



Visa Policy as Migration Channel

Luxembourg

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September 2011



Abbreviations

ADEM	Administration de l'Emploi (National Employment Office)
CCTS	Commission Consultative pour Travailleurs (Advisory Committee for Workers)
CES	Conseil Economique et Social (Economic and Social Council)
EC	European Commission
EEA	European Economic Area
EEC	European Economic Community
EMN	European Migration Network
EU	European Union
IGSS	Inspection générale de la Sécurité Sociale (General Inspectorate of Social Security)
IOM	International Organization for Migration
MOU	Memorandum of Understanding
MYO	Migrer les yeux ouverts (Migrate with Open Eyes)
NCP	National Contact Point
NGO	Non-Governmental Organisation
STATEC	Institut National de la Statistique et des Études Économiques du Grand-Duché du Luxembourg (National Statistical Institute of Luxembourg)
TFEU	Treaty of Functioning of the European Union

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Foreword

The opinions and interpretations 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 Affairs nor do they represent National Government policy.

The present report was drafted by Adolfo Sommaribas with the assistance of Anne Koch, 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), Dr. Claudia Hartmann-Hirsch, (CEPS/Instead), Germaine Thill (STATEC), and Marc Hayot (OLAI Reception and Integration Agency, Ministry of Family and Integration).

Executive Summary

Issuing a visa derives from the sovereign authority of the State.

Visa policy is composed of a group of parameters set by national legislation (Constitution, laws, regulations and decrees), thereby allowing the administration to determine which foreigners can be admitted to enter and stay on a temporary basis on its territory. It is a social phenomenon because it reacts and interacts with the entire social system of the State. It will respond to the social, economic, political, educational and ethical sub-systems. For example, during periods of war or social conflicts, visa policy has acted as an effective instrument to stop the immigration of a certain type of population. On the other hand, in times of high economic growth, in order to avoid labour shortages¹, visa policy can allow for the immigration of foreigners on flexible terms².

This group of parameters, based on objective and sometimes subjective terms, allows regulating the entry of foreign nationals into the territory of the State. On the one hand, it can act as permission that the state grants to a specific individual, while on the other hand it can act as a restriction through filtering people that are considered as a potential threat to public interest.

As it is a manifestation of the sovereign power of the State, in principle, the administrative authority would not be obliged to inform the person of the reasons why the visa was granted or refused. However, with the development of the principle of transparency in administrative law, this has changed and nowadays the motives of the decision tend to be communicated. This is to avoid any abuse of power from the civil servant who takes the decision, thus acting as a means to control the acts of the civil servant by the administrative or judicial courts but also by society in general.

¹ Luxembourg repeatedly faced similar situations throughout the last decades : 1) the Italian immigration during the development of the steel industry ; the Italian and Dutch immigration after World War II and the Portuguese immigration in the 1960's.

² This change of policy can be observed in new labour policies which tend to promote the immigration of high skilled workers from third countries (directive 2009/50/CE) while restricting the immigration of low skilled workers.

In modern times, most countries distinguish between short-stay visas (three months or less), long-term visas (more than three months) and transit visas. All these types of visas are integrated within the legal authority of the State.

The integration of Luxembourg in the Schengen Agreement and the subsequent integration into European law, through the Treaty of Amsterdam, have generated the partly transfer of this legal authority to the European Parliament and Commission. Nowadays, short-term visas are the exclusive competency of the European authorities, as provided for in article 77 of the Treaty of the Functioning of the European Union and the Visa Code. However, residual competency over long-term visas, better known as the D Visa, remains at national level in Luxembourg. In Luxembourg this competency allows for the authorization of stay of third country nationals on a temporary basis on its territory.

It is important to underline that the competency for the attribution of the two kinds of visas lies within different Ministries in Luxembourg. The Passports and Visas Office (Bureau des Passeports et Visas) of the Ministry of Foreign Affairs is responsible for processing and authorizing short-stay visas, while the Directorate of Immigration of the Ministry of Labour, Employment and Immigration is in charge of processing and authorizing long-stay visas.

However, the processing of both kinds of visas is treated by the diplomatic missions that represent Luxembourg in third countries. Given its small size, Luxembourg has very few diplomatic representations abroad (see Annex 1) and it is mainly represented by other Member States (mainly the other Member States of the Benelux, France, Germany, Portugal and Spain) a, meaning that in the case of Luxembourg the cooperation developed through the Visa Code, had been in place for many years now.

The fact that Luxembourg does not have external borders with third countries makes it very difficult for visa policy to work as a migration channel. A third country national coming to Luxembourg with a valid C visa issued by any other Member State cannot be controlled by Luxembourgish authorities, because there are no physical controls. The only way to detect them would be through identity verification by the police, but in a country with around 150.000 people commuting on a daily basis, effective controls are limited.

In summary, visa policy in Luxembourg cannot be considered as a means to channel migration because Luxembourg does not have control over the external borders of the European Union. There are some non-governmental organizations that consider that people

who want to come to Europe will do it no matter which obstacles are in the way, so in their opinion visa policy tends to promote irregular migration.

The two case studies chosen in the study, the People Republic of China and the Russian Federation, illustrate the global reality of growing economies on a small scale. Over the last 10 years there has been an increase in the number of citizens coming from both countries that work in Luxembourg. This can be explained by the economic importance of both countries and the fact that Luxembourg is a sophisticated financial center.

However, in general terms, regular immigration from both countries is not significant (though in the future that can change because of the moving of the headquarters of important companies from both countries to Luxembourg), because most of the immigration to Luxembourg stems from EU Member States and especially from neighbouring countries. With regard to irregular migration, there are hardly any cases related to the Russian Federation (only five people were expelled).

The case of Chinese citizens is similar as that of Russian citizens in the sense that legal migration is scarce but has grown steadily throughout the last decade. However, with regard to irregular migration, the situation is slightly different as there have been known cases of Chinese irregular migrants working in Chinese restaurants in Luxembourg. Due to lack of identification papers, however, they tend to be released after initial arrest and disappear in the nature. However, this type of irregular migration is not significant in numbers and has not generated any kind of debate on the national level.

VISA POLICY AS MIGRATION CHANNEL

1. Introduction

Schengen is known by third-country nationals as a visa requirement for entering the European Union. Nevertheless, Schengen is more complex and the recent developments with the massive flows of immigrants of refugees arriving to the external borders of the European Union have compromised and questioned the existence of the Schengen convention and one of the fundamental principles of the European Union: freedom of movement.

The Treaty on the Functioning of the European Union (TFEU) makes a distinction between short stay and long stay for third-country nationals. Firstly, it covers the Schengen acquis³ and secondly, it is considered as Common Immigration Policy.⁴

The short-stay regime is governed by Council regulation 539/2001⁵ of 15 March 2001 listing third-countries whose nationals must/or must not be in possession of visas when crossing the external borders. This regime concerns visas, issued by Member States, for stays not exceeding three months per six-month period.

The long-stay regime requires that the third-country national wanting to stay longer than three months in one or more Member States, needs to either obtain a national long-stay visa or a residence permit from the Member State to which he wishes to move.

The main objective of this study is to analyze the nexus between visa policy and migration management and control, including tackling irregular migration and criminality. It will serve to inform policy makers and analysts about the effects of visa policy on the management of migration. In addition, it will allow evaluating the effectiveness of different strategies to use visa policy to manage migration including co-operation with third countries and explore the effects of European Union policy and legislation on national policymaking and practices.

³ Article 77(2)(a) TFEU, provides that measures should be adopted by the European Parliament and the Council concerning the common policy on visas and other short-stay residence permits

⁴ Article 79(2) TFEU provide that measures shall be adopted in the area of the conditions of entry and residence, and the standards on the issue by the members states of long-stay visas and residence permits

⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:081:0001:0007:EN:PDF>

The study will be focused on third-country nationals excluding the citizens from Iceland, Norway and Switzerland who benefit from flexible visa, entry and residence procedures that are out of the scope of articles 77 and 79 of the Treaty on the Functioning of the European Union (TFEU).

The target audiences of this study are policy makers concerned with visa policy and migration, NGO's, academic researchers and the general public that are interested in visa policy and legal migration.

It is important to mention that the recent events of Lampedusa that triggered the Franco – Italian conflict, the judgment *M.S.S. vs. Belgium and Greece*⁶ of the European Court of Human Rights of January 21, 2011 and the position of Denmark to reestablish the physical borders have not only put the Schengen Convention and the Dublin Agreement to the test, but also the European Pact on Immigration and Asylum⁷ and the Stockholm Program⁸. These two instruments try to guarantee not only more effective border controls allowing access to Europe to third-country nationals while guaranteeing the safety of EU citizens. To achieve that goal, the Action Plan Implementing the Stockholm Program⁹ highlights the importance of the entry into operation of the SIS II and VIS systems.

In Luxembourg, visa policy has not been a polemic issue, especially because Luxembourg is used to free movement of persons without internal borders. The fact that the only external border of the country is the International Airport (with very few direct flights coming from third countries), makes that the issuing of short-term visas cannot be considered as an effective migration control instrument.

The visa restrictions imposed on certain third-countries have contributed to the development of a parallel and very lucrative black visa market allowing the holder to enter into the EU. False visas with forged signatures are commonly found at the external borders. Moreover, in Luxembourg, the concerned public officials have discovered the utilization of mailbox corporations, producing letters of invitations to third-country nationals that will permit them to obtain a visa. Additionally, problems with nationals or residents that warrant visitors

⁶http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=880339&portal=hbkm&source=external_bydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649

⁷<http://register.consilium.europa.eu/pdf/en/08/st13/st13440.en08.pdf>

⁸<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:EN:PDF>

⁹http://ec.europa.eu/justice/news/intro/doc/com_2010_171_en.pdf. This action plan highlights the importance of the use of modern technologies in border management for complementing the actual tools that are being used. This action plan is completed with the EU Internal Security Strategy of 25 February 2010, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/113055.pdf

‘sponsors’ to Luxembourg have been noted i.e. in some cases the authorities responsible for the verification of the sponsors found that the person having signed the document does not even know the third-country national visiting.

1.1. 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 analyzes 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. Additionally semi-structured interviews were conducted with government officials, Ngo representatives working in the field of visa counselling. Thirdly, a workshop regrouping representatives of civil society and migrant associations was organized in order to incorporate their experiences, and perspectives into the study.

1.1.1. Literature review

Initially, a research of academic-oriented literature as well as policy-related publications on visa policy in the national context was made. There are, to the author’s knowledge, no empirical studies on current visa policy in Luxembourg. As Luxembourg is one of the founder Members of the Schengen Convention, Luxembourg visa policy is closely related to EU migration and visa policy. This is why the subject is very technical and it is handled by the ministerial authorities responsible for issuing the visas. It is important to indicate that visa policy within the European Union has become largely uniformed by the introduction of the

Visa Information System and the Visa Code. The only competence that is left to Luxembourg with regard to national visa policy is the issuing of long term visas.

1.1.2. Archival analysis

An archival analysis has been carried out to determine the national vision, policy and legislation in relation to visa policy. This involved the collection and analysis of relevant policy and legal documents, including government programs, official speeches, opinions of different stakeholders on different bills, the minutes of the public parliamentary sessions, and responses to parliamentary inquiries.

1.1.3. Semi-structured interviews

Semi-structured interviews were conducted with ministerial authorities, diplomatic authorities, public officials, representatives of non-governmental organizations and representatives of civil society.

1.1.4. Workshop

As part of the preparation of this report, a workshop was held by the national EMN contact point at the University of Luxembourg on 6 July 2011. The workshop was attended by a representative of the government, migrant associations and advocacy groups and aimed at finding out their attitudes and experiences. Workshop participants were asked about their experiences, knowledge and views on visa policy in Luxembourg. The insights gained during the workshop have been incorporated at various points in the present report.

1.2. Definitions

Borders (external):

Member States' land borders, including river and lake borders, sea borders and their airports, river ports, sea ports and lake ports, provided that they are not internal borders¹⁰.

¹⁰ Council Regulation (EC) n° 562/2006. Art. 1(2)

Borders (internal):

The common land borders, including river and lake borders, of the Member States, the airports of the Member States for internal flights and sea, river and lake ports of the Member States for regular ferry connections¹¹.

Country of Origin

The country (or countries) which are a source of migratory flows and of which a migrant may have citizenship.

In refugee context, this means the country (or countries) of nationality or, for stateless persons, of former habitual residence.

Related Terms: Country of Birth, Country of Nationality, Country of Transit, Country of Destination, Country of Return

Country of Nationality

The country (or countries) of which a person holds citizenship.

Synonym: State of Nationality

Entry (Illegal)

The entry of a third-country national into an EU Member State who does not satisfy article 5 of Schengen Border Code.

In a global context, crossing borders without complying with the necessary requirements for legal entry into the receiving State.

Related Term: Illegal Immigration, Legal Entry, Irregular Migrant

Entry (Legal)

Entry of a third-country national into an EU Member State, for a stay not exceeding three months per six-month period, which satisfies article 5 of Schengen Border Code.

¹¹ Council Regulation (EC) n° 562/2006

In a global context, this means crossing borders with authorised entry, complying with the necessary requirements for legal entry into the receiving State.

Related Term: illegal Entry

Entry (Refusal of)

In the EU context, refusal of entry of a third-country national at the external EU border because they do not fulfil all the entry conditions laid down in article 5(1) of Regulation (EC) No 562/2006 and do not belong to the categories of persons referred to in article 5(4) of that Regulation.

In a global context, refusal of entry of a person who does not fulfil all the entry conditions laid down in the national legislation of the country for which entry is requested.

Entry Ban

An administrative or judicial decision or act preventing entry into and stay in the territory of the Member States for a specified period, accompanying a Return Decision.

Synonym: Re-entry ban

Residence Permit

Any authorisation issued by the authorities of a Member State allowing a third-country national to stay legally in its territory, in accordance with the provisions of article 1(2)(a) of Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals.

Broader Term: Residence Document

Schengen Information System (SIS)

A joint communitarian information system that enables the relevant authorities in each Member State, by means of an automated search procedure, to have access to alerts on persons and property for the purposes of border checks and other police and customs checks carried out within the country in accordance with national law and, for some specific

categories of alerts, for the purposes of issuing visas, residence permits and the administration of legislation on aliens in the context of the application of the provisions of the Schengen Convention relating to the movement of persons.

Sponsor

Broadly, a person or entity which undertakes a (legal, financial or personal) engagement, promise or pledge, on behalf of another, that is a third-country national.

In the EU context of Family Reunification, a third-country national residing lawfully in a Member State and applying or whose family members apply for family reunification to be joined with him/her.

Visa

The authorisation or decision of a Member State required for transit or entry for an intended stay in that Member State or in several Member States. The nature of the visa shall be determined in accordance with the following definitions:

- (i) 'long-stay visa' means the authorisation or decision of a Member State required for entry for an intended stay in that Member State of more than three months;
- (ii) 'short-stay visa' means the authorisation or decision of a Member State required for entry for transit through or an intended stay in that State or in several Member States for a period whose total duration does not exceed three months in a six month period;
- (iii) 'airport transit visa' means the authorisation or decision allowing a third-country national specifically subject to this requirement to pass through the transit zone of an airport, without gaining access to the national territory of the Member State concerned, during a stopover or a transfer between two sections of an international flight.

Visa In(ormation Svstem (VIS)

It is a system implemented for the exchange of visa data between Member States, which enables authorised national authorities to enter and update visa data and to consult these data electronically

2. Policy and legal framework for the granting of Visa in Luxembourg

2.1. Historical Background

2.1.1. Migration in Luxembourg

In order to analyze visa policy in Luxembourg, it is important to firstly outline the migration history of Luxembourg.

Immigration can be considered as a structural phenomenon in the history of the region now known as the Grand Duchy of Luxembourg.¹²

Previously a country of emigration, Luxembourg experienced large-scale labour immigration from both low - and highly skilled workers with the onset of the Industrial Revolution in the second half of the 19th century and the development of the steel industry. It coincided with the country's accession to the German Customs Union in 1842, the installation of the railway in 1859 and the political consolidation and demilitarization following the Treaty of London signed in 1867, all of which facilitated cross-border trade and the transport of goods and people. Given that not a sufficient number of qualified and/or willing workers could be recruited among the local population, qualified workers, engineers and supervisors came mainly from the neighbouring regions of Germany; they brought their families and eventually settled permanently. At the same time, manual workers arrived from Italy to work in the country's mines and factories. Contrary to their German counterparts, they were less qualified and overwhelmingly single men or they came without their families. Their migration pattern was characterized by a frequent rotation between the neighbouring regions of Lorraine, Luxembourg and Saarland in search for the best working conditions and highest salaries. It involved a short stay of several months in Luxembourg before migrating elsewhere in the region and sometimes returning to Luxembourg at a later point in time.

After the Second World War, German immigration stopped for obvious reasons but additional workers were needed foremost in the construction and agricultural sectors for the reconstruction of the country. Already in 1945, the Government of Luxembourg called on Italians to come to Luxembourg but the Italian Government refused to comply with that request for political reasons. In 1948, after all, a bilateral agreement was concluded between

¹² The subsequent outline is based on Pauly (2010). See Circular and Temporary Migration: Empirical Evidence, Current Police Practice and Future Options in Luxembourg, LU-EMN-NCP, 2011, pp. 33 – 35

Italy and Luxembourg which had been regularly extended until the creation of the European Economic Community (EEC) in 1957. The agreement involved an annual quota, the recruitment of workers in Italy, and fixed-term but renewable work contracts. In the course of the 1950s, however, immigration from Italy declined as workers preferred to go to Germany or Switzerland where higher wages were paid or they decided to look for work in the economically strong Northern part of Italy. To give further incentives, Luxembourg accorded more open conditions in 1957 such as the possibility for family reunification, higher annual quotas and subsidies for companies to provide appropriate accommodation. Yet, these measures did hardly have any effect and became superfluous with the coming into force of the Treaty of Rome on 1 January 1958 which allowed for the free circulation of workers between the Member States of the EEC.

Luxembourg also entered into bilateral labour agreements with other States and in doing so, deliberately encouraged a ‘White and Catholic immigration’¹³. In 1950, a bilateral agreement was signed with the Netherlands to recruit agricultural workers. According to the conditions of the agreement, workers had to be unmarried and Catholic men from the Dutch provinces of North Brabant and Limburg bordering Belgium. Since the Mid-1960s, Portuguese migrants who had been working in the French neighbouring province of Lorraine came to Luxembourg, and, in 1970, a bilateral agreement was signed between Portugal and Luxembourg. Family reunification was allowed immediately. The agreement became redundant when Portugal nationals, after the country had joined the EEC in 1986, enjoyed freedom of movement within the territory of the Member States as from 1 January 1993. The majority of Portuguese immigrants was low-qualified and worked primarily in the construction and cleaning sector or as domestic workers. Cape Verdean migrants, however, who through the colonial ties between the two countries came to work in Portugal where they mainly replaced the unskilled Portuguese labourers that had migrated to other European countries and then often moved onwards from Portugal¹⁴ or went directly to Luxembourg¹⁵, mainly with a Portuguese passport were not welcomed.

In 1970, a bilateral agreement was signed with the Former Republic of Yugoslavia. However, the fact that the possibility for family reunification was not provided for in this agreement,

¹³ Pauly (2010: 68)

¹⁴ Carling (2002)

¹⁵ Centre de Documentation et d’Animation Interculturelle (2010: 13)

leaves the question whether this agreement was established as a means to prevent further immigration from a predominantly ‘Muslim’ country. For the same reason, bilateral labour agreements with Asian or North African countries were not envisaged.

As a result of further migration inflows, family reunification and chain migration, Portuguese nationals constitute nowadays the largest group of non-nationals in Luxembourg (81 274 or 15.9% of the total 511 840 inhabitants in Luxembourg on 1 January 2011¹⁶). Nationals from the Former Republic of Yugoslavia, including those who came to Luxembourg during the Yugoslav wars in the 1990s and the conflicts in Kosovo, represent the largest group of third-country nationals.¹⁷ They form part of the 43.2 percent non-nationals among the resident population in Luxembourg (or 221 364 on 1 January 2011) and this high number of non-nationals can be largely explained by the massive recourse to foreign workforce.¹⁸ Contrary to most of the other EU Member States, the overwhelming majority of resident non-nationals are of EU-origin, only 14.1 percent of immigrants are third-country nationals.¹⁹

2.1.2. Definition and Signification of a Visa

There is a direct relationship between visa policy and immigration.

A visa is the effective control of a country over foreign citizens that which to enter and/or stay in its territory.

Visa policy is directly linked to the State sovereignty²⁰ and with its sovereign right to self-determine the condition of entry and stay in its territory. It is considered as an instrument of foreign policy²¹.

¹⁶ These figures, however, do not provide information about the total number of persons with immigration background, particularly those who naturalized, and those with double citizenship who are counted as nationals in the statistics

http://www.statistiques.public.lu/stat/TableViewer/tableView.aspx?ReportId=384&IF_Language=fra&MainTheMe=2&FldrName=1&RFPath=68

¹⁷ See Circular and Temporary Migration: Empirical Evidence, Current Police Practice and Future Options in Luxembourg, LU-EMN-NCP, 2011, pp. 35

¹⁸ Thelen (2010: 225)

¹⁹ See Circular and Temporary Migration: Empirical Evidence, Current Police Practice and Future Options in Luxembourg, LU-EMN-NCP, 2011, pp. 35

http://www.statistiques.public.lu/stat/TableViewer/tableView.aspx?ReportId=384&IF_Language=fra&MainTheMe=2 &FldrName=1&RFPath=68

²⁰ Point of view of NGO, Interview N° 4

²¹ Les orientations de la politique de l’immigration, Doc. Fr.2007

Visa policy is a group of parameters set by the legislation (Constitution, laws, regulations and decrees) that permits the administration to determine which foreigners can be admitted to enter and stay on a temporary basis on its territory. It is a social phenomenon because it reacts and interacts with the entire social system of a State. It will respond to the social, economic, political, educational and ethical sub-systems.

Visas were almost unknown before World War I in international travel. Nevertheless, when the war started, belligerent countries found out that visa refusal could be an effective means to forbid the entry of certain type of foreigners, compromising national security, into their territory.

Normally the criteria used by a country to decide on the provision of a visa are:

- a) Nationality;
- b) Travel document;
- c) Profession
- d) Travel motivation
- e) Personal history of the applicant.

Nowadays, it has become a matter of security and justice.

Curiously there is not a single definition of visa in any law.

Even the actual visa code does not have a clear definition of visa. Art. 2 (a) and (b) of the Visa Code (Regulation 810/2009) says that “visa” means: “an authorization issued by a Member State with a view to:

- (a) Transit through or an intended stay in the territory of the Member States of a duration of no more than three months in any six-month period from the date of first entry in the territory of the Member States;
- (b) Transit through the international transit areas of airports of the Member States²².

2.1.3. History of the Schengen Area:

At the beginning of the XX century, a valid passport was a prerequisite for any travel from one state to another (from Paris to Russia). Since then, there had been several attempts to try to suppress internal borders between states.

²² It is important to mention that until the visa code the transit visas were excluded from the European Union law

A first attempt that still subsists between the United Kingdom and Ireland (Irish Free State) dates back to 1922, when both countries passed laws which treated the other country as part of its own territory for immigration purposes.

On 1944, the governments-in-exile of the Netherlands, Belgium and Luxembourg (Benelux²³) signed an agreement to eliminate border controls between themselves; this agreement was put into force in 1948. Similarly, the Nordic Passport Union²⁴ was created in 1952 to permit free travel amongst the Nordic countries of Denmark, Finland, Iceland, Norway and Sweden and some of their associated territories. Both of these areas have been subsumed within the Schengen Area.

On June 14th, 1985, Germany, France, Belgium, the Netherlands and Luxembourg signed an agreement in the Luxembourgish town of Schengen, foreseeing a gradual suppression of the borders controls of persons at the internal borders between the signing parties. Italy did not sign at that time due to its borders which constitute a challenge in terms of control.

On June 19th 1990, in order to apply the Schengen agreement, the Schengen Convention (Convention d'application de l'Accord de Schengen) was signed. The convention foresaw compensatory measures that will guarantee a unique space of security and justice. These compensatory measures were:

- 1) harmonizing provisions relating to entry into and short stays in the Schengen area by non-EU citizens (uniform Schengen visa);
- 2) asylum matters
- 3) measures to combat cross-border drugs-related crime;
- 4) police cooperation (hot pursuit);
- 5) Cooperation among Schengen states on judicial matters.

The Convention Implementing the Schengen Agreement entered into force on 1 September 1993; its provisions could not take practical effect, however, until the necessary technical and legal prerequisites (such as databases and the relevant data protection

²³ Traité instituant l'Union économique Benelux, http://www.benelux.int/pdf/pdf_fr/rgm/rgm_unieverdrag.pdf

²⁴ The Nordic Passport Union was established in three steps. The first step came in 1952, in the form of agreements by the Nordic countries to abolish passports for travel between them and to readmit aliens having entered illegally into one Nordic country from another. The second step was implemented in 1954, when the agreement was extended to allow citizens to reside in any Nordic country without a residence permit. The third step was the removal of passport checks for aliens at internal Nordic borders by a treaty signed July 12, 1957 and coming into force May 1, 1958

authorities) were in place. The Convention thus took practical effect on 26 March 1995²⁵, for the original Parties to the Schengen Agreement as well as for Spain and Portugal. Since 1995 Italy, Greece, Austria, Denmark, Finland and Sweden have signed the Convention, which only entered into force for the three Nordic countries on 25 March 2001. A Schengen cooperation agreement was concluded with the non-EU members of the Nordic Passport Union (Norway and Iceland) in 1996. Norway and Iceland have also fully implemented the Schengen regime since 25 March 2001.

Once checks at common borders are completely abolished, the holder of a uniform visa is entitled to stay in the above-mentioned 15 countries which apply the Convention Implementing the Schengen Agreement for a maximum of up to 90 days, within a six-month period.

The Schengen protocol was annexed to the Treaty of Amsterdam on 2 October 1997 (primary law). This convention came into force on 1 May 1999. This allowed that most of the competences were transferred to the European Community.

The control for the entry inside the Schengen Space is made at the external borders of the member countries.

As Mrs Cecilia Malmström emphasized “The creation of the Schengen area is one of the most tangible, popular and successful achievements of the European Union, and when necessary, we must find ways to protect and improve it.”²⁶

²⁵ At this date the technical and juridical conditions were put in place, like the databases and the authorities needed to guarantee the personal protection data. See cidal.diplo.de/Vertretung/cidal/fr/03/-Bienvenue/02_Schengen/01_accord_seite.html

²⁶ 26th anniversary of Schengen: statement of the European Commissioner for Home Affairs, Cecilia Malmström, Memo/11/401, 13 June 2011, <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/401>

2.1.3.1. Key Points of the Convention Implementing the Schengen Agreement

The key points of the convention implementing the Schengen Agreement are:

- Citizens of countries implementing the Schengen Agreement can cross the internal borders of the implementing countries at any point without checks.
- A visa with no territorial restrictions (visitor's or business visa allowing the holder to stay up to 90 days per six-month period, transit or airport visa) granted to a third-country national by one implementing country entitles the holder, for the same purpose and for the duration of the visa's validity, to enter without border checks other implementing countries as well.
- Any third-country national with a residence permit valid in one implementing country may travel on a valid passport, without requiring a visa, for up to 90 days per six-month period to other implementing countries.
- Harmonized visa policies of Schengen countries (common list of third countries whose nationals require visas).
- External border checks according to a common Schengen standard.
- Access by all Schengen countries to the Schengen Information System (SIS) providing personal identity and other data throughout the Schengen area.
- Close police and judicial cooperation.
- Joint efforts to combat drug-related crime.
- Rules determining competence for asylum procedures²⁷.

2.1.3.2. Transposing the Schengen Convention into national law

On 29 May 1992, the Luxembourgish parliament ratified the Schengen Convention²⁸. To fully implement the Schengen convention, the Law of 9 August 1993 modified the law of 31 March,

²⁷ These provisions were replaced by the the Dublin Convention of 15 June 1990. Today it is known as “Dublin II”

²⁸ See Memorial A n° 51 of 23 July, 1992

1979 that regulates the utilisation of nominative data in the informatics procedures²⁹ and created the national database of the Schengen Information System. The Law of 18 August 1995 on the entry and residence of foreign nationals had introduced a system of sanctions to the airlines that bring inside the country a traveler that does not have a valid travel document and/or a required visa. The Law of 21 December 2006³⁰ transposed four EU directives, including directive 2001/51/CE of the European Council of 28 June 2001, which completed the dispositions of article 26 of the Convention implementing the Schengen Agreement³¹.

It is important to mention that the establishment of the Schengen area was the base for developing a common visa policy. The fundamental principle of the Schengen cooperation is to harmonize the procedures in issuance of visas, with the objective of reporting the identification procedures and visa control at the external borders of the European Union. This objective requires an effective and efficient cooperation between the diplomatic and consular authorities and a clear attitude to diffuse and share sensible information contained in the SIS and the VIS, as soon as it will be operational.

2.1.4. Implementing a common visa policy

As we mentioned in the definition, visa policy remains a sovereign right of the State. With the construction of the European Union, Member States have lost some of their sovereign rights to the benefit of the European Union as a whole. One of these rights is visa policy. This transfer has been slow to the point that visa policy is a shared competence between the European Union and Member States.

Luxembourg has been part of the process since its beginning, which explains why Luxembourg visa policy is following European Policy to 99%. The only part that remains to be based entirely on national law is the D Visa, or long-stay visa that is in reality a condition to obtain a resident permit.

²⁹ See Memorial A n° 65 of 20 August, 1993,

<http://www.legilux.public.lu/leg/a/archives/1993/0065/1993A11791.html>

There are also three regulations : Grand ducal regulation of 9 august 1993 on the organization and function of the control authority; Grand ducal regulation of 9 august 1993 that authorize the creation and exploitation of a nominative data base that constitutes the national section of the Schengen information system and the grand ducal regulation of 9 august 1993 that modified the grand ducal regulation du 2 October 1992, on the creation and exploitation of the nominative data base of the General Police. This last decree was modified by decree of 22 December 2006. See Memorial A n° 237 of 29 December 2006

³⁰ See Memorial A n° 230 of 27 December, 2006

<http://www.legilux.public.lu/leg/a/archives/2006/0230/a230.pdf#page=2>

³¹ [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42000A0922\(02\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42000A0922(02):EN:HTML)

The short-stay visa policy had been transferred to the Union in a progressive manner from the middle 1990's³². The common policy from the decisional point of view is being applied from 1 January 2005 (co-decision procedure)³³. In the application of this policy the Border Code of 15 March 2006 was adopted³⁴ finalizing with the visa code and complemented by the Regulation n° 265/2010 of the European Parliament and of the Council of 25 March 2010.

It is important to mention that the visa is a condition of entry but does not give the holder a right of entry. The main objective to require a third-country national to produce a visa is to avoid that migrants that can represent a “migratory risk” can enter the territory³⁵.

Nevertheless, the visa policy only regulates a minimum part of the inflows of migrants that enter annually the Schengen Area. In some cases there is a major migratory risk from the countries that are not subject to visa requirements (in the Luxembourg case, the Brazilian citizens³⁶ or Serbian nationals). Additionally, the problem of visa “over stayers” remains. These are the reasons why the authorities consider that visa policy by itself is not and cannot be an effective instrument to control migration flows and thus does not serve as a migration channel.

It is important to mention that not all third-country nationals are subject to holding a visa in order to enter the Schengen area. It all depends in which list the country falls. If it is in the black list, the citizens from those countries are compelled to hold a visa for entering³⁷. The citizens from countries that are not on that list (white list) do not require having a visa.

³² Regulation 1683/95 of the European Council of 29 May 1995

³³ Directive 2004/927/CE of 22 December 2004

³⁴ Regulation 562/2006 of the European Parliament and of the Council of 15 March 2006

³⁵ Les cahiers juridiques du Gisti, Les visas en France, 2003, p. 3. Article 30 of the Visa Code says: “**Rights derived from an issued visa.** Mere possession of a uniform visa or a visa with limited territorial validity shall not confer an automatic right of entry”

³⁶ The Brazilian citizens take advantage that to guarantee the efficiency of the reciprocity principle; the European Commission had signed two new agreements of visa's exemption with Brazil on 28 September 2010. The main reason was that Brazil demanded a visa to the citizens of four Member States (Estonia, Latvia, Cyprus and Malta). However, the European Union had threatened Brazil to include it in the black list if he continues to demand a visa for citizens of certain Member States. Finally Brazil signed an agreement with the EU for an exemption of short stay visas for European citizens (Dec. n° 2010/UE of the Council, 7 October 2010)

³⁷ Annex 1 of the regulation n°539/2001 of the Council 15 March 2001. This common visa policy needed a list of countries whose citizens are considered “undesirable”. Regulation n° 2317/95 of the Council of 25 September 2005 (it has been actualized since then several times). See also, regulation n° 1932/2006 of 21 December 2006. It is important to notice that the participation of the Parliament on the development of the lists had changed with time because before it can only give its opinion

2.2. National policy and legislative framework

Luxembourg is a founding member of the Schengen Area, founded in 1985. As mentioned before, national visa policy is a clear reflection of the European Union migration and visa policy³⁸.

Even more important is the fact that Luxembourg does not have physical external borders. The country does not have any external borders, except for the International Airport of Luxembourg³⁹. Controls are limited to the flights arriving from the United Kingdom because the rest of the flights arrive from other European Union Member States so they are not considered external flights⁴⁰ and some other flights coming from third-countries. This means that Luxembourg relies on the external controls made by other Members States, random internal controls and the issuance of visas to prevent irregular migration. Nonetheless, Luxembourg contributes to the control of the external borders of the European Union via its implication in the activities deployed by Frontex⁴¹.

