 7.2.8: Evolution of TCN demand on old-age pensions (2008 – 2012)



Source: IGSS, 2014 © LU EMN NCP

Table n°7.2.16: TCN population benefiting from old-age pensions by continent (2008-2012)

Origin	Women			Men			Total
	No.	Avg. Age	Avg. Insurance (years)	No.	Avg. Age	Avg. Insurance (years)	
Africa	22	74	16	173	72	15	195
America	313	75	10	1104	74	11	1417
Asia	39	71	14	113	71	15	152
Europe non-EU	519	71	14	1657	70	15	2176
Others	144	76	8	339	76	16	483
Total	1037	73	12	3386	72	14	4423

Source: IGSS, 2014 © LU EMN NCP

The table demonstrates a clear difference between gender: there were only 1037 women (23,4%) beneficiaries in contrast with 3386 men (76,6%) during the period 2008 to 2012.

For the period 2008-2012 the average age of men and women was almost the same (72 years and 73 years). We have also a similar contribution period (14 years and 12 years).

7.3. The costs to each (Member) State of providing social security benefits including healthcare to third-country nationals

The estimated costs of the social security in regards to TCNs have represented in the period 2008 – 2012 around 312,3 million euros.³⁶⁴

³⁶⁴ This amount includes a conservative projection of the cost of the long-term care in 2012 at approximately 5.806.292, taking into account a conservative increase of 10% which is lower than the normal yearly increase shown in table n° 7.3.4.

The principle cost is health care, which represents between 67,8% and 74,3% of the total payment of social security benefits during the period in question. The second largest item is the long-term care. If we consider a conservative projection of 5.800.000 for the year 2012 it will amount to 23.554.382 euros (7,5% of all the expenses).

Table n° 7.3.1: Cost of social security benefits (2008-2012)

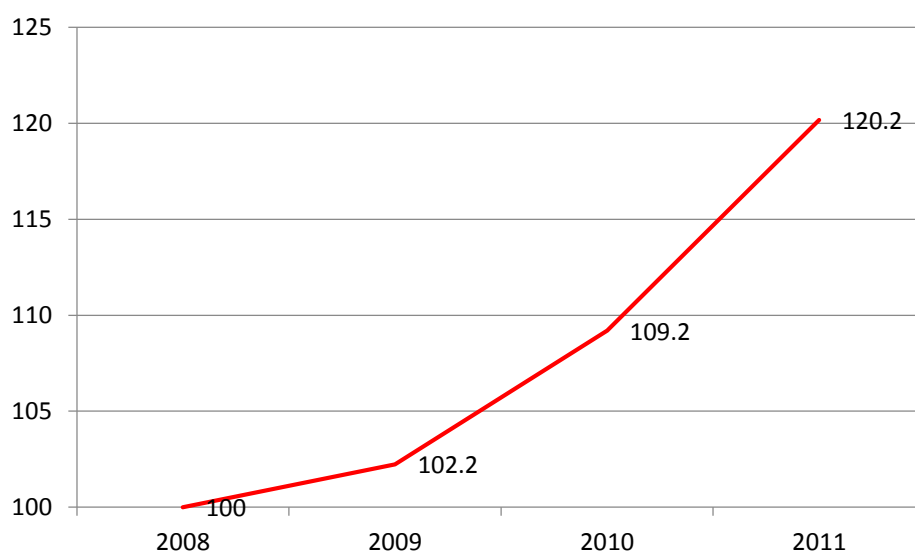
Benefits	2008	2009	2010	2011	2012	Total
Healthcare	37317671	41706857	44685954	48998967	55905616	228615065
Sick cash benefits	6093493	1953564	1890948	2457210	2845835	15241050
Maternity and paternity leave	3125595	3226188	3178004	3369616	3618339	16517742
Accidents at work & occupational diseases	2357680	2364382	2424922	2597397	2770507	12514888
Long-term care	3571907	4116396	4787632	5278447	N.D.	17754382
Old-age pensions	748353	885312	972554	1100712	1248802	4955733
Invalidity benefits	1008230	1135006	1250924	1367198	1484900	6246257
Survivors pensions	819862	886209	914369	981021	1044892	4646353
Total	55042791	56273914	60105308	66150568	N.D.	306491471

Note: There is no data for long-term care benefits for the year 2012

Source: IGSS, 2014 © LU EMN NCP

The costs of social security has increased by a 20,2% between 2008 and 2011 as we can see from graph n° 7.3.1. Between 2008 – 2009 the increase was only of 2,2% and then it increased by 7%. If we take a conservative increase of 10% on the cost of long-term care for 2012 (5.806.292 euros) just to make a projection of the evolution of the global cost between 2008 – 2012, the increase will be around 35,8%.

