

Analytical Report on Legislation

RAXEN National Focal Point LUXEMBOURG

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Association for the support of immigrant workers,
Luxembourg

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1. Executive summary

This report is initially a presentation and an analysis of the existing anti-discriminatory legislation in Luxembourg. The anti-discriminatory legislation is widened with the legislation on the integration from abroad as well as with the legislation which supports diversity. To present this legislation, we placed it in its true context: demography in Luxembourg, the situation of foreigners in Luxembourg. In this context we will also speak about border-crossers, foreigners in the educational system, foreigners in the national labour market, asylum seekers, etc. We will limit ourselves to use the term "foreigner" in this report, to include all categories of non-nationals. However, before beginning the report, detailed definitions of various terms are given. Thus, we can note which term is used at the national level to speak about which group from abroad: immigrant, applicant of asylum, border-crosser, first/second generation, etc.

While passing to the principal part, the presentation and the analysis of the existing legislation in this field, we will give initially a short outline of all the existing legislation: texts of law, Penal code, Constitution, jurisprudence etc. Then we analyse this legislation with a special focus on its gaps, its exceptions, and its failures. We will also put it in the European and international context, to compare and see the differences. Special attention will be paid to the two European directives 2000/78/CE and 2000/43/CE, from which the latter should have already been transposed into the national law. Here, we will analyse the progresses done so far towards implementing the directives.

While speaking of legislation, we obviously will not forget the framework, which supports the application of this legislation. Thus, we analyse the institutional context that supports the application of this legislation. We take into account the existing organisations on the governmental and non-governmental level and how they operate. The pitfalls of this legal framework will also be highlighted in this chapter. In an effort to up date our reporting we mention the recent events in the fight against discrimination. Finally, we summarize the main findings of this report on the conclusion chapter. Our main findings can be summarized as follows :

The national anti discrimination legislation is rather well developed. Unfortunately it has still not been extended to international criteria (example : European anti discrimination directives 2000/78/CE and 2000/43/CE). Therefore, it remains very difficult to apply the legislation in place. The report shows that only very few complaints against racial discrimination have been introduced in the last years. Any important jurisprudence can be found and the national commission against racism¹, set up by the Luxembourg law, does not have any case to report.

¹ CSP-rac (Commission Spéciale Permanente contre le racisme – Special Permanent Commission against racism)

Table of contents

1.	Executive summary	3
2.	Glossary/definition of terms and concepts	5
3.	Introduction	7
4.	Background	8
4.1.	Migration, integration and diversity policies.....	8
4.2.	Short overview of current legislation and policy on immigration	14
5.	Legislation against discrimination on racial/ ethnic/ religious/ cultural grounds... 18	
5.1.	Documents related to Article 13, Action program.....	19
5.2.	Legislation for special areas	19
5.3.	Non-existing data, “gap analysis”, description of non-existing legislation.....	22
6.	Impact of anti-discrimination legislation.....	24
6.1.	Instalment of institutions, Specialised bodies.....	24
6.1.1.	CSP – RAC	24
6.1.2.	Human Rights commission	25
6.1.3.	Ombudsman	25
6.1.4.	E-mail address Ministry of Family.....	26
6.2.	Descriptive data on recorded complaints regarding racial/ethnic/religious/cultural discrimination in various sectors.....	26
6.2.1.	Recorded complaints	26
6.3.	Data on court cases, jurisprudence	30
6.3.1.	Jurisprudence 1612/68	30
6.3.2.	Other jurisprudence	30
7.	Strategies, initiatives and good practices for further developing legislation against discrimination, racism and exclusion, for equal treatment, diversity and integration	32
7.1.	Committees, investigations etc.....	32
7.1.1.	Campaign by the Ministry of Family	32
7.1.2.	Civil Party.....	32
7.1.3.	Existence of organised interest groups	33
8.	Summary and Conclusions.....	34

2. Glossary/definition of terms and concepts

DEFINE THE GROUPS IN FOCUS: MIGRANTS AND MINORITIES, FIRST, SECOND, THIRD GENERATION MIGRANTS, NATIONAL AND OTHER MINORITIES, ASYLUM SEEKERS, REFUGEES ETC IN ACCORDANCE WITH OFFICIAL DOCUMENTS, STATISTICS, LEGISLATIVE ACTS

The following definitions are presenting the terms used in the context of this report.