Nevertheless, it is obvious that there is a small part of visa policy that continues to be a regalia right of the country: visa D (authorization to reside in Luxembourg and thus a condition for obtaining a residence permit⁴²). The law of 29 August 2008 on the free movement of persons and on immigration is a clear example of this situation. It regulates in detail the type of residence permit that a third-country national can have and in which cases a foreigner can migrate legally to Luxembourg. In this sense, we can conclude that Luxembourg has a general vision of the role that national visas play in promoting and controlling national migration, especially if we consider article 39 of the Law of 29 August 2008. This article establishes as general principle that the third-country national that wants to apply for a resident permit has to apply his or her home country, previously to entering the country. It is established in the same

³⁸ There are some members of civil society that consider that the visa policy of the government does not comply with European Union legislation on the issue. Point of view of NGO, Interview N° 10, page 2, lines 66 to 70

³⁹ Police Grand-Ducale, Programme Pluriannuel 2007 – 2013, p. 1

⁴⁰ Point of view of a member of the Grand Ducal Police, Interview N° 3, page 1, lines 28 to 38

⁴¹ Point of view of a member of the Grand Ducal Police, Interview N° 3, page 1, lines 23, 24, 35 to 38; page 2, lines 83 to 90. Luxembourg has several members of the police that are members of the RABBIT programme of Frontex. They are deployed in a short delay when Frontex demands their assistance. They do field operations and missions to control irregular migration. Also Luxembourg has putted to the disposal of Frontex a surveillance airplane in the context of the HERA programme

⁴² Point of view of the Government, Interview 1, page 4, lines 50 to 56

article that the application made in Luxembourg to obtain a resident permit that is not made in exceptional circumstances⁴³ will be rejected.

It is evident that the requirement of applying from their home country for an authorization to stay prevents irregular migration in the sense that the person will not be allowed coming into the country as a tourist and then changing his migratory status. The general rule is that the person that tries to stay under these conditions will not be allowed to regularize his or her situation later, and he will be considered an irregular migrant for all purposes (he or she cannot rent a place by him/ herself, buy a car, get an employment, get any public services, etc.).

The Law of 29 August 2008 foresees the following type of authorizations to stay (and resident permits) for third-country nationals:

1. Salaried workers (art. 42)
2. High skilled workers (art. 45)
3. Independent workers (art. 51)
4. Athletes (art. 54)
5. Students, pupils, trainees and volunteers (art. 55)
6. Researchers (art. 63)
7. Family reunification (art. 68)
8. Private reasons (art. 78). In this category are included the cases of humanitarian reasons (art. 78 (3))⁴⁴.

It should be noted that article 89 of the Law of 29 August 2008 only allows for the regularization of third-country nationals under exceptional circumstances. The person in question needs to fulfill the following conditions:

- 1) The person is not a potential danger to the public order, public security or public health;
- 2) The person has not made use of false information about his identity;
- 3) The person demonstrates that he has a real intention of integration;

⁴³Article 39 (2) of the Law of 29 August 2008

⁴⁴ The residence permit for humanitarian reasons was simplified eliminating the requirement of proper housing and health insurance coverage, when the Law of 29 August 2008 was modified by the Law of 1 July 2011

- 4) That he demonstrate by any means that he has have lived and worked continuously for at least 8 years or
 - 5) That he has accomplished his schooling for at least 6 years in a Luxembourgish school.
- In this case the demand has to be made in the year that follows his eighteenth birthday.

Fulfilling all the requirements is not an easy task meaning that regularization on the basis of this article has been limited to a few single cases. Nevertheless, Luxembourg has always practiced a case by case regularization policy, as it is mentioned in the Coalition accord and the Governmental Declaration of 2004.

2.2.1. Visa policy

Position of the Government

In Luxembourg, visa policy is closely related to European Visa Policy and in the government's point of view national visa policy does not serve as a migration channel. In general, visa policy is not an internal issue. It is the competence of the General Affairs Commission of the European Union; because it is a general issue (it concerns all the Member States)⁴⁵.

Visa policy is planned from the perspectives of "free movement of persons"⁴⁶ and from a political point of view⁴⁷.

In conclusion, there is not a national independent visa policy from the European Union legislation. This means visa policy is not an immigration policy⁴⁸.

Visa policy that is applied by the European Union⁴⁹ has a political dimension, especially when it decides which countries are subject to visa requirements or not⁵⁰.

⁴⁵ Point of view of the Government, Interview N° 1, page 2, lines 13 to 15

⁴⁶ Point of view of Government, Interview N° 1, page 3, lines 27-29

⁴⁷ Point of view of Government, Interview N° 1, page 2, lines 12-15

⁴⁸ Point of view of Government, Interview N° 1, page 2, lines 12-13 and page 3 lines 27-29. There is one NGO that considers visa policy as a prerogative of the State but this policy cannot provide effectives means to control irregular migration. Point of view of NGO, Interview N°10, page 3, lines 109 to 113

⁴⁹ At the European level, visa policy in principle will try to eliminate the visa requirements. Nevertheless, when the EU signed a visa facilitating agreement with a third country it is evident that the other country has to assume certain responsibilities such as controlling the conduct of its citizens when they abused of this freedom. Point of view of Government, Interview N° 1, page 3, lines 30-32

⁵⁰ Point of view of Government, Interview N°1, page 3, line 24

However, visa policy is useful for controlling the entry of certain type of individuals. In this sense the legal framework is quite elaborated.

The law of 29 August 2008, as mentioned, provides the legal framework for permanent or temporary (more than three months) legal migration to the country⁵¹. Nevertheless, the different types of resident authorization are not promoted to the same extents⁵². The country has been developing a very modern and vigorous economy over the last 60 years, meaning that migration policies are closely related to economic needs. In the governmental programme of 2009, legal immigration is described as being a « positive contribution to the society and the economy of Luxembourg. » Furthermore, this programme indicates that the application of the law of August 29th 2008 on the free movement of persons and immigration “must take place within the framework of a coherent and proactive immigration policy [...] The objective is to adapt immigration to the needs of Luxembourg’s economy, while fully respecting the European and international commitments which Luxembourg has made.”⁵³

In order to do this, an inter-ministerial think tank was set up. It is composed of the ADEM, the Ministry of Employment and the Directorate of Immigration. A first meeting took place in December 2009. Its mission is to create directions and recommendations for a proactive and coherent immigration policy which takes into consideration the interests of Luxembourg’s economy and the current situation as well as the future of the labour market.⁵⁴

The importance given to economic immigration by Luxembourg’s Government was brought forward during the interviews : « The growth of the economy [of Luxembourg] depends in part also upon the businesses of the third countries who move to Luxembourg and who, in turn, will bring part of their work force [with them]...It is clearly a very important subject for Luxembourg.”⁵⁵

Nonetheless, one could fear that Luxembourg’s Government does not give much importance to economic migration coming from third countries because of the large numbers of labourers coming from the Grand-Region (cross borders workers).

⁵¹ One NGO considers that Luxembourg has its own visa policy in terms when it comes to D visas. Point of view of the NGO, Interview N° 10, page 2, lines 66 to 70

⁵² Point of view of Civil Society, Interview with NGO, Interview N° 10, pages 3-4, lines 139 to 189

⁵³ Governmental programme, Ministry of Foreign Affairs, *chapter IV.1. Immigration*, <http://www.gouvernement.lu/gouvernement/programme-2009/programme-2009/02-mae/index.html>

⁵⁴ European migration network, « Rapport politique sur les migrations et l’asile 2009 », page 32

⁵⁵ Ministerial point of view, interview 4, page 1, lines 9-12. European migration network, “Satisfying Labour Demand through Migration in Luxembourg”, 2011

When interviewed, the ministerial and employers' representatives consider that most attention is given to highly-skilled workers or the « rare pearls » which are difficult to find in Europe. From the employers' point of view, if Luxembourg wishes to continue its growth, it must do so in the niches of high added value, as the cost of labour is too high to allow growth in low added value employment.⁵⁶ Following this view, the Government plans to take several initiatives.⁵⁷ The by-word then seems to be: “Qualification, wherever it comes from”.⁵⁸ Furthermore, according to the governmental programme of 2009, “Luxembourg’s Government intends to develop its scientific human capital so as to promote research in Luxembourg. To this end, it is working to create an environment which will be propitious to the expansion of scientific and technological employment and which favors career perspectives and mobility”⁵⁹.

In this perspective, many initiatives have been taken by the Government, which tend to conciliate migration policy with the economic needs of the country.

Position of civil society:

The position of civil society is that visa policy is a policy based on power⁶⁰. Member States have the right to decide how and under which conditions third-country nationals can enter their territories⁶¹. Therefore, it is not a policy to channel migration.

Most of the associations interviewed about the subject consider that there is not a clear policy of the government to channel migration through visa policy⁶². One organization considers that the problem of migration is more complex and visa policy is only a part of it⁶³. The fact that Luxembourg does not have any type of control at its internal borders makes that the visa policy is inefficient to control migration, because most of the migrants that are in an irregular

⁵⁶ Employers' point of view, interview 10, page 2, lines 42-45. European migration network, “Satisfying Labour Demand through Migration”, 2011

⁵⁷ Ministerial point of view, interview 12, page 8, lines 25-50 and page 9, lines 1-6. European migration network, “Satisfying Labour Demand through Migration”, 2011

⁵⁸ Ministerial point of view, interview 12, page 8, lines 25-50 and page 9, lines 1-6. European migration network, “Satisfying Labour Demand through Migration”, 2011

⁵⁹ Governmental programme of 2009, page 87

⁶⁰ Point of view of NGO, Interview N° 10, page 3, lines 109 to 110. Point de view of NGO, Interview N° 4, page 2, lines 55 to 61

⁶¹ Workshop on Visa Policy as a migration channel and Irregular Migration, EMN NCP Luxembourg, 6 July 2011

⁶² Point of view of NGO, Interview N° 9, page 1, lines 25 to 29

⁶³ Point of view of NGO, Interview N° 5, page 1, lines 29 to 42. Also, Interview N° 4, page 2, lines 79 to 96

situation in Luxembourg have come through another border state⁶⁴ (i.e. a lot of the migrants from the MAGREB countries had come through France).

The vast majority of irregular migrants have either used the fact that there was no visa requirement to enter the Schengen area⁶⁵ (Brazilian citizens) or overstayed their visa (i.e. the citizens of Cape Verde). The rest comes through irregular migration (i.e. the Nigerians)⁶⁶.

In consequence, for this organization there is not a general policy to control migration through visa policy. It is considered as almost impossible to control immigration through visa policy because they can only control it through some entries (borders are open to migrants that are in another bordering country) but they cannot control the exits.

Another organization considers that visa policy in Luxembourg is strongly linked to European policy (European directives). Another organization considers that Luxembourgish visa policy focuses on fighting irregular migration rather than promoting legal migration⁶⁷.

Nevertheless, another organization is very critical and considers that visa policy is promoting irregular immigration because certain nationalities abuse the visa or use the absence of a visa requirement in order to come and stay in Luxembourg once the validity of the visa expires (Cape Verde) or the period of three months expires for the third-country nationals (Brazilians and Balkan countries) which don't need a visa to enter the Schengen area⁶⁸.

2.2.2. Legal framework:

The legal framework of the common visa policy in primary law was originally based on the Treaty of Amsterdam⁶⁹. This was later modified with the entry in force of the Treaty of Lisbon of 1 December 2009 in its title V⁷⁰.

⁶⁴ Point view of NGO, Interview, N° 10, page 3, lines 126

⁶⁵ Point of view of NGO, Interview N° 10, page 3, lines 116 to 121

⁶⁶ Point of view of NGO, Interview N° 5, page 6, lines 247 to 258

⁶⁷ Point of view of NGO, Interview N° 9, page 1, lines 25 to 29. This person said: "... on peut constater qu'ils essayent plus de battre la migration irrégulière que de faire une ouverture pour une migration légale..."

⁶⁸ Point of view of NGO, Interview N° 5, page 7, lines 318 to 321

⁶⁹ See Title IV of the Treaty. Article 62.2.b)

⁷⁰ Article 77 of the TFEU establishes the rules for short-term stay visas. This article comprehends four major aspects: 1) the lists of countries that are subject to the visa requirement and those countries that are exempted; 2) the procedures and conditions of issuing visas by the Member States; 3) a model type visa and 4) rules in terms of uniform visa

The secondary law that derives from the treaty is the visa code, which is compulsory for every Member State, and is the legal base that regulates short-term visa policy in Luxembourg.

The legal framework with regard to visa policy is completed by the law of 29 August 2008 on the free movement of persons and on immigration that regulates entry and residence of foreigners, including European Union citizens and citizens from associated states (Norway, Iceland and Switzerland) as well as third-country nationals. It regulates all the aspects of temporary stay or permanent residence and the sanctions that can generate the conducts that violate these rules. Additionally, the following regulations apply with regard to visa policy: the Visa Information System regulation, the Grand-ducal regulation of 21 December 2007⁷¹, Regulation No. 265/2010 of the European Parliament and of the Council of 25 of March 2010 amending the convention implementing the Schengen agreement, Regulation No. 562/2006 as regards the movement of persons with a long stay visa and the European Commission decision of 11 June 2010 that establishes the handbook for the organization of visa sections and local Schengen cooperation⁷² in accordance with article 51 of the Visa Code. It contains the guidelines for organizing visa sections and local Schengen cooperation.

Finally the visa facilitating agreements subscribed by the European Union and the Balkan countries (Serbia, Macedonia, Bosnia-Herzegovina, Albania, and Montenegro), the Russian Federation, Ukraine, Moldova and Georgia, (see Section 5.3.1) and the Memorandum of Understanding on Approved Destination Status subscribed by the European Union and China (See section 4.1.3) complete this framework.

Implementation of the Visa Information System and the Visa Code

The implementation of the Visa Information System (VIS) and the Schengen Information System (SIS) is the competence of an inter-ministerial work group composed by the Ministry of Foreign Affairs, the Ministry of Justice, the Grand-ducal Police, the Informatics Centre of the Government and the Intelligence Services⁷³.

The SIS has been operational for several years. Nevertheless, the implementation of the Luxembourgish system of SIS II had not been completed until 2011 because of the need to

⁷¹ This regulation establishes the list of “safe countries”

⁷² http://ec.europa.eu/home-affairs/policies/borders/docs/c_2010_3667_en.pdf

⁷³ Police Grand-Ducale, Programme Pluriannuel 2007-2013, p. 2

firstly implement a computer interface between the passport reading machines and the SIS database.

For implementing these systems (SIS II and the Automatic Fingerprint Identification System – AFIS-) the Grand-ducal police had planned to acquire the technical equipment for detecting the false travel documents and forge documents (especially visas). The main reason for this was to equip the Foreigners Section of the Judicial Police Service with advanced technology in order to counteract irregular migration and human trafficking.

The main acquisition planned by the programme will be a mobile terminal that allows the police to make identification and authentication verifications during the identity control in the field. That instrument that is easily transportable can be used in the controls in cafés, restaurants, cabarets, constructions sites, train and bus stations and the airport⁷⁴. The system is integrated by a laptop with different software, with a logical control access and communication interfaces and a terminal for taking finger prints and pictures. Luxembourg has decided to fight passport and visa fraud by more severe and strict identity controls.

In relation with biometrical visas, this machine allows to take finger prints of the person that is being checked and to compare them with the data that appears in the VIS. This operation allows verifying if the checked person is an authorized holder of the visa in his passport⁷⁵.

This machine allows to search in the different biometrical databases, such as AFIS, SIS and VIS. The system can use different biometrical systems depending of the data dispoable to give a better identity result⁷⁶.

Further to some technical problems at the level of the European Commission and other Member States, the VIS project has been pushed back. The new date of entry into force was set to 24 June 2011.

In order to accomplish this community project, Luxembourg has taken connectivity tests provided by the Commission and developed a new data entry programme (conforming to the requirements of the 767/2008 regulation (VIS) and the 810/2009 regulation (Visa code). Furthermore, the Luxemburgish diplomatic missions, who are delivering visas, were provided with the necessary equipment, notably a fingerprint reader.

⁷⁴ Police Grand-Ducale, Programme 2010, p. 2

⁷⁵ Police Grand-Ducale, Programme 2010, p. 3

⁷⁶ Police Grand-Ducale, Programme 2010, p. 3

It is important to note that both instruments, the Visa Information System and the Visa Code do not need to be transposed into national law.

It is to be underlines that with the introduction of the Visa Code, that came into force on October 52009 because it did not have to be transposed in the Member States, the proceedings and delays that apply in the treatment of the applications are the same. The decision is taken on a case by case basis. However, the Visa Office can take into consideration aspects and information related to the country's situation⁷⁷, if it is considered a "safe country" etc. Also, it needs to be considered that there are countries where the verification of certain information will take a lot of time for the diplomatic representatives because of the lack of infrastructure or the lack of information systems put in place.

Nevertheless, one of the associations said that the implementation of the Visa Code, especially in the case of refusals, is not evident. The main example is that the visa code obliges Member State to justify the motives for their refusals. Nevertheless, this association is categorical as that in all treated cases, there has not been a single case where the rejected applicant received a copy of the motivated decision⁷⁸.

2.2.3. Visa policy, national legislation and legal immigration

The previous section has illustrated the explicit link between the legal framework and visa policy with regard to legal immigration. The government policy seems to favour highly skilled migration and researchers. The by-word then seems to be: "Qualification, wherever it comes from".⁷⁹

The interviewed associations qualified the government's visa policy as being focused on promoting the entry (with the exception of family reunification cases) of people with qualifications⁸⁰. The position of the government in the transposition of the directive 2009/50/CE creates a very favorable procedure in comparison to the salaried worker resident

⁷⁷ Position du Passports and Visas Office (Bureau de Passeports et Visas)

⁷⁸ Point of View of NGO, Interview N° 5, page 5, lines 205 to 228

⁷⁹ Ministerial point of view, interview 12, page 8, lines 25-50 et page 9, lines 1-6. European Migration Network, "Satisfying Labour demand through Migration", 2011

⁸⁰ Point of view of Civil Society, Interview with CL, VM

permit, especially in relation with family reunification procedure⁸¹ while visas to low skilled workers⁸² are more limited.

The explanation, from the employers' point of view, is that if Luxembourg wishes to continue its growth, it must do so in the niches of high added value, as the cost of labour is too high to allow growth in low added value employment.⁸³

Highly skilled workers

The provisions of article 45 of the law of August 29th 2008 on the free movement of persons and immigration takes into account the directive of the Council establishing the conditions of entry and residence of third-country nationals for highly skilled (EU blue card)⁸⁴ employment. The government thereby manifests its interest in facilitating the recruitment of highly skilled workers. The complete transposition into national law of the directive 2009/50/EC of the Council of May 25th 2009 establishing the conditions of entry and residence of third-country nationals for highly skilled employment is currently being prepared.

In terms of the article mentioned above, the highly skilled worker may have access to the labour market in better conditions and by more simplified procedures.⁸⁵ As such, unlike workers, the highly skilled worker must only prove that he meets the legal conditions to enter the territory, that he has a work contract which corresponds to the required qualifications, and a salary which is at least equal to the equivalent of three times the social minimum wage for a non-skilled worker⁸⁶. On 1 January 2011⁸⁷ the social minimum wage for a non-skilled worker was 1.757,56 € gross per month⁸⁸. These provisions are applied to third-country nationals who have a higher education degree or who have specialized professional experience of at least five years for jobs requiring particular professional knowledge and capacities. There is no market test to verify the priority of hiring community nationals. Consequently, the opinions of

⁸¹ Point of view of Civil Society, Interview with CL, VM

⁸² Interview with associations of Civil Society, L.H., ASTI

⁸³ Employers' point of view, Satisfying Labour Demand, EMN-NCP-LU, 2010, interview 10, page 2, lines 42-45

⁸⁴ The directive proposition (COM(2007) 637) has been adopted in the meantime: Directive 2009/50/CE of the Council of May 25th 2009 establishing the conditions of entry and of residence of third-country nationals for a highly qualified job position : <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0050:FR:NOT>

⁸⁵ Art. 45 of the law of August 29th 2008 on the free movement of persons and on immigration

⁸⁶ Art. 1 of the grand-ducal regulation of September 26th 2008 which determines the level of minimum wage for a highly qualified worker in execution of the law of August 29th 2008 on the free movement of persons and on immigration, in : Memorial A N° 145 of September 29th 2008

⁸⁷ <http://www.guichet.public.lu/fr/entreprises/ressources-humaines/remuneration-travailleur/paiement-remunerations/salaire/index.html>

⁸⁸ http://www.mss.public.lu/publications/parametres_sociaux/index.html. Last review 12 July 2011

the ADEM (Administration de l'Emploi) and of the CCTS (Commission Consultative des Travailleurs Salariés) are not required. These persons may be granted a residence document for a maximum period of three years, renewable upon request.

According to the article 45 of the law of August 29th 2008 on the free movement of persons and immigration, a change of employer or of sector is possible if the job in question requires particular knowledge or capacities, if the worker possesses a work contract for which he possesses the required qualifications and if his pay is equal to at least three times the social minimum wage.⁸⁹

Researchers

The other group of third-country national migrants that the government promotes is researchers. The law of August 29th 2008 promotes the issuance of residence permits to this group of migrants without the restriction of salaried workers in order to pursue a research project. This document may be granted by the minister to the third-country national who has a higher education degree which gives him access to doctoral programmes, if he can show a reception convention signed by an accredited research organization, as well as a certificate proving that he will be taken care of. The “researcher” residence document is valid for one year or for the length of the research project and is renewable.⁹⁰

2.2.4. Visa policy, national legislation and irregular migration

The visa is a document issued by a state allowing for the temporary visit by a citizen of another, for a period of time and a specific purpose. Nevertheless, it does not give the holder a right to enter the country.

The border control authorities are the persons that had the authority to decide if a citizen of a third country can stay temporarily in the territory or not. The situation is the same for a person that holds a visa as well that for a person that does not require a visa. The Member States are responsible for the regular control of the external borders. The permission to stay up to 90

⁸⁹ Art. 45 of the law of August 29th 2008 on the free movement of persons and on immigration

⁹⁰ Art. 63 of the law of August 29th 2008 on the free movement of persons and on immigration

days inside the Schengen area applies in principle to all the third-country nationals independent if they need a visa or not.

However, there are people that enter by regular channels and overstayed the period of 90 days⁹¹.

There are three sources for irregular migration: a) people coming through regular channels and overstayed the 90 day period (with visa or without visa); b) people that were regular migrants and that have lost their legal status across time and c) clandestine migration.

In Luxembourg the general policy is to fight irregular migration. As mentioned, in the multiannual programme 2007 – 2013 and the programme of 2010, one of the main objectives of the Grand-ducal police is to counteract irregular migration⁹².

In 2007, Nicolas Schmit, Minister Delegate of Foreign Affairs and Immigration, proposed a series of measures to counteract irregular immigration. Another measure that was discussed was a new directive to harmonize the sanctions against employers that hired irregular immigrants⁹³. The Minister cited poverty and the perspective of an attractive employment as the principal reasons that push people to leave the countries of origin. Instead of putting all the responsibility on these countries, the EU Member States would need to counteract it in their own terrain. Among others, he proposed that the sanctions could imply the exclusion of the company from the public markets or the suppression of public subventions that the company benefits⁹⁴.

On the 21 January 2010 in a meeting of Ministers of the European Union, M. Nicolas Schmit underlined the need for an open EU immigration policy that must try to organize the legal

⁹¹ Point of view of the Government, Interview 1, page 3, lines 40 – 47

⁹² Police Grand-Ducale, Programme Annuel, 2010, p. 2 When talking about the acquisition of an equipment that will allow to detect false travel documents and other forge documents they said that this acquisition has been selected by the Directorate General as one priority for the Grand Ducal Police to furnish the field units, especially the Foreigner Section of the Judiciary Police Service with an effective tool to fight against illegal immigration

⁹³ This directive is the « sanctions » directive (2009/52/CE) that has to be transposed on 20 July 2011 but the government had announced that on September 30, 2011 the Government council will approve the bill to be sent to Parliament. Point de view of the Government, Interview 1, page 12, lines 250 – 252. See Rapport sur l'état de transposition des directives européennes (*État des lieux au 10 mai 2011*) ; Ministry of Foreign Affairs, 10 May 2011, http://www.europaforum.public.lu/fr/actualites/2011/06/rapport-transpositions/rapporttransposition_versionfinale_1762011_ca.pdf

⁹⁴ Europaforum.lu, « **Nicolas Schmit a présenté un paquet de mesures de la Commission européenne qui visent à mieux combattre le problème de l'immigration illégale en Europe** », 13 June 2007, <http://www.europaforum.public.lu/fr/actualites/2007/06/conseil-jai-schmit/index.html?highlight=immigration%22ill%C3%A9gale>

migration and discourage the inflows of irregular migrants. In that context, he considered that immigration must be harmonized in the domains of entry, residence and status of migrants⁹⁵.

Nevertheless, the position of some of the associations interviewed in the context of this study is very clear: most of the irregular migrants that are in Luxembourg have come legally. That is because either they obtain a visa to enter the Schengen area by any Schengen Member State and they just stay in the Schengen area (Cape Verde), or they enter the European Union without the need of a visa (Brazil and the Balkans), because they are exempted, and they stay on or they are legal residents in another Member State and they came to Luxembourg trying to get a job and stay. In the first two cases it is clear that there is an abuse of the visa policy⁹⁶. Another group of irregular migrants is the one composed from the rejected asylum seekers⁹⁷, and the last group is the clandestine migrants.

2.2.4.1. Refusal of entry:

The border control authorities can refuse the entry of anyone that they consider not fulfilling the legal requirements established by article 34 of the Law of 29 August 2008 for entering⁹⁸. This decision will be taken by the border control officer (Airport Control Service) and it must be duly motivated⁹⁹. This decision can be executed ex-officio by the agents of the Airport control service. The notification and the execution of the decision are included in a minute that will be addressed to the Minister.

⁹⁵ Europaforum.lu, « **Sécurité intérieure, coopération transatlantique en matière de lutte contre le terrorisme et politique d'immigration dans le cadre du traité de Lisbonne étaient au programme des ministres réunis à Tolède pour un Conseil JAI informel** », 21 January 2010.

<http://www.europaforum.public.lu/fr/actualites/2010/01/jai-halsdorg-schmit/index.html?highlight=immigration%22ill%C3%A9gale>

⁹⁶ Point of View of NGO, Interview 9, page 2, lines 94 to 101; Point of View of NGO, Interview 5, page 7, lines 319 to 322

⁹⁷ In 2001, this group composed the majority of the regularizations

⁹⁸ Art. 34, paragraph (2) of the law of August 29th 2008 on the free movement of persons and on immigration :

1. must possess a valid passport and a valid visa if this is required;
2. must not be the object of a notification for non-admission
3. must not be the object of an injunction forbidding entry on the territory
4. must not be considered as a threat for public order, domestic security, public health or international relations of the Grand-duchy of Luxembourg or of one of the States members of an international Convention relating to the crossing of exterior borders, linking the Grand-Duchy of Luxembourg
5. Must justify the object and the conditions of the foreseen stay, and justify having sufficient personal resources, as much for the planned length of stay as for the return trip to the country of origin, or justify the possibility of legally acquiring these means, and have health insurance coverage which covers all risks within the territory. A grand-ducal regulation defines the required resources and indicates the conditions and modalities according to which this proof may be brought.

⁹⁹ Article 104 (1) of the Law of 29 August 2008.

Nevertheless, against the refusal's decision, the visa holder can file an action for annulment to the first instance administrative tribunal. However, this action does not have a suspensive effect over the decision.

2.2.4.2. Abuse of the validity of the visa:

The law foresees certain consequences for overstaying the validity period of a visa. Article 100 of the Law of August 2008 foresees that the government will refuse the stay and order the expulsion of a third-country national who has overstayed the period granted by the visa.

The legal framework foresees several sanctions for the people that abuse their visas. Once the authorities realized that a person has overstayed the validity of the visa, a duly motivated decision of refusal of stay will be taken¹⁰⁰ by the Minister. The decision is notified to the person and it will mention the administrative actions and the timeframe to appeal against the decision. Nevertheless, the decision is accompanied with an obligation to leave the country within a certain period (that is normally a month or more¹⁰¹) and with an entry ban of maximum five years. Against this decision the person concerned can introduce recourse to the first instance administrative court and in case that the decision is negative he can introduce an appeal to the Administrative Court¹⁰².

Once the decision is final (*res judicata*), and the irregular migrant refuses to leave, he can be expelled by force¹⁰³.

There are some exceptions that are contemplated in the laws where the third-country national cannot be expelled:

- 1) when a request for extradition is pending¹⁰⁴;
- 2) when there is the suspicion that the life or freedom of the third-country national in his country of origin is in danger according to article 3 of the European Convention on

¹⁰⁰ Article 109 (1) of the Law of 29 August 2008.

¹⁰¹ Only in urgency cases duly motivated the delay given will be less than a month. Article 111 (2) of the Law of 29 August 2008.

¹⁰² Article 113 of the Law of 29 August 2008.

¹⁰³ Article 124 (1) of the Law of 29 August 2008.

¹⁰⁴ Article 128 of the Law of 29 August 2008.

Human Rights or that he will be subject to cruel, inhuman or degrading treatments or torture¹⁰⁵;

- 3) when the third-country national because of medical reasons dully corroborated has to be treated urgently¹⁰⁶.

In relation with the last point, the third-country national receives a reprieve to the expulsion for a maximum period of 6 months. This reprieve can be renewed up to a maximum of 2 years¹⁰⁷. However, in the case of medical reasons, if the situation persists, the third-country national can apply for a resident authorization for medical reasons for the duration of the treatment that cannot exceed one year. Nevertheless, if the situation continues this resident permit can be renewed after study of the case¹⁰⁸.

Article 140 of the Law of 29 August 2008¹⁰⁹ penalizes the irregular migrant who has received a notice to leave the country but does not follow it, except when he had been granted with a reprieve of expulsion. However, this article has to be harmonized with the recent judgment *El Dridi v. Italy* of 28 April 2011 (C61-11) of the European Court of Justice¹¹⁰ that says: “Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, in particular articles 15 and 16 thereof, must be interpreted as precluding a Member State’s legislation, such as that at issue in the main proceedings, which provides for a sentence of imprisonment to be imposed on an illegally staying third-country national on the sole ground that he remains, without valid grounds, on the territory of that State, contrary to an order to leave that territory within a given period. With regard to third-country national students that want to stay for other purposes, the Law of 29 August 2008 is very clear. The

¹⁰⁵ Article 129 of the Law of 29 August 2008

¹⁰⁶ Article 130 of the Law of 29 August 2008.

¹⁰⁷ Article 131(1) of the Law of 29 August 2008.

¹⁰⁸ Article 131 (2) of the Law of 29 August 2008.

¹⁰⁹ It punishes the irregular migrant with a fine of 251 to 1250 euros or/and a prison sentence of 8 days to a year.

¹¹⁰ The Court concluded that : « Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, in particular Articles 15 and 16 thereof, must be interpreted as precluding a Member State’s legislation, such as that at issue in the main proceedings, which provides for a sentence of imprisonment to be imposed on an illegally staying third-country national on the sole ground that he remains, without valid grounds, on the territory of that State, contrary to an order to leave that territory within a given period”.

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&alljur=alljur&jurcdj=jurcdj&jurtpi=jurtpi&jurtfp=jurtfp&nunaff=&nomusuel=El%20Dridi&docnodecision=docnodecision&allcommjo=allcommjo&affint=affint&affclose=affclose&alldocrec=alldocrec&docdecision=docdecision&docor=docor&docav=docav&docsom=docsom&docinf=docinf&alldocnrec=alldocnrec&docnoor=docnoor&docppoag=docppoag&radtypeord=on&newform=newform&docj=docj&docop=docop&docnoj=docnoj&typeord=ALL&domaine=&mots=&resmax=100&Submit=Rechercher>

student that does not fulfill his student commitments can have his resident revoked¹¹¹ without prejudice of applying the sanctions foreseen by article 101.

However, once he finishes his diploma, the student can apply for a salaried worker permit for a maximum delay of two years¹¹² if he fulfills the following requirements:

- a. The applicant has obtained his higher education diploma;
- b. He wishes to complete his academic formation with a first professional experience that serves the economic interests of the Grand Duchy of Luxembourg and those of country of origin;
- c. The economic activity that the applicant wants to develop is related to his academic training;
- d. He is in possession of a work contract.

This working residence permit is not renewable. So, if the student decides to stay after this period the sanctions of article 100 and 101 will apply.

2.3. Agreements with third countries

As Luxembourg is a founding member of the Schengen Space it is evident that all its visa policy is related to the general visa policy of the European Union. Also, as Luxembourg does not have a diplomatic representation in most of the non-European Union countries (see annex 3), it depends on the diplomatic representations of other European Union countries to protect and administer its interests. Luxembourg does not have any external border with a non-EU country. This makes that the country does not have any visa bilateral treaty with any non-EU country.

The visa facilitating agreements that Luxembourg applies are the ones that the European Union have negotiated with other non-EU countries.

These multilateral treaties are with the following countries: Visa facilitating agreements with the Balkan countries (Serbia, Macedonia, Bosnia-Herzegovina, Albania, and Montenegro), Russian Federation, Ukraine, Moldova and Georgia, (See Section 5.3.1) and the

¹¹¹ Article 57 (4) of the Law of 29 August 2008.

¹¹² Article 59 of the Law of 29 August 2008.

“Memorandum of Understanding on Approved Destination Status” subscribed by the European Union and China (See section 4.1.3).