Graph 7.3.1.: Evolution of costs of social security benefits in the period 2008-2011



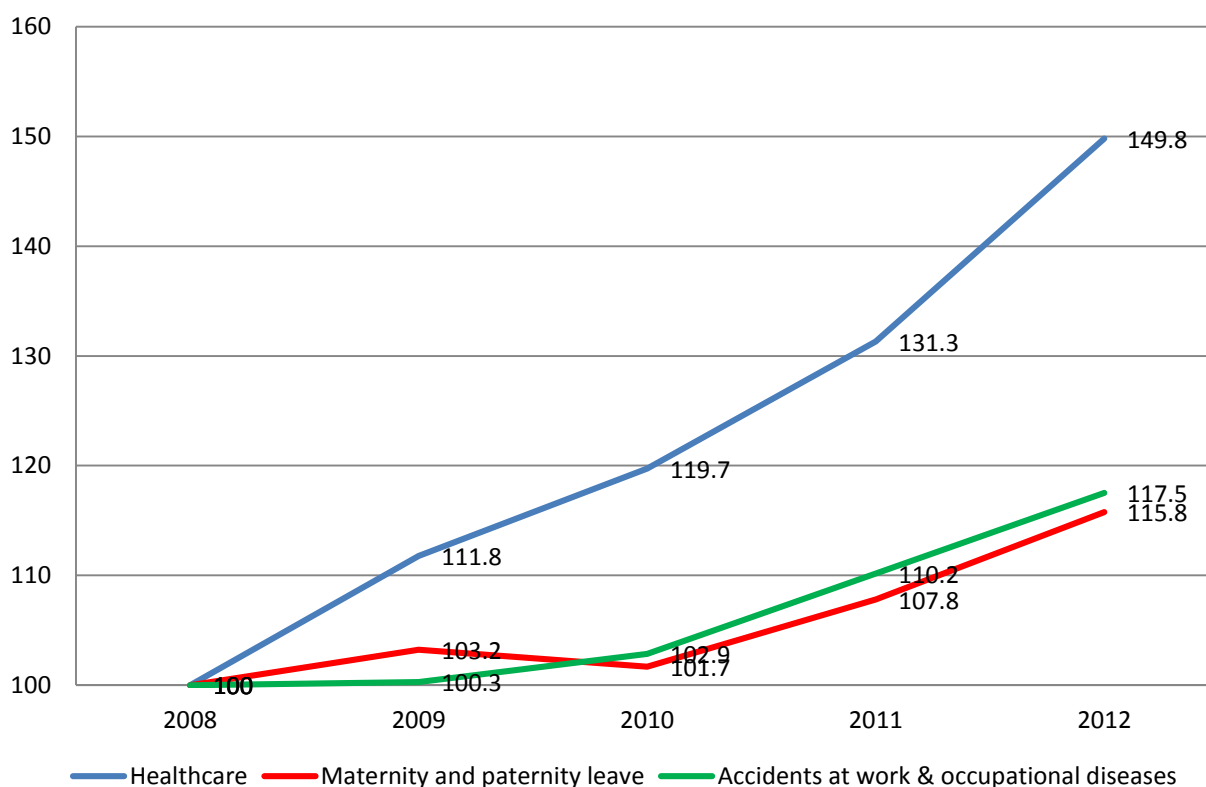
Notes: Scale: Base 100 in 2008. This graph demonstrates the evolution of costs based on 2008.

Source: IGSS, 2014 © LU EMN NCP

Healthcare is the item that has increased substantially between 2008 and 2012. The [graph n° 7.3.2](#) shows that the costs of health care have almost increased 50% during 2008 – 2012. From 2011 to 2012 the growth was of almost 18,5%.

In contrast, the evolution of costs in maternity and paternity benefits and accidents at work and occupational benefits the evolution was almost similar with the exception from 2009 to 2010. During the period 2008 – 2012 the growth was of 15,8% for the maternity and paternity leave and 17,5% in the case of accidents at work and occupational diseases.