- **Immigrant (Immigré):** A person of a foreign origin, with a European or non European language, who migrated from his/her country of origin in order to settle in Luxembourg, with or without changing his/her origin nationality to the Luxembourgish one.
- **Foreigner (Etranger):** According to the article 1st of the law of March 28, 1972, on the entry and stay of foreigners, the medical control from abroad and the use of the foreign workforce, "is regarded as foreigner, with regard to the application of this law, any person who does not hold any means of proof that he or she has the Luxembourgish nationality"
- **Community-member (Communautaire):** Any person who has the nationality of a Member State of the European Union
- **Non-community member (Non-communautaire):** A person who has the nationality of a country that is not member of the European Union. One should bear in mind that at the level of the legislation regarding employment and residing in Luxembourg, there is an important divergence between the Community citizens and the non-community citizens. (Work permits, residence permit, etc)
- **Applicants of asylum (Demandeurs d'asile):** Defined according to the Convention of Geneva of 1951.
- **Refugee (Réfugié):** According to the Geneva Convention, a refugee is a person "who has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinions, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country" Geneva Convention, Article 1, 1959
- **First/ second generation (Première/ seconde génération):** This term is used regarding the immigrants. The first generation comprises the people who lived in their country of origin before coming to Luxembourg (Cf. point 1 of this chapter). The second generation are the people born in Luxembourg of immigrant parents, who are either Luxembourgers or foreigners, but who grew up in Luxembourg.

DEFINITION OF DISCRIMINATION AND ANTI-DISCRIMINATION IN LEGISLATION

The only legal definition of discrimination, which exists at the national level, is a general definition and is registered in the law of July, 19, 1997 (main national law against racism), which modifies the Penal code:

This definition reads as follows:

Article 454 of the criminal Code specifies that “discrimination is any distinction drawn between physical persons by virtue of their origin, the colour of their skin, their sex, their sexual orientation, their family situation, their state of health, their handicap, their morals, their political or philosophical opinions, their union activities, their belonging or not belonging, whether real or supposed, to a specific ethnic group, race or religion. Discrimination is also any distinction drawn between legal entities, groups or communities of people, by virtue of the origin, the colour of skin, the sex, the sexual orientation, the family situation, the state of health, the handicap, the morals, the political or philosophical opinions, the union activities, the belonging or not belonging, whether real or supposed, to a specific ethnic group, race or religion, of members or certain members of those legal entities, groups or communities.”²

GOVERNMENTAL DEFINITIONS

At the time of a campaign of information and sensitising, presented by the Department of Family (more precisely the *Commissariat du Gouvernement aux Etrangers*), folders on the various forms of discrimination were published by this Department . The folder on racial discrimination or the discrimination based on ethnic origin in the employment sector, presents various definitions, namely one about discrimination in general, another one about direct discrimination and more specific indirect discrimination. These definitions are as follows:

Discrimination:

- "There is discrimination when a provision, a criteria or a practice disadvantage in a disproportionate way certain people because of their racial or ethnic origin, of their religion or convictions, their handicap, their age or their sexual orientation.
- a direct discrimination occurs when a person is treated in a way less favourable than another would be, was not or would not be in a comparable situation on the basis of the one of the reasons aimed to by the first article (see definition of discrimination)

An indirect discrimination occurs when a provision, a criteria or an apparently neutral practice are likely to involve a particular disadvantage for people of a certain racial or ethnic origin, of a religion or conviction, a handicap, an age or a given sexual orientation compared to other people, this criteria or this practice is not objectively justified by a legitimate objective and the means of carrying out this objective are not suitable and necessary ”³

² Law of 19 July 1997 completing the Criminal Code and amending the criminalisation of racism and relating criminalisation to revisionism and other acts based on illegal discrimination.

³ Ministère de la Famille, de la Solidarité sociale et de la Jeunesse- Commissariat du Gouvernement aux étrangers ; Ministère du Travail, *Dans le milieu du travail aussi, la différence est dans votre regard*, campagne d’information et de sensibilisation, juillet 2003, Luxembourg

3. Introduction

To begin with, this information has been gathered from various sources, including Luxembourg Law, different national and international NGOs, several publications and the media.

On the basis of the documents obtained, a synthesis was made, with regard to both these texts (international laws and conventions) and current case law.

By writing this report, we tried to respect the indications of the guidelines given by the EUMC.

In a way of introduction to the report, a list of definitions is given. These are definitions of the terms which will recur in the report. We tried, in spite of the fact that it was not possible for each term, to refer to official or legal definitions. To be able to locate the report in its context, we give a whole set of data on demography in Luxembourg and more specifically on the foreigners in Luxembourg. Thus, not to neglect certain fields, we try to give an overview on data on immigrants in regard of the labor market, education and demography. There is also useful information on the border crossers for Luxembourg, e.g. asylum seekers.

Further we will examine the anti-discriminatory legislation currently in force. We analyze the evolution of the legislation, the current texts, the applicable sanctions, the existing faults, together with the jurisprudence, even though the latter is still incipient. With regard to the effectiveness of the legislation, we will try to give an outline on the situation of Luxembourg: the organizations which exist, the intervention of the government as well as good practices which had been realized.