It needs to be clarified that these visa facilitating agreements have a counterpart that are the readmission agreements. This means that these multilateral agreements are signed not only to facilitate the issuance of visa and the free movement of citizens of both parties in each other territory but at the same time they establish simplified procedures to return the citizens of the other party when they are in irregular situation and the other country must accept the return of their own citizens. So we can conclude that those agreements facilitate not only the legal migration (temporary) but have also a prevention effect over the irregular migration.

2.4. Recent changes to visa policy and legislation within context of a common EU dimension

As all the founding members, Luxembourg had implemented its visa policy in accordance, first with the Schengen agreement and once the Schengen agreement became EU law, the visa policy had always been in accordance with EU law.

This situation is totally different from other countries that joined the Schengen Agreement afterwards and which had to adapt their visa policy to the requirements of Schengen.

The Law on the free movement of persons and on immigration had transposed different directives. For example, article 45 of the law is a partial adoption of the European directive 2009/50/EC¹¹³. Articles 55 to 62 of this law transpose the European directive 2004/71/EC and articles 63 to 67 transpose the directive 2005/71/EC.

Also the agreements with the Balkans States that lifted visa requirements had affected the visa policy of Luxembourg.

During the 1990's, Luxembourg accepted a lot of refugees coming from the Balkans States and granted an ad hoc administrative status to a lot of them which was abolished with the Dayton agreement (accord de Dayton). After this period, the applications were examined under the asylum procedure. Many of these people were refused political asylum. Some of them got a tolerance status to rest temporarily in the country because of the conflict.

¹¹³ The directive 2009/50/CE has not been transposed yet. The Council of Ministers on 10 June 2011 approved a bill to modify the Law of 29 August 2008 on the free movement of persons and on immigration to transpose the directive, http://www.gouvernement.lu/salle_presse/conseils_de_gouvernement/2011/06-juin/10-conseil/index.html

Once the situation calmed down in their original countries, in application to the asylum law a lot of these asylums were not renewed. Many of rejected asylum seekers from the Balkans were legalized in 2001¹¹⁴. A lot of them were also forced to leave the country either by force or voluntarily with the economic aide of Luxembourg.

Now that the visa requirement has been lifted, they are returning. The situation in Luxembourg is that there is a large community of Balkans states citizens in the country so most of the people that are coming stay with family or friends. Only the people that do not have any link with the country are demanding political asylum¹¹⁵.

The exemption of the obligation of visa for certain Balkans countries citizens is an important factor that explains the recent rise in international protection applications from the Roma minorities coming from Serbia. The asylum seekers from Serbia, between January and April 2011, represent 54% of the total number of international protection applications, and the applications from the Roma minorities from Serbia represent 41% of all the new applications for international protection.

¹¹⁴For more details about asylum policy in the years 1990-2010, see Besch Sylvain. Les réfugiés entre droit et politique, in : ASTI 30+. 30 ans de migrations. 30 ans de recherches. 30 ans d'engagements, Editions Guy Binsfeld, 2010, pp. 106-123

¹¹⁵ Interview with associations of Civil Society, L.H., ASTI

Table N° 1: **International protection seekers (January – July 2011)**

International Protection Seekers (January – July 2011)						
	Files	Individuals applicants	Serbian Files	Individual Applicants Serbia	Files Roma Serbians	Individual Applicants Roma Serbian
Jan. 11	60	116	16	47	12	35
Feb.11	62	147	29	98	21	71
Mar.11	93	237	61	179	45	142
Apr.11	69	147	10	27	6	18
May11	75	134	13	29	10	24
Jun 11	55	114	8	25	7	24
Total	414	895	137	405	101	314
%		100%		45.25		35.08

Source: Ministry of Foreign Affairs, 2011 © EMN NCP LU

According to the interviewed NGOs, the problem has not been recognized in all its magnitude by the government which has only seen an extraordinary rise in international protection applications. The real problem will be appreciated when these people begin applying for a residence permit as salaried workers.¹¹⁶

However, the political response of the government was fast. Confronted with a high volume of international protection seekers (mainly from Serbia) between the end of the year 2010 and the beginning of 2011, the government and the Parliament addressed the issue. In the State of the Nation speech, Prime Minister, Jean-Claude Juncker said that Luxembourg is not ready to open its doors to people that come from a safe country¹¹⁷. He asked the Parliament to approve

¹¹⁶ Point of view of NGO, Interview N° 5, page 14, lines 643 to 652.

¹¹⁷ The Prime Minister said:

« Nous avons dans notre pays, comme je viens de le dire, de graves problèmes, problèmes que, bien que touchant un petit nombre de personnes, nous devons régler, parce que la non-gestion de ces problèmes aurait de graves conséquences tant pour les personnes concernées que pour la société dans son ensemble.

En plus, nous devons faire face aux défis qui nous viennent de l'étranger. Je veux parler des réfugiés, dont le nombre n'a cessé d'augmenter au cours de l'année passée et notamment au cours des derniers mois. En 2007, 426 personnes ont cherché une protection internationale au Luxembourg, en 2008, leur nombre s'est élevé à 463, avant de passer à 505 en 2009. En 2010, ils étaient 786, et rien que pendant les trois premiers mois de cette année, leur nombre était de 487, ne soit plus que le total de l'année 2008. On ne peut exclure que dans les mois à venir, nous soyons confrontés à 50 à 60 demandes d'asile par semaine.

the bill that authorizes the fast track procedure. He also announced a «return help package» to the Serbian nationals that leave the country in a three month period after their arrival (250 euros per adult and 100 euros per child). The Government Council of 18 mars 2011 approved a modification to the Grand Ducal regulation of 21 December 2007 that fixed the list of «safe countries» in the sense that it includes Serbia¹¹⁸.

313 des 487 personnes qui sont arrivées avant la fin du mois de mars sont originaires de Serbie. Elles quittent la Serbie, parce que la situation économique y est désastreuse et que la pauvreté y est élevée. Elles peuvent plus facilement quitter la Serbie depuis la suppression de l'obligation de visa entre la Serbie et l'Union européenne. Parmi les réfugiés serbes, la proportion de Roms est de 75 %.

Nous sommes d'avis que la Serbie est un pays sûr. C'est un pays qui a une perspective européenne à moyen et à long terme. L'actuel afflux de réfugiés d'origine serbe vers l'Europe de l'Ouest et, partant, le Luxembourg, doit – et je suis désolé de devoir m'exprimer de manière aussi drastique – s'arrêter. Aujourd'hui comme hier, la politique gouvernementale suit trois principes : le Luxembourg ouvre ses portes à toute personne poursuivie dans son pays d'origine, le Luxembourg ouvre ses portes parfois et en fonction des circonstances à ceux qui viennent au Luxembourg pour d'autres raisons et le Luxembourg n'est pas, a priori, prêt à ouvrir ses portes à ceux qui viennent d'un pays sûr. Il s'ensuit logiquement qu'au cours des derniers mois, aucun ressortissant serbe ne s'est vu accorder l'asile et il y a lieu de supposer que cette situation ne changera pas dans les mois à venir. Il est dans l'intérêt des ressortissants serbes de quitter notre pays dans les trois mois de leur arrivée. Ils touchent 250 euros par adulte et 100 euros par enfant pour le voyage de retour, qu'ils pourront effectuer à bord d'autocars gratuits. Les personnes dont la demande d'asile est rejetée au bout de plus de trois mois, à la fin de la procédure d'asile, doivent quitter le pays sans bénéficier d'aide.

Il est essentiel que les décisions sur les demandes d'asile se prennent rapidement. Pour cette raison, il faut accélérer davantage les procédures d'asile dites "accélérées", et ce notamment lorsque les demandeurs viennent d'un pays sûr. Or, l'application de la procédure d'asile accélérée telle que prévue à l'article 20 de la loi du 5 mai 2006, est, à la suite d'intermezzos jurisprudentiels, gelée depuis février 2010. Vendredi dernier, le gouvernement a proposé un projet de loi garantissant le redémarrage de la procédure accélérée. Je vous demande d'approuver ce projet rapidement.

A cela vient s'ajouter le problème de l'hébergement des réfugiés, qui est une affaire compliquée qui requiert à la fois prudence, tact et détermination.

Cela est vrai tout d'abord au niveau de l'accueil des réfugiés. Les services d'accueil et les services de logement ainsi que les services chargés de l'instruction des demandes d'asile doivent être dotés sans tarder de personnel supplémentaire. C'est là un effort actuellement en cours.

Deuxièmement, cela est vrai pour l'hébergement proprement dit. Nous avons un besoin urgent de nouvelles possibilités d'hébergement qui doivent respecter une répartition équitable des charges sur l'ensemble du pays. Il faut qu'à terme, aucune commune ne soit dépassée par ces mesures, mais en même temps, il faut qu'aucune commune ne se soustraie à la solidarité intercommunale et nationale nécessaire. Cette question fera l'objet d'entretiens avec le Syvicol qui auront lieu encore cette semaine. A moyen terme, nous devons créer en plusieurs endroits du pays de grandes infrastructures modulables sous forme de halles ou de conteneurs offrant des possibilités d'hébergement suffisantes au cas où nous serions – comme nous en avons fait l'expérience au cours des derniers mois – confrontés à de véritables vagues de réfugiés. Bien sûr, il faut concevoir ces infrastructures de manière à pouvoir les affecter à d'autres usages en cas de baisse de l'afflux de réfugiés. » Cela dit, je dois ajouter ceci : les Roms vivant en Serbie ou ailleurs en Europe vivent dans des conditions difficiles. Inutile de le nier. C'est pourquoi je veux que les Roms qui sont au Luxembourg soient traités avec le respect et la sensibilité nécessaires. Ils sont malheureux. Toutefois, dans ce monde, le Luxembourg n'est pas le lieu qui permet de régler tous leurs problèmes. C'est pourquoi la ministre de la Famille et le ministre de l'Immigration se rendront sur place en Serbie pour examiner eux-mêmes comment nous pouvons améliorer les conditions de vie des Roms chez eux. La politique est claire : nous proposons notre assistance aux Roms en Serbie, et nous le faisons en collaboration avec les ONG luxembourgeoises. Le sort des Roms ne nous laisse pas indifférents. Toutefois, plutôt que de les aider ici, nous misons sur l'aide que nous leur fournissons chez eux. http://www.gouvernement.lu/gouvernement/etat-nation/traduction_francaise/index.html?SID=ba78841b709950c3e75d9236a187e28b

¹¹⁸ The list of safe countries is composed by: Albania, Benin, Bosnia-Herzegovina, Cape-Verde, Croatia, Ghana, Macedonia, Mali, Montenegro, Senegal, and Ukraine

With this modification people coming from Serbia (that is considered a safe country) that apply for international protection will be treated with the fast track procedure according with the Law of Asylum and other complementary forms of protection of 5 May 2006. So that the Ministry of Foreign Affairs can use the fast track procedure the bill of law was submitted to Parliament on 19 April 2011 and it was approved on 5 May 2011 (Law of 19 May 2011¹¹⁹).

3. Practical Implementation and Organization

3.1. General Procedure followed in the Stages of the C Visa Procedure

The General Procedure that Luxembourg follows for the issuance of a Visa C is the one that is contemplated in the Visa Code and the handbook for the organization of visa sections and local Schengen cooperation.

The person shall ask for an appointment to fill the application.¹²⁰ The person shall lodge the uniform application¹²¹ form in person¹²² (Annex 2) and present his passport, a photograph and all the supporting documents that are asked by the consular authority¹²³ (there is a not exhaustive list of things that the diplomatic representatives can ask from the applicant). The diplomatic officer will collect the fingerprints from the applicant¹²⁴. The applicant must pay the visa fee¹²⁵. The applicant must pass an interview with a person of the consulate. Here the diplomatic officer can assess by the first time if the person represents a migratory risk or not. This is considered a determinant factor to deliver a visa¹²⁶. The diplomatic officers receive a formation on profiling, to ask certain type of questions to verify the story of the applicant¹²⁷. Also he has to verify if the condition of the guarantee and the reception in the Member State as well as the economic resources of the applicant are sufficient and in accordance to the law.

The diplomatic officer will review if all the information is complete and correct and if the application is admissible¹²⁸. If it is admissible then he or she continues the procedure by

¹¹⁹ http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletImpl/?path=/export/expanded/sexpdata/Mag/103/052/100521.pdf

¹²⁰ Article 9.2 of the Visa Code. This application must take place within a period of two weeks from the date when the appointment was requested

¹²¹ Article 11.1 of the Visa Code

¹²² Article 10.1 of the Visa Code

¹²³ Article 14 of the Visa Code

¹²⁴ Article 13 of the Visa Code

¹²⁵ Article 16 of the Visa Code

¹²⁶ In Muslim countries, the French representations compel the applicant to come to the interview with an uncovered face. See decision of the French Council of State, 7 December 2005, n° 264464, El Morsli

¹²⁷ Information provided by the Passports and Visas Office

¹²⁸ Article 19 of the Visa Code

introducing all the information into the VIS and verifying and linking it with any previous application made¹²⁹.

If the officer considers that the application does not fulfill the requirements, he will declare it inadmissible and the consulate must return the application form and any documents submitted by the applicant, destroy the collected biometric data, reimburse the visa fee and not examine the application. If it is admissible the officer will stamp the passport and send the file for examination¹³⁰.

Once he considers that the file is completed (in the Luxembourg case) he can either approve the visa ex-officio (in the case where there is another Member State that represents Luxembourg) or transfer the file electronically to the Passport and Visa office in Luxembourg.

There the responsible civil servant will verify all the information. He has to determine if the applicant fulfills the entry conditions set out in article 5(1) (a), (c), (d) and (e) of the Schengen Border Code¹³¹ and assess whether the applicant presents a risk of illegal immigration or a risk to the security of the Member States and whether the applicant intends to leave the territory of the Member States before the expiry of the visa¹³². For this purpose he must decide if there is need to make a query on certain aspects (i.e. interviewing the resident sponsor, contacting the company that is inviting the person, make the verification in the Visa Information System, the SIS, etc. or demand the diplomatic mission to verify if certain

¹²⁹ Article 8 of the VIS regulation and article 19.2 of the Visa Code

¹³⁰ Article 20 of the Visa Code

¹³¹ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R0562:EN:NOT> Article 5 (1) of the Schengen Border Code says:

1. For stays not exceeding three months per six-month period, the entry conditions for third-country nationals shall be the following:

- (a) they are in possession of a valid travel document or documents authorizing them to cross the border;
- (b) they are in possession of a valid visa, if required pursuant to Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement [17], except where they hold a valid residence permit;
- (c) they justify the purpose and conditions of the intended stay, and they have sufficient means of subsistence, both for the duration of the intended stay and for the return to their country of origin or transit to a third country into which they are certain to be admitted, or are in a position to acquire such means lawfully;
- (d) they are not persons for whom an alert has been issued in the SIS for the purposes of refusing entry;
- (e) they are not considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States, in particular where no alert has been issued in Member States' national data bases for the purposes of refusing entry on the same grounds.

¹³² Article 21.1 of the Visa Code

documents are authentic or to ask the applicant for more information)¹³³. It is important to note that this assessment of the migratory risk is discretionary. However in certain cases the consular services are compelled to communicate their individual files to the Passport and Visa Office¹³⁴.

Once the visa officer considers that the file is completed, he will take a decision of whether to accept (with all the different specifications – number of entries and validity, if it is limited or not -) or refuse the visa¹³⁵.

In the first case the decision will be communicated to the diplomatic mission to authorize the visa¹³⁶. In this case the sticker will be placed on the applicant passport¹³⁷ and they will contact the person so he can come and pick it up.

In the second case the decision must be communicated in writing¹³⁸ to the applicant with the indication of the recourses, delays and instances that he can take against the decision¹³⁹. The diplomatic officer has to hand to the applicant a document with the motives of the refusal (this is applicable since April 25, 2011). However, the Visa Code in its annex VI simplifies the work of the competent authorities establishing a form that will expose in a circumstantial manner the reasons for the refusal of the visa¹⁴⁰. The main reasons for refusal are:

- a) Existence of a risk for the public order or a risk of diversion of the object of the visa¹⁴¹;
- b) Insufficient resources. In this case there is a quantitative criterion. The precarious situation of the applicant implies by itself a migratory risk.

¹³³ The officer after reviewing all the available information in the VIS and the SIS can make a consultation to the central authorities of other Member States. Article 22.1 of the Visa Code.

¹³⁴ Article 21 of the Visa Code insists on the discretionary power of consular authorities. For example it is interesting the position of the French Council of State (Conseil d'Etat Français) in this point had said that the French diplomatic authorities dispose of a large discretionary power and can justify their decision in issuing a visa in the general interest. CE, 28 February 1986, No. 41550, Ngako Jeuga, Rec. CE, p. 49.

¹³⁵ Article 23.4 (a), (b), (c) of the Visa Code

¹³⁶ Articles 24 and 25 of the Visa Code

¹³⁷ Article 29.1 of the Visa Code

¹³⁸ Article 32.2 of the Visa Code

¹³⁹ Article 32.3 of the Visa Code

¹⁴⁰ It establishes eleven reasons that justify the refusal of the visa. However, it is important to mention that the consular authorities have the right to refuse the visa with other motives than those contemplated in the annex VI, based on the large discretionary powers.

¹⁴¹ In this case the diplomatic officer must take into account: 1) the past conduct and the criminal record of the applicant, 2) if he had overstayed the allowed period of a previous visa on the Schengen area or 3) if he had been an irregular migrant in the past and 4) has to take in consideration if there is any risk to the general interest (for example, the officer can realize that the application cover a permanent installation plan in the Schengen area, or if there are not sufficient attachments to the country of origin).

- c) Inscription on the Schengen Information System.
- d) The non-serious character of a study project.
- e) Financial incapacity of the family member on the Member State that invites the applicant to assume the financial responsibility of the applicant in the territory of the member state.

All this procedure has to be handled in a delay of 15 days from the day of the lodging of the application¹⁴². Nevertheless, in cases where further scrutiny is needed or when the diplomatic mission represents another Member State (the case of Luxembourg) the delay is of 30 days¹⁴³. Exceptionally the delay may be extended to 60 days in case additional documents are needed.

3.2. Visa issuance for the purpose of legal immigration – specific procedure followed in the Stages of the Visa Procedure

There are three types of visas that Luxembourg can issue under the visa code: a) A Visa; b) C Visa and c) D Visa.

A) A Visa

The A Visa is a transit visa, normally for transit in international airports. In the case of Luxembourg it is not current to issue an A Visa because the International Airport of Luxembourg (FINDEL) is not an international hub for any company so it is very difficult that someone will try to travel in transit to another country through Luxembourg.

Nevertheless, the Grand-ducal police, especially the Central Unit of the Police at the International Airport, is charged with the border control and the issuance of urgency visas and the implementation of the Schengen Information System (SIS)¹⁴⁴.

B) C Visa

Visa applications should be made in person at a Luxembourg diplomatic or consular mission or diplomatic or consular mission of a member state signed up to the Schengen agreement which issues visas on behalf of Luxembourg in the applicant's home country.

¹⁴² Article 23.1 of the Visa Code. This delay applies for Luxembourg in the Luxembourg diplomatic missions.

¹⁴³ Article 23.2 of the Visa Code

¹⁴⁴ Police Grand-Ducal, Programme Pluriannuel 2007-2013, p. 1.

3.2.1. Procedure for the application of a C Visa

In general terms, there are 3 types of Visa applications:

- Visa application with a sponsor in Luxembourg
- Visa application without a sponsor
- Visa application through firms/official delegations/sport clubs

Two copies of a visa application form should be filled in.

The following documents should be provided in support of the application:

- two recent passport photos
- a valid passport or a travel permit recognized by the Schengen countries whose validity is at least three months longer than the validity of the visa applied for
- Written proof relating to the reason for the journey such as:
 1. official invitation letter for a business trip
 2. certified copy of an accommodation or a letter of the reference person in Luxembourg guarantying the stay.
 3. hotel reservation
 4. return airplane ticket
 5. proof of sufficient means of subsistence (bank statements, cash, credit cards etc.)
 6. proof of legal residence in the usual country of residence
 7. health or travel insurance is required

It is important to note that from 11 October 2011 onwards, the applicant will be compelled to give his finger prints (10 fingers)¹⁴⁵. With this new system, the biometrical data will be saved in a common database which will be used to control the visa's holder identity at the external border. Still, there are some practical problems because there are some people that do not have finger prints, because they work with chemical products (i.e. farmers) or because they submit themselves to chemical procedures or plastic surgeries to erase their finger prints¹⁴⁶. It

¹⁴⁵ Information provided by the Passports and Visas Office, May 2011

¹⁴⁶ Information provided by the Passports and Visas Office.

is important to highlight that this procedure will only be applied in a first phase to a global roll-out to citizens coming from the Maghreb countries.

As we have seen Luxembourg does not have diplomatic representation in all the countries so for issuing the C visa (with or without territorial limitations). There are two possibilities:

1. The visa is issued *ex-officio* by another Member State's diplomatic representation without consulting Luxembourg. This practice is called *visa granted ex-officio*¹⁴⁷. In this case the diplomatic representation will follow its own procedures. In this situation the diplomatic representation will accept or refuse the visa on its own right. In case of refusal, Luxembourg has the right to ask the reasons why the diplomatic representation refuses *ex-officio* the visa. Nevertheless, the applicant must file the administrative recourses in the administrative jurisdiction of the country that made the refusal and not in Luxembourg.
2. The visa is approved by Luxembourg. This can be made directly through a Luxemburgish diplomatic mission or through another Member State's diplomatic representation that represents Luxembourg. In any of these two cases the following procedure will have to be respected:

1. The applicant must complete the visa application joining all the documents that are listed as requisites (See annex I of the Visa Code (regulation EC 810/2009¹⁴⁸).

2. Normally once the applicant brings the application completed he will have to pass in most cases a little interview with a consular officer. Once the application is complete it is transferred with the remarks made by the consular officer by electronic means to the Visa department in Luxembourg. The delay of 15 days begins to run from the moment the diplomatic authority judged the application as completed.

3. Here the examination procedure begins. The examiner will evaluate if the applicant fulfill the criteria so the visa can be issued. If the examiner considers that he needs more information, he can demand any document included in the list of non-exhaustive justifying documents (annex II of the Visa Code (regulation EC 810/2009)) and any other that he considers necessary. It is important to note that when there is an invitation of a particular the examiner

¹⁴⁷ Visa « accordé d'office ». Passports and Visas Office, 2011.

¹⁴⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009R0810:EN:NOT>

can call the company or interview the person that will be responsible for the foreigner¹⁴⁹. When there is a person that is taking the financial responsibility of the person that he is inviting, the «Passports and Visas Office» (Bureau des Passeports et Visas) has to intervene twice: 1) it has to validate the financial guarantee, and 2) decides to grant the visa or not.

4. Once the examiner has finished his evaluation, he takes the file to the head of the department and they will discuss the decision to be taken. The Director of the Passports and Visas Office will take the final decision. If it is accepted or rejected the visa department would contact the diplomatic representation with the decision.

If it is accepted the diplomatic representation will issue the visa. However, if this representation has any further information that demonstrates that the applicant does not deserve to be issued a visa, then the diplomatic representation would stop the issuing and contact the Visa office submitting the new information. The final decision will be taken by the Visa office.

In case that the visa was refused, the applicant will be notified of the final decision and the motives of the refusal (see form¹⁵⁰). The applicant has to come to the embassy or consulate to receive the signed refusal. It is only until then that the delay for making recourse against the decision is possible.

There are two types of recourse:

a) **Gracious recourse:** This is a recourse that is made to the Director of the Passport and Visa Office, to reconsider his decision. Against his final decision there is no other recourse.

b) **Administrative recourse:** This is the normal recourse that any citizen could introduce to the first instance administrative court. The delay for introducing the recourse is of three months (art. 16 of the Law of 21 June 1999) from the notification of the decision. Against the decision of the first instance administrative court the applicant has the right to make an appeal

¹⁴⁹ The person that guarantees the stay of the foreigner is responsible up to 2 years for the person and he is liable for any wrong doing that the foreigner does in the Schengen area. Also the person is responsible for the return of the foreigner to the country of origin. Interview with the Bureau des Passeports et Visas, May 2011.

¹⁵⁰ This form comes from the STANDARD FORM FOR NOTIFYING AND MOTIVATING REFUSAL, ANNULMENT OR REVOCATION OF A VISA contemplated in annex VI of the Visa Code.

to the Administrative Court (Cour Administrative).The delay for doing so is of 40 days (art. 38)¹⁵¹

Nevertheless, it is almost impossible that an applicant will use this administrative procedure not only because of the cost of hiring a lawyer but the time it will take to be decided. So normally the only thing that the applicant does is to file gracious recourse against the decision to the Director of the Visa Office.

Types of visas:

The C visa issue by Luxembourg is uniformed in accordance with the Visa Code. Nevertheless for internal use to distinguish the duration of the visas the Visa department made an internal classification:

- a) C-1: one entrance with a maximum stay of 30 days and the holder must entry in 30 days after issuance.
- b) C-2: multiple entries with a maximum stay between 30 and 90 days. Maximum validity: three months.
- c) C-3: multiple entries with a maximum stay of 90 days. Validity between 3 months and a year.
- d) C-5: multiples entries with a maximum stay of 90 days. Validity between 1 and 5 years.

Delay for issuing a C VISA

The delay for issuing a C visa is the one that is established by the Visa Code. It is important to mention that the transmission of the information, thanks to the new technologies this transmission is made on real time.

¹⁵¹ Law of 21 June 1999. This law rules the procedure of the administrative jurisdictions.
<http://www.legilux.public.lu/rgl/1999/A/1892/1.pdf>

3.2.2. Procedure for obtaining a D visa

The visa D or long stay visa entitles its holder to stay for more than 90 days in the territory of the country that issued it. Also, it entitles its holder to travel in the Schengen area for up to 3 months¹⁵². It is important to notice that the new D visa has integrated the ancient D+C visa that disappeared on 5 April 2010 with the entrance on force of the Visa Code.

The D visa is a prerequisite for obtaining a resident permit. Article 39 of the Law on the free movement of persons and on immigration is clear that the application for the authorization to stay and for the visa has to be done from the country of origin. In this case the diplomatic representation that represents Luxembourg does not have any discretion in issuing the visa and it is compelled to send the application directly to the Ministry of Foreign Affairs in Luxembourg, who is the only competent authority that will take the decision related to the residence permit and the D visa. However, the diplomatic representation will help in the examination procedure of the application.

It is necessary to distinguish between the application for the authorization to stay and that for the visa. The application for the authorization to stay has to be introduced first. The delays in which the Ministry of Foreign Affairs 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.

In any case the delay starts to run when the file is completed.

Once the authorization to stay is accorded, the applicant has 90 days to obtain the D visa in case it is needed or 90 days to enter the country, in case the applicant does not required a visa to enter.

This D visa is issued in the following cases¹⁵³:

1. Salaried worker

In order to obtain the authorization to stay as salaried worker in Luxembourg, the third-country national must meet the five following conditions¹⁵⁴ :

¹⁵² With the visa code the qualification of Visa D+C was incorporated in the new D Visa.

¹⁵³ Article 38 of Law on the free movement of persons and on immigration

- a. the worker must meet with, like all other third-country nationals, the general regulations of article 34, paragraph (2) of the law of August 29th 2008 on the free movement of persons and on immigration¹⁵⁵;
- b. he must not prejudice the hiring priority from which certain workers benefit in virtue of the community or national dispositions;
- c. the practice of the intended activity serves the economic interests of Luxembourg;
- d. the person seeking authorization disposes of the required professional qualifications for the practice of the intended activity;
- e. the person seeing authorization possesses a work contract for a job opening declared vacant to the ADEM in the forms and conditions foreseen by the afferent current legislation. The necessary conditions are verified respectively by the ADEM and by the consultative commission for workers (CCTS¹⁵⁶ following the modalities determined by the grand-ducal regulations.¹⁵⁷ The minister in charge of immigration requests, first of all, the opinion of the ADEM, who must reply within three weeks, then afterward that of the CCTS;

¹⁵⁴ Art 42 of the law of immigration of August 29th 2008

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

¹⁵⁵ Art. 34, paragraph (2) of the law of August 29th 2008 on the free movement of persons and on immigration :

1. must possess a valid passport and a valid visa if this is required;
2. must not be the object of a notification for non-admission
3. must not be the object of an injunction forbidding entry on the territory
4. Must not be considered as a threat for public order, domestic security, public health or international relations of the Grand-duchy of Luxembourg or of one of the States members of an international Convention relating to the crossing of exterior borders, linking the Grand-Duchy of Luxembourg.
5. Must justify the object and the conditions of the foreseen stay, and justify having sufficient personal resources, as much for the planned length of stay as for the return trip to the country of origin, or justify the possibility of legally acquiring these means, and have health insurance coverage which covers all risks within the territory. A grand-ducal regulation defines the required resources and indicates the conditions and modalities according to which this proof may be brought.

¹⁵⁶ Within the terms of the grand-ducal regulation of September 5th 2008 and in application of the law of August 29th 2008 on the , three consultative bodies have been created which the ministry competent for immigration during the decision-making process, so notably for the CCTS; The principal mission of the CCTS is to ensure the general conformity with the legal conditions which control the renewal or the conference of the residence document of employed workers or the work permit of third-country nationals. The CCTS is composed of 10 members, seconded by the competent ministries.

¹⁵⁷ Art. 43 of the law of August 29th 2008 on the free movement of persons and on immigration

3.2.3. Procedures for the residence authorization:

Once the application is completed, the diplomatic representation will transfer the file to the Ministry of Foreign Affairs in Luxembourg. The case will be assigned to the examiner. This person will analyze all the documents that are submitted to him and will decide if the application is in accordance with the law.

Procedure for the residence authorization:

The application for the authorization to stay has to be addressed to the Ministry of Immigration. The demand must contain¹⁵⁸:

- The identity of the applicant ;
- A complete copy of the applicant's passport that must be certify against the original;
- The birth certificate;
- The criminal record or an affidavit;
- A curriculum vitae;
- A certified copy of the diplomas or of the professional qualifications of the applicant, with the translation in French, German or English if the original documents are not issued in theses languages
- A labour contract, dated and signed by both parties;
- The applicant must indicates if there any family ties with the employer
- A motivation letter that will support the application

The examiner can demand any other document or complementary information¹⁵⁹ that he considers necessary for its investigation. For example, he/she can interview the members of the company or the employer to verify the authenticity of the documents.

The Ministry must transfer a copy of the application and all the information to ADEM that has to give a motivated opinion¹⁶⁰ on the opportunity of authorizing the resident permit. That

¹⁵⁸ Article 2 of the grand ducal regulation of 5 September 2008 that fixed the conditions and modalities related to the issuing of resident permits for salaried workers

¹⁵⁹ Art. 4 of the grand ducal regulation of 5 September 2008.

¹⁶⁰ This opinion must contains: 1) that the post was declared vacant by the ADEM; 2)the objective need of the employer related to the execution of the work in the position that the employee is required; 3) verification of the concrete availability of other registered workers in ADEM that benefit from a priority to be higher; 4) the follow

must be done in a three weeks period. After receiving the opinion or at the expiration of the delay, the Ministry will demand the position of the consultative commission of workers (CCTS). The commission will give the respective opinion to the minister and then the Minister takes the final decision.

The third-country national who received an authorization to stay as a salaried worker who can give the proof that he has appropriate housing and a medical certificate may be granted a “salaried worker” residence document (titre de séjour). The first residence document is valid for one year maximum and for one sector and one profession only. For the first renewal¹⁶¹, the residence document is extended for two additional years if the worker has a work contract for a job position declared vacant with the ADEM. From the second renewal on, the residence document, valid for three years, can be used for all professions in all sectors.

2. Highly skilled workers

The provisions of article 45 of the law of August 29th 2008 on the free movement of persons and on immigration takes into account the directive proposition of the Council establishing the conditions of entry and residence of third-country nationals for highly skilled (EU blue card)¹⁶² employment. The Government thereby manifests its interest in facilitating the recruitment of highly skilled workers. The complete transposition into national law of the directive 2009/50/EC of the Council of May 25th 2009 establishing the conditions of entry and residence of third-country nationals for highly skilled employment is currently being prepared.

In terms of the article mentioned above, the highly skilled worker may have access to the labour market in better conditions and by more simplified procedures.¹⁶³ As such, unlike workers, the highly skilled worker must only prove that he meets the legal conditions to enter the territory, that he has a work contract which corresponds to the required qualifications, and a salary which is at least equal to the equivalent of three times the social minimum wage for a non-skilled worker. On the first of January the social minimum wage for a non-skilled worker

ups to the assignments and 5) the number of workers that have a resident permit in relationship with the total number of workers of the employer. Art.3 of the grand ducal regulation of 5 September 2008.

¹⁶¹ The Minister can ask for the opinion of the consultative commission of workers, if the previous conditions do not exist anymore. According to Art. 6 of the grand ducal regulation of 5 September 2008.

¹⁶² The directive proposition (COM(2007) 637) has been adopted in the meantime: Directive 2009/50/CE of the Council of May 25th 2009 establishing the conditions of entry and of residence of third -country nationals for a highly qualified job position :

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0050:FR:NOT>

¹⁶³ Art. 45 of the law of August 29th 2008 on the free movement of persons and on immigration

was 1.757,56 € gross per month¹⁶⁴. These provisions are applied to third-country nationals who have a higher education degree, or who have specialized professional experience of at least five years for jobs requiring particular professional knowledge and capacities. There is no market test to verify the priority of hiring community nationals. The opinions of the ADEM and of the CCTS are as a consequence not required. These persons may be granted a residence document for a maximum period of three years, renewable upon request.

According to the article 45 of the law of August 29th 2008 on the free movement of persons and on immigration, a change of employer or of sector is possible if the job in question requires particular knowledge or capacities, if the worker possesses a work contract for which he possesses the required qualifications and if his pay is equal to at least three times the social minimum wage.¹⁶⁵

Procedure:

The procedure for high qualified workers is simplified in relation with the procedure of salaried workers.