Graph n° 7.3.2: Evolution of costs of healthcare, maternity and paternity leave and accidents at work and occupational benefits in the period 2008 – 2012

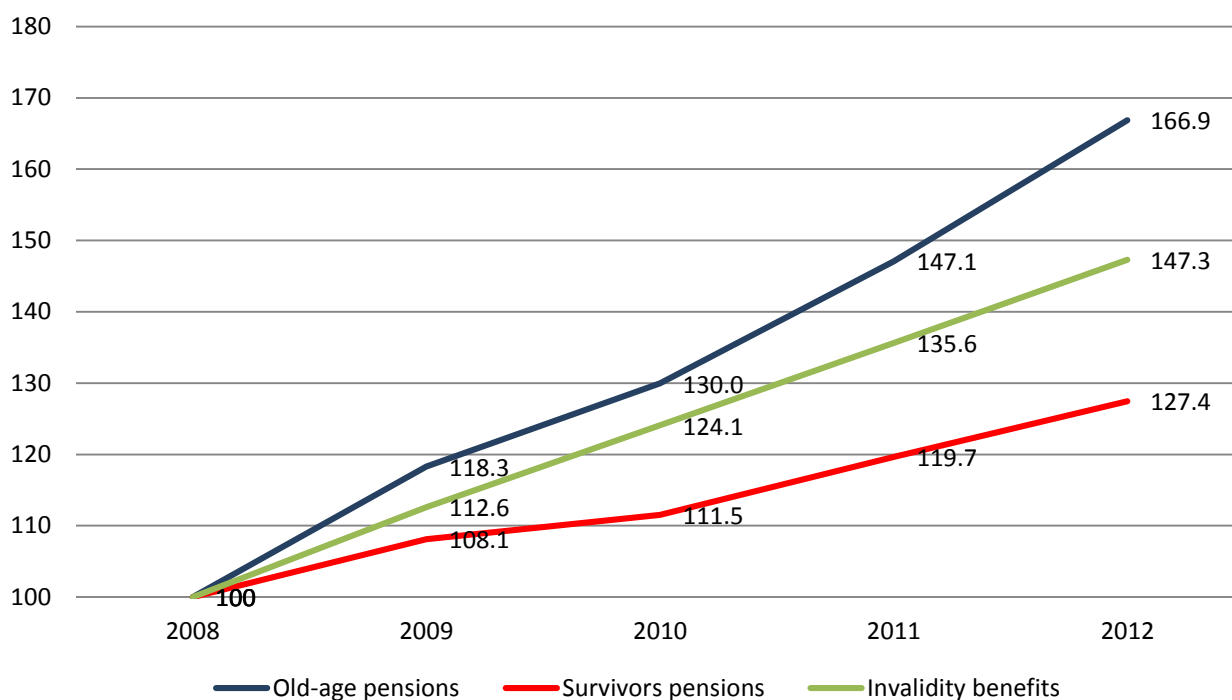


Note: Scale: Base 100 in 2008. This graph demonstrates the evolution of costs based on 2008.
Source: IGSS, 2014 © LU EMN NCP

The major evolution can be found in the benefits that are generally exportable such as old-age pensions, survivors' persons and invalidity benefits, which are paid to resident and non-resident TCNs.

As we can see from the graph below the evolution of the old-age pensions has increased by 66,9% in the period 2008 – 2012, the invalidity benefits by 47,3% and the survivors' pensions by 27,4% as we can see from [graph 7.3.3](#).

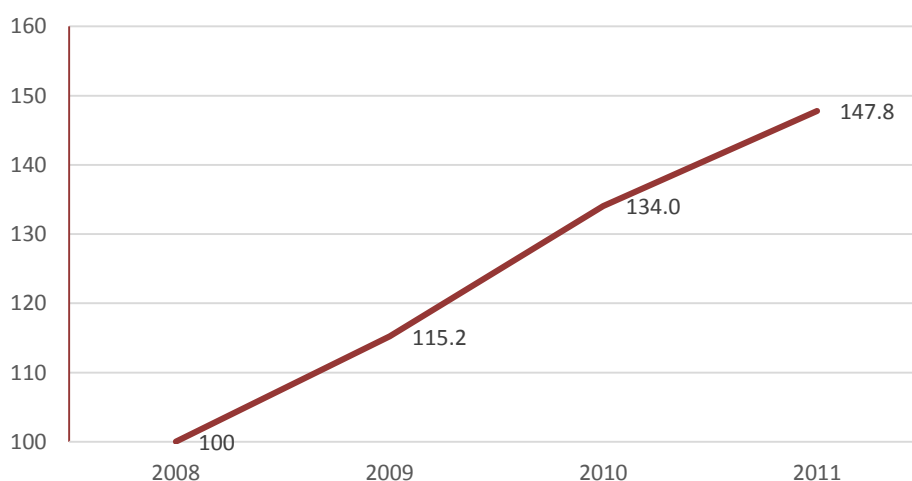
Graph n° 7.3.3: Evolution of costs of old-age pensions, survivors' pensions and invalidity benefits in the period 2008 – 2012



Note: Scale: Base 100 in 2008. This graph demonstrates the evolution of costs based on 2008.
Source: IGSS, 2014 © LU EMN NCP

The costs of long-term care has been rising since 2008 almost 15% every year. We can see that from 2008 to 2011 the accumulated increase had been of 47,8%.