4. Background

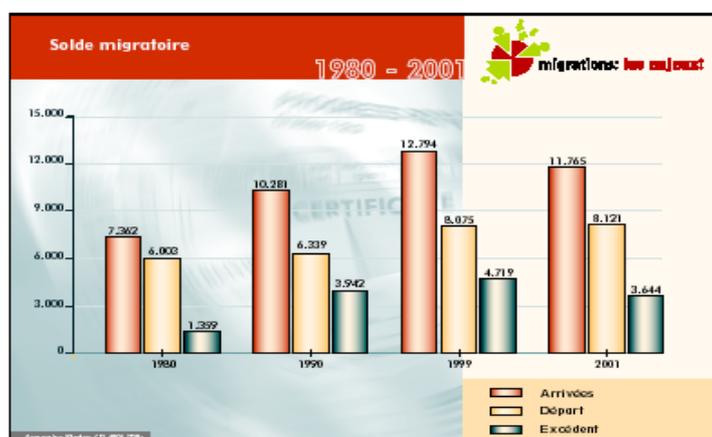
4.1. MIGRATION, INTEGRATION AND DIVERSITY POLICIES

153 different nationalities (TABLE 1) were present in Luxembourg in March 2002 (only legal residents).

Le Centre Informatique de l'Etat a recensé, en mars 2002, 153 nationalités différentes (Luxembourgeois compris), auxquelles il faut rajouter les apatrides et les "Indéterminés".

Luxembourg	276 505	Bulgarie	193	Sri Lanka	25	Soudan	3
Portugal	64 805	Tunisie	174	Lituanie	24	Tchad	3
France	23 803	Belarusse	170	Malte	22	Trinité-et-Tobago	3
Italie	20 707	Algérie	140	Niger	20	Zaire	3
Belgique	17 026	Tchéquie	140	Côte d'Ivoire	18	Zimbabwe	3
Allemagne	11 450	G-B d'Outre-Mer	131	Angola	17	Cambodge	2
Yougoslavie	8 283	Estonie	125	Éthiopie	16	Centrafrique	2
Grande-Bretagne	5 567	Cameroun	122	Ghana	15	Gabon	2
Pays-Bas	4 247	Pérou	117	Indonésie	15	Iles Fidji	2
Espagne	3 367	Corée du Sud	110	Singapour	15	Jordanie	2
Bosnie-Herz.	2 597	APATRIDES	108	Georgie	14	Les Seychelles	2
Danemark	2 367	Congo	104	Guatemala	14	Mozambique	2
Cap-Vert	1 850	Australie	94	Ouzbékistan	14	Bahamas	1
Amérique	1 748	Afrique du Sud	91	Arménie	13	Barbade	1
Suède	1 464	Slovaquie	88	Hong Kong	13	Belize	1
Grèce	1 411	Vietnam	85	Madagascar	13	Djibouti	1
Chine	1 353	Israël	80	Uruguay	12	Émirats Arabes Unis	1
Irlande	1 262	Ile Maurice	79	Burundi	11	Guinée Equatoriale	1
Russie	970	Chili	72	Niger	11	Guyane	1
Finlande	911	Slovénie	67	Syrie	11	Honduras	1
Pologne	840	Colombie	57	Afghanistan	10	Libye	1
Autriche	636	Liban	55	Irak	10	Mali	1
Ukraine	629	Argentine	53	Bénin	9	Mauritanie	1
Indéterminée	589	Moldavie	53	Guinée	9	Namibie	1
Roumanie	589	URSS	52	Kirghizistan	9	Nicaragua	1
Suisse	555	Nouvelle-Zélande	43	Sierra Leone	8	Sainte-Lucie	1
Japon	453	Chine (Taiwan)	42	Burkina-Faso	7	Tanzanie	1
Macédoine	450	Sénégal	42	Guinée-Bissau	7		
Islande	425	Pakistan	41	Haiti	7		
Croatie	414	Népal	38	Kenya	7	apatrides	
Hongrie	394	Cuba	35	Libéria	7	Les apatrides	
Brazil	382	Bangladesh	34	Liechtenstein	7	représentent toutes	
Maroc	342	Lettonie	33	Paraguay	7	les personnes sans	
Canada	336	Mexique	33	Somalie	7	nationalité légale.	
Iran	333	Tchécoslovaquie	33	Azerbaïdjan	6	Indéterminée - autres	
Turquie	320	Togo	32	Ouganda	5	Nous ne sommes pas	
Inde	277	Rwanda	31	Bolivie	4	en mesure de prédire	
AUTRES	270	Congo	29	Costa Rica	4	cette rubrique.	
Albanie	263	Malaisie	29	La Dominique	4		
Norvège	263	Venezuela	28	Mongolie	4	Union européenne	
Philippines	263	Égypte	27	Chypre	3		
Rép. Dominicaine	263	Équateur	26	Jamaïque	3		
Thaïlande	223	Kazakhstan	26	Panama	3		

Net migration (TABLE 2) Source: Statec. Arrivés: arrivals; Départ: departure; Excédent: surplus