The application must be filed at the embassy of the country of origin and must comply with the requisites of article 34 paragraph (1) of the Law on the free movement of persons and on immigration.¹⁶⁶ He has to have a contract and the qualifications required for the position and that the salary agreed will be at least three times the social minimum wage. Also he/she has to prove that he has adequate housing where to live¹⁶⁷. However, the examiner can demand any additional information that he/she will think is necessary for the decision.

Like there is no market test to verify priority of hiring community nationals then the opinions of ADEM and of the CCTS are not required. The Minister can take the decision once the examiner considers that the file is completed.

¹⁶⁴ Art. 1 of the grand-ducal regulation of September 26th 2008 which determines the level of minimum wage for a highly qualified worker in execution of the law of August 29th 2008 on the free movement of persons and on immigration, in : Memorial A N° 145 of September 29th 2008

¹⁶⁵ Art. 45 of the law of August 29th 2008 on the free movement of persons and on immigration.

¹⁶⁶ He has to have a valid travel document and a visa if it is necessary.

¹⁶⁷ The criteria are defined by the grand ducal regulation of 5 September 2008.

3. Researchers

The law of August 29th 2008 instigates the residence document in order to pursue a research project. This document may be granted by the minister to the third-country national who has a higher education degree which gives him access to doctoral programmes, if he can show a convention signed by an accredited research organization, as well as a certificate proving that he will be taken care of. The “researcher” residence document is valid for one year or for the length of the research project and is renewable.¹⁶⁸

However, the research organization has to be approved by the Ministry and it has to fulfill all the requirements of article 65 of the Law of August 29th 2009 on the free movement of persons and on immigration.

One of the principal objectives of the Luxembourg government is to attract top researchers in certain fields, like biomedicine.

Procedure:

Once that the documents have been presented to the diplomatic representation and they have been transferred to the Ministry the examiner will verify if all the requirements of article 63 are fulfilled and the modalities of the convention signed with the research organization. Once that the examiner finished his evaluation the final decision will be taken by the Minister.

The «research» residence permit will be issued for at least one year or for the entire period of the project, and it can be renewed if the conditions by which it had been granted continue to be valid.

4. Athletes

The residence document for athletes is granted to practice, exclusively, an athletic or coaching activity. The athlete or coach must fulfill the conditions of entry into the territory and must have concluded a contract with an accredited federation or with an affiliated club. The salary must not be inferior to the social minimum wage set for a full-time job and the concerned person must be covered by illness/accident insurance. The applicant must prove that he/she has

¹⁶⁸ Article 63 of the law of August 29th 2008 on the free movement of persons and on immigration

adequate housing. The Minister takes the decision without consulting any of the consultative commissions. The residence permit is valid for one year maximum. This document is renewable, upon request, for the same period of validity, as long as the conditions for qualifying are met.¹⁶⁹

5. Transferred workers

A transfer authorization permit may be granted, upon request from the host company, to a third-country national worker who is temporarily transferred to the Grand-Duchy of Luxembourg, within the framework of a transfer between companies belonging to a social or economic entity.

Procedure:

In order to do this, the host company must submit a request to the minister, explaining the position and work the worker will accomplish and the duration of the transfer.

In order for the transfer authorization permit to be approved, the worker must be engaged through a work contract of unfixed length to the sending company who is doing the transfer.

The “transferred salaried worker” transfer authorization permit is valid for one year maximum. This document is renewable, upon request, for the same period of validity as long as the conditions of qualification are met.¹⁷⁰ This document does not allow the holder to obtain a residence permit.¹⁷¹

6. Independent workers

A residence document for independent activity may be granted to a third-country national who wishes to exercise a non-salaried profession in Luxembourg.

¹⁶⁹ Art. 54 of the law of August 29th 2008 on the free movement of persons and on immigration

¹⁷⁰ Art. 47 (1) of the law of August 29th 2008 on the free movement of persons and on immigration

¹⁷¹ Art. 47 (5) of the law of August 29th 2008 on free movement of persons and on immigration

Procedure¹⁷²:

The applicant must fulfill the same professional qualifications and integrity criteria that any EU citizens. He has to prove that he has the required qualifications to practice the activity he wants to develop.

The applicant must prove that he has adequate resources so as to be able to practice this activity and that the activity serves the interests of the country.

Also the applicant has to prove that he has adequate living facilities.

Once the examiner considers that the application is completed the Ministry will ask the opinion of the Consultative Commission of Independent Workers (CCTI).¹⁷³

The residence document is granted for three years, renewable upon request for the same length of time.¹⁷⁴

7. Students, pupils, trainees and volunteers

This resident permit is only issued to the third-country national whose only objective is to study if he fulfills the following conditions:

- a. The applicant has been accepted in a higher education institution¹⁷⁵ for obtaining a diploma of higher education;
- b. The applicant has a parental authorization to pursue the studies if he is not 18 years old.
- c. The applicant proves that he has financial means to sustain himself and to return to his country of origin.
- d. The applicant has health insurance

¹⁷² This 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.

¹⁷³ Art. 51 of the law of August 29th 2008 on the free movement of persons and on immigration

¹⁷⁴ Art. 52 of the law of August 29th 2008 on the free movement of persons and on immigration

¹⁷⁵ The University of Luxembourg, any institute that delivers BTS diplomas and any other higher education institution that is approved in virtue of the Law of 14 August 1976 that established the conditions of creations of private establishments of higher education.

The residence permit will be issued for one year and will be renewed yearly for the duration of the studies and if the programme is inferior to a year it will be issue for the duration of the studies.

The student can only work a maximum of 10 hours per week monthly if he is in a master or PhD programme. The students that are registered in a BTS or a bachelor programme can only work the same hours, after having completed the first two semesters. This limitation does not apply during the summer vacation period. It also does not apply to the PhD students that are doing research inside the higher education institution or a research center, as well as the assistants that have a contract with the University of Luxembourg¹⁷⁶. The residence permit cannot be renewed or withdrawn if the student does not respect the working time limits or he does not do any progress in his studies.

Nevertheless, a salaried worker residence permit can be authorized for a maximum period of 2 years if the applicant fulfills the following conditions:¹⁷⁷

- e. The applicant had obtained his higher education diploma;
- f. He wishes to complete his academic education with a first professional experience that serves the economic interests of the Grand Duchy of Luxembourg and those of country of origin;
- g. The economic activity that the applicant wants to develop is related to his academic formation;
- h. He is in possession of a work contract.

In the case of trainees the situation is slightly different. The trainee must fulfill the following criteria:

- a. That the internship is compulsory and foreseen in the programme the applicant is in;
- b. The applicant proves that he has the parental authority in case he is a minor;
- c. He proves that he has the financial means to support himself during the internship and the means to return to the country of origin.

¹⁷⁶ Art. 57 (3) par. 3 of the law of August 29th 2008 on the free movement of persons and on immigration

¹⁷⁷ Art. 59 of the law of August 29th on the free movement of persons and on immigration

He would receive a trainee residence permit for the duration of the internship that cannot exceed one year. Only in very exceptional cases the Ministry can renew only one time the permit and for the time needed to obtain a professional qualification recognized by Luxembourg.¹⁷⁸

8. Family Reunification

There are two different types of procedures for family reunification. The first type is when the third-country national is a family member of a European Union citizen or a citizen of Iceland, Norway or Switzerland.

For this purpose the law considered as a family member the following persons:

- a spouse to whom the European is married
- a civil partner bound by official ceremony (such as *Pacte civil de solidarité*)
- a direct descendant (child) (or descendant/child of partner) that is not 21 years old
- a direct ascendant (parent) who is dependent on the Luxembourg resident or his/her partner
- certain exceptions for persons who have lived in the same household as the resident applicant.

The third party country national who wishes to apply for family reunification to an EU or similar citizen must file the application for a D visa in the Luxembourg diplomatic representation (can be a Luxembourg embassy or the embassy of another Member state that represents Luxembourg) in his or her country of origin.

The documents to be submitted to the embassy are:

- an authenticated copy of the full passport, valid for at least six months;
- an extract from the birth certificate;
- an extract from the criminal record, established at least three months ago.

In case the family reunification is for a spouse or partner, then the applicant must also submit:

¹⁷⁸ Art. 61 (2) of the Law of 29th August 2008

- an extract from the marriage certificate/copy of partnership;

If it is a child of divorce parents the applicant must submit a copy of the judgement conferring custody of the minor to the parent who is residing in Luxembourg, or a notarized authorization from the other parent attesting his or her agreement that the minor can move abroad.

In case of an ascendant the applicant must submit:

- proof of financial support, in any appropriate means, proving that the ascendant was in a situation of dependency to the descendant living in Luxembourg for a period of at least six months before the application for family reunification.

The second type of family reunification is the case that the Luxemburgish resident is a third-country national. In this case the application procedure changes.

The application must be made before entering the country. In exceptional cases with due reason the minister may agree that the application can be made when the family members are already in Luxembourg.

The Luxembourg resident must:

- hold a residence permit valid for at least one year and must have been living in Luxembourg for at least twelve months.
- provide proof of stable, regular and sufficient resources to cover his or her own needs and those of dependent family members without using the social security system,
- provide proof of adequate housing for the family member(s) and health insurance cover for himself or herself and family members.

As in the first type of family reunification the applicant must file the application with the following documents:

- a full copy of his or her passport, certified as true to the original;
- a birth certificate;
- a document proving the existence of the marriage, the registered partnership or the family relationship(for the children of the non-resident, proof that he or she has custody and responsibility of them);

- an extract of the police record or an affidavit.

The applicant must also enclose the following documents concerning the situation of the person who is a Luxemburgish resident:

- copy of the residence permit of the resident applicant valid for a period of over one year;
- Certificate of residence
- proof of the resident applicant's resources equivalent to the minimum wage for a duration of 12 months¹⁷⁹
- proof of suitable accommodation in Luxembourg;
- proof of health insurance covering all risks on Luxembourg territory;”

All of these documents must have an apostil added by the competent local authority in the country of origin or certified by the competent local authority in the country of origin and authenticated by the diplomatic representation of Luxembourg. If the documents are not written in German, French or English, a certified translation by a sworn translator must be enclosed.

Family reunification is not accepted in any case of polygamous marriage, if the resident applicant already has another spouse living with him in the Grand Duchy of Luxembourg.

Procedure:

Once the files arrive to the Ministry of Foreign Affairs they will be transferred to an examiner. The Ministry can ask for any other information that is relevant to the file. To obtain proof of the existence of family relationships, the minister or the agent of the diplomatic or consular post representing the Grand Duchy of Luxembourg in the country of origin of the family member may carry out interviews with the third party country national Luxembourg resident or family members, and any examination or investigation considered appropriate.

Once the examiner considers that the file is completed he will submit his conclusions to the Minister, who will authorize the resident permit.

¹⁷⁹ http://www.gouvernement.lu/dossiers/social_emploi/seguritesociale/index.html

If the application is approved the embassy will issued the visa and once that the «family member» arrives on the territory the authorities from the Ministry of Foreign Affairs will issue the residence permit.

In a case of family reunification where the third-country national obtains a residence permit, a “family member” residence permit valid for a period of one year must be issued, renewable at the applicant’s request, as long as the conditions for obtaining it are still fulfilled. The validity period of the residence permit granted will not exceed the date of expiry of the non-EU resident’s residence permit.

In the opinion of the associations the biggest problems that they are confronted is the fact that the process takes very long and that creates a real stress for the family reunification applicant. Sometimes a year goes by without the applicant receiving an answer¹⁸⁰. There is always an administrative justification (the absence of a document that is hard to obtain, or the social investigation) for the delay but there is not a real discrimination to several third countries citizens¹⁸¹.

9. Private reasons:

The law on free movement of persons and on immigration allows the residence permit for private reasons. This authorization is complementary to the family reunification when the applicant does not fulfill the conditions for family reunification but where the personal and family attachments, are so intense, old and stables, that the refusal will violates the right to private and family life.

However, this authorization can also be issued in cases of humanitarian motifs that are extremely grave and to those applicants that can prove that they can live on its own financial means.

In all cases, the applicant must prove that he/she has health insurance and dispose of housing facilities where to live and sufficient financial means to subsist.

¹⁸⁰ Point of view of NGO, Interview N° 9, page 3, lines 124 to 126.

¹⁸¹ Point of view of NGO, Interview N° 10, page 9, lines 421 to 432 and point of view of NGO, Interview N° 7, page 24, lines 1121 to 1135.

Procedure:

The procedure is the same as on family reunification and the examiner can demand any type of information that he considers necessary for his investigation. Once the file is completed the file is transferred to the Minister and he will take the final decision.

The «private reasons» residence permit is issued for one year and it can be renewed if the conditions continue to be applicable. Nevertheless, the Ministry can evaluate the level of integration of the applicant in the Luxemburgish society.

The applicant can get a «salaried worker» residence permit if he fulfill the conditions for the “salaried worker” residence permit establish in article 42 of the Law of 29th august of 2008.

It is to mention that in all the procedures for obtaining the «authorization of stay» regardless, of the type of authorization requested, Luxembourg can in any moment of the procedure ask the opinion of the Member State’s diplomatic mission that received the application.

Visa procedure:

Once the authorization to stay had been issued the beneficiary has 90 days to apply for the long-stay visa in front of the diplomatic mission that represents Luxembourg in the country of origin.

The applicant must file the normal visa application form (Annex D), and has to present the administrative decision that gives the person the resident authorization in case that the third-country national needs a visa for entering the country.

In any case the applicant must apply for the visa 90 days after the notification of the decision was made to him. If he does not apply in that period of time the visa will be refused and the applicant must begin the entire procedure again.

Normally the visa will be issued in a very short delay because the residence authorization already had been approved. Nevertheless, if the diplomatic representation discovers new information about the applicant that had been hidden from the embassy or that the documents submitted are false the diplomatic mission would stop the procedure and contact the Ministry

of Foreign Affairs. In this case, the Ministry would have to decide if he denied the visa or not¹⁸².

The decision authorizing the residence authorization and the issuance of the visa is signed by the Directorate of Immigration. However the visas are initialized by the diplomatic representation agent that issue the visa in accordance with the decision, as a proof of validity of the visa.

Recourses and appeals:

If the application is refused or no response is issued within the delays above mentioned¹⁸³ the applicant can introduce recourse to the first instance administrative court.

The delay for introducing the recourse is of three months (art. 16 of the Law of 21 June 1999) from the notification of the decision. Against the decision of the first instance administrative court the applicant has the right to make an appeal to the Administrative Court (Cour administrative). The delay for doing so is of 40 days (art. 38)¹⁸⁴

3.2.4. National Visa Practices for admission of third-country nationals

As described in the section on visa (visa C and D) issuing procedure, there is a long process to follow to issue the visas. This is especially true for D visas, where the diplomatic missions and the Ministry have put in place different procedures to control the validity and legality of the documents submitted by the applicants (See Section 3.2.)

For example, in the case of C visas, the Visa department can contact the «sponsoring» person in Luxembourg, who had invited the applicant to interview him and determine the seriousness of the sponsoring (i.e. if he knows the person, if he knows the consequences of his sponsoring, etc.). It had occurred that the personnel of the visa department had discovered in certain cases

¹⁸² Point of view of the Government, Interview 1, page 6 lines 103 -118. However, it is important to notice that art. 35.2 of the Visa Code allow another Member State to abrogate a visa. In this case the authorities of the other Member State must inform the issuing country.

¹⁸³ Three or nine months depending if the resident is a European or a third-country national,

¹⁸⁴ Law of 21 June 1999. This law rules the procedure of the administrative jurisdiction. <http://www.legilux.public.lu/rgl/1999/A/1892/1.pdf>

that the sponsor did not know the person and that he had signed the papers to help a friend that wanted to invite someone but that would not fulfill the criteria.

Also, the Visa department can contact the companies that have issued invitations to third-country nationals and verify the authenticity of the invitation and the purpose of the visa.

It is important to notice that the Visa department is entitled, as well as the diplomatic mission, to ask for any kind of information that they consider relevant for the study and evaluation of the applicant's file.

The same situation occurs with the D visas. The diplomatic mission can make any verification on the country of origin that considers necessary for determining the seriousness, validity and legality of the documents that the applicant had submitted. Also it can demand any information from the applicant that they consider necessary for clarifying any doubt that they have. On the Ministry side, the examiner can contact any of the «sponsors» or companies that want to bring a third-country national into the country. The examiners can demand from these people all the information that will be relevant to determine the seriousness, validity and legality of the documents that the Luxembourgish resident or the Luxembourgish company had submitted.

In the case of family reunification the examiner has the right to interview the resident to determine the level of affective links that the resident has with the third-country national¹⁸⁵. In cases of suspicion of a marriage of convenience, the diplomatic representative and the minister officer can conduct simultaneous and independent interviews to the applicant and to the resident to determine the really of their story and to verify the facts.

After the visa is issued the authorities continue to have a determinant role to play in the admission of the third-country national independent to the type of visa that the applicant holds.

Once the third-country national arrive to the external border of the European Union, the border officer has the right to interview the visa holder of the intentions of his visit. If the border officer considers that there is something suspect or that the travelling documents are faked or that the version given by the holder is contradictory, or that he/she brings illegal or suspect things or has not declared certain things (i.e. money exceeding 10000 euros) they can transfer the holder to an office for further interrogation. In cases that the holder had brought

¹⁸⁵ Point of view of NGO, Interview N° 5, page 7, lines 299 to 302 and page 26 lines 1253 to 1260.

illegal or suspect things or has brought money exceeding 10000 euros the visa will be void and the holder will be placed on the holding facility of the exterior border, in order to be expelled or to be transferred to the custody of the police or the state prosecutor.

In Luxembourg like there is only one external border, the International Airport, the third-country national will be placed in the airport retention center called «AIDA». The *AIDA Centre* can hold a maximum of 28 detainees (men, women and families) for a maximum period of 72 hours. In this period the Minister has to decide to extend the detention and transfer the subject to the Retention Centre (Centre de Réention), expel the third-country national and if the things that he brought are illegal or the travel documents are falsified he/she will be placed under the jurisdiction of the Attorney General (Procureur Général d'Etat).

If the Minister decides to extend the detention over 72 hours the detainee will be transferred to the holding facility outside of the airport. The detention facility (*Centre de Retention*) is currently located in a separate wing of the Central Penitentiary of Luxembourg (*Centre Pénitentiaire de Luxembourg*) in Schrassig. This facility can hold up to 25 male detainees but no women or families. The opening of the Retention Centre, located in the vicinity of the international airport with separate units for men, women and families, is foreseen for mid-2011.

Nevertheless, in 2009 and 2010 there was not a single case of refusal of entry on any grounds (Annex V, part B of the Schengen Border Code – art. 5.1 (a)) in the International Airport.

In Luxembourg different authorities are competent in the external border domain:

1. The Grand-ducal Police has a Central Unit in the Airport, which is charge with the border control, the issuance of urgency visas and the implementation of the Schengen Information System.
2. The Ministry of Foreign Affairs is in charge of the issuance of visas through its consular network, and has to implement the informatics tools that are related to the issuance of visas (VIS) and its coordination with the central informatics center of the Government.

3.2.5. Challenges and success factors for facilitating legal immigration

Luxembourg had implemented, in cooperation with other Member States, a programme with Cape Verde for facilitating legal migration (See Section 4). This programme expired at the end of 2010. Nevertheless, in reality this has not been very useful because people that want to stay will not try to use this type of programmes because they will be afraid that the Luxembourgish authorities refuse their visas. Normally what these people will do is apply for a C Visa to any country in the European Union (normally Portugal or Luxembourg) and once they arrived, they just stay¹⁸⁶.

3.3. Visa procedures for the purpose of preventing irregular migration

We have discussed several controls that are introduced in the visa procedure that can prevent the irregular migration.

1. **Document verification:** The possibility of the consular authorities and the Ministry's officers to control all the documents that are presented to them. They can control the travel documents to verify the authenticity of them. Also, they can verify all the financial evidence that are submitted (bank statements, property's certificates, salary slips, marriage certificates, civil status documents, etc.)
2. **Interviews:** In the case of family reunification the interviews celebrated with the parties are very important. They can provide valuable information to verify not only the strength of the links between the persons involved but also to verify the sincerity of their intentions. This allows to determine the when we are confronted with a "marriage of convenience" (sham marriage) or to determine in case of elders the precarious conditions in which they leave. Finally also, in cases of applications for high skilled workers or salaried workers the interview can allow the authorities to realize if the person is really qualified or not for the job.

¹⁸⁶ Interview with associations of Civil Society, N.C., R.C. and with, LH, AS

Also these types of interviews allow the functionaries of the diplomatic missions to verify the real intention of the applicant; by the way they behave during the interviews (profiling)

For the local authorities the interview allows the parties to verify the authenticity of the invitation. In some cases governmental officials had determined that the society that had invited the person was a mail box society that did not exist¹⁸⁷. Also they can verify the authenticity of the working contracts. When there are private visits they can question the person that is not only making the invitation but is responsible for the person during his stay in Luxembourg, to corroborate if the person really knows the person that he is trying to bring into the country.

3.3.1. Prevention of irregular migration through other measures during visa issuing

Due to the fact that Luxembourg does not have a lot of diplomatic representations abroad and is represented by other Member States, Luxembourg depends on the practices of these diplomatic representations for preventing irregular migration.

3.3.2. Challenges and success factors for preventing irregular migration

The most important challenges that the European Union and Luxembourg have to tackle to prevent irregular immigration are:

- 1) Forgery of travel documents and visas: As we have seen described in Section 2.1 (**Implementation of the Visa Information System and the Visa Code**), one of the principle objectives of the Luxembourgish authorities is to prevent irregular migration by detecting false travel documents and visa forgery. A large quantity of irregular migrants that try to enter in the European Union using falsified travel documents of visas. This is a multimillion dollar business that in some countries is controlled by organized crime¹⁸⁸. In this sense, Luxembourg had acquired sophisticated equipment

¹⁸⁷ Information provided by the Passports and Visas Office. .

¹⁸⁸ Information provided by the Passports and Visas Office.

to prevent and fight irregular migration that used this type of documents, during the entry process or by making regular and randomized identity controls.

- 2) Fight the criminal organizations that profit from the lucrative business of helping third-countries nationals to enter the European Union. In this case, the migrants do not have any kind of documents and it is smuggler rings that bring them into the European Union against large amount of money to be paid by the migrants, either at the beginning of the trip or later). In this sense, Luxembourg collaborates with the rest of the European Union to fight this problem¹⁸⁹. In 2007, Luxembourg participated in the operation HERA III¹⁹⁰ of Frontex¹⁹¹: a) Luxembourgish experts participated by conducting interviews with detain irregular migrants to determine and establish if they had been supported by smugglers rings and to establish the possible routes that they used¹⁹²; b) Luxembourg facilitates a reconnaissance plane to operate in Western Africa; c) facilitates agents that integrates the RABIT programme¹⁹³ and they are deployed at Frontex' demand to participate in mission and operations; d) participates in the logistics for the return flights organized by Frontex¹⁹⁴; e) In order to support Member States faced with a massive influx, Luxembourg has temporarily seconded officials from the immigration directorate of the Ministry for Foreign Affairs, as well as from the Grand-ducal police under the terms of its involvement in Frontex operations¹⁹⁵
- 3) Information campaigns.

¹⁸⁹ For Luxembourg the external borders control is a responsibility of all the Member States. This was the official position of Ministers Luc Frieden and Nicolas Schmit. Europaforum.lu, Le Luxembourg annonce la contribution à la lutte contre l'immigration, autour des Îles Canaries 15 February 2007.

¹⁹⁰ This operation was deployed in the Canarias Islands and had as principal objective to fight irregular migration. Luxembourgish Government, Press Release, Luc Frieden et Nicolas Schmit annoncent une contribution luxembourgeoise à l'opération Hera III de l'Agence Frontex, 15-02-2007, http://www.gouvernement.lu/salle_presse/communiqués/2007/02/15friedenschmit/index.html

¹⁹¹ The main task of FRONTEX is to carry out so-called 'Risk Analyses', give technical and operational assistance at the external borders as well as to manage joint return operations

(FRONTEX, 2006). See, Spiegel, Elisabeth, **FRONTEX – Legitimate Agent for Border Security or Ruthless Deportation Agency?** Double Bachelor Degree Thesis, School of Management and Governance, University of Twente, The Netherlands, 2010, p. 4. In the Memo 11/449 of 22 June 2011, Commissionaire Malmström said: "I very much welcome this political agreement which confirms the EU's commitment to strengthening the operational capabilities of Frontex, also ensuring that the activities of the Agency will take place in full respect of the European fundamental rights provisions. This proposal will ensure that, in the performance of their tasks, members of Frontex teams fully respect fundamental rights and human dignity, including the principle of non-refoulement," <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/449&type=HTML>

¹⁹² Interview with member of the Grand Ducal Police, Interview N° 3, pages 3-4, lines 148 to 184.

¹⁹³ Interview with member of the Grand Ducal Police, Interview N° 3, page 1, lines 16 to 21 and page 2, lines 57 to 59

¹⁹⁴ EMN-NCP-LU, Policy Report 2008, p. 50

¹⁹⁵ EMN-NCP-LU, Policy Report 2009, p. 25

- 4) Retention and expulsion. Irregular migration is a big issue in the European Union. Irregular migration is hard to calculate¹⁹⁶ but is counted by the millions in the Schengen area.

4. Co-operation with third countries

The only agreements which exist with third countries in the area of migration is the « Partenariat pour la mobilité entre l'Union européenne et le Cap-Vert » (“Partnership for mobility between the European Union and Cape Verde”)¹⁹⁷ and the « Migrer les yeux ouverts » (MYO) (“Migrate with open eyes”) programme¹⁹⁸. Cape Verde was chosen as it is a target country of the cooperation for development policy and because there is a large population of Cape Verde nationals living in Luxembourg. However, there is no existing criteria which would allow for the identification of other countries with which similar agreement can be made. Indeed, given the lack of information on the labour shortage in Luxembourg it is difficult to identify target countries or target sectors.

The Partnership for mobility was signed by Spain, France, Luxembourg and Portugal on June 5th 2008.¹⁹⁹ Luxembourg committed itself to study the possibility of putting into place mechanisms for circular migration with Cape Verde.²⁰⁰ Currently, as the negotiations have not yet been launched, no pronouncement can be made as to the exact content of such an agreement.²⁰¹ Also this partnership tries to develop a real cooperation in migration and development issues and to prevent and fight clandestine migration, smugglers rings and the traffic of human beings.

Within the framework of this partnership, Luxembourg has bound itself to reinforcing the « Migrer les yeux ouverts » programme which was initially started in Cape Verde by the Luxembourgish cooperation and which « looks to, among other things, familiarize future family reunification migrants from Cape Verde with social, linguistic and other realities of living in

¹⁹⁶ Point of view of the Government, Interview, 1, page 10, lines 200 to 202

¹⁹⁷ Europaforum.lu, Le partenariat pour la mobilité entre l'Union européenne et le Cap-Vert, 9 November, 2010. <http://www.europaforum.public.lu/fr/actualites/2010/11/qp-berger-capvert/index.html>

¹⁹⁸ This is a programme developed by Luxembourg.

¹⁹⁹ Luxembourg Government information and current events, Official statement of 5 June 2008 « Signature du Partenariat pour la mobilité entre l'Union européenne et le Cap-Vert », http://www.gouvernement.lu/salle_presse/communiqués/2008/06-juin/05-UE-Cap-vert/index.html (last update on 05.05.2008, last consultation on 15.01.2011)

²⁰⁰ Annual Policy Report 2009, page 35.

²⁰¹ Response of Monsieur, the Minister of Labour, Employment, and Immigration to the parliamentary question N°955 on the partnership on mobility with Cape Verde proposed by the Honorable Deputy Monsieur Eugene Berger, 13 October 2010, http://www.dp.lu/docs/political_actions/qp_doc_20101013_0955_r.pdf

Luxembourg.”²⁰² This programme has just reached its deadline at the end of 2010 and the MYO office must therefore be closed. According to the Foreign Affairs and Immigration Ministry a similar project is going to be launched and a new common office opened.²⁰³

Luxembourg had collaborated to put in place a common visa application centre and helped in the preparation of a communitarian project that will try to reinforce the capabilities of Cape Verde in migration flows administration²⁰⁴.

4.1. The facilitation of legal migration and/or prevention of irregular migration: China

The first study case is the Popular Republic of China. It exists under its current denomination since 1 October 1949. It is the most populated nation in the world with 1.339.724.852 people (census 2010) and is the third largest nation in the world with 9.640.821 km². It has a gross domestic product of 10.085 trillion dollars, placing the country as the second largest economy in the world.

4.1.1. Rationale for choosing China

China has become an indispensable partner for Luxembourg Foreign Trade. Luxembourg exports to China have more than quintupled between the mid 90's and mid 2000's. At the same time, imports from China have increased by a tenfold during that same period²⁰⁵.

Nowadays, commercial transactions are growing. In 2008 the exports to China represented 157,4 million euros and the imports 72,9 million euros. In 2009 those numbers declined because of the economic crisis to 132, 6 for exports and 47,9 for imports²⁰⁶.

In Luxembourg, two major Chinese banks are established: the Bank of China (Luxembourg) and the Industry and Commercial Bank of China (Luxembourg).

²⁰² Response of Monsieur, the Minister of Labour, Employment, and Immigration to the parliamentary question N°955 on the partnership on mobility with Cape Verde proposed by the Honorable Deputy Monsieur Eugene Berger, 13 October 2010, http://www.dp.lu/docs/political_actions/qp_doc_20101013_0955_r.pdf

²⁰³ Official statement by the Foreign Affairs and Immigration ministry, Signature of the partnership for mobility between the European Union and Cape Verde (05.06.2008) http://www.gouvernement.lu/salle_presse/communiqués/2008/06-juin/05-UE-Cap-vert/index.html

²⁰⁴²⁰⁴ Europaforum.lu, Le partenariat pour la mobilité entre l'Union européenne et le Cap-Vert, 9 November, 2010.

²⁰⁵ Foreign Trade, Official Agenda 2010, Le Gouvernement du Grand-duché de Luxembourg et la Chambre de Commerce de Luxembourg, p. 12 <http://www.cc.lu/docdownload.php?id=3158>

²⁰⁶ Le Luxembourg en Chiffres 2010, Ministère de l'Economie et du Commerce extérieur, p. 41. http://www.eco.public.lu/chiffres-cles/Luxchiffres_2010.pdf

The importance of China is reflected by the fact that Luxembourg has its embassy in Beijing but it also has a General Consulate in Shanghai. The two consulates issue visas to Chinese citizens but Luxembourg is also supported by the Dutch consulate in Guangzhou and by the Belgian consulate in Hong Kong.

Furthermore, in 2010 Luxembourg treated 1426 visa applications and the Luxembourgish consulates issued 1355 visas (the Belgian consulate in Hong Kong had issued 32 visas). Nevertheless, it is important to note that from the total amount, only 91 visas (6,7%) were long-stay visas. This follows the trend that the majority of visas that are issued by Luxembourg in China are trade or tourism related.

4.1.2. Historical overview of relations with China

The bilateral diplomatic relations between the Popular Republic of China and the Grand-Duchy of Luxembourg began in 1972. In 1972, the Luxembourgish Foreign Minister, M. Gaston Thorn, made the first official visit to China. Since then there have been several high ranking visits from both sides. In 1979, the Grand-Duke Jean and the Grand-Duchess, Joséphine Charlotte, made the first state visit to China and in 1987 the president of China, Li Xiannian made a State visit to Luxembourg. The Prime Minister, M. Jean-Claude Juncker made three official visits to China in 1996, 2002 and 2004 and in 1998 and 2000 the prime ministers of China, Li Peng and Zhu Rongji, made official visits to Luxembourg. The last State visit was made by the Grand-Duke Henri on 2006, when he inaugurated the General Consulate in Shanghai.

Nevertheless, the economic cooperation between China and Luxembourg has existed since the end of the XIX century. The technical director of Iron and Steel Works was a metallurgist engineer, called Eugène Ruppert.

Today there are several Luxembourgish companies with an economical interest in China (i.e. Arcelor Mittal, Paul Wurth, Ceratizit, Rotarex – specialized in the developing and fabrication of valves, regulators and fittings - , International Electronic Engineering, Luxcontrol, etc.)

The Industrial and Commercial Bank of China decided to establish its European Headquarters in Luxembourg.²⁰⁷

Chinese Migration in Luxembourg:

It is to be mentioned that the Chinese community has been growing over the last years. There are a large majority of Chinese immigrants that work in Chinese restaurants. The restaurants began bringing Chinese citizens because they were in need of personal. Every restaurant had the right to engage three persons, which later became a multiplication factor (each of these three Chinese was likely to open their own restaurant later and bring three other Chinese citizens and so on). However, most of them did not have a real diploma as cooks²⁰⁸. On this matter the Ministry of Labour and Employment, responding to a parliamentary query (n° 45) from the Member of Parliament M. Eugène Berger who had asked, based on a German weekly newspaper article if in Luxembourg Chinese were inhumanly treated and exploited in Chinese restaurants in the same way as described by the article. The Ministry had said that he did not know that this type of criminal behavior existed in Luxembourg²⁰⁹.

Most of the Chinese citizens living in Luxembourg come from the Zhejiang province (south of Shanghai) and there are others that come from Manchuria and the Northern provinces. Sometimes Chinese immigration tends to be associated with trafficking in human beings and

²⁰⁷ Banque Chinoise ICBC met en place son siège européen à Luxembourg, *Neweurope*, 23 Janvier, 2011. <http://translate.google.lu/translate?hl=fr&langpair=en%7Cfr&u=http://www.neurope.eu/articles/104335.php> Sa filiale luxembourgeoise a changé de nom à ICBC Europe.