Graph n° 7.3.4: Evolution of costs of long-term care in the period 2008 – 2011

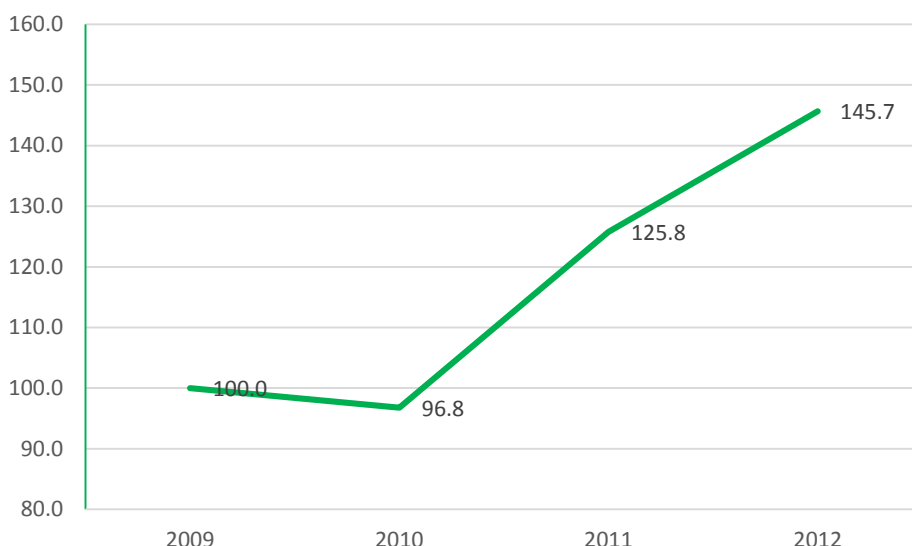


Note: Scale: Base 100 in 2008. This graph demonstrates the evolution of costs based on 2008.
Source: IGSS, 2014 © LU EMN NCP

In regards to sick cash benefits there is a precision that we need to do. The costs of sick cash benefits is higher in 2008 (almost the triple) in comparison to 2009. This is due to the introduction of a single status for all employees in the private sector eliminating the difference between manual and non-

manual workers. Before, the entrance into force of the single status for private employees, the Health Fund in average intervened from the first day of sick-leave for the manual worker and from the fifteenth day for the non-manual worker (employees). After the single status has entered into force the Health Fund only intervenes in average from the thirteenth week of sick-leave. This explains the diminution in the costs between 2008 and 2009 from 6.093.493 euros to 1.953.564. However, since 2009 the costs have increased significantly with the exception of 2010 (96,8%) as we can see from the [graph below](#).

Graph n° 7.3.5: Evolution of costs of sick cash benefits in the period 2009 – 2012



Note: Scale: Base 100 in 2008. This graph demonstrates the evolution of costs based on 2009.
 Source: IGSS, 2014 © LU EMN NCP

The evolution line demonstrates an increase of 25,8% between 2009 and 2011 and a growth of 45,7% between 2009 and 2012. This shows a significant increase in the cost of sick cash benefits received by TCNs in recent years.

8. KEY FINDINGS

This division of social security benefits in Luxembourg is not only the result of links between the situations considered as “social risks”, but also the result of an historical development.

The entire social protection system is composed by: 1. Social security system, which is financed by the contributions from the employees, employers and the State paid; 2. Social assistance, which is financed by general taxation and based on the solidarity principle; and 3. Social aid, which is financed by general taxation as well. For benefiting from the two first parts of the protection system, the applicant must fulfil the objective criteria and conditions required by the legislation. It is not subject to the discretionary principle. In the last one, the social aid, the allocation of the benefits depends more in the discretionary principle, particularly with regard to the evaluation of social needs.

The Luxembourg social security system is a labour based system and not a residence-based system. As it is centred on the principle of equality, it is a main factor of the Luxembourgish conception on the integration process. Any person, who legally resides and is authorised to work in the Luxemburgish territory - or even a TCN CBW who contributes to the system-, pays his/her contributions to the social security system, and is entitled to benefit of it independently of its

nationality. S/he will have access in the same conditions as the Luxemburgish and EU citizens to the social security system, if s/he fulfils the conditions of each type of benefits and the trial periods established by the law.

The only benefit exempted from the labour-based system are the family benefits, financed nowadays by general taxation. Family benefits are granted to the children who must be legally residents in Luxembourg (exception made with CBW).