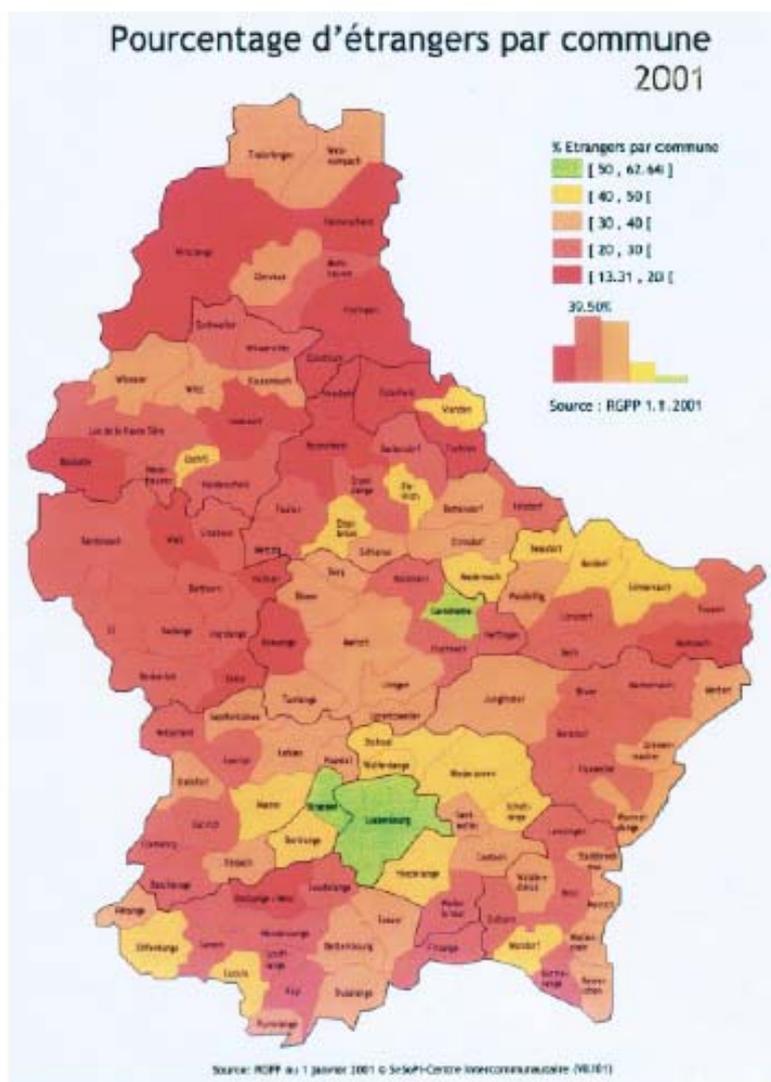
One can notice on the previous table, that the most important groups of immigrants are comprised of citizens from the European Union member countries: Portugal, France, Italy, Belgium and Germany. One should take into account that Italy, Belgium and France are our three neighbour countries, and it is, therefore, normal that we have an important migrant inflow from these countries. Italy and Portugal are the two countries with which Luxembourg had a labour force agreement. The two immigration models explained in the annexe are based on these two countries.⁴ The first nationality of non-EU nationals are the Yugoslavians, which can be explained by the two important waves of Yugoslavians coming to Luxembourg in the beginning of the nineties, because of the war in former Yugoslavia. These people, even if they came for political reasons and should have come in the frame of the Geneva Convention, have been regularised very fast after their arrival in Luxembourg. The second wave came at the end of the nineties. These people have been registered as asylum seekers under the terms of the Geneva Convention. Some of them had to leave the country in the meantime, others have been regularised.⁵

By the table below, one can notice that an important number of foreigners are living in Luxembourg-City. We suppose that this is a common phenomenon in all the member countries.

⁴ see annex : immigration models

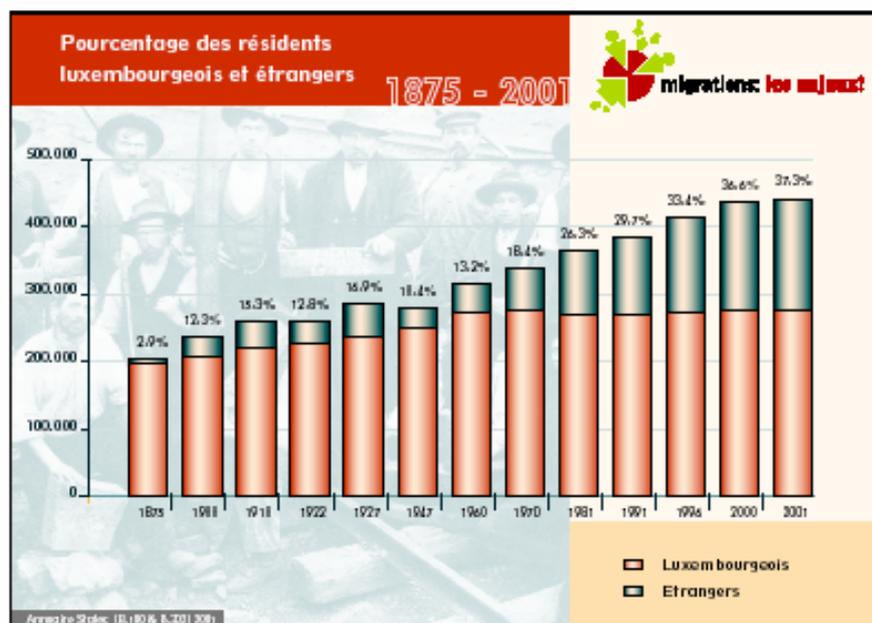
⁵ see annex. asylum seekers in Luxembourg

(Table 3) Percentage of non-nationals in Luxembourg.