²⁰⁸ Les Chinois au Luxembourg”, Interview anonyme, China à Lëtzebuerg, May 2008, p. 34

²⁰⁹ « Se basant sur un article de presse paru dans un hebdomadaire allemand, l'honorable député me demande si des faits et des méthodes tels que décrits dans l'article en question existent également au Luxembourg. En ma qualité de ministre du Travail et de l'Emploi et de ministre de l'Immigration, je n'ai pas connaissance que des agissements criminels tels que relatés dans la presse allemande, existent au Luxembourg. Or, si de tels agissements devaient exister dans un Etat membre de l'Union européenne, il serait pour le moins curieux qu'ils n'aient lieu que dans ce seul Etat membre. Sur base de l'article 134 de la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration, la police grand-ducale effectue des contrôles dans le milieu des restaurants chinois au Luxembourg. Ces contrôles sont effectués soit par des unités de police, soit par des agents de l'Administration des Douanes et Accises, soit en coopération entre les deux administrations. En 2008, la police grand-ducale a effectué 10 contrôles dans le milieu concerné, ce qui a permis de découvrir 18 personnes en situation irrégulière. L'Administration des Douanes et Accises pour sa part a contrôlé pendant la même période 144 personnes dans 52 restaurants chinois. Outre 13 infractions en relation avec l'hygiène générale, 1 personne a été trouvée en situation irrégulière.

Parmi ces personnes, 16 ont été placées en rétention. 3 personnes ont été transférées, sur base de la réglementation Dublin vers un autre Etat membre de l'Union. 3 autres ont été rapatriées vers la République populaire de Chine, dont 1 retour volontaire. Les 10 autres ont été libérées, alors qu'une identification, donc un rapatriement n'ont pas été possibles

exploitation at the work place.²¹⁰ According to the answer by the Ministry, there has not been a verification of this situation in the Chinese restaurants.

However, some Chinese citizens have accepted to return to China because of their difficult living and working conditions in Luxembourg. The OIM, through its cooperation programme with the Directorate of Immigration, arranges the voluntary return²¹¹.

4.1.3. Existence of migration agreements with China

By its very nature, readmission concerns three actors: the state that requests readmission, the state that is requested to readmit, and the person to be readmitted (either irregular migrant or rejected asylum seeker). Their interests are very different. While the first two actors decide upon the legal framework of readmission, the third one is its mere object. The returning state usually refers to the integrity of its asylum system or its migration control system and argues that the electorate is in favor of a restrictive control approach. Even though forced return is costly, the expense is considered to be lower than the long-term financial costs of not implementing it. The state requested to readmit may have economic, demographic or social interests in not readmitting its own citizens and even more so third-country nationals²¹².

The person to be readmitted is confronted with the choice between staying in irregularity or returning. If the individual is unwilling to return, the returning state might react by threatening and then also implementing forced removal. Furthermore, the authorities of the country of origin or transit might display an uncooperative attitude by denying that the individual actually possesses their nationality, by not issuing the necessary travel documents, or by objecting to the modalities of return.

Readmission questions constitute a segment of those policy issues that, when the Treaty of Amsterdam took effect, became part of the *acquis* in the 1st pillar. The competence to conclude readmission agreements on behalf of EU Member States was shifted to the European Community. The European Commission received the mandate by Member States to negotiate readmission agreements with non-member countries on their behalf. However, not all of the EU members participate in readmission policy. Since Community readmission agreements are

²¹⁰ Les Chinois au Luxembourg”, Interview anonyme, China à Lëtzebuerg, May 2008, p. 34

²¹¹ Point of View of NGO, Interview N° 6, page 4, lines 173 to 175.

²¹² Trauner, Florian/Kruse, Imke, EC Visa Facilitation and Readmission Agreements: Implementing a New EU Security Approaching the Neighbourhood, CEPS Working Document No. 290/April 2008, p.p. 9-10
http://www.libertysecurity.org/IMG/pdf_EC_Visa_Facilitation_and_Readmission_Agreements.pdf

based upon the provision of Title IV of the Treaty Establishing the European Community (TEC), they are not applicable to the UK and Ireland unless these countries opt-in in the manner provided for by the Protocol to the TEC. Likewise Community readmission agreements will not extend to Denmark by virtue of the Protocol on the position of Denmark.

In September 2000, the Commission received the first mandates for negotiations with Morocco, Sri Lanka, Russia, and Pakistan; in May 2001 with Hong Kong and Macao; in June 2002 with Ukraine; and in November 2002 with Albania, Algeria, Turkey, and China (Council of the European Union, 2002a).

Actually there are no bilateral migration agreements with China.

However, in May 2004, China officially asked the European Union to negotiate on visa facilitation in parallel with negotiations on readmission²¹³, despite the fact that the Destination Status Agreement had already taken a first step towards visa facilitation in February 2004. It incorporated a readmission clause as a 'quid pro quo' which essentially means visa facilitation for group visits of Chinese tourists to the EU.

Chinese tourists going through selected travel agencies will benefit from simplified and facilitated procedures to apply for tourist visas for the Member States of the European Union which have been granted «Approved Destination Status» (ADS) by China. The agreement also includes provisions allowing return of possible Chinese over-stayers. The new accord is expected to enter into force before the summer and will generate significant flows of Chinese visitors to Europe, thus boosting EU-China tourism exchanges and people-to-people contacts.

Commenting on the signature, EU External Affairs Commissioner Chris Patten said: *«This agreement is good news for China and for Europe. I look forward to seeing more Chinese tourists here, and I hope many will take up the new opportunity to travel. Human contacts really do make a difference, and I believe this new agreement will help Europe and China to understand each other better, as well as bringing new commercial opportunities. The next step is to deepen our co-operation on migration in all its form».*

The Memorandum of Understanding on Approved Destination Status, which was initialed during the 30 October 2003 EU-China Summit in Beijing, is the largest ADS agreement ever

²¹³ Trauner, Florian/Kruse Imke, EC Visa Facilitation and Readmission Agreements: Implementing a New EU Security Approach in the Neighbourhood, CEPS Working Document No. 290/April 2008, p. 11

concluded by China and will facilitate Chinese tourist group`s access to most Member States of the European Union. With the visas given by the consular offices of these Member States, Chinese tourist groups will be allowed to freely travel within these countries. Schengen visas will be delivered by the current Schengen countries and national visas by the acceding countries until the date they are allowed to join the Schengen area.

However, it is to be noted that most of the Chinese tourist groups that come to Luxembourg are not the wealthy people. In many cases, they are employees that are rewarded by their companies at the end of the year or after several years of work with a trip to Europe of two to three weeks. Luxembourg is included in these tours because it takes only a half day to visit the city²¹⁴.

EU consulates in China will simplify and facilitate the delivery of tourism visas for groups (with a minimum of 5 persons) which will apply through designated Chinese travel agencies. China agreed to take back possible over-staying tourists according to article 5 of the agreement.

For the European Community, the Memorandum of Understanding (MoU) was signed by the European Commission`s Deputy-Director General for External Relations, Herve Jouanjean, and the Irish Ambassador in China, Mr. Declan Connolly, representing the EU Presidency. The China National Tourism Administration (CNTA) was represented by its Chairman, M. He Guangwei. Denmark, Iceland, Norway and Switzerland have concluded separate ADS agreements with CNTA. The MoU contains specific provisions on the accreditation, monitoring and possible sanctioning of travel agencies under the ADS scheme.

On 16 September 2004, the Commission issued a Recommendation on the implementation of the MoU²¹⁵, in which it proposed common implementation procedures for the MoU with respect to accreditation of travel agencies, couriers' identification badges, practical arrangements concerning cooperation with their couriers, as well as the warnings and withdrawals which can be imposed on travel agencies. Pursuant to this Recommendation, the Commission is responsible for establishing and updating the list of couriers and for informing the Chinese authorities of any sanctions imposed on travel agencies.

²¹⁴ « Les Chinois au Luxembourg », Interview anonyme, China à Lëtzebuerg, May 2008, p. 33

²¹⁵ OJ L 296, 21.9.2004 p. 23. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:296:0023:0026:EN:PDF>

Nevertheless, there are two readmission agreements signed at the communitarian level with two Chinese regions. The first one was signed with the Government of the Hong Kong Special Administrative Region of the People's Republic of China on 27 November 2002 and ratified on 1 March 2004. The second one was signed with Macao on 13 October 2003 and ratified on 1 June 2004.

The readmission treaty with Hong Kong was the first readmission agreement signed by the EU²¹⁶. The first treaty indicates that Hong Kong shall readmit, upon application by a Member State and without any formalities other than those specified in the agreement, all persons who do not fulfill the conditions in force for entry to, presence in, or residence on the territory of the requesting Member State. Also, these agreements contain the commitment to readmit stateless persons or persons of another jurisdiction who entered the EU illegally from the country in question, or vice versa. These might include, for example irregular immigrants in the EU who were also in an irregular situation in the country from which they entered, or who had temporary residence permits in that country that have subsequently expired.

4.1.4 Any other measures

It is important to mention that the position of the European Union to China is to facilitate visas in a progressively manner to avoid a major inflow of Chinese citizens. However, this position contrasts with the recent exemption of visa to the Taiwanese citizens made by the European Parliament and the Council in the regulation n° 1211/2010 of 15 December 2010²¹⁷.

²¹⁶ Readmission Agreements; Memo/05/351, Brussels, 5 October 2005.

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/05/351&format=HTML&aged=1&language=EN&guiLanguage=en>

²¹⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:339:0006:0007:EN:PDF>

4.1.5 Statistics

A. Arrivals and Departures

The migration inflows and outflows to and from Luxembourg of Chinese citizens in the last 23 years are illustrated by the following table:

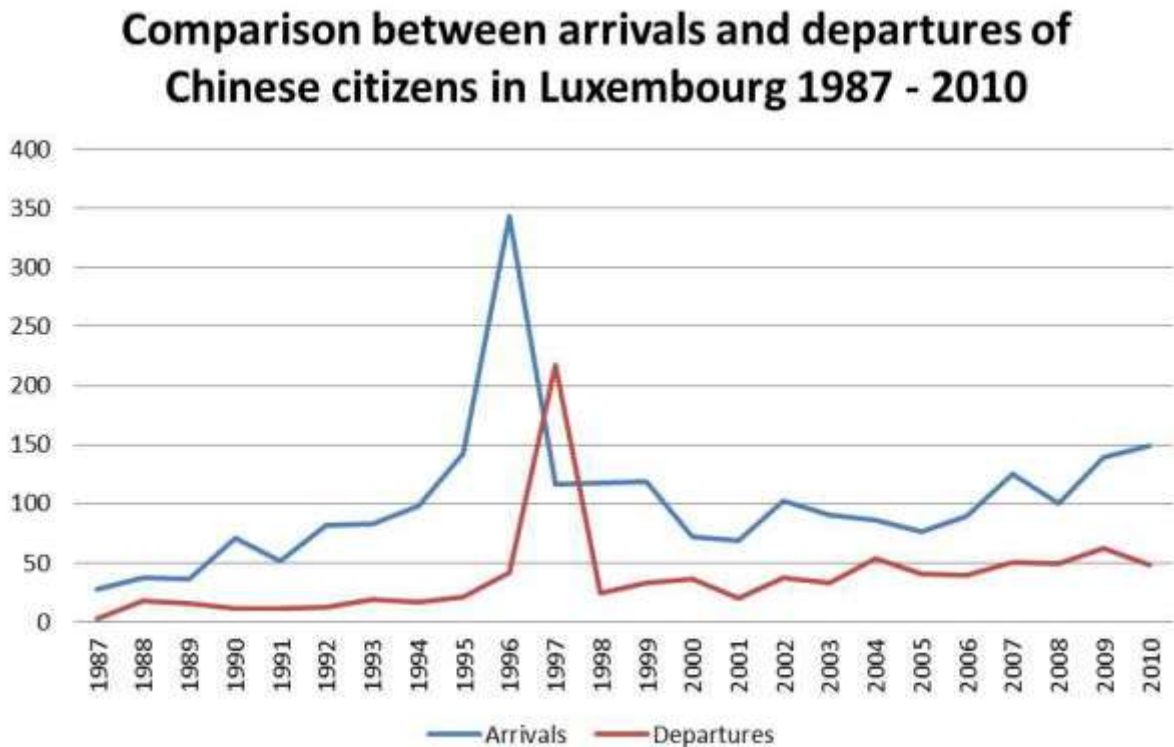
Table N° 2: Arrivals and Departures of Chinese nationals 1987 to 2010

	Arrivals	Departures	Balance	% Aug. Arrivals	% Aug. Departures
1987	28	3	25		
1988	37	18	19	32.1%	500.0%
1989	36	16	20	-2.7%	-11.1%
1990	71	12	59	97.2%	-25.0%
1991	52	12	40	-26.8%	0.0%
1992	82	13	69	57.7%	8.3%
1993	83	19	64	1.2%	46.2%
1994	98	17	81	18.1%	-10.5%
1995	143	21	122	45.9%	23.5%
1996	343	42	301	139.9%	100.0%
1997	117	217	-100	-65.9%	416.7%
1998	118	24	94	0.9%	-88.9%
1999	119	33	86	0.8%	37.5%
2000	72	36	36	-39.5%	9.1%
2001	69	20	49	-4.2%	-44.4%
2002	103	37	66	49.3%	85.0%
2003	91	33	58	-11.7%	-10.8%
2004	86	54	32	-5.5%	63.6%
2005	76	41	35	-11.6%	-24.1%
2006	90	40	50	18.4%	-2.4%
2007	125	50	75	38.9%	25.0%
2008	100	49	51	-20.0%	-2.0%
2009	139	62	77	39.0%	26.5%
2010	149	48	101	7.2%	-22.6%

Source: STATEC, 2011 © EMN NCP LU

It is obvious that the number of Chinese in Luxembourg has been increasing since 1987. As we can see from the graph below, with the exception of 1997, the inflow number has always been bigger than the outflow number.

Graph N° 1:



Source: STATEC, 2011 ©EMN NCP LU

This graph shows that since 2000, inflow and outflow lines have had a very uniform pattern with certain picks but nothing significant. Nevertheless, it is obvious that the yearly balance is positive, meaning that each year there are more Chinese citizens arriving than leaving. Since the year 2000 there were 1100 arrivals and only 470 departures. This represents a positive balance of 630 (an average of 57 persons per year).

The majority of new arrivals are women as we can see from the table below:

Table N° 3: New arrivals of Chinese nationals by sex (2002 – 2009)

	Men	%	Women	%	Total
2002	38	35,5%	69	64,5%	107
2003	37	40,7%	54	59,3%	91
2004	32	37,2%	54	62,8%	86
2005	30	39,5%	46	60,5%	76
2006	38	42,2%	52	57,8%	90
2007	51	40,8%	74	59,2%	125
2008	37	37,0%	63	63,0%	100
2009	55	39,6%	84	60,4%	139

Note: In 2002 Eurostat included 4 Taiwanese citizens in the Chinese numbers²¹⁸

Source: EUROSTAT © EMN NCP LU

In 2009, a total of 139 Chinese citizens arrived in Luxembourg. As can be seen from the graph below, the majority were women. This trend has been the same since 2002 as the following graph illustrates:

Graph N° 2:

Arrival of Chinese citizens by sex 2002 - 2009



Source: EUROSTAT © EMN NCP LU

²¹⁸ See Statec, 2002: Arrivals and Departures. China and Taiwan.

This tendency remains the same with regard to outflows (more women leaving than men – with the exception of 2006-). However, the percentage difference is less than in the case of arrivals.

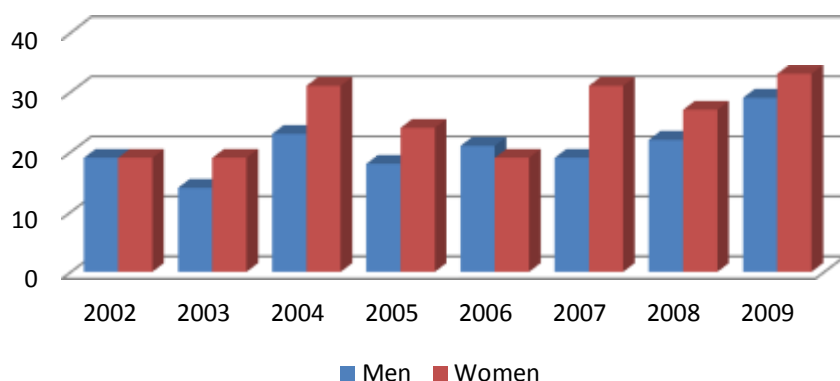
Table N° 4: **Departures of Chinese nationals by sex (2002 – 2009)**

	Men	%	Women	%	Total
2002	19	50.0%	19	50.0%	38
2003	14	42.4%	19	57.6%	33
2004	23	42.6%	31	57.4%	54
2005	18	42.9%	24	57.1%	42
2006	21	52.5%	19	47.5%	40
2007	19	38.0%	31	62.0%	50
2008	22	44.9%	27	55.1%	49
2009	29	46.8%	33	53.2%	62

Source: EUROSTAT © EMN NCP LU

Graph N° 3 :

Departure of Chinese citizens by sex 2002 - 2009



Source: EUROSTAT © EMN NCP LU

B. Chinese working and residing in Luxembourg

The numbers of Chinese citizens working and residing in Luxembourg have been steadily growing since 2000 and have almost duplicated over the last decade.

Table N°5: **Chinese working and residing in Luxembourg by sex and status**

Year	Male			Female			Total
	Workers	Employee	Civil Servant	Workers	Employee	Civil Servant	
2000	140	44	0	66	14	0	264
2001	137	46	0	78	20	0	281
2002	136	47	0	86	25	0	294
2003	140	48	0	87	28	0	303
2004	143	53	0	97	24	0	317
2005	140	48	0	96	18	0	302
2006	156	60	0	122	37	0	375
2007	162	57	0	121	34	0	374
2008	162	60	0	136	51	0	409
2009		230	0		200	0	430
2010		254	0		203	0	457

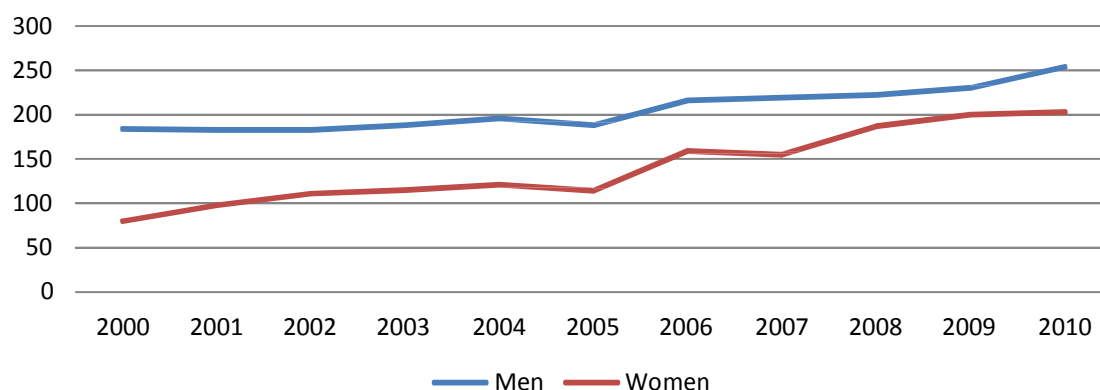
Source: IGSS, 2011 © EMN NCP LU

Note: Since 2009 workers and employees have been grouped under the unique salaried workers status. This data represents the situation on 31 March of each year.

It is interesting to note that the balance between men and women tend to balance out through the decade. At the beginning the number of men was superior (69,7%) to women(30,3%) but in 2010 the proportion was almost similar (55,6% were men and 44,4% were women) as we can see from the graph below.

Graph N° 4:

Representation of Chinese citizens working in Luxembourg by sex 2000 - 2010



Source: IGSS, 2011 © EMN NCP LU

In the EMN study Satisfying Labour Demand through Migration, EMN NCP LU obtained information on the composition of the Labour force in Luxembourg from the Inspectorate General of the Social Security. However, between 2004 and 2009 not all salaried workers had their CITP code (91% in 2004 and 33,6% in 2009). For this reason no accurate comparisons can be made between these years.

Nonetheless the table below, including a portion of the entire Chinese workers, shows that between 2006 and 2008 the level of qualification was growing. Over these two years, the number of high skilled and skilled workers had doubled.

Table N° 6: **Level of Qualification of Chinese workers – 2006 – 2008**

Year	Highly skilled	Skilled	Low skilled	Unknown	Total
2006	10	38	6	26	80
2007	24	65	8	22	119
2008	24	73	13	25	135

Source: IGSS, 2009 © EMN NCP LU

C. Asylum

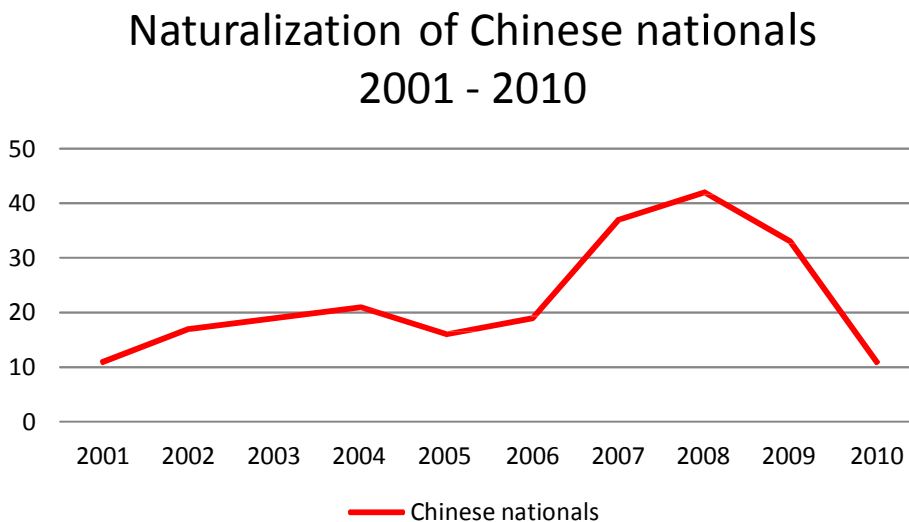
With regard to asylum applications, there was not a single application from Chinese citizens during 2007, 2009 and 2010. In 2008 there was one single application while there were two in 2006²¹⁹.

In between 2006 and 2010, no positive decision in asylum applications was given to any Chinese citizen and not a single subsidiary protection status was granted²²⁰ in the same period.

D. Naturalizations

The naturalizations of Chinese citizens in Luxembourg have not followed an ascending line. Different from other nationalities that had taken advantage of the new Law of Naturalization (Law of 23 October 2008), the number of naturalizations since 2008 has declined substantially for Chinese citizens. Between 2001 and 2004, the number of naturalizations had been on the rise ranging from 11 in 2001 to 21 in 2004. Then in 2005, there were only 16 and from 2005 to 2008, the number had been increasing, from 19 in 2006 to 42 in 2008. However, with the entry into force of the new law, the numbers have decreased significantly to a bottom low of 11 in 2010. This can be explained by the fact that the new law requires a language skill test and that makes it more difficult for Chinese nationals to acquire the nationality.

Graph N° 5:



Source : STATEC, 2011 © EMN NCP LU

²¹⁹ See Key figures in asylum matters. Evolution of Asylum/International Protection by country/region of origin. Ministry of Foreign Affairs. <http://www.mae.lu/en/content/view/full/14461>

²²⁰ Source: Ministry of Foreign Affairs, 2006 – 2010.

4.1.6 Findings of China case

China has become the second largest economy in the world²²¹. It is considered as the largest growing economy (8,7% en 2009). In this context it is clear that the main relationships between China and Luxembourg are based on financial reasons, Luxembourg being one of the most sophisticated financial centers in the world. As we have seen the Industrial and Commercial Bank of China had decided to establish its European Headquarters in Luxembourg. This situation demonstrates the importance of the financial ties between the two countries.

However, the financial interests that are at stake, the migration of Chinese citizens to Luxembourg is quite small if we compare its population. There were only 1426 visa applications made to the Luxemburgish consulates in China during 2010. From those visas applications, Luxembourg granted 1355 visas, from which only 91 was long-stay visas (6,7%), meaning that legal migration to Luxembourg is very low. The large majority were short-stay visas that are mainly for tourism²²² (894), accounting for 66% of the total number of visas granted by the consulates of Shanghai and Beijing.

Even if China is a growing economy, the economic situation of the general population has not improved significantly, so the majority of tourists that visit Luxembourg come in excursions that are paid by the company in which they work as a bonus or a present for their performance.

Migration of Chinese citizens in Luxembourg has grown over the last twenty three years, with arrivals that are more significant than the departures. However, the number of Chinese workers that are registered in the IGSS had almost doubled in the last ten years. At the same time we have seen that the number of naturalization had been growing steadily between 2001 until 2008, the year when the new naturalization law was introduced. This law requires that the applicant passes a language skill test that is quite hard for Chinese citizens.

With regard to irregular migration, the phenomenon is known to exist but it is impossible to quantify the phenomenon. It is believed that there are an important number of Chinese immigrants that work illegally in Chinese restaurants. When arrested in a police raid, the persons are sent to the Detention Center in Schrassig. However, due to identification issues,

²²¹ According to the US State Department the gross domestic product of China was in 2009 \$4.814 trillion (exchange rate-based), <http://www.state.gov/r/pa/ei/bgn/18902.htm>

²²² These are visas with a maximum validity of 30 days and a maximum stay of 30 days.

they tend to be released and then they leave to another European Union country waiting that the situation calms down.

The only debate over Chinese migrants was generated by the parliamentary query made by the Member of Parliament, Mr. Eugène Berger. On 16 October 2009 the Ministry of Labour Employment and Immigration, responding to this parliamentary query (n° 45) that question based on a German weekly newspaper article if in Luxembourg Chinese citizens were treated inhumanly and exploited in Chinese restaurants in the same way as described by the article, said that he did not know that in Luxembourg this type of criminal behavior existed.²²³ After this discussion the issued was not addressed any more.

4.2. The facilitation of legal migration and/or prevention of irregular migration: Russian Federation

The second study case is the Russian Federation. It exists under its current denomination since 1 October 1949. It has a population of 142.905.200 people (census 2010) and is the largest nation in the world with 17.075.400 km². It has a gross domestic product of 2.222 trillion dollars (2010).

²²³ The Minister said : « En ma qualité de ministre du Travail et de l'Emploi et de ministre de l'Immigration, je n'ai pas connaissance que des agissements criminels tels que relatés dans la presse allemande, existent au Luxembourg. Or, si de tels agissements devaient exister dans un Etat membre de l'Union européenne, il serait pour le moins curieux qu'ils n'aient lieu que dans ce seul Etat membre. Sur base de l'article 134 de la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration, la police grand-ducale effectue des contrôles dans le milieu des restaurants chinois au Luxembourg. Ces contrôles sont effectués soit par des unités de police, soit par des agents de l'Administration des Douanes et Accises, soit en coopération entre les deux administrations. En 2008; ,la Police police grand Ducale a effectué 10 contrôles dans le milieu concerné, ce qui a permis de découvrir 18 personnes en situation irrégulière. L'Administration des Douanes et Accises pour sa part a contrôlé pendant la même période 144 personnes dans 52 restaurants chinois. Outre 13 infractions en relation avec l'hygiène générale, 1 personne a été trouvée en situation irrégulière. Parmi ces personnes, 16 ont été placées en rétention. 3 personnes ont été transférées, sur base de la réglementation Dublin vers un autre Etat membre de l'Union. 3 autres ont été rapatriées vers la République populaire de Chine, dont 1 retour volontaire. Les 10 autres ont été libérées, alors qu'une identification, donc un rapatriement n'ont pas été possibles. » See http://chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/036/838/083357.pdf

4.2.1. Rationale for choosing the Russian Federation

The Russian Federation is considered as a rising economic power. It is part of the “BRIC” (Brazil, Russia, India and China). Luxembourg being a sophisticated financial centre has a special interest in a fluent economic exchange with the Russian Federation.

The political and economic importance of the Russian Federation to Luxembourg goes to the point that Luxembourg has an embassy in Moscow (Saint Petersburg is served by the Belgian Consulate but Luxembourg has an honorary consul). This allows for the possibility of having more data about the visas issued by the Luxembourgish mission without having to pass through the diplomatic authorities of other countries that represent Luxembourg abroad.

From a quantitative point of view, the Russian Federation case is very interesting. During 2010, the diplomatic representations of Luxembourg in Russia have received 5511 applications. This is the largest number of applications made by citizens of any given country that apply for coming to Luxembourg. From the total amount, the Luxembourgish authorities have approved 5354 visas (97,2%). However, from the total amount of applications and visas applied and approved, there were only 49 D visas (long-stay visas). This amount represents only 0,92% of the visas approved and 0,89% of the total amount of applications.

Most of the visas issued were C visas for tourism, family or business reasons and the majority of long stay visas are for family reunification.

It is important to note that the Russian Federation is the most important energetic partner of the European Union in terms of exporting oil and natural gas. Nevertheless, Luxembourg is not dependent on oil because it does not have any refineries and the gas that the country uses comes from Germany and Belgium²²⁴. However, there is mutual financial interest in the Russian Federation and Luxembourg because of financial investments made by Luxembourgish companies, and vice versa in the sense that Russian companies are attracted by the Luxembourg financial centre. These elements could explain the large amount of visas approved by Luxembourg in that country. Energy and finance are the key areas of cooperation between Russia and Luxembourg.

The bilateral trade almost tripled between 2003 from 66,6 million USD to 228,3 million USD in 2006. In 2008 the exportations from Luxembourg represented 140,6 million euros but in

²²⁴Herald of Europe, The Bilateral Relations of EU Members States with Russia, December, 2008, p. 33
http://www.heraldofeurope.co.uk/Issues/5/European%20Affairs/THE_BILATERAL_Relations/THE_BILATERAL_Relations.pdf

2009 they decreased because of the crisis to 103,2 million euros (-26,6%)²²⁵. In 2007, according to Rosstat data, Luxembourg was the second largest investment partner for Russia. Its investments accounted for 15,5% of all foreign investments in Russia. In 2007, Luxembourg was the second destination for Russian investments accounting for 27% of all the Russian investments toward the European Union.

However, bilateral relations suffered temporarily after the Serstal bid for Arcelor steel was turned down by the shareholders who preferred the offer of Lakshmi Mittal and the condemnation by the Luxemburgish government to Russian recognition of the independence of Abkhazia and South Ossetia.

In 2010, Luxembourg has become the third most important investor in Russia. A great number of Luxembourg companies have decided to produce in Russia: ArcelorMittal is investing in steel in Tver; Guardian will produce glass in Ryazan; Astron has chosen Yaroslavl for the construction sector. Several telecommunication companies, among them ASTRA-SES have chosen Russian launchers to put their satellites on orbit from Baïkonour. The city of Moscow and a number of major Russian companies took advantage of Luxembourg's financial legislation to issue Eurobonds at the Luxembourg Stock Exchange²²⁶.

4.2.2. Historical overview of relations with the Russian Federation

In 1867, Russia was among the signatories of the London Treaty, which guaranteed perpetual independence to the sovereign Luxembourg state under the aegis of the Nassau dynasty. Russia was asked by the representative of the Grand-Duchy of Luxembourg, Baron Victor de Tornako, to defend the interests of the Grand-Duchy and its citizens²²⁷.

The diplomatic relations between Russia and Luxembourg go back to 1872²²⁸. Luxembourg was a young country and it was represented to Tsarist Russia by the Netherlands.

²²⁵ Le Luxembourg en chiffres 2010, page 41. http://www.eco.public.lu/chiffres-cles/Luxchiffres_2010.pdf

²²⁶ Gaston Stronck, "Bilateral relations between Luxembourg and Russia: historical ties and important economic relations", http://www.ruseu.com/br/luxembourg/details_50.html

²²⁷ CENTRE CULTUREL A.S. POUCHKINE ASSOCIATION LUXEMBOURG-RUSSIE, http://www.centre-pouchkine.lu/qui_sommes_nous/histoire_et_historique/index.html

²²⁸ Le Quotidien, « Luxembourg/Russie : relations diplomatiques », 16 novembre 2010. <http://www.lequotidien.lu/culture/17139.html>

The idea of having direct diplomatic relations between the two states was born after the revolution of October 1917 and it was supported by the radical liberal groups and by certain socialists.

The official date for exchange of couriers between the two states was made through a press release on October 26, 1935. The first commercial representatives for both states were M. Antoine Funck (Luxembourg) and Eugène Hirshfeld (USSR). They were interrupted in 1940 because of the Nazi occupation but they were reestablished on October 1942 by the Luxembourgish government in exile.

The first soviet ambassador in Luxembourg was M. Eugène Roubinine and the second was V.S. Lebedev that presented his credentials on the spring of 1944 to the Grand-Duchess Charlotte in London.

The first Luxembourgish ambassador to the Soviet Union with residence in Moscow was M. René Blum and he was nominated on June 16, 1944.

Nowadays, Luxembourg has an embassy in Moscow²²⁹ and an honorary consulate in Saint Petersburg and Russia has an embassy in the city of Luxembourg²³⁰.