The entitlement to unemployment benefits, social assistance and social aid depend also on specific migratory conditions.

The entitlement to unemployment benefits depends on the type and the validity of the residence permit.

For the RMG (social assistance), the TCN (excluding the beneficiaries of an international protection) has to prove a residence of 5 years during the last twenty years.

For the social aid, some categories of TCNs are excluded from the cash material assistance, in particular the persons who benefit from an authorization of stay that have being sponsored by a third party who is responsible for their needs, students and pupils and persons who only have a temporary residence.

Seen the geographical dimensions of the territory, the exportability of benefits has been addressed by Luxembourg since the beginning of the system. All the benefits which are derived from contributions can be exported wherever the beneficiary lives.

With the modification of the financing system of family benefits (from contributions to general taxation) most of the bilateral conventions which had foreseen the exportability of family allowances were modified to exclude them with only two exceptions.

Luxembourg is a country open to migrations. In consequence it has strongly developed bilateral agreements on coordination rules of social security in order to guarantee the most complete protection to the migrant worker and his/her family. These conventions are inspired by the same coordination rules established by EU law: aggregation of the insurance periods, exportability of benefits and equality of treatment. Those are the principles that Luxembourg defends during the negotiation of bilateral agreements.

In principle the Luxemburgish bilateral treaties, do not distinguish between nationals and residents, with some exceptions where the provisions only apply to the nationals of the signatory parties. In treaties signed with distant countries or with countries which have a complete different healthcare system and accident at work and occupation disease insurance, Luxembourg prefers to exclude these items from the treaties. In regards to unemployment benefits, the treaties only foresee the aggregation of the periods for the opening of the right (not the exportability of the benefits).

All the conventions are applicable to salaried workers and self-employed workers independently of their nationality, with the exceptions mentioned above.

The TCNs who represent only 6% of the global population of the country, are proportionally more concerned by unemployment than the Luxemburgish or EU nationals, even though during the economic crisis the EU nationals were more affected by it.

For the TCNs as for the others, the costs of social security benefits have increased over the last five years. This is the direct consequence of the growth of the resident and active working population of the country.

The health care benefits, as they concern all the population, are the more important cost-wise, which is logic due to the fact that the number of beneficiaries follows the evolution of the resident and working population. Healthcare represents the most expensive benefit of the social security system based on the contributions.

Even if the old-age pensions have increased proportionally faster than the other benefits during the reference period (2008 – 2012), in the case of TCNs old-age pensions and survivors' pensions continue to be the less expensive benefits for the system.

This situation indicates on one hand that the profile of immigrants is relative younger compared to the profile of the autochthonous population and on the other hand that in the future we are going to see a growing aging migrant population in the future.

The significant number of effectives who are beneficiaries of accidents of work and occupational diseases and invalidity benefits can be referred to the position which TCNs occupy in the labour market. A large majority of the TCNs are actives in sectors where the working conditions are particularly harsh and constraining (i.e., construction, hotel and catering, etc.)

Even though the system is based on a labour-based system some problems in the case of TCNs were detected:

- a) Article 43 (4) of the Law of immigration foresees the possibility to renew for a supplementary year the residence permit in cases that the salaried worker proves that s/he cannot work the entire duration of its work contract or the case s/he is unemployed and receiving unemployment benefits. However, situations as the accident of work and occupational diseases are not addressed precisely by the law.

In the case of unemployment benefits, the access is linked to the type and validity of residence permit.

- b) Applying for social assistance or social aid can constitute an obstacle for family reunification or to for obtaining a long-term residence status. In regard to the family reunification, the replacement income are taken into consideration for the determination of financial resources and this can affect directly the outcome of the decision.
- c) The importance of TCNs among the beneficiaries of certain number of services raised a certain number of questions, such as, long-life learning training and reinsertion in the labour market in regard to persons who are receiving unemployment benefits, prevention measures in regard to accidents at work.

Finally, the general principle of access to the social security system requires that the TCN must be a legal resident in the country. In the case the social security's authorities determine that there is an irregularity on the affiliation, they can proceed to a retroactive adjustment and a retroactive disaffiliation. However, the authorities only do retroactive adjustments in very short time frameworks, trying to preserve the rights of the workers. In this sense, the social security authorities do not execute immigration police functions.

ANNEX(ES)

1. **Further sources in relation to migration and welfare**
2. **Standardised tables for the collection of statistics on numbers of third-country nationals employed, unemployed and inactive by national group**

Available compilations of previous related **EMN Ad-Hoc Queries** (pdf files) and a List of Directives as set out in the **EU Acquis** in relation to irregular migration will be uploaded into a folder assigned to this Study on the Information Exchange System.