Source: SESOPI Centre Intercommunautaire, 2001

Percentage of Luxemburgers and non-nationals in Luxembourg from 1875 to 2001.
(Table 4)

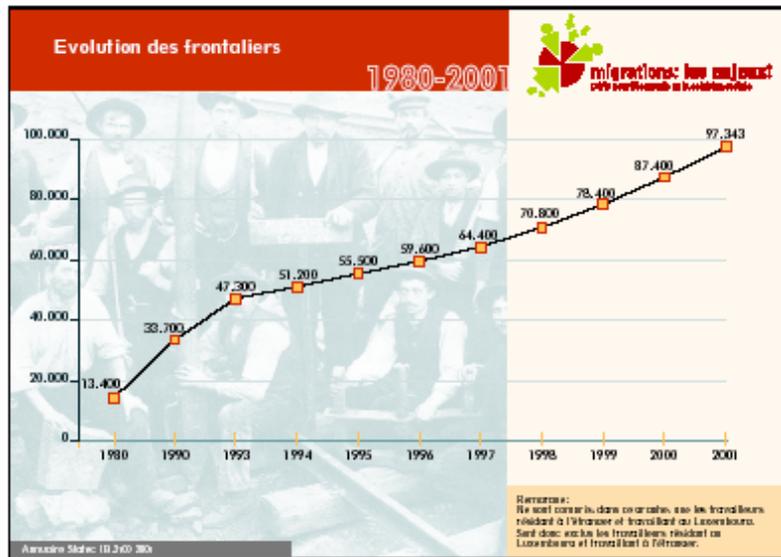


The Luxembourgish population remains permanent for the last 40 years, since 1960. The foreign residents are increasing, from 13 % to 37% of the total population.

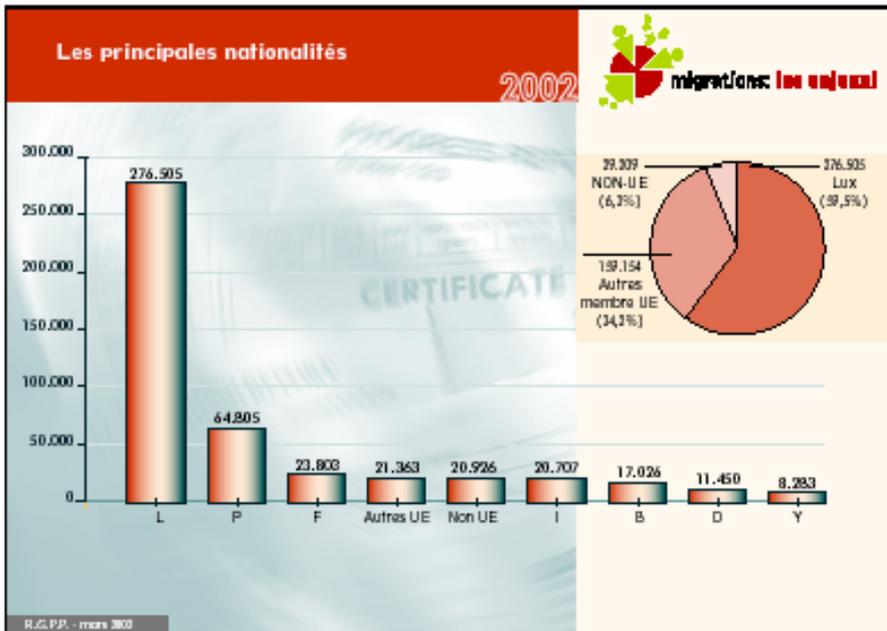
In this context, the extremely favourable economic situation of the Grand Duchy should not be ignored. The rate of unemployment is very low, to be exact 2.8% according to the latest data from the Employment Service, for September 2002⁶. Moreover, it emerges from the 2002 report by the Economic and Social Council that the employment market has experienced considerable momentum, for example with an increase of jobs of 6.5% between October 2000 and October 2001, and the creation of 15,000 additional posts. These figures are not exceptional to the extent that the same body states that since 1990 has been a constant rise of the salaried employment, with growth varying from 3.5% to 6.5%. Therefore a specific phenomenon is encountered: in order to cope with job demand, employers must have recourse more and more to a work force from the border regions. At present around 100,000 employees residing in border regions (commonly called cross-border or cross-border workers) have a job in Luxembourg, 53% are coming from France, 29% Belgium and 18% Germany.