4.2.3 Existence of migration agreements with the Russian Federation

There are no bilateral migration agreements between the Russian Federation and Luxembourg. However, there is a visa facilitating agreement with the European Union (see below and section 5.3.1)

High skilled workers

Nevertheless, the Russian Federation has issued a similar disposition to the blue card directive, in accordance with article 13/2 of the Federal Law No. 86 of 19 May 2010²³¹. Since 1 July 2010 Russian Consulates receive applications and grant visas to foreign citizens claiming to be highly skilled workers. The applicant must submit: passport, information confirming the experience of the foreign citizen, his/her skills or achievements in a specific field;

²²⁹ <http://moscou.mae.lu/en>

²³⁰ <http://www.ruslux.mid.ru/>

²³¹ http://www.ruslux.mid.ru/hsm_en.html

recommendations confirming expert knowledge and qualification and consent to include the information provided by the applicant in the database within the state system of recording migration as well as consent to forward these personal details to employers and sponsors on . Since 1 July 2010 Russian Consulates receive applications and grant visas to foreign citizens claiming to be highly skilled workers. The applicant must submit: **Readmission agreements**

Luxembourg has not signed any bilateral readmission agreement with Russia but is member of the communitarian readmission agreements with Russia²³². Those agreements and their application protocols define the obligations and procedures that each party has to respect²³³ and they were negotiated and signed by the European Commission. The agreement with the Russian Federation was signed on 25 May 2006 and was ratified on July 1, 2007. The effective application of this agreement had permitted the expulsion of 3 Russian citizens in 2009 and 2 in 2010²³⁴. Currently, there is a negotiation going on between Luxembourg and the Russian Federation for signing the Protocol for the readmission agreement between the two countries. According to the Russian consul, he expects that this protocol will be signed on September 2011²³⁵.

Visa agreement

Luxembourg has not signed any agreement with the Russian Federation related to visa policy. However, on October 12 2005 the European Commission and the Russian Federation signed a communitarian agreement on visa facilitation²³⁶. This "visa facilitation agreement" defines the procedures for issuing short-stay visas. Under the new agreement, a decision on whether or not to issue a visa will have to be taken as a rule within 10 days and the documents that need to be presented have been simplified. The agreement also sets out simplified criteria for issuing multiple-entry visas for many groups of people, such as lorry drivers, people on business, students, journalists and diplomats. Moreover, visa fees applied by both Parties have very substantially been reduced to 35 €. Visa fees are waived for some groups of people such as close relatives, students or disabled people. Individuals holding Russian or EU Member

²³² Europaforum, « En réponse à une question parlementaire de Felix Braz, Nicolas Schmit fait le point sur les accords de réadmission applicables au Luxembourg », 25 février 2011.

<http://www.europaforum.public.lu/fr/actualites/2011/02/qp-braz-readmission/index.html>

²³³ Le Quotidien, « Réadmission » est synonyme d'expulsion », 26 février 2011.

<http://www.lequotidien.lu/politique-et-societe/20576.html>

²³⁴ Europaforum, « En réponse à une question parlementaire de Felix Braz, Nicolas Schmit fait le point sur les accords de réadmission applicables au Luxembourg », 25 février 2011.

²³⁵ Point of view of the Russian diplomatic representative, Interview N° 2, page 2, lines 44 to 46.

²³⁶ OJ L129 of 17.5.2007, p.27.

State diplomatic passports will be exempt from visa regulations under the agreement. Both parties have also agreed to undertake measures as soon as possible to simplify registration procedures.²³⁷

The Russian Federation bases its diplomatic relations on the principle of reciprocity. Once the visa facilitating agreement was signed, the Russian Federation simplified the issuance of visas for European citizens, especially for business and tourism but also for the families of a Russian citizen living abroad that do have the Russian citizenship to make visits to relatives in the Russian Federation²³⁸.

However, the Law of 29th August 2008 continues to apply to all issues not covered by this agreement, such as the refusal to issue a visa, recognition of travel documents, proof of sufficient means of subsistence, and the refusal of entry, expulsion measures or the general rule of the personal interview with the applicant²³⁹. Also, Schengen rules must be respected (i.e. Visa Code regulations).

4.2.4. Any other measures

There is an intention from the government of Russia and the European Union to abolish the need of visas for Russian citizens coming to the Schengen area.

The Russian Consul in Luxembourg considers that the Russian Federation will abolish the visa system the moment that the European Union decides to do the same²⁴⁰.

From the Russian point of view, the visa proceedings have been facilitated after the visa facilitating agreements. Nowadays the possibility of obtaining a tourist visa for Russia is simpler than before. The same applies to visas for the family members of a Russian citizen that want to visit Russia, student visa and the visas issued for assisting to cultural and sportive

²³⁷ Press Release, IP/05/1263

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/05/1263&format=HTML&aged=1&language=EN&guiLanguage=fr>

²³⁸ Point of view of the Russian diplomatic representative, Interview N° 2, page 6, lines 226 to 228.

²³⁹ Guidelines for the implementation of the agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation, p. 2.

http://www.bfm.admin.ch/content/dam/data/migration/rechtsgrundlagen/weisungen_und_kreisschreiben/weisung_en_visa/vhbl/vhbl-anh08_vfa-durchfuehrung-RUS-e.pdf

²⁴⁰ Point of view of the Russian diplomatic representative, Interview N° 2, page 10, lines 404 to 406.

events. As we have seen before, the Russian Federation had simplified the proceedings to obtain a highly skilled worker visa.

However, there still some problems to solve with regard to the issuance of certain types of visas, but according to the Russian diplomatic authorities, President Medvedev will be signing certain decrees to facilitate the traveling of European Union family members of a Russian citizen to Russia.

Nevertheless, there are some people in Europe that considered that there are some obstacles to the visa-free regime.

Nikolay Petrov named three key obstacles to a visa-free regime between Russia and Europe:

- The open border with CIS neighbors. The Russian Federation borders with the densely populated and impoverished states of Central Asia. Strengthening these borders would imply huge investments and weaken the Kremlin's influence in the region. On the other hand, a readmission agreement imposes certain liabilities on Moscow if citizens from the CIS illegally enter the EU from Russian territory and requires returning them to the countries of origin. This could become a serious financial burden.
- The problem of Caucasus. Given the increasing instability in southern Russia, there is a continual flow of political asylum seekers and refugees to Europe, which complicates relations between Moscow and Brussels.
- Corruption. European officials are not confident that all Russian international passports are received legally and following required procedures. It is necessary to make this process more transparent²⁴¹.

²⁴¹ Changes in Visa Policies of the EU Member States, May 17, 2010. Carnegie Endowment for International Peace, <http://www.carnegieendowment.org/events/?fa=eventDetail&id=2922>

4.2.5. Statistics

Statistics on the Russian Federation

A. Arrivals and Departures

The migration inflows and outflows in Luxembourg of Russian citizens in the last 23 years are presented in the following table:

Table N° 7: Arrivals and Departures of Russian nationals (1988 – 2010)

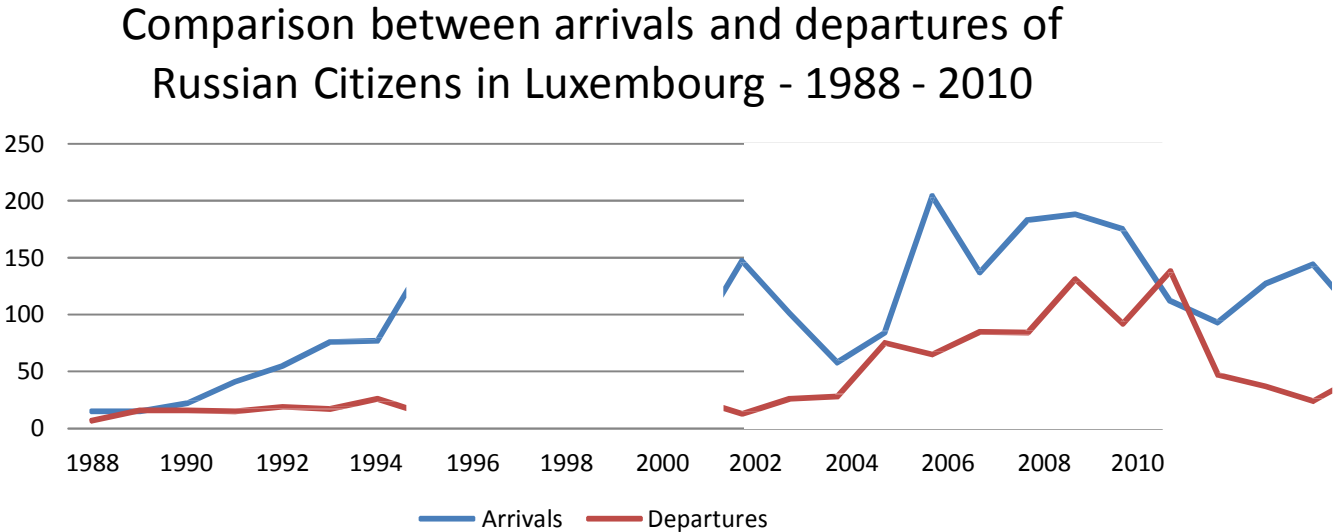
	Arrivals	Departures	Balance	% Aug. Arrivals	% Aug. Departures
1988	15	7	8		
1989	15	16	-1	0.0%	128.6%
1990	22	16	6	46.7%	0.0%
1991	41	15	26	86.4%	-6.3%
1992	55	19	36	34.1%	26.7%
1993	76	17	59	38.2%	-10.5%
1994	77	26	51	1.3%	52.9%
1995	147	13	134	90.9%	-50.0%
1996	101	26	75	-31.3%	100.0%
1997	58	28	30	-42.6%	7.7%
1998	84	75	9	44.8%	167.9%
1999	204	65	139	142.9%	-13.3%
2000	137	85	52	-32.8%	30.8%
2001	183	84	99	33.6%	-1.2%
2002	188	131	57	2.7%	56.0%
2003	175	92	83	-6.9%	-29.8%
2004	112	138	-26	-36.0%	50.0%
2005	93	47	46	-17.0%	-65.9%
2006	127	37	90	36.6%	-21.3%
2007	144	24	120	13.4%	-35.1%
2008	96	47	49	-33.3%	95.8%
2009	93	53	40	-3.1%	12.8%
2010	101	34	67	8.6%	-35.8%

Source: STATEC, 2011 © EMN NCP LU

Notes: Between 1988 and 1991, the data relates to citizens of the URSS. During 1992 and 1993, the data was divided into Russian citizens and URSS. However, for these two years data was added.

The table shows that the number of Russian citizens has been increasing in Luxembourg since 1990. As we can see from the graph below, with the exception of 2004, the inflow number has always been bigger than the outflow number.

Graph N° 6:



Source: STATEC, 2011 ©EMN NCP LU

This graph shows that since 2000 the inflow and outflow lines have not had a very uniform pattern with certain important peaks. For example in 2004 there was a major augmentation in the departures and a reduction of the arrivals. Then with the entry into force of the visa facilitating agreement on 2007, there was an abrupt rise of arrivals and a slight reduction of departures. This tendency has had its peak in 2007 but because of the economic and financial crisis arrivals were reduced by 33,3% in 2008 and lost 3,1% in 2009. However, the line began to recuperate in 2010 (8,6%). Nevertheless, it is obvious that the yearly balance is positive, between 2000 and 2010, meaning that each year there are more Russian citizens that arrive and stay than the ones that leave. Between 2000 and 2010 there were 1449 arrivals and 772 departures. This represents a positive balance of 677 (an average of 61 persons per year).

In 2009 there were 93 Russian citizens that arrived in Luxembourg. As we can see there are more women than men that arrive in the Grand-Duchy from Russia. This trend is the same since 1998 as we can appreciate from the graph below.

Table N° 8: **New arrivals of Russian nationals by sex (1998 – 2009)**

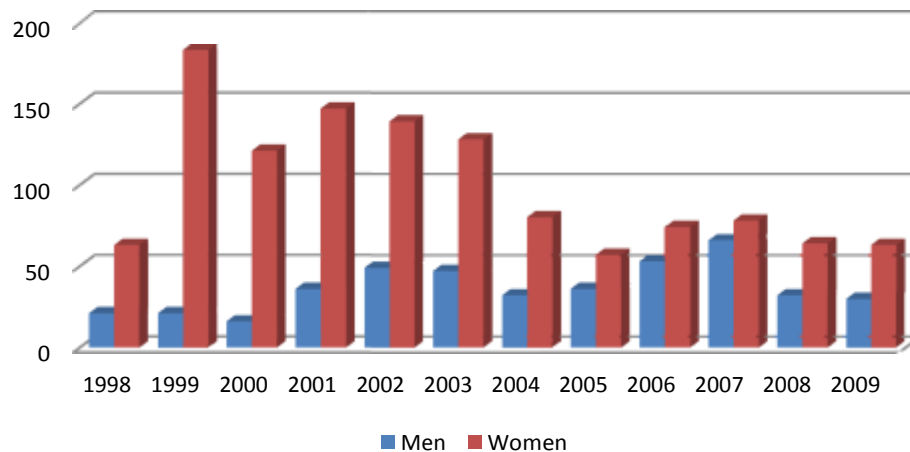
	Men	%	Women	%	Total
1998	6	8.0%	69	92.0%	75
1999	16	24.6%	49	75.4%	65
2000	4	4.7%	81	95.3%	85
2001	9	10.7%	75	89.3%	84
2002	17	13.0%	114	87.0%	131
2003	15	16.3%	77	83.7%	92
2004	17	12.3%	121	87.7%	138
2005	24	51.1%	23	48.9%	47
2006	13	35.1%	24	64.9%	37
2007	11	45.8%	13	54.2%	24
2008	24	51.1%	23	48.9%	47
2009	22	41.5%	31	58.5%	53

Source : EUROSTAT © EMN NCP LU

In 2009 there were 93 Russians that arrived in Luxembourg. As we can see there are more women than men that arrived in the Grand-Duchy from Russia. This trend is the same since 1998 as we can appreciate from the graph below.

Graph N° 7:

Arrivals of Russian citizens by sex 1998-2009



Source: EUROSTAT © EMN NCP LU

It is known that many women from the Russian Federation come to the west to marry European citizens or to work as «artists», explaining the mentioned trend, because as we will see below this amount of new arrivals is reflected in the Labour force survey or in the statistics of the IGSS.

For the outflows the tendency is almost the same as for the inflows. More women than men leave the country.

Table N° 9: **Departures of Russian nationals by sex (1998 – 2009)**

	Men	%	Women	%	Total
1998	6	8.0%	69	92.0%	75
1999	16	24.6%	49	75.4%	65
2000	4	4.7%	81	95.3%	85
2001	9	10.7%	75	89.3%	84
2002	17	13.0%	114	87.0%	131
2003	15	16.3%	77	83.7%	92
2004	17	12.3%	121	87.7%	138
2005	24	51.1%	23	48.9%	47
2006	13	35.1%	24	64.9%	37
2007	11	45.8%	13	54.2%	24
2008	24	51.1%	23	48.9%	47
2009	22	41.5%	31	58.5%	53

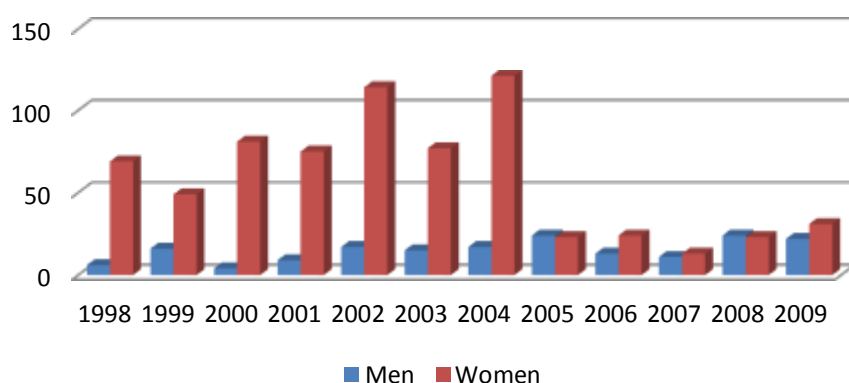
Source: EUROSTAT © EMN NCP LU

The movement had been reduced once the «artist» visa was eliminated²⁴² in 2004. Since then the trend has been almost stable.

²⁴² This was the visa that was issued to women that came to work in cabarets in Luxembourg. Information provided by the Passports and Visas Office.

Graph N° 8:

Departure of Russian citizens by sex 1998 - 2009



Source: EUROSTAT © EMN NCP LU

B. Russian citizens working and residing in Luxembourg

Between 2003 to 2010 the number of Russians citizens working and residing in Luxembourg has grown 263,1% with an average of 15,1% per year on this period, as we can see from the table below.

Table 10: **Russian citizens working and residing in Luxembourg by sex and status**

Year	Male			Female			Total
	Workers	Employee	Civil Servant	Workers	Employee	Civil Servant	
2003	1	30	0	18	35	0	84
2004	1	30	0	26	36	0	93
2005	3	34	0	33	42	0	112
2006	6	36	0	32	45	0	119
2007	11	37	0	36	61	0	145
2008	9	49	0	37	90	0	185
2009		60	0		146	0	206
2010		68	0		153	0	221

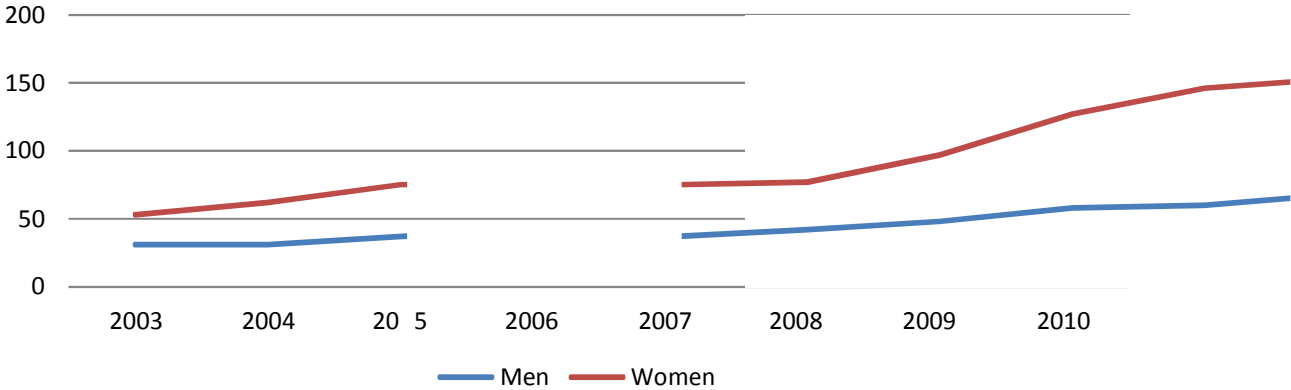
Source: IGSS, 2011 © EMN NCP LU;

Note: Since 2009, workers and employees have been grouped under the unique salaried workers status. This data represents the situation on 31 March of each year.

However, the proportion of Russian women working and residing in Luxembourg is significantly superior to men. In 2003 women represented 63,1% of the Russians working in Luxembourg compared to 36,9% of men. In 2010 the proportion of women grew to 69,2% while men only represented 30,8%. It is important to note that the number of women has almost tripled in seven years (288,7%) while the proportion of men has only doubled (219,4%).

Graph N° 9:

Representation of Russian citizens working in Luxembourg by sex 2003 - 2010



Source: IGSS, 2011 © EMN NCP LU

In the EMN study Satisfying Labour Demand through Migration, EMN NCP LU obtained Social Security information on the composition of the Labour force, by qualification level, in Luxembourg from the Inspectorate General of the Social Security. However, between 2004 and 2009 not all the salaried workers had their CITP code: in 2004 the proportion was 91% and in 2009 it was 33,6%. That is the reason why we cannot make accurate comparisons between the years in this domain.

However, from the table below that includes a portion of the Russian workers in Luxembourg we can see that between 2006 and 2008 the level of qualification is growing and that in two years the number of skilled workers had doubled.

Table N° 11: **Level of qualification of Russian workers – 2006 – 2008**

Year	Highly skilled	Skilled	Low skilled	Unknown	Total
2006	21	21	8	24	74
2007	19	26	15	22	82
2008	19	48	18	28	113

IGSS, 2009 © EMN NCP LU

However, the level of high skilled workers had been stable between 2006 and 2008.

C. Asylum applications

The number of asylum applications from Russian citizens decreased between 2006 and 2010. In 2006, the number of applications was 43. This number fell to 13 during 2007 and 2008. On 2009 there were 27 applications²⁴³ and in 2010 only 21.

In 2007, the Directorate of Immigration granted 8 positive decisions to Russian citizens²⁴⁴. In 2008 the number of positive decision was 5²⁴⁵. This number increased in 2009 with 13 positive decisions.

During the period of 2006 to 2009 not a single subsidiary protection was granted to a Russian citizen.

D. Naturalizations

It is important to note that the number of Russian nationals who have acquired the Luxembourgish nationality has exploded since the approval of the law on naturalization (Law of 23 October 2008). Since 2001, the number of Russian citizens acquiring the Luxembourgish nationality had been growing very slowly (4 in 2001, 5 in 2002, 2 in 2003, 5 in 2004, 8 in 2005 and 13 in 2006). Between 2007 and 2009 the number of naturalization was

²⁴³ There is one application filed by a non-accompanied minor.

²⁴⁴ Annual report on Asylum and Immigration, Statistics for Luxembourg 2007, European Migration Network, p 11

²⁴⁵ Annual report on Migration and International Protection. Statistics for Luxembourg 2008, European Migration Network, p. 44

of 10 per year but in 2009 the number jumped to 40 (a 300% increase) and in 2010 the number was 50.

Graph 10:



Source : STATEC, 2011 © EMN NCP LU

4.2.6 Findings of Russian Federation case

The relations between the Russian Federation and Luxembourg go back in history to the signing of the Treaty of London. However, since 1935 the two countries maintain diplomatic relationships (with an interruption of four years during World War II). Nowadays the relations between both countries are based on economic reasons (Luxembourg is one of the major investors in Russia and vice versa) due to the fact that Russia is a growing economy, especially in the energetic sector and Luxembourg is a sophisticated financial centre. Nevertheless, there are very strong cultural links between the two countries.

These two factors explain why Luxembourg issued the large majority of its visas to Russian citizens. In 2010, there were 5511 visa applications from which 5354 were issued (97,2%). Most of the visas are short-stay visas (see data section). The long-stay visas (D visas) are only 49 visas that amounts to 0,9% of the total number of visas issued. The number of refusals (62) is minimum (1,2%) and there is not any abuse of visas reported (visa overstay).

Migration of Russian citizens to Luxembourg was characterized during the Soviet era by feminine migration that came to Luxembourg to marry Luxembourgish citizens. Since the fall

of the Berlin wall and the downfall of the Soviet Union the situation has changed. In the first time the number of women that came to Luxembourg increased but not only for family reunification but also for working in the cabarets. This was considered by many including United Nations as trafficking in human beings, leading the Luxembourgish government to abolish the visas «artist visa» on 1 May 2004.

However, since 2000, the type of traveller of Russian citizens to Luxembourg has changed. Most of them are businessmen that come to Luxembourg to establish companies and for reasons related to work. The important investments between the two countries have influenced the type of traveller between the two countries. It is important to mention that in the last decade a majority of migrants moving legally to Luxembourg are high skilled or skilled workers that come to work for Russian companies. This phenomenon explains why the number of Russian workers has almost tripled in the last decade. This trend is going to continue especially given the existing rumour that the giant Gazprom has the intention to move its German headquarters from Berlin to Luxembourg. That would imply a movement of a total of 520 workers, most of whom are Russian citizens²⁴⁶.

The main interest of the Russian Federation is to create a visa-free regime between the Russian Federation and the European Union. According to the Russians, the visa facilitating agreement signed in 2006, has simplified the issuance of visas and continue to do so, to the point that the diplomatic authorities of the Russian Federation in Luxembourg considers that if the European Union lift the visa requirements they are willing to do the same.

It is important to note that the migration of Russian citizens has not generated a debate in Luxembourg. After the issue of the «artist visa» in in the 1990's and early 2000's and its abolition on 1 May 2004, the migration of Russian citizens (the discussion was in general over the women that came from Eastern European countries) had not been debated. Excluding the cases of international protection applications made by Russian citizens that have decreased during the last few years, the relations between the two countries are very stable. Irregular migration from Russian citizens is not a serious problem as it is with the Brazilians, Serbians and Cap-verdiens. In the official statistics for the last five years, the number of readmission persons has been five. Nevertheless, the Russian authorities dispute this fact arguing that the protocol of the readmission agreement has not been signed yet (it is going to

²⁴⁶ Wort.lu, “Gazprom eyes up Luxembourg”, 4 July 2011.
<http://www.wort.lu/wort/web/en/business/articles/2011/07/154700/index.php>

be signed in September 2011) and that the only information that they have over these five cases is that three of them were readmitted through Brussels and not from Luxembourg. There was no information regarding the other two.

It is important to mention that regarding the naturalization of Russian citizens, the number has increased since the new naturalization law that permits to hold the double nationality.

As we can see, the migration situation of Russian citizens to Luxembourg is not a major problem. However, we consider important to mention that a study released by the Carnegie Moscow Center and the Stefan Batory Foundation in Warsaw on May 2010, reports two disturbing trends. First, even as it is getting relatively easier for Russians to get visas to Western Europe, it is getting progressively harder for them to get visas to the new Schengen zone states of Eastern Europe, reducing ties with the country's closest neighbors. And second, the gap in visa procedure and enforcement within the Schengen zone is growing wider.

The new visa procedures may help resolve these problems.

Visas are part of border controls, designed to allow law-abiding travellers in while keeping unwelcome elements out. The problem is that sometimes the law-abiding citizens are often kept out, while criminals seem to have little trouble reaching their destinations²⁴⁷.

Another argument for keeping the visa requirement for the Russian Federation is a mean to promote progress towards democracy and the rule of law in Russia, because in this moment Russia does not need any financial support, technical assistance and other benefits that were needed at the beginning of the 1990's. That element will give the European Union some leverage with Russia.

However, the main objective of the European Union with the Russian Federation is a strategic integration, so to certain extent the abolishment of visas will be inevitable. As M. Borja Cortés-Bretón of the Spanish Embassy, said during the presentation of the international survey organized by the Stefan Batory Foundation in Moscow on May 2010, long-term visas and other instruments might ameliorate the current situation. He suggested that allowing the

²⁴⁷ GREENE, Sam, Lift EU Visas for Russians, The Moscow Times, May 17, 2010. <http://www.carnegieendowment.org/publications/?fa=view&id=40814>

issuance of two, three, or even five-year visas would in practice amount to a virtual visa-free zone²⁴⁸.

5. Effects of EU Policy and Legislation

The EU visa policy has emerged in response to the integration of the EU Member States and ensuring the functioning of the EU internal market, one of the core principles of which is the freedom of movement of persons²⁴⁹.

The ambitious goal enshrined into the Amsterdam Treaty to develop the Union as the area of freedom, security and justice which «includes the right to move freely throughout the Union that can be enjoyed in conditions of security and justice accessible to all»²⁵⁰ required from the EU to develop the effective common instruments for controlling its external borders, fighting irregular migration and organized crime. The EU visa policy has become an instrument for ensuring of the Union's internal security and became an important element of the EU foreign policy.

To implement this policy, the Maastricht Treaty contained the provisions on harmonization of the laws covering the list of third countries whose nationals must be in possession of visa while entering the Schengen area and a uniform format for the visas.

5.1. Impact of EU visa policy and legislation on Luxembourg

As already mentioned, the visa policy of Luxembourg has been strongly influenced by EU visa policy and legislation and since the Law on the free movement of persons and on immigration had transposed already several EU directives, the transposition of directives in this field does not create a big impact. In addition the fact that the Visa Code and the Visa Information System regulation does not need transposition in the national legislation had made that these pieces of legislation had immediate effect since the moment they came into effect.

Nevertheless, according to one of the associations interviewed, the coming into force of the Visa Code has not changed the administrative practice. For example, one association had

²⁴⁸ Changes in Visa Policies of the EU Member States, May 17 2010. Carnegie Endowment for International Peace, <http://www.carnegieendowment.org/events/?fa=eventDetail&id=2922>

²⁴⁹ Commission of the European Communities 1985, 9

²⁵⁰ European Council 1999

mentioned that even if the Visa Code foresees that when a C visa is refused the embassy has to issue a document explaining the motives of the refusal, in their professional experience they have noticed that in the practice the diplomatic representation does not give any explanation of the refusal.

According to their own experience over the last few years, especially with regard to family reunification issues, the administrative practice may differ from what is foreseen in the legislation. For example, in cases of unaccompanied minors, even if the law facilitates family reunification, the documents that are requested from the parents of the minor are difficult to provide and in that sense the administrative practice is highly formalist²⁵¹. While it is understandable that the functionaries of the Ministry of Foreign Affairs demand these documents but in the context of refugees' family reunification the provision of some documents is very difficult in practice, either because the government refuses to give them or because there is no government to issue them (i.e. Somalia). Other example is the problem with migrants that already have a resident permit in another Member State and came to Luxembourg to work and their application was refused on the bases that they did not make their application from their country of residency²⁵². What they considered very formalistic and difficult to understand is that in some cases these migrants have enormous difficulties to find a job and they cannot return to their country of residence without incurring in economic distress and losing their jobs²⁵³.

5.2. Overall impact of EU migration policy and legislation on visa policy and the issuing of visas in Luxembourg

The European Migration policy and legislation on visa policy is the norm in the issuing of visas in Luxembourg, with the exception of the Law on the free movement of persons and on immigration that regulates the issuance of the authorization for the residence permit and the residence permit. The EU migration policy and legislation, especially with the visa facilitating agreements, the exemption of visa requirements to certain countries had influenced the number of visas issued and the number of arrivals of migrants in Luxembourg.

²⁵¹ Point of view of NGO, Interview N° 9, page 2, lines 60 to 65

²⁵² Point of view of NGO, Interview N° 9, page 2, lines 73 to 85

²⁵³ Point de view of NGO, Interview N° 7, pages 6-7, lines 283 to 289 and Interview N° 10, page 2, lines 73 to

However, it is important to take into consideration that a high number of visas issued by Luxembourg are issued by other Member States.

5.3. Instruments that have had an effect on Luxembourg legislation and/or policy and practices:

5.3.1. EU visa facilitation agreements

The purpose of visa facilitation agreements is to promote interaction between the citizens of the European Union and the contracting States. The agreements serve to facilitate the issuance of visas for a short stay between Member States and the contracting state.

The European Union and the contracting States wish to facilitate personal interaction which is a prerequisite for the stable development of economic, humanitarian, cultural, scientific and other relations by facilitating the issuance of visas to the citizens of the European Union and the contracting States in compliance with the principle of reciprocity.

Visa facilitation agreements apply to visas for the Schengen area for an intended stay of no more than 90 days per period of 180 days.

All visa facilitation agreements are invariably associated with a readmission agreement via a suspense condition clause. In a readmission agreement, the third-country undertakes to cooperate in taking back irregular residents in accordance with the agreed provisions relating to procedure, evidence, etc. The European readmission agreements apply not only to nationals of the third country but also to irregular residents who entered the EU via the territory of the third country, insofar as this can be proved. This conditional approach enables the EU to reintroduce stricter visa issuing procedures on a temporary basis.

Since visa policy is a European matter because of the freedom of movement in the Schengen area, the visa facilitation agreements are negotiated by the European Commission and not by individual Member States. In the last past years, the European Union had signed visa facilitation- combined with readmission agreements with the following countries:

- a) **Balkan countries:** Serbia²⁵⁴, Bosnia-Herzegovina²⁵⁵, Albania²⁵⁶, Macedonia²⁵⁷ and Montenegro²⁵⁸. These agreements came into force from 1 January 2008. These agreements determine the application fee at €35, shortens the visa application processing period, regulates exemptions from visa fees and simplifies terms and conditions for issue of visas to specific categories of people. The Agreement does not regulate the terms and conditions of stay over 90 days, which remain to be regulated by national legislation.
- b) **Russian Federation**²⁵⁹: this agreement simplifies the documents that the Russian or European citizen has to provide to obtain a certain type of visa (art. 4). It also foresees the issuance of multiple entry visas (art. 5), the fees for issuing the visas (art. 6), length of procedures for processing visas applications (10 days with the possibility to extend it to 30 days if further scrutiny of the application is needed) and some other travel aspects. This agreement has been in force from 1 June 2007.
- c) **Ukraine**²⁶⁰ This agreement has been in force since 1 January 2008. It determines the application fee at €35, shortens the visa application processing period, regulates exemptions from visa fees and simplifies terms and conditions for issue of visas to specific categories of people. The Agreement does not regulate the terms and conditions of stay over 90 days, which remain to be regulated by national legislation.
- d) **Moldova**²⁶¹. This agreement has been in force since 1 January 2008. It determines the application fee at €35, shortens the visa application processing period, regulates exemptions from visa fees and simplifies terms and conditions for issue of visas to specific categories of people. The Agreement does not regulate the terms and conditions of stay over 90 days, which remain to be regulated by national legislation.

²⁵⁴ Official Journal of the European Union, 19 Dec. 2007, Nr. L 334/137 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:334:0137:0147:EN:PDF>

²⁵⁵ (Official Journal of the European Union, 19 Dec. 2007, Nr. L 334/97, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:334:0097:0107:EN:PDF>

²⁵⁶ (Official Journal of the European Union, 19 Dec. 2007, Nr. L 334/85 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:334:0085:0095:EN:PDF>

²⁵⁷ Official Journal of the European Union, 19 Dec. 2007, Nr. L 334/125 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:334:0125:0135:EN:PDF>

²⁵⁸ Official Journal of the European Union, 19 Dec. 2007, Nr. L 334/109 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:334:0109:0119:EN:PDF>

²⁵⁹ Official Journal of the European Union, 17 May 2007, Nr. L 129/27 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:129:0027:0034:EN:PDF>

²⁶⁰ Official Journal of the European Union, 18 Dec. 2007, Nr. L 332/68 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:332:0068:0076:EN:PDF>

²⁶¹ Official Journal of the European Union, 19 Dec. 2007, Nr. L 334/169 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:334:0169:0179:EN:PDF>

- e) **Georgia**²⁶²: The visa facilitation agreement aims at making it easier for Georgian citizens, in particular those who travel most, to acquire short term visas for the EU. It provides a reduced visa fee of 35€ instead of 60 € for all Georgian citizens and a total exemption from the visa fee for certain categories of applicants (e.g. children below the age of 12, pensioners, disabled persons, students, close relatives and representatives of civil society organizations). Furthermore for certain persons (e.g. business people, students and journalists) the necessary documents requested for supporting a visa application are simplified. Bona fide frequent travellers will be issued multi-entry visas with long periods of validity. Finally, the holders of diplomatic passports are exempt from the visa obligation. The agreement also obliges the Consulates to take a decision within 10 days on whether or not to issue a visa²⁶³. This agreement has been in force since 1 March 2011.
- f) **Republic of Seychelles**: The EU had signed agreements with this country tending to exempt its citizen of the visa requirement²⁶⁴.
- g) **Maurice Islands**: The EU had signed agreements with this country tending to exempt its citizen of the visa requirement²⁶⁵.
- h) **Saint Christopher and Nevis Federation**: The EU had signed agreements with this country tending to exempt its citizen of the visa requirement²⁶⁶.

However, it is important to mention that the Visa facilitating agreements with the Balkan States had been transformed into the lifting of visa requirements²⁶⁷, as we will see below.

²⁶² Official Journal of the European Union, 25 February 2011, Nr. L 52/34, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:052:0034:0044:EN:PDF>

²⁶³ European Union signs visa facilitation agreement with Georgia, Press Release, IP/10/737, Brussels, 17 June 2010, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/737&format=HTML&aged=1&language=EN&guiLanguage=fr>

²⁶⁴ Directive 2009/900/CE of 30 November 2009.

²⁶⁵ Directive 2009/899/CE of 30 November 2009.

²⁶⁶ Directive 2009/899/CE of 30 November 2009

²⁶⁷ The European Commission had analyzed the consequences of the neighborhood policy with certain countries in Central and Eastern Europe, proposing in a first phase to extend the visa facilitating agreements excepting from this obligation in the regulation n° 1244/2009 of 30 November 2009, the citizens of the Former Yugoslav Republic of Macedonia and Serbia. In a second phase this exemption will be extended to the citizens of Albania and Bosnia-Herzegovina if they were in possession of a biometric passport. It is important that the Council of Justice and Internal Affairs had approved on its meeting of 24 and 25 February 2011, the decision to create a monitoring panel of the visa liberalization policy in the Balkan states. This mechanism will permit to suspend the visa exemptions in case of a massive or important inflow of migrants from these countries.

5.3.2. Lifting of visa requirements with particular third countries

The Council of Justice and Internal Affairs of the European Union decided on 30 November 2009 to lift the visa requirements to third country nationals from Serbia, the former Yugoslavian republic of Macedonia and Montenegro from 19 December 2009 and for the citizens of Albania and Bosnia-Herzegovina from 15 December 2010. The only requirement is for these citizens to have a biometric passport. The citizen has the right to travel without a visa in the Schengen area for 90 days during a period of six months²⁶⁸. However, they cannot establish or work in any Member State.

These Council decisions had the support of Luxembourg²⁶⁹.

Nevertheless, as of the beginning of the 2011, the number of applicants for asylum that are nationals from some Balkans countries is in constant augmentation since the lift of the visa requirements to those countries.

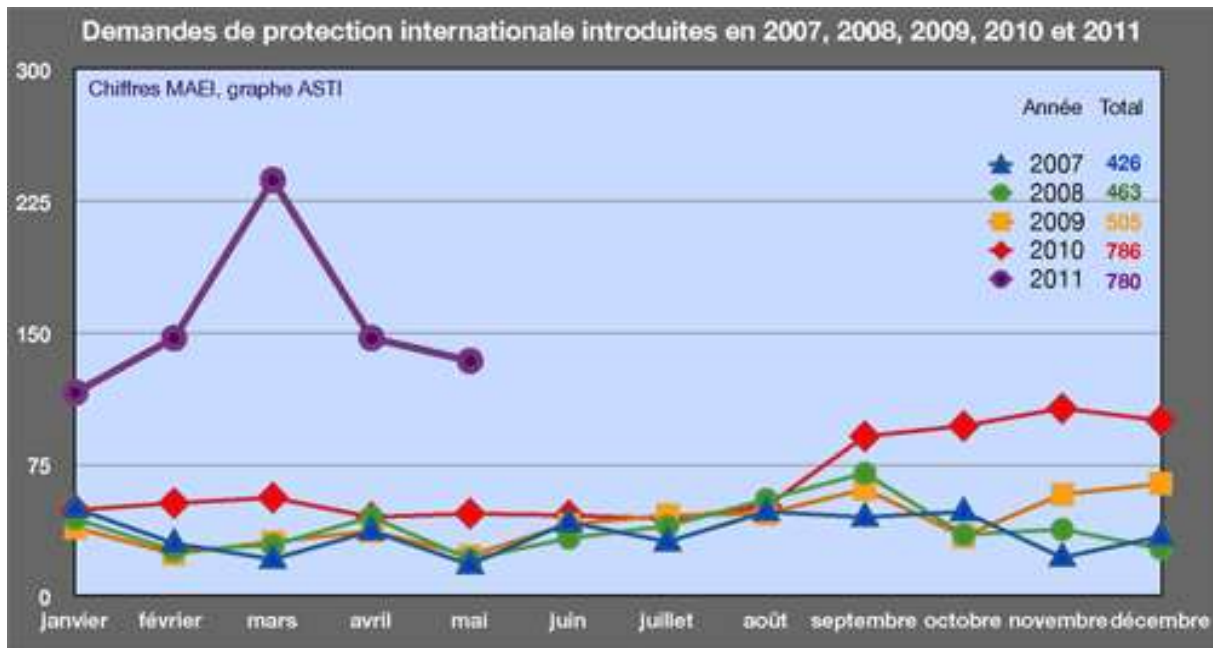
Fernand Kartheiser MP (ADR) made a parliament query on 2 February 2011 to the Minister of Labour and Immigration regarding the resurgence of the asylum applications from Balkans countries citizens after the lifting of the visa requirement.

As we can see from the graph below the number of asylum applications to May 2011 is almost the same as the total amount of asylum applications in the year 2010.

²⁶⁸ European Commission, Commission proposes visa free travel for citizens from the Western Balkans, Press Release, IP/09/1138, 15 July 2009.

²⁶⁹ Europaforum.lu, Jean-Marie Halsdorf a participé le 30 novembre 2009 à son premier Conseil Justice et Affaires intérieures, 30 November 2009. <http://www.europaforum.public.lu/fr/actualites/2009/12/conseil-jai/index.html>

Graph N° 11:



This situation was recognized by the Ministry of Labour and Immigration, Mr. Nicolas Schmit during a conference on 1 February 2011. He noted a resurgence of asylum applications by Serbian citizen, especially of Roma origin and members of the Albanian speaking minorities²⁷⁰. However, the Minister had recognized that the problem is not exclusive to Luxembourg but that other countries like Germany, Belgium, Sweden²⁷¹ and the Netherlands have been affected as well. He had granted that this is a real problem that will challenge the administrative and judiciary capacities of the Directorate of Immigration.

The Serbian Minister of the Interior, Mr. Ivan Dacic, had said that most of these people are false asylum seekers that are moved by economic motives, because they are not politically persecuted. They are motivated by a financial calculation trying to benefit of the financial aids that some Member States give to asylum seekers²⁷².

The minister of Labour, Employment and Immigration; M. Nicolas Schmit during his participation to the session of the Council of Justice and Internal Affairs held in Luxembourg on 9 June 2011, said that the lifting of the visa requirements would held not only rights but

²⁷⁰ Europaforum, Le ministre de l'Immigration Nicolas Schmit constate un "afflux de demandes d'asile émanant de ressortissants de la Serbie" après la levée de l'obligation de visa vers l'espace Schengen, 1 February 2011, <http://www.europaforum.public.lu/fr/actualites/2011/02/schmit-asile/index.html>

²⁷¹ In Sweden only in 2 months they had more than 10.000 applications.

²⁷² Europaforum, Nicolas Schmit et Ivica Dačić ont fait part de leur volonté que Luxembourg et Serbie poursuivent leur coopération "dans un esprit parfaitement européen" pour lutter contre l'afflux de demandeurs d'asile en provenance de Serbie, May 5, 2011, <http://www.europaforum.public.lu/fr/actualites/2011/05/schmit-serbie/index.html>

also obligations for beneficiary third country, and it is the responsibility of these countries to take the corrective measures to prevent this type of abuse. Nevertheless, he signaled that it is also the responsibility of the bordering Member States (i.e. Hungary and Greece) to guarantee the correct application of the entry regulations to the Schengen area at the external borders²⁷³.

The meeting was closed by a promise by the Serbian Minister of Interior for Serbia to take the necessary measures in order to solve the problems related to the massive inflow of asylum seekers to Member States. Among the solutions that were proposed are: 1) the temporary deprivation or non-renewal of the passport of persons who had 'abused' the asylum right; 2) the fight by all means of the criminal organizations that benefit from the trafficking of human beings from Serbia to the European Union²⁷⁴.

5.3.3. The Visa Information System

The legislative package on the Visa Information System (VIS) was adopted by the European Parliament²⁷⁵. This package had permitted to create the biggest biometric data base in the world. The VIS Legislative package is formed by the VIS Regulation and the VIS Decision. The VIS Regulation allows consulates and other competent authorities to use the system when processing visa applications and to check visas. The VIS Decision allows police and law enforcement authorities to consult the data under certain conditions that should ensure a high level of data protection²⁷⁶.

The Visa Information System prevents an applicant who is refused a visa by one Schengen country from applying to others ("visa shopping"), but also facilitating the fight against fraud and checks at external borders. The system is similar to the SIS with a central information system about C-visas (C-Vis) and a national system in every Member State (N-Vis). Its

²⁷³Europaforum, Conseil JAI - L'espace Schengen sous pression. Nicolas Schmit : "Il est faux de croire qu'en instaurant des contrôles aux frontières intérieures, l'on arrivera à maîtriser les problèmes qui ont surgi." June 9, 2011, <http://www.europaforum.public.lu/fr/actualites/2011/06/conseil-jai-schengen/index.html>

²⁷⁴ Europaforum, Nicolas Schmit et Ivica Dačić ont fait part de leur volonté que Luxembourg et Serbie poursuivent leur coopération "dans un esprit parfaitement européen" pour lutter contre l'afflux de demandeurs d'asile en provenance de Serbie, May 5, 2011

²⁷⁵European Digital Rights, European Visa Information System accepted by the EU bodies; June 20, 2007 <http://www.edri.org/edriagram/number5.12/VIS-EU-adoption>

²⁷⁶As Baroness Sarah Ludford explained in her report that was adopted by the European Parliament, such data "shall only be processed for the purposes of the prevention, detection, investigation and prosecution of terrorist offences or other serious criminal offences..." and that that "personal data obtained...from the VIS shall not be transferred or made available to a third country or to an international organization."

efficiency has to be guaranteed by the insertion of biometrical data of the visa applicants and the technical integration of SIS II²⁷⁷.

The Visa Information System is capable to store data on up to 70 million people concerning visas for visits to or transit through the Schengen Area. This data will include biometrics (photographs and fingerprints) and written information such as the name, address and occupation of the applicant, date and place of the application, and any decision taken by the Member State responsible to issue, refuse, annul, revoke or extend the visa²⁷⁸.

The Baroness Sarah Ludford MEP had insisted that «the VIS is a border-management system and its principle is not to combat terrorism and crime. Let us remember that 99.9% of visitors to the EU are legitimate travellers who do not have any connection with criminality whatsoever, nor indeed do illegal immigrants or unauthorized entrants²⁷⁹».

Nevertheless, Council Decision 2008/633/JAI laid down the conditions under which Member States' designated authorities and the European police Office (Europol) may obtain access for consultation of the Visa Information System for the purposes of the prevention, detection and investigation of terrorist offences and of the serious criminal offences. Also, in principle it excludes the possibility of sharing the information with third countries or an international organization but it leaves the possibility of doing so if «in an exceptional case of urgency, such data may be transferred exclusively for the purposes of the prevention and detection of terrorist offences and of other serious criminal offences and under the strict conditions set out in the Decision, subject to the consent of the Member State having entered the data into the VIS. Records of such transfers shall be kept and made available to national data protection authorities».²⁸⁰

On the meeting of the Council of Justice and Internal Affairs, held in Luxembourg on June 9, 2011, the Ministers of Interior had approved the creation of a European agency for the operational management of information systems (i.e. SIS II, VIS and EURODAC). The

²⁷⁷ Doc. COM /2003), 323 final, 3 June 2003.

²⁷⁸ European Parliament, Justice and home affairs, EU visa information system to help prevent visa shopping, Press Release, 7 June 2007, <http://www.europarl.europa.eu/sides/getDoc.do?language=en&type=IM-PRESS&reference=20070606IPR07543>

²⁷⁹ European Digital Rights, European Visa Information System accepted by the EU bodies; June 20, 2007

²⁸⁰ The Legislative Observatory, European Parliament, Procedure File no. CNS/2005/0232, Combating terrorism and internal security: access for consultation of the Visa Information System VIS by the authorities of Member States and by Europol. <http://www.europarl.europa.eu/oeil/file.jsp?id=5293032>

headquarters of this agency will be located at Tallinn (Estonia). However, the exploitation of the informatics systems will be made from Strasbourg²⁸¹.

5.3.4. The Visa Code and the common consular instructions

The European Union had simplified and accelerated the procedures for the delivery of short-term visas²⁸² inside the Schengen area since 5 April 2010. That date is when the Visa Code came into force.

That code compiles all the juridical norms that regulate the decision for deliverance of visas. It implements the visa common policy of the Member States. The code main objectives are:

- 1) Reinforce transparency;
- 2) Reinforce juridical security: the applicant must be informed of the motives for refusal (article 32.2) and the possibility of appealing the decision to another instance (article 32.3). Nevertheless, this appeal has to be formulated to the respective judicial or administrative authority of the Member State that refused the visa and the procedure will be regulated by national law;
- 3) Guarantee the equality of treatment of applicants ;
- 4) Harmonization of norms and procedures of the Member and Associate States

With the Code, the application form was simplified and had been clarified, a situation from which benefit both applicants and the consular personnel.

Additionally, it has harmonized the visa fee to 60 euros for adults (art. 16.1) and 35 euros for children aged 6 to 12 years (art. 16.2) while exonerating the payment of the visa fee to certain categories of applicants (i.e. children under 6 years, school pupils, students, postgraduate students and accompanying teachers for the purpose of study or educational training, researchers doing scientific research on short-term basis, representatives of non-profit organizations aged 25 years or less participating in seminars, conferences, sports, cultural or educational events organized by non-profit organizations²⁸³). It also can be waived in certain

²⁸¹ Europaforum, Conseil JAI - L'espace Schengen sous pression. Nicolas Schmit : "Il est faux de croire qu'en instaurant des contrôles aux frontières intérieures, l'on arrivera à maîtriser les problèmes qui ont surgi." June 9, 2011

²⁸² Europaforum, Avec l'entrée en vigueur du code des visas de l'UE, les conditions de délivrance de visas Schengen de court séjour seront simplifiées et accélérées, 5 avril 2010,

<http://www.europaforum.public.lu/fr/actualites/2010/03/code-visas/index.html?highlight=visa>

²⁸³ Article 16.4 of the Visa Code

cases such as, certain children aged between 6 to 12 years, holders of diplomatic and service passports, participants aged 25 years or less in seminars, conferences, sports, cultural or educational events organized by non-profit organizations²⁸⁴.

However, countries having concluded a visa facilitating agreement with the European Union will continue to pay a fee of 35 euros.

It also regulates the cooperation between Member States (article 40 (b) and article 41), the recourse to Honorary Consuls (article 42) and with external providers (article 43). It is important to notice that the external provider will not have access to the visa information system under any circumstances (article 43.5). It is important to mention that the Visa Code gives a more prominent role to the diplomatic representations in cooperating between them in a third-country national in the Schengen context. In this context the European Commission has taken the decision of 11 June 2010 that establishes the Handbook for the organization of visa sections and local Schengen cooperation²⁸⁵ in accordance with article 51 of the Visa Code. It contains the guidelines for organizing visa sections and local Schengen cooperation.

It is important to note that Luxembourg has applied all the regulations of the Visa Code from the day it came into force, on April 5, 2010²⁸⁶. There was thus no necessity of transposing the regulation into national law²⁸⁷. The Passport and Visa Office applies the visa code in its entirety.

²⁸⁴ Article 16.5 of the Visa code

²⁸⁵ http://ec.europa.eu/home-affairs/policies/borders/docs/c_2010_3667_en.pdf

²⁸⁶ Article 58 of the Visa Code.

²⁸⁷ This regulation is binding in its entirety and directly applicable in Luxembourg in accordance with the Treaty establishing the European Community.

5.3.5. Regulation No. 265/2010 of the European Parliament and of the Council of 25 of March 2010 amending the convention implementing the Schengen agreement and Regulation No. 562/2006 as regards movement of persons with a long stay visa

The regulation No. 265/2010 of the European Parliament and of the Council of the Council of 25 March 2010²⁸⁸ came into force on 5 April 2010.

At that date, Luxembourg stopped issuing the visa D+C, which allowed the holder who had a long-stay visa to travel in the Schengen area for three months. Now with the implementation of regulation No. 265/2010, Luxembourg only issues Visa D that allows its holder to travel in the Schengen area up to three months.

There was no need for transposing the regulation into national law because this regulation is binding in its entirety and directly applicable in Luxembourg in accordance with the Treaty establishing the European Community.

5.4. National discussions and political debate on current and future visa policies

In this moment, there is not a current debate on visa policy in Luxembourg. As we have seen there is a parliamentary discussion going on because of the visa facilitating agreement with the Balkan countries, which had produced a massive inflow of «asylum seekers». In section 5.3.2, we mentioned the current problem in Luxembourg that from the beginning of the year there has been a significant rise in asylum applications (780 applications between January and May compared to 786 applications for the entire year 2010).

Fernand Kartheiser MP (ADR) made a parliament query on 2 February 2011 to the Minister of Labour and Immigration regarding the resurgence of the asylum applications from Balkans countries citizens after the lifting of the visa requirement. This query came after the Minister Nicolas Schmit gave a press conference on 1 February 2011 about the subject.

The Ministers Nicolas Schmit (Immigration) and Jean Asselborn (Foreign Affairs) provided an answer to the query n° 1223²⁸⁹ that said that the European Commission had negotiated

²⁸⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:085:0001:0004:EN:PDF>

²⁸⁹ The complete text of the answer of both Ministers was :

agreements tending to eliminate the visa requirement for the Balkan countries based on a timetable were conditions had to be satisfied by each concern country (i.e. documents' security, border management, combatting irregular immigration, combatting organized crime and

« 1. Lors des négociations avec les pays concernés ayant abouti à abolir l'obligation du visa pour entrer dans l'Union européenne et respectivement dans l'espace Schengen, la question des demandeurs d'asile potentiels a-t-elle été abordée et si oui quelles sont les mesures concrètes qui ont été prises pour éviter un afflux de demandeurs d'asile ou pour permettre leur reconduction ?

La Commission européenne a mené les négociations de libéralisation des visas avec les pays des Balkans occidentaux sur base de feuilles de routes contenant des conditions à satisfaire pour chacun des Etats concernés.

Celles-ci portaient notamment sur la sécurité des documents, la gestion des frontières, la lutte contre l'immigration illégale, la lutte contre la criminalité organisée, la corruption et les droits fondamentaux.

Des accords de réadmission ont par ailleurs été conclus avec chacun des pays.

Des discussions ont actuellement lieu au Conseil pour ce qui est du suivi du mécanisme de libéralisation du régime des visas pour les pays des Balkans occidentaux.

2. D'une manière générale, Messieurs les Ministres n'estiment-ils pas que l'entrée de citoyens sans visas doit être réservée à des pays respectant strictement les conventions internationales en matière des droits de l'Homme, auquel cas la question du dépôt d'une demande d'asile ne devrait pas se poser ? Est-ce que les pays des Balkans, en particulier la Serbie, sont considérés comme "pays tiers sûrs" du point de vue de la législation, respectivement de son application ?

Le respect par un pays donné des Conventions internationales en matière de droits de l'homme n'empêche pas les citoyens de ce pays de faire un dépôt d'une demande d'asile auprès d'un autre pays. Ces demandes sont alors examinées au cas par cas par l'administration compétente, conformément au droit applicable en la matière. D'après le règlement grand-ducal du 21 décembre 2007 fixant une liste de "pays d'origine sûrs au sens de la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection", la République d'Albanie, la République de Bosnie-Herzégovine, la République de Croatie, l'Ancienne République Yougoslave de Macédoine, ainsi que la République de Monténégro sont considérées comme pays d'origine sûrs.

La Serbie ne figure pas sur cette liste en raison du Kosovo qui, au moment de l'adoption du Règlement grand-ducal du 21 décembre 2007, n'avait pas encore déclaré son indépendance.

3. Messieurs les Ministres estiment-ils qu'il y a lieu d'étendre le point (1) de l'Art.16 de la loi du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection aux pays candidats à l'adhésion à l'Union européenne pour lesquels l'obligation du visa a été abolie ?

L'article 16 (1) de la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection dispose que "toute demande de protection internationale de la part d'un citoyen de l'Union européenne est irrecevable". Il n'est pas envisagé d'étendre l'article 16 (1) aux pays candidats à l'adhésion à l'Union européenne pour lesquels l'obligation du visa a été abolie, une telle extension n'étant pas compatible avec les directives européennes.

4. En attendant le cas échéant une modification de la loi relative au droit d'asile pour appliquer le point mentionné ci-dessus aux pays candidats à l'adhésion à l'Union européenne pour lesquels l'obligation du visa a été abolie, le Gouvernement ne devrait-il pas appliquer à ces pays la notion de "pays tiers sûrs" et adopter dans les délais les plus brefs les règlements grands-ducaux pour simplifier et accélérer au maximum les procédures applicables aux demandeurs d'asile originaires de ces pays ?

Actuellement, une question préjudicielle quant à la conformité de l'article 20 de la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection avec le droit européen est pendante devant la Cour de Justice de l'Union européenne.

Dès lors, à l'heure actuelle, la procédure accélérée prévue par l'article 20 de la loi modifiée du 5 mai 2006 précitée ainsi que, indirectement, la notion de pays d'origine sûr ne peuvent pas être appliquées.

Néanmoins, dès que cette question aura été examinée par la Cour de Justice de l'Union européenne, il est envisagé de faire figurer la Serbie parmi les pays d'origine sûrs moyennant modification du règlement grand-ducal du 21 décembre 2007 précité.

corruption and fundamental rights). Also, readmission agreement had been signed with each country.

After this discussion, there was the possibility of suspending the lift of the visa requirements for the citizens of the countries that were producing the inflow of asylum seekers.

However, after the visit of the Serbian Minister of Interior²⁹⁰ (see section 5.3.2) on 5 May 2011, the position of the Luxembourgish government is that the actual situation must be confronted but in any case for the moment there is no suspension of the lifting of the visa requirements for the Balkan countries.

Nevertheless, there is no current discussion of reviewing the visa policy on the short or medium term.

The only reaction that this inflow of immigration generated was that the bill for approving the fast track asylum was passed in a record time and that Serbia was rapidly included in the list of “safe countries”²⁹¹.

²⁹⁰ Nicolas Schmit et Ivica Dačić ont fait part de leur volonté que Luxembourg et Serbie poursuivent leur coopération "dans un esprit parfaitement européen" pour lutter contre l'afflux de demandeurs d'asile en provenance de Serbie, May 5, 2011

²⁹¹ <http://www.gouvernement.lu/gouvernement/etat-nation/traduction/francaise/index.html?SID=ba78841b709950c3e75d9236a187e28b>

6. Data and empirical evidence on visas issued by and immigration to Luxembourg

The issuing of visas in Luxembourg depends on two different institutions: The Passports and Visa Office (Bureau des Passeports et Visas) of the Ministry of Foreign Affairs and the Directorate of Immigration that depends of the Ministry of Labour, Employment and Immigration. The first institution is responsible for the short stay visas and the second is responsible of handling the residence authorizations.

The activities of the Passports and Visas Office are explained in the table below:

Table N° 12: **Activities of the Passports and Visas Office 2001 - 2010**

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Issuance of passports	14307	13114	15603	16152	19927	21326	46719	32596	27447	30020
Specimen passports	0	0	0	0	0	0	0	0	0	130
Passports extensions	7978	8047	8862	8695	8788	6151	0	0	0	0
Stolen/lost passports	924	879	1102	909	511	868	641	592	898	1113
Authentications	22546	25116	26152	29261	33951	46890	53992	54160	46189	51476
Visas	21692	19242	23478	15399	8834	9442	11579	10921	9272	11156
Declaration of liability (Law of 29.08.08)	0	0	0	0	0	0	0	0	5375	5508
Total operations	67447	66398	75197	70416	72011	84677	112931	98269	89181	99403
Variation of numbers of visas (%)	0,00	-11,29	22,01	-34,41	-42,63	6,88	22,63	-5,68	-15,10	20,32

Source: Passports and Visas Office, 2011

As we can see from the table above, there has been a decline in the amount of visas issued by Luxembourg over the last ten years. From 2001 to 2003 the number of visas passed from 21692 to 23478. Nevertheless, in 2004 it fell down to 15399 and in 2005 it hit a bottom low of 8834 to begin increasing in 2006 until now with the exception of 2008 and 2009.

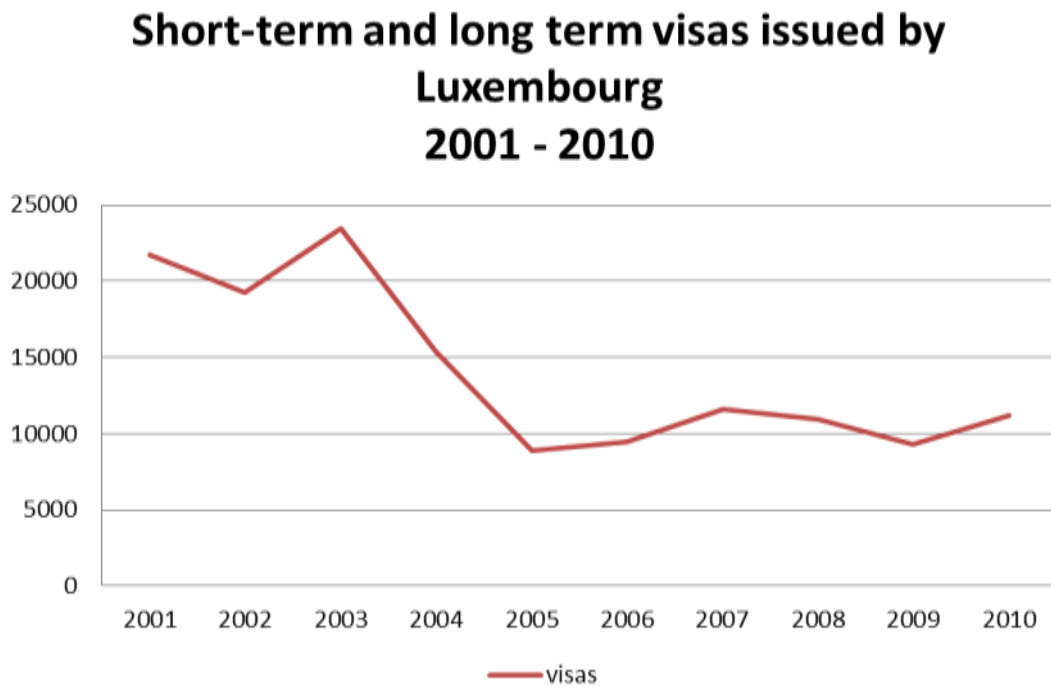
The explanations for this tendency in the timeline can be explained because in 2004 there were two events that change the issuance of visas: the first one was the adhesion of the EU-10 countries to the European Union on 1 May 2004 and the second issue was that the Luxemburgish government had abolished on 1 May 2004 the «artist visa»²⁹², after the recommendations made by Committee on the Elimination of Discrimination against Women to the forth rapport of Luxembourg.

²⁹² Comité pour l'élimination de la discrimination à l'égard des femmes. Examen des rapports présentés par les États parties conformément à l'article 18 de la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes. Cinquième rapport périodique des États parties. Luxembourg. 2006. P. 13. This documents says :

« 39. Dans le passé, le Luxembourg avait été souvent critiqué du fait qu'il émettait des autorisations spéciales de séjour pour des artistes de cabaret qui venaient presque exclusivement de pays en dehors de l'Union européenne. Ces autorisations spéciales, uniques dans l'Union européenne, ont valu au Luxembourg le reproche d'encourager le trafic des femmes. En fait, la loi du 26 mai 2004 modifiant la loi du 30 juillet 1999 concernant le statut de l'artiste professionnel indépendant et l'intermittent du spectacle avait été dévoyée pour faciliter l'entrée d'artistes de cabaret sur le territoire national. Les artistes ont accédé au territoire luxembourgeois en se procurant un visa spécial valable exclusivement pour le territoire luxembourgeois, à condition de prouver l'existence d'un contrat de travail dans un cabaret. Afin de ne pas affecter l'efficacité de la lutte contre le trafic des êtres humains, le Commissaire européen aux droits de l'homme, M. Alvaro Gil-Robles avait invité le Gouvernement luxembourgeois à revoir la pratique de ces visas temporaires. Confronté à un nombre croissant de demandes d'autorisations spéciales, le Gouvernement luxembourgeois a décidé en avril 2004 de ne plus émettre d'autorisations pour les ressortissants d'États non membres de l'Union européenne souhaitant travailler à Luxembourg comme « artiste de cabaret » ou dans une activité similaire, avec effet au 1er mai 2004. Cette décision d'abolir purement et simplement les visas d'artistes témoigne de la volonté du Gouvernement luxembourgeois de prendre des mesures concrètes pour lutter efficacement contre la traite des êtres humains. »

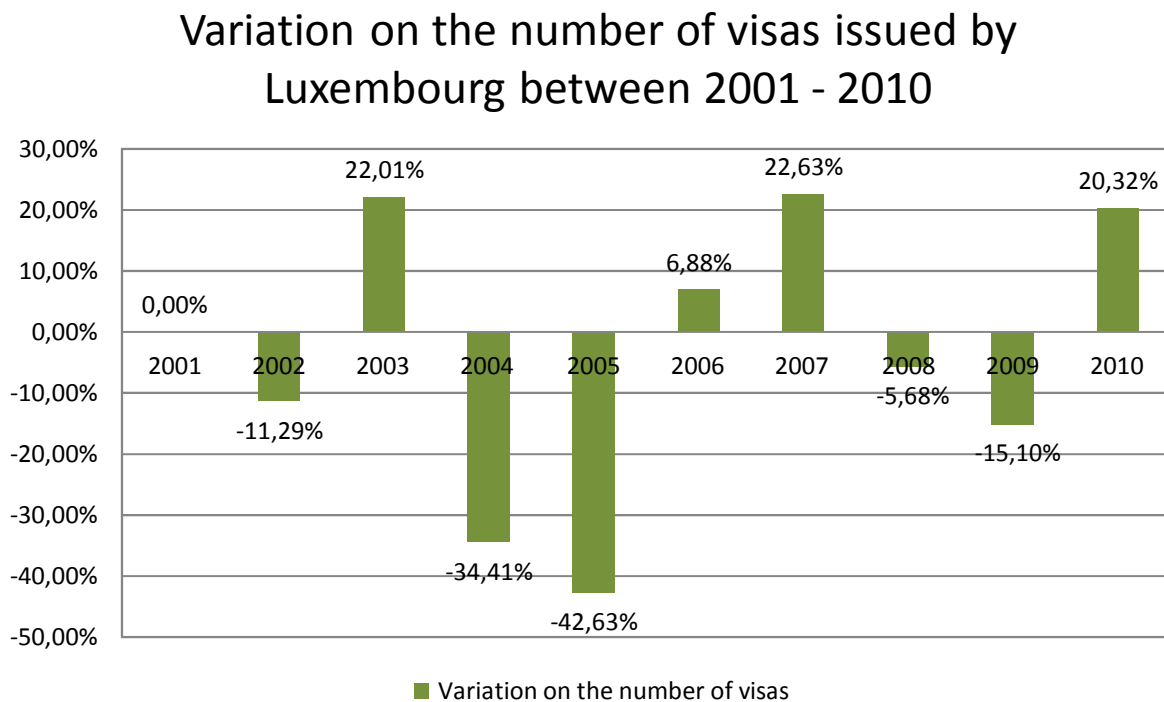
These variations are seen from the following graphs.

Graph N° 12:



Source: Passports and Visas Office, 2011 © EMN NCP LU

Graph N° 13



Source: Passports and Visas Office, 2011 © EMN NCP LU

As we can see the fall between 2003 and 2004 was of 34,41% but the variation between 2004 and 2005 was even bigger (42,63%). After 2005 the number of visas began to increase until 2008. When the crisis started the number of visas issued fell by 5,7% in 2008 and 15,1% in 2009. Nevertheless after the recovery in 2010 the numbers of visas began to increase substantially (20,3%) but until 2010 the number of visas continues to be inferior to the number in 2007.

As we mentioned before the issuance of visas by Luxembourg is not only made by Luxembourgish diplomatic missions that are very few but also by the diplomatic missions of other Member States that represents Luxembourg's interests abroad.

Table 13 shows us the visas issued by Luxembourg during 2010 through its diplomatic missions around the world and the Ministry of Foreign Affairs in Luxembourg²⁹³.