⁶ Employment Service, Luxembourg, <http://www.adem.lu>

Evolution of the number of Border-crossers from 1980 to 2001. (TABLE 5)



Main nationalities in 2002 (TABLE 6)



The main nationalities in Luxembourg in 2002.

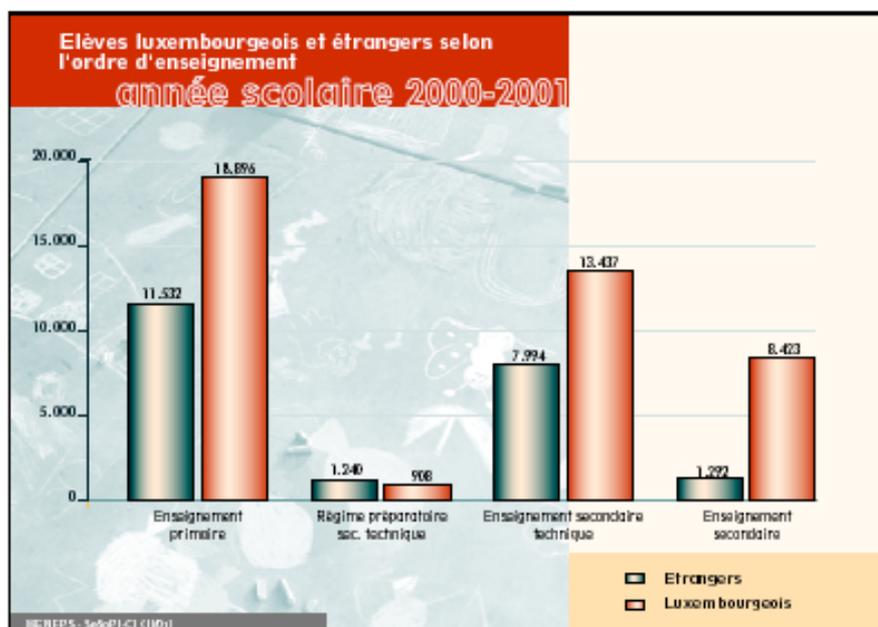
L= Luxemburger
 P= Portuguese
 F= French
 Autre UE= other European nationalities
 Non UE= Non European nationalities

I= Italians
 B = Belgians
 D= Germans
 Y= Yugoslavian

The demographic situation as well as its origins (the immigration models) are explained in the annexes.

Regarding employment the national labour market is composed as follows: Luxemburgers at 36 % , non-national residents at 27% and border-crossers at 37 %. The group of border crossers is composed as follows: 20% of the entire labour market are French, 10% of the entire labour market are Belgians and 7 % of the entire labour market are German

Comparison between foreigners and nationals educational levels (table 7)



The table presented above is a comparison between the importance of foreigner and Luxembourgish pupils in the education system : primary education, preparation regime for secondary school, secondary technical school and secondary « classical » school.

Asylum Seekers (table 8)

Fin 2001, environ 5000 demandeurs d'asile sont répertoriés aux registres du Ministère de la Justice.

Leur répartition par nationalités

Yougoslavie	77.4 %	Iran	0.4 %
Autres	7.2 %	Rwanda	0.4 %
Albanie	4.8 %	Slovaquie	0.4 %
Bosnie	3.1 %	Afghanistan	0.3 %
Macédoine	1.7 %	Congo /RD	0.3 %
Russie	1.4 %	Kazakhstan	0.3 %
Turquie	0.8 %	Pakistan	0.3 %
Algérie	0.7 %	Ukraine	0.3 %
		Sans nationalité	0.3 %

La majorité de ces demandeurs d'asile est arrivée au Luxembourg en 1998 et 1999.

sources: Réponse de M. Frieden, Ministre de la Justice, à la question parlementaire de M. le Député J-P Koepf
Chambre des députés - 2001

The above table indicates the percentages by nationality of the 5000 asylum seekers who were registered at the Ministry of Justice end of 2001.

4.2. SHORT OVERVIEW OF CURRENT LEGISLATION AND POLICY ON IMMIGRATION

In Luxembourg, article 10 B of the Grand Ducal Constitution guarantees the equality of all the Luxembourgers. Article 111 of the Luxembourg Constitution guarantees that “every foreigner on the Luxemburg territory, benefit from the protection according to persons and goods, except the exceptions established by the law.” According to administrative jurisprudence, non-nationals are assimilated to Luxembourgers as long as no law is in contradiction with this assimilation. Concerning the legal effect of the constitutional provision, article 2 of the law of July 27, 1997 on the organisation of the constitutional Court lays out that the Court will rule on the constitutionality of the legislative acts, except for the acts concerning approval for treaties.

In administrative issues, there is no specific provision stipulated in Luxembourg law in order to sanction these discriminations, thus recourse to common law becomes applicable. Yet, criminal law has implemented a wide range of sanctions in order to both prevent and punish all forms of discrimination.

When an illegal discrimination intervenes in the application of a legal provision, the sanction is the cancellation of the decision criticized by the qualified administrative jurisdiction according to the matter in point, although the legal or specialized jurisdiction can also be referred to in certain cases. When discrimination lies in a law or a regulation, the sanction lies in its non-implementation. The victim of a discriminatory decision can require compensation according to the common law of civil liability;

Luxembourg ratified on the 1st may 1997 the Convention of New York of 1966 on the elimination of all forms of racial discrimination. The law of August 9, 1980, pursuant to the aforementioned convention, came to supplement the Penal code by adding articles 454 and 455, which punish various forms of racial discrimination. These articles were modified by a law of July 19, 1997, (template n° 4A0001) which gives article 454 of the penal code a new definition of discrimination and increases the penalties for racist offences by creating new reasons for indictment. According to the Bank of Data of jurisprudence of the Legal Information Centre of the General Parquet floor of the Grand Duchy of Luxembourg, no court order was still returned on the basis of articles 454 to 457-4 of the Penal code.

Moreover, the law of July 27, 1993 (template n° 4A0008) relating to the integration of non-nationals comes to facilitate the process of integration for non-nationals in the Grand Duchy of Luxembourg by setting forth various supportive measures (for instance, in housing, formation, organisation of leisure, reception, travel or repatriation, assistance to be taken part in the social life, etc.) Indeed, as an example, article 3 of the law on foreigners' integration in the Grand Duchy of Luxembourg, as well as foreigner-supportive social action, forbids any discrimination against individuals, groups of individuals or community based on racial, skin color, ancestry, national, ethnic and/or religious origin, the consequence of which can be the implementation of criminal judgments provided for by articles 454, 455 and 456 of the Criminal Code. . Up to this date, there is not any jurisprudence.

In 1997, the European year against racism, the Parliament adopted various amendments of the Penal code and introduced a detailed anti-discrimination legislation, which includes the reasons based on race, ethnic origin and religion or belief. The Code covers in particular the labour market, the supply of products, services, recruitment and dismissal.

For information purposes, a working group was instituted in July 1994 by the Ministry of Justice within the Commission of legislative studies and responsible for the reform of the Penal code, whose sub-group is elected to be firstly devoted to the problems related to racism in order to propose possible legislative modifications.

The law of July 19, 1997 is a result of this work. It grants in particular to associations the right to constitute civil part for the infringements against the articles 453 to 457-4 of the penal code. Moreover, the concept of equality and the prohibition of discrimination are deemed to be multifarious .

In criminal law, one should consider the recent reform thereof, largely inspired by French law, which extends repression to any forms of discrimination (cf. law of 19 July 1997)

Article 454 paragraph 1 of the Criminal Code was thus modified as follows:

Art. 454. (L. 19 July 1997) It is considered as a discrimination any distinction made between natural persons on the grounds of their origin, their skin color, gender, sexual orientation, family situation, health condition, handicap, morals, political or philosophical opinions, trade union activities, real or supposed belonging to an ethnic group, nation, race or determined religion.

It is also considered as a discrimination any distinction made between legal entities, groups or communities of individuals, on the grounds of origin, skin color, gender, sexual orientation, family situation, health condition, handicap, morals, political or philosophical opinions, trade union activities, real or supposed belonging to an ethnic group, nation, race or determined religion, of all or some members of these legal entities, groups or communities.

Article 455 draws the restrictive list of situations in which discrimination is punishable and determines the applicable sanctions.

Art. 455. (L. 19 July 1997) Any discrimination provided for by article 454, committed against natural persons or legal entities, groups or communities of individuals, is sanctioned by a prison sentence ranging from eight days to two years and by a fine ranging from 251 euros to 25.000 or only one of these sentences, when it consists of :

- 1) refusal to supply or authorize the use of a good;
- 2) refusal to supply a service;
- 3) subordinating the supply of a good or service to a restriction based on one of the elements provided for by article 454 or any other discrimination made for this supply, on the basis of one of the elements provided for by article 454;
- 4) To indicate in an advertisement the intention to refuse a good or a service or to practise discrimination during the supply of a good or a service, by basing itself on one of the elements aimed at in article 454;
- 5) to hinder the normal exercise of all economic activity,
- 6) to refuse to engage, to sanction or to dismiss a person;
- 7) to subordinate a job offer on a condition based on one of the elements aimed at in article 454.

Article 457 finally somehow moderates the preceding provisions by omitting to consider certain facts as discriminatory:

- In discrimination based on health, when it consists of operations having for object the prevention and the coverage of the risk of death, risk striking a blow at the physical integrity of a person or the risk of incapacity to work or invalidity;
- In discrimination based on health or handicap, when it consists of a refusal to hire or dismissal based on the medical inaptitude stated by the interested party;
- In discrimination based on hiring, on nationality, when belonging to a definite nationality constitutes, according to the statutory provisions relative to public service, to the rules relative to the exercise of certain occupations and to the provisions in Employment law, the determining condition in the exercise of a job or a professional activity;
- In discrimination based on entry, of staying and in the right to vote in the country, on nationality, when belonging to a definite nationality constitutes, according to

the legal and statutory provisions relative to entry into a country, of staying and of the right to vote in the country, the determining condition of entry, of staying and exercise of the voting right in the country;

- In differentiations of treatment foreseen by or ensuing from another legal arrangement.