Table N° 13: Number of visas applications treated by Luxembourg in 2010

Visa Type	Granted	Granted ex-officio	Rejected	Ongoing	To be completed	Without object	Rejected ex-officio	Unkown	Total
A	1	0	0	0	0	0	0	0	1
C	72	9	1	3	6	0	5	0	96
C1	1742	187	81	8	26	3	3	2	2052
C2	1472	672	38	7	17	3	3	0	2212
C3	1461	1123	15	13	19	0	0	0	2631
C5	251	600	0	1	5	1	0	0	858
D	149	3	8	52	12	0	0	0	224
D+C	95	3	2	5	0	0	0	0	105
Total	5243	2597	145	89	85	7	11	2	8179

Source: Passports and Visas Office, 2011 © EMN NCP LU

It is important to note that there was only one A visa issued in 2010. Luxembourg issued 152 D visas that amounts to 1,9% and 98 visas D+C (that disappeared in 2010) that represents

²⁹³ Information given by the Passports and Visas Office.

1,2%. This means that long term visas only represents 3,1% of the total of visas issued by Luxembourg in 2010.

We can see that the number of refusal is very low: only 156 refusals (rejected and rejected ex-officio) that represents 1,9% of the total visa applications. It is important to note that the number of visas granted by Luxembourg is of 95,8% and the percentage of visas granted ex-officio is of 31,7%.

The most common visa granted by the Luxemburgish authorities is the short-stay visa multiple entry (C3) with a validity of 1 year (31,6%). The least visa issued is the short-stay visa multiple entry with a validity of more than 1 year (10,4%). As we can see, most of these visas were granted ex-officio (70,5%).

The distribution worldwide of the issuance of visas by the Luxembourg authorities can be seen from the table below:

Table N° 14: Visas applications treated by Luxembourg by location 2010

	Type de Visa	Accordée	Decidé d'office	Refusé	En cours	A completer	Sans objet	Refusé d'office	Inconnu (A1)	TOTAL
MOSCOW	C	1			1					2
	C1	686	69	27	3	11	1			797
	C2	987	547	19	1	12	3			1569
	C3	1118	1049	14	10	17				2208
	C5	250	598		1	5	1			855
	D	36		2	20	9				67
	D+C	12	1							13
TOTAL		3090	2264	62	36	54	5	0	0	5511
BEIJING	C	3								3
	C1	460	65	2	1	5				533
	C2	138	14			3				155
	C3	84	23			1				108
	D	36		1	1					38
	D+C	13		1						14
TOTAL		734	102	4	2	9	0	0	0	851
LONDON	C1	139		29	3	1	1			173
	C2	154	6	6	6					172
	C3	193	45	1	3					242
	C5		1							1

	D	9	2							11
	D+C	3								3
TOTAL		498	54	36	12	1	1	0	0	602
SHANGHAI	C1	369		17		8	1			395
	C2	62	2	10						74
	C3	43								43
	C5	1								1
	D	35		3	16					54
	D+C	7		1						8
TOTAL		517	2	31	16	8	1	0	0	575
BANGKOK	C		9			2		5		16
	C1	1	44	4		1		3		53
	C2	13	92	3		2		3		113
	C3	2	5							7
	C5		1							1
	D		1							1
	D+C	7	2							9
TOTAL		23	154	7	0	5	0	11	0	200
MINISTERE DES AFFAIRES ETRANGERES	C	3		1	1	1				6
	C1	50	8					2		60
	C2	52	8							60
	C3	4	1							5
	D			1						1
TOTAL		109	17	2	1	1	0	0	2	132
WASHINGTON D.C.	C	53				3				56
	C1	13								13
	C2	2								2
	C3	10				1				11
	D	1								1
	D+C	5								5
TOTAL		84	0	0	0	4	0	0	0	88
LISBON	D	20			9					29
	D+C	46			4					50
TOTAL		66	0	0	13	0	0	0	0	79
NEW YORK	C	8								8
	C2	53	3							56
	C3	2								2
TOTAL		63	3	0	0	0	0	0	0	66
SAN FRANCISCO	A	1								1
	C	4								4
	C1	21		1						22
	C2	7								7

	C3	4								4
	D	1								1
TOTAL		38	0	1	0	0	0	0	0	39
PRAGUE	D	4			2	3				9
TOTAL		4	0	0	2	3	0	0	0	9
ROME	C1				1					1
	D	3			2					5
	D+C	2								2
TOTAL		5	0	0	3	0	0	0	0	8
TOKYO	C1	3		1						4
	C2	2								2
	D	1								1
TOTAL		6	0	1	0	0	0	0	0	7
GENEVA	C				1					1
	C2	1								1
	C3	1								1
	D			1						1
TOTAL		2	0	1	1	0	0	0	0	4
THE HAGUE	C2	1								1
	D	2								2
TOTAL		3	0	0	0	0	0	0	0	3
BRUSSELS	D				1					1
	D+C				1					1
TOTAL		0	0	0	2	0	0	0	0	2
ATHENES	D	1								1
TOTAL		1	0	0	0	0	0	0	0	1
BERLIN	D				1					1
TOTAL		0	0	0	1	0	0	0	0	1
Police Grand Ducale	C1		1							1
TOTAL		0	1	0	0	0	0	0	0	1
TOTAL GENERAL		5243	2597	145	89	85	7	11	2	8179

Source: Passport and Visas Office, 2011 © EMN NCP LU

It is important to note that the major countries for which Luxembourg issues short-stay and long-stay visas are in the Russian Federation (5354) and the Popular Republic of China (836 in Beijing and 519 in Shanghai). The total amount of visas issued in the Russian Federation and the Popular Republic of China is 6709 of the total number of visas granted by Luxembourg worldwide (7840). This represents 85,6%.

In 2010, the total number of applications made by Russian citizens to the Luxembourgish consulate was 5511. From that number, 5354 visas were granted (97,2%) from which 2264

were granted ex-officio (representing 42,3 of the visas granted). The number of rejected visa is 62 that represents 1,1% of all the applications.

In the case of China there were only 1426 applications and there were 1355 visas granted (95%). The visas granted ex-officio are 104 representing 7,7% of the visas granted. The rejection percentage is 2,5% (35 rejections).

In relation with the other visas issued by Luxembourg by other Member States they are showed in the tables below:

1) Belgium:

Luxembourg had depended on the representation by Belgium it became independent in 1839 in other countries. The best example is that during the Treaty of London, the Russian delegation was charged with representing the interests of the Grand Duchy of Luxembourg and the people of Luxembourg.

Since the sub regional integration with Belgium in the Belgium – Luxembourg Economic Union in 1925 the ties between the two countries have been very strong and Belgium had represented Luxembourg in a large number of countries. To this date, Belgian diplomatic missions represent Luxemburgish interests in 64 countries over 5 continents.

The table below shows the total amount of visas issued on Luxembourg behalf by the Belgian diplomatic missions around the world.

However, the information is global so it does not allow differentiating between short stay visas and long stay visas. The large majority of visas are short-stay visas but we cannot precise the percentage.

Table N° 15:

**Visas issued by Belgian diplomatic missions
on behalf of Luxembourg (2008 - 2011)**

PAYS	2008	2009	2010	2011
AFRICA	1771	1499	1605	193
Algeria	136	125	150	10
Angola	3	4	9	0
Bénin	6	1	9	0
Burkina Faso	25	28	38	0
Burundi	1	10	10	0
Congo	9	10	7	3
Congo DR (Kinshasa)	64	58	67	12
Egypt	119	117	125	15
Ethiopia	22	32	24	0
Ivory Coast	67	43	50	8
Cameroon	97	117	105	10
Kenia	24	32	40	5
Libya	6	10	7	3
Marocco	282	267	249	43
Nigeria	107	66	107	5
Rwanda	25	25	22	5
Senegal	196	138	139	13
Tanzania	45	19	19	3
Tunisia	141	117	134	15
Uganda	11	4	4	0
South Africa	385	276	290	43
America	243	231	197	23
Canada	25	30	23	0
Costa Rica	2	1	0	0
Cuba	45	43	28	5

Jamaica				5
Mexico	6	4	2	0
Argentina			2	
Brazil	16	4	5	1
Chile	1	0	2	0
Colombia	45	63	53	6
Peru	74	79	70	4
Venezuela	29	7	12	2
Asia	1704	1696	2161	307
China (Hong Kong)	2	8	32	3
Philippines	64	56	60	15
India	602	718	931	125
Indonesia	24	23	64	2
Iran	182	170	194	29
Israel	34	22	30	4
Jordania	51	65	66	1
Kuwait	2	7	7	2
Lebanon	60	38	62	9
Malaysia	5	0	2	1
Pakistan	41	37	27	7
Quatar	1	8	4	0
Saudi Arabia	0	29	39	9
Singapore	27	13	33	3
Syria	34	38	31	5
Taiwan	66	79	70	1
Thailand	85			
Turkey	241	268	328	64
United Arab Emirates	19	23	68	0
Vietnam	143	72	100	23
South Korea	21	22	13	4

Europa	1775	1564	1666	148
Albania	0	271	243	0
Bulgaria	23	15	9	3
Finland	0	0	1	0
Hungary	0	0	1	0
Ireland	14	15	17	3
Kosovo	161	298	545	47
Croatia	170	32	19	1
Ukraine	648	487	765	88
Romania	20	32	33	6
United Kingdom	1	0	0	0
FYR of Macedonia	738	414	33	0
Oceania	6	9	4	1
Australia	6	9	4	1

Source: Passport and Visas Office, 2011
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It is important to note that those countries for which the Belgian diplomatic authorities issued more visas are:

In Africa: South Africa followed by Morocco, Senegal, Tunisia and Algeria.

In the Americas, the countries that demand most visas from Luxembourg are Peru, Colombia and Cuba. These countries are considered of high immigration risk.

In Asia, the Indians are the people that demand most visas for coming to

Luxembourg. This demonstrates not only the increasing economic exchange between India and Luxembourg but also the importance of India as a growing world economy. It is followed by Turkey, Iran and Lebanon. Taiwanese citizens are excluded from this list because since the end of 2010, they are exempted (??) from the visa requirements.

In Europe, Belgian diplomatic missions issued visas to Ukrainian citizens (648 in 2008, 487 in 2009 and 765 in 2010) and citizens of the remaining Balkans countries that are subjected to visa requirements, like Albania and Kosovo.

- 2) France: This country represents the interests of Luxembourg in some African and central Asian countries.

Table N° 16: Visas issued by France on Luxembourg behalf 2009 - 2010

COUNTRY	2009	2010
Azerbaïdjan	N/A	144
Botswana	N/A	4
Cape Verde	N/A	35
Chad	N/A	7
Fiji	N/A	1
Gabon	N/A	10
Guinea-Bissau	N/A	2
Haiti	N/A	3
Jamaica	N/A	2
Laos	N/A	5
Mauritania	N/A	3
Niger	N/A	8
St. Lucia	N/A	1
Togo	N/A	19
Uzbekistan	N/A	61
TOTAL	N/A	305

Passports and Visas Office, 2011

3) Germany: This country represents Luxembourg in Belarus where they issued the large majority of visas for Luxembourg (270 visas in 2010 that represents 58,8%), some Asian countries and African countries.

Table N° 17: Visas issued by Germany on behalf of Luxembourg (2009 – 2010)

COUNTRY	2009	2010
Armenia	N/A	37
Bahrain	N/A	26
Belarus	N/A	270
Cambodia	N/A	11
Cyprus	N/A	9
Kyrgyzstan	N/A	12
Madagascar	N/A	22
Malawi	N/A	0
Mongolia	N/A	35
Maynmar	N/A	0
Namibia	N/A	14
Nepal	N/A	12
Tajikistan	N/A	4
Turkmenistan	N/A	7
TOTAL	N/A	459

4) Hungary: This country issues visas for Luxembourg on behalf of Moldova.

As we can see from the table below the only type of visa that the Hungarian consulate issued in 2009 on the behalf of Luxembourg were for short stay visit. The visas for visits amounted for 41,9% of the total number of visas. The visas issued for sport events came in second with 32,3%. There were 8 visas issued for participating in conferences (12,9%), 4 official visas (6,5%) and only 2 tourist visas (3,2%).

The fact that there are not many tourists coming from Moldova to Luxembourg is due to the fact that Moldova is one of the poorest countries in Europe. Its average gross salary is of 181 € per month. That explains why most of the visas are to visit family or to come to sportive events or conferences

Table N° 18: Visas for Luxembourg issued by Hungary on behalf in Moldova – 2009 – 2010

Visa Type	2009	2010
C	62	0
Visit	26	
Business	0	
cultural	0	
official	4	
medical	0	
tourism	2	
sport	20	
research	0	
studies	2	
volunt.	0	
conference	8	
D	0	
Refusals	0	
Withdrawn	0	
Pending	0	
Total	62	0

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5) Netherlands: This country has a common history with Luxembourg. Since 1872, the Netherlands has represented the interests of Luxembourg in Russia. With the development of the Benelux agreement after World War II, the Netherlands is the second country in importance that represents Luxembourg interests around the world.

Table N° 19: Visas issued by the Netherlands on the behalf of Luxembourg (2009 – 2010)

City/Country	2009	2010
Accra, Ghana	2	
Open		0
Issued		9
LTV ²⁹⁴		0
Cancelled		1
Refused		0
TOTAL	2	10
Almaty, Kazakhstan	155	
Open		1
Issued		162
LTV		1
Cancelled		1
Refused		1
TOTAL	155	166
Asmara, Eritrea	0	
Open		0
Issued		2
LTV		0
Cancelled		0
Refused		0
TOTAL	0	2
Bamako, Mali	31	
Open		0
Issued		16
LTV		0
Cancelled		0

²⁹⁴ LTV: Limited territorial visas

Refused		2
TOTAL	31	18
Colombo, Sri Lanka	17	
Open		0
Issued		17
LTV		0
Cancelled		0
Refused		0
TOTAL	17	17
Cotonou, Benin	19	
Open		0
Issued		9
LTV		0
Cancelled		1
Refused		3
TOTAL	19	13
Dhaka, Bangladesh	0	
Open		0
Issued		0
LTV		0
Cancelled		0
Refused		1
TOTAL	0	1
Dubai, U.A.E.	53	
Open		0
Issued		35
LTV		0
Cancelled		4
Refused		0
TOTAL	53	39
Guangzhou, China (PR)	0	

Open		0
Issued		0
LTV		0
Cancelled		0
Refused		0
TOTAL	0	0
Guatemala City, Guatemala	0	
Open		0
Issued		0
LTV		0
Cancelled		0
Refused		0
TOTAL	0	0
Ho Chi Minh, Vietnam	1	
Open		0
Issued		0
LTV		0
Cancelled		0
Refused		0
TOTAL	1	0
Khartoum, Sudan	3	
Open		0
Issued		6
LTV		0
Cancelled		0
Refused		0
TOTAL	3	6
La Paz, Bolivia	0	
Open		0
Issued		5
LTV		0

Cancelled		0
Refused		0
TOTAL	0	5
Lusaka, Zambia	15	
Open		0
Issued		0
LTV		0
Cancelled		0
Refused		0
TOTAL	15	0
Managua, Nicaragua	0	
Open		0
Issued		2
LTV		0
Cancelled		0
Refused		0
TOTAL	0	2
Maputo, Mozambique	4	
Open		0
Issued		0
LTV		0
Cancelled		0
Refused		0
TOTAL	4	0
Miami, USA	0	
Open		0
Issued		0
LTV		0
Cancelled		0
Refused		0
TOTAL	0	0

Montevideo, Uruguay	0	
Open		0
Issued		0
LTV		0
Cancelled		0
Refused		0
TOTAL	0	0
Muscat, Oman	11	
Open		0
Issued		8
LTV		0
Cancelled		0
Refused		0
TOTAL	11	8
Paramaribo, Surinam	0	
Open		0
Issued		1
LTV		0
Cancelled		0
Refused		0
TOTAL	0	1
Port-of-Spain, Trinidad and Tobago	12	
Open		0
Issued		13
LTV		0
Cancelled		1
Refused		0
TOTAL	12	14
Quito, Ecuador	1	
Open		0
Issued		19

LTV		0
Cancelled		0
Refused		0
TOTAL	1	19
Rabat, Morocco	2	
Open		0
Issued		1
LTV		0
Cancelled		0
Refused		0
TOTAL	2	1
Sana'a, Yemen	2	
Open		0
Issued		1
LTV		0
Cancelled		1
Refused		0
TOTAL	2	2
Santo Domingo, Dominican Republic	65	
Open		1
Issued		49
LTV		0
Cancelled		0
Refused		26
TOTAL	65	76
Sarajevo, Bosnia - Herzegovina	592	
Open		0
Issued		375
LTV		0
Cancelled		8

Refused		1
TOTAL	592	384
Skopje, FYR of Macedonia	149	
Open		0
Issued		0
LTV		22
Cancelled		0
Refused		0
TOTAL	149	22
St. Petersburg, Russian Federation	0	
Open		0
Issued		0
LTV		0
Cancelled		0
Refused		0
TOTAL	0	0
Tbilisi, Georgia	34	
Open		0
Issued		26
LTV		0
Cancelled		0
Refused		3
TOTAL	34	29
Vancouver, Canada	0	
Open		0
Issued		0
LTV		0
Cancelled		0
Refused		0
TOTAL	0	0
Wellington, New Zealand	0	

Open		0
Issued		0
LTV		0
Cancelled		0
Refused		0
TOTAL	0	0

Source: Passports and Visas Office, 2011 © EMN NCP LU

6) Slovenia: This country issues the visas on Luxembourg behalf in Montenegro,

Table N° 20: Visas issued by Slovenia on Luxembourg behalf in Montenegro

(2009 – 2010)

Visa Type	2010
C	1
Total	1

Source: Passports and Visas Office © EMN NCP LU

7. Conclusions

Luxembourg is a founding member of the Schengen Convention, since 1985. Its geographical position, located in the middle of the European Union, puts Luxembourg in a very special position: it does not have any external borders (except the airport) and there are very few flights coming from third countries. National visa policy thus had to be developed in accordance with European Union migration and visa policy. The transfer of the sovereign right to decide on a national visa policy was made systematically. However, like it is a shared competence, Luxembourg follows and applies the Visa Code completely for the short-term visa, but maintains exclusive competence with regard to long-term visas that are regulated by the Law on the free movement of persons and on immigration of 29 August 2008.

The fact that Luxembourg does not have external borders means that Luxembourg relies, with the exception of the International Airport, on the control and the surveillance done by other Member States at the external borders

This situation makes that Luxembourg's visa policy (visa facilitation, visa exemption, etc.) cannot be considered a migration channel because the country does not have any control of the free movement of persons inside the Schengen area and the fact that Luxembourg does not have any controls at its territorial borders makes the control of any type of migration (regular or irregular) difficult. Visa policy is a consequence of the free movement of persons in the Schengen area and the decisions are taken at the European level.

Furthermore, due to its small size, Luxembourg does not have a lot of diplomatic representation around the world, meaning that the issuing of visas for Luxembourg depends on another Member States' diplomatic representation. Thus, the issuance of visas is quite particular compared to other Member States because the large majority of visas are issued via the intermediary of another Member State, which in some cases can approve or reject a visa ex-officio without the approval of Luxembourg. Because of its dimensions and limited human resources, Luxembourg has centralized its main diplomatic representations in countries that represent a very important economic stake for the country, e.g. the United States of America, the Popular Republic of China and the Russian Federation.

The only visa policy that Luxembourg can develop and control is the long-term visa, and this policy is predominantly focused on attracting highly qualified workers and researchers. This

policy is economy-oriented, trying to satisfy the needs of the industry and the financial- and banking sectors. The position of the government is very clear in this aspect making the procedures for these types of migrants relatively easy in comparison with the other types of residence permits, to the point that family reunification in the case of highly qualified workers after the transposition of directive 2009/50/CE can be made immediately in contrast with the family reunification of a salaried worker who has to wait one year after having received his papers.

The fact that Luxembourg visa policy is directly attached to European Union migration tends to create a serious risk of irregular migration because of free movement of persons in the Schengen area. Primo, Luxembourg has a very particular situation in relation with its foreign population. Different from the rest of the Member States, Luxembourg is characterized by its important communitarian population, whose entries and stays cannot be controlled. Once the visa, the authorization of stay of three months for the third-country nationals or the residence permit expires, the individual can stay or leave the territory but the authorities do not have any means to verify if this person leaves the territory or not. These cases and the cases of citizens that are exempted of a visa amount for the vast majority of the irregular migration that exists in Luxembourg. The exemption of visa had been putted to the test with the Brazilian citizens that are beginning to install themselves in Luxembourg and the recent inflow of Serbian Roma that had demanded international protection. The government was compelled to pass a bill in Parliament to implement the fast track procedure to confront the massive inflow of these migrants. In consequence, European Union visa policy in general and Luxembourg visa policy in particular, cannot be considered as a migration channel and somehow tend to promote irregular migration.

Nonetheless, Luxembourg has actively participated in external border control, by transferring equipment and human resources to Frontex since Member States have a responsibility to control their external borders on behalf of the other Schengen countries.

8. Annexes

Annex N°1: List of The third country nationals that require a visa and a valid passport for entering Luxembourg

- Afghanistan
- Algeria
- Angola
- Armenia
- Azerbaijan
- Bahrain
- Bangladesh
- Belarus
- Belize
- Benin
- Bhutan
- Bolivia
- Botswana
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Cape Verde
- Central African Republic
- Chad
- China
- Colombia
- Comoros
- Malawi
- Maldives
- Mali
- Mauritania
- Micronesia
- Moldova
- Mongolia
- Montenegro
- Morocco
- Mozambique
- Myanmar
- Namibia
- Nauru
- Nepal
- Niger
- Nigeria
- North Korea
- Northern Mariana Islands
- Oman
- Pakistan
- Palau
- Papua New Guinea
- Peru

- Congo
- Cuba
- Democratic Rep. of Congo
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- East Timor
- Egypt
- Equatorial Guinea
- Eritrea
- Ethiopia
- Fiji
- Gabon
- The Gambia
- Georgia
- Ghana
- Grenada
- Guinea Bissau
- Guyana
- Haiti
- India
- Indonesia
- Iran
- Iraq
- Ivory Coast
- Jamaica
- Jordan
- Kazakhstan
- Philippines
- Qatar
- Russia
- Rwanda
- Sao Tome and Principe
- Saudi Arabia
- Senegal
- Serbia
- Sierra Leone
- Solomon Islands
- Somalia
- South Africa
- Sri Lanka
- St. Lucia
- St. Vincent and the Grenadines
- Sudan
- Surinam
- Swaziland
- Syria
- Tajikistan
- Tanzania
- Thailand
- Togo
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Tuvalu

- Kenya
- Kiribati
- Kuwait
- Kyrgyzstan
- Laos
- Lebanon
- Lesotho
- Liberia
- Libya
- FYR of Macedonia
- Madagascar
- Uganda
- Ukraine
- United Arab Emirates
- Uzbekistan
- Vanuatu
- Vietnam
- Western Samoa
- Yemen
- Zambia
- Zimbabwe

Source: Ministry of Foreign Affairs, Passports and Visas Office, May, 2011

Annex N° 2: List of the countries whose nationals are exempted from a Short Term visit to Luxembourg.

- Albania
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey) if holder of a biometric passport
- Andorra
 - Valid national identity card
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Antigua and Barbuda
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Argentina
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Australia
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Austria
 - Valid national identity card
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Bahamas
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Barbados
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Liechtenstein
 - Valid national identity card
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Lithuania
 - Valid national identity card
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Macao
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Macedonia
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey) if holder of a biometric passport
- Malaysia
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Malta
 - Valid national identity card
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Mauritius (Isle)
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Mexico

- beginning of the journey)
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Belgium
 - Valid national identity card
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Bosnia Herzegovina
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey) if holder of a biometric passport
- Brazil
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Brunei
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Bulgaria
 - Valid national identity card
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Canada
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Chile
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Costa Rica
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Monaco
 - Valid national identity card
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Montenegro
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey) if holder of a biometric passport
- New Zealand
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Nicaragua
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Norway
 - Valid national identity card
- Panama
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Paraguay
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Poland
 - Valid national identity card
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)

- Croatia
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Cyprus
 - Valid national identity card
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Czech Republic
 - Valid national identity card
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Denmark
 - Valid national identity card
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- El Salvador
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Estonia
 - Valid national identity card
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Finland
 - Valid national identity card
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- France
 - Valid national identity card
- Portugal
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Romania
 - Valid national identity card
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Saint Kitts and Nevis
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- San Marino
 - Valid national identity card
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Serbia
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey) if holder of a biometric passport. The waiver does not apply to holders of Serbian passports issued by the Serbian Coordination Department. (Koordinaciona uprava)
- Seychelles
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Singapore
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Slovakia

- Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Germany
 - Valid national identity card
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Greece
 - Valid national identity card
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Guatemala
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Honduras
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Hong Kong
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Hungary
 - Valid national identity card
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Iceland
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Ireland
 - Valid national identity card
- Valid national identity card
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Slovenia
 - Valid national identity card
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- South Korea
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Spain
 - Valid national identity card
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Sweden
 - Valid national identity card
- Switzerland
 - Valid national identity card
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Taiwan
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- The Netherlands
 - Valid national identity card
- United Kingdom
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)

- Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Israel
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Italy
 - Valid national identity card
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Japan
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Latvia
 - Valid national identity card
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- United States of America
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Uruguay
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Vatican City
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)
- Venezuela
 - Valid passport without a visa (valid at least 3 months after the beginning of the journey)

Source: Ministry of Foreign Affairs, Passports and Visas Office, May, 2011

Annex N° 3: List by country and by diplomatic representations that treat the demand and issue the visas on Luxembourg's behalf.

COUNTRY	CITY	DIPLOMATIC REPRESENTATION
Albania	Tirana	Belgium
Algeria	Algiers	Belgium
Angola	Luanda	Belgium
Argentina	Buenos Aires	Belgium
Armenia	Yerevan	Germany
Australia	Canberra	Belgium
Azerbaijan	Baku	France
Bahrain	Manama	Germany
Bangladesh	Dhaka	Netherlands
Belarus	Minsk	Germany
Benin	Cotonou	Netherlands
Bolivia	La Paz	Netherlands
Bosnia-Herzegovina	Sarajevo	Netherlands
Botswana	Gaborone	France
Brazil	Sao Paolo	Belgium
Brunei Darussalam	Bandor Seri Begawan	France
Bulgaria	Sofia	Belgium
Burkina Faso	Ouagadougou	Belgium
Burundi	Bujumbura	Belgium
Cambodia	Phnom Penh	Germany
Cameroon	Yaoundé	Belgium
Canada	Montreal	Belgium
	Vancouver	Netherlands
Cape Verde	Praia	Portugal
Central African Republic	Bangui	France
Chad	N'Djamena	France

Chile	Santiago	Belgium
China (PR)	Beijing	Luxembourg
	Guangzhou	Netherlands
	Shanghai	Luxembourg
	Hong Kong	Belgium
Colombia	Bogota	Belgium
Comoros	Moroni	France
Congo	Brazzaville	Belgium
Congo (Democratic Republic)	Kinshasa	Belgium
	Lubumbashi	Belgium
Costa Rica	San José	Belgium
Côte d'Ivoire	Abidjan	Belgium
Croatia	Zagreb	Belgium
Cuba	La Havana	Belgium
Cyprus	Nicosia	Germany
Djibouti	Djibouti	France
Dominican Republic	Santo Domingo	Netherlands
Ecuador	Quito	Netherlands
Egypt	Cairo	Belgium
El Salvador	San Salvador	Spain
Equatorial Guinea	Malabo	Spain
Eritrea	Asmara	Netherlands
Ethiopia	Addis Ababa	Belgium
Fiji	Suva	France
FYR of Macedonia	Skopje	Netherlands
Gabon	Libreville	France
Georgia	Tbilisi	Netherlands
Ghana	Accra	Netherlands
Guatemala	Guatemala City	Netherlands

Guinea-Bissau	Bissau	France
Haiti	Port-au-Prince	France
Honduras	Tegucigalpa	Spain
India	New Delhi ²⁹⁵	Belgium
	Mumbai	Belgium
Indonesia	Jakarta	Belgium
Iran	Teheran	Belgium
Ireland	Dublin	Belgium
Israel	Tel Aviv	Belgium
	Jerusalem	Belgium
Jamaica	Kingston	Belgium
Japan	Tokyo	Luxembourg
Jordan	Amman	Belgium
Kazakhstan	Almaty	Netherlands
Kenya	Nairobi	Belgium
South Korea	Seoul	Belgium
Kosovo	Pristina	Belgium
Kuwait	Kuwait City	Belgium
Kyrgyzstan	Bishkek	Germany
Laos	Vientiane	France
Lebanon	Beirut	Belgium
Libya	Tripoli	Belgium
Madagascar	Antananarivo	Germany
Malawi	Lilongwe	Germany
Mali	Bamako	Netherlands
Mauritania	Nouakchott	France
Mauritius	Port Louis	France
Mexico	Mexico City	Belgium

²⁹⁵ Even though Luxembourg has a consular section in New Delhi (passports competence), the visa application is the competence of the Belgian representation.

Moldova ²⁹⁶	Chisinau	Hungary
Monaco	Monaco	France
Mongolia	Ulan Bator	Germany
Montenegro ²⁹⁷	Podgoria	Slovenia
Morocco	Rabat	Netherlands
	Casablanca	Belgium
Mozambique	Maputo	Netherlands
Myanmar	Rangoon	Germany
Namibia	Windhoek	Germany
Nepal	Kathmandu	Germany
New Zealand	Wellington	Netherlands
Nicaragua	Managua	Netherlands
Niger	Niamey	France
Nigeria	Abuja	Belgium
Oman	Muscat	Netherlands
Pakistan	Islamabad	Belgium
Panama	Panama City	Spain
Papua New Guinea	Port Moresby	France
Paraguay	Asuncion	Spain
Peru	Lima	Belgium
Philippines	Manila	Belgium
Qatar	Doha	Belgium
Romania	Bucharest	Belgium
Russian Federation	Moscow	Luxembourg
	St Petersburg	Netherlands
Rwanda	Kigali	Belgium

²⁹⁶ In Moldova the visas A, B, C, are issued by the Hungarian Diplomatic Mission in Chisinau, but the applicants for D visa still have to apply at the Luxembourgish Embassy in Moscow.

²⁹⁷ In Montenegro the visas A, B, C are issued by the Slovenia Diplomatic Mission in Podgorica, but the applicants for a D visa have to apply at the Belgian Embassy in Belgrade.

St Lucia	Castries	France
San Marino	San Marino	Italy
Sao Tomé	Sao Tomé	Portugal
Saudi Arabia	Riyadh	Belgium
Senegal	Dakar	Belgium
Serbia	Belgrade	Belgium
Seychelles	Victoria	France
Singapore	Singapore	Belgium
South Africa	Cape Town	Belgium
	Johannesburg	Belgium
Sri Lanka	Colombo	Netherlands
Sudan	Khartoum	Netherlands
Syria	Damascus	Belgium
Taiwan	Taipei	Belgium
Tajikistan	Dushanbe	Germany
Tanzania	Dar-es-Salaam	Belgium
Thailand	Bangkok	Luxembourg
Togo	Lomé	France
Trinidad and Tobago	Port-of-Spain	Netherlands
Tunisia	Tunis	Belgium
Turkey	Ankara ²⁹⁸	Belgium
	Istanbul	Belgium
Turkmenistan	Ashgabat	Germany
Uganda	Kampala	Belgium
Ukraine	Kiev	Belgium
United Arab Emirates	Abu Dhabi ²⁹⁹	Belgium
	Dubai	Netherlands
United Kingdom	London	Luxembourg

²⁹⁸ In 2011, Luxembourg plans to open a diplomatic representation in Ankara.

²⁹⁹ In 2011, Luxembourg is going to open a diplomatic representation in Abu Dhabi

United States of America	Washington D.C.	Luxembourg
	Atlanta	Belgium
	Chicago	Austria
	Los Angeles	Belgium
	Miami	Netherlands
	New York	Luxembourg
	San Francisco	Luxembourg
Uruguay	Montevideo	Netherlands
Uzbekistan	Tashkent	France
Vanuatu	Port Vila	France
Venezuela	Caracas	Belgium
Vietnam	Hanoi	Belgium
	Ho-Chi Minh City	Netherlands
Yemen	Sana'a	Netherlands
Zambia	Lusaka	Netherlands
Zimbabwe	Harare	France

SOURCE: MINISTRY OF FOREIGN AFFAIRS. Passports and Visas Office, May 2011

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11 May 2011, with a political representative of the Government of Luxembourg

Semi structured interview 1

6 June 2011, with a political representative of the Government of Luxembourg

Semi structured interview 2

18 August 2011, with a diplomatic officer of the Russian Federation

Semi structured interview 3

18 July 2011, with an officer of the Grand Ducal Police

Semi structured interview 4

11 July 2011, with two members of a NGO

Semi structured interview 5

22 June 2011, with a representative of a NGO

Semi structured interview 6

20 July 2011, with a representative of OIM

Semi structured interview 7

5 July 2011, with two representatives of a NGO

Semi structured interview 8

4 July 2011, with a professor of the University of Luxembourg

Semi structured interview 9

22 June 2011, with a representative of a NGO

Semi structured interview 10

19 July 2011, with two representatives of a NGO

Interviews for EMN Annual Study 2010 on ‘Satisfying Labour Demand through Migration’

Semi structured interview 1

6 July 2010, with a representative of a Luxembourg trade union

Semi structured interview 4

7 July 2010, with a representative of the Government of Luxembourg

Semi structured interview 7

9 July 2010, with a representative of an employers’ organization

Semi structured interview 10

20 July 2010, with a representative of the banking sector

Semi structured interview 12

10 August 2010, with three political representatives of the Government of Luxembourg



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