Additionally, Luxembourg has ratified the convention n°111 of the International Organisation for Employment regarding discrimination as well as Protocol n°12 of the European Convention on Human Rights, which foresees a general interdiction of discrimination.

Already signed in 1998⁷ by the principal political parties, the Charter of the European political parties for a non-racist society was approved, at the instigation of the ASTI (Association of support for the immigrant workers), by all the parties having taken part in the national and European elections in 1999. All delegates agreed on not to use the issues of immigration or refugees for political aims and electoral campaigns.

Kommentar [n1]: Fit to change ?

On December 12, 2002 the administrative court pronounced an interesting ruling in terms of stay authorizations (cause list N°15102C ruling of November 12, 2002 appeal against cause list N° 14089 judgment of the 29th May 2002)

Indeed, the Administrative Court considered that, to make void a decision refusing the authorization of stay to a Yugoslav national, the regularization procedure which still hasn't been sanctioned by a specific law derogatory to common law, whatever the circumstances, should range within the framework of legally applicable provisions in terms of access and stay of foreigners so that all the criteria publicly announced by the Government should only be viewed as valid and referred to as long as they are embedded in the legal framework thereof.

Besides, the administrative tribunal, in a recent judgment – cause list N°15378 pronounced on September 25, 2002 considered that the foreigner applicant who can show evidence of having built a 3-year-long stable family situation, on the one hand, by building a genuine affective relationship with a resident in regular situation – with whom he/she intends to have a family, but also having exercised some kind of professional activity, shall benefit from a safeguard measure, consisting in the right to a provisional stay in a country until a decision on the essence of the case has been rendered by the authority to which the case was referred to.

⁷ the Charter of the European political parties for a Non-Racist society

5. Legislation against discrimination on racial/ ethnic/ religious/ cultural grounds

The legislation against discrimination on racial, ethnic, religious or cultural grounds is based on the immigration and integration legal acts and policies. At the national level, the Luxembourg law on racism has its basis in article 454 and subsequent articles of the Criminal Code, as amended by the Law of the 19 of July 1997, which defines, prohibits and specifies penal sanctions for the specific discriminatory practices.

According to the above-mentioned article, the desecration, by some means, of tombs or memorials, is punished with one month to 2 years imprisonment and with a fine that goes from 10.001 to 1.000.000 francs. This includes:

- Whoever, either by speeches, cries or threats uttered in places or public meetings, or in writings, printed paper form, drawings, engravings, paintings, emblems, images or any other written support, word or image, sold or distributed, put on sale or exposed in places or public meetings, or by wall cupboards or posters exposed to the public, or by any audio-visual mean of communication, encourages the acts envisaged in article 455, hatred or violence with regard to a person, physical or moral, of a group or a community considered under article 454;
- Whoever belongs to an organisation whose objectives or activities consist in carrying out the type of acts envisaged in the paragraph 1 of this article;
- Whoever prints or makes print, manufactures, holds, transports, imports, exports, puts in circulation on the Luxembourg territory, sends from the Luxembourg territory, gives to the post office or another professional in charge of the distribution of the mail on the Luxembourg territory, distributes on the Luxembourg territory writings, printed papers form, drawings, engravings, paintings, posters, pictures, films, emblems, images or any other written support, the word or the image, likely to incite to acts envisaged in article 455, hatred or violence with regard to a person, physical or moral, of a group or a community, while being based on one of the elements under article 454. The confiscation of the objects enumerated here will be done in all this cases.

Art. 457-2.-

When the infringements defined in article 453 were made on grounds of membership or non-membership, true or supposed, of people belonging to a certain ethnic group, a specific nation, race or a religion, the punishment is six months to three years with a fine from 10.001 to 1.500.000 francs or one of these punishments only.

Art. 457-3. -

Who, either by speeches, cries or threats uttered in places or public meetings, or in writings, printed papers form, drawings, engravings, paintings, emblems, images or any other written support, word or image sold or distributed, put on sale or exposed in places or public meetings, or by wall cupboards or posters exposed to the public, or by any audio-visual mean of communication, disputes, minimises, or justifies several crimes against humanity or war crimes such as they are defined by article 6 of the statute of the International Military Tribunal attached to the treaty of London of August 8, 1945 and

which were a clerk either by the members of an organisation declared criminal pursuant to article 9 of the aforesaid statute, or by a person found guilty by a Luxembourg foreign or international jurisdiction for having done such crimes, is punished of an eight days to six months imprisonment and of a fine from 10.001 to 1.000.000 francs or one of these punishments.

The same punishment is valid for those that, by one of the means mentioned in the preceding paragraph, disputed, minimised, justified or denied the existence of one or several genocides such as they are defined by the law of 8 August 1985 bearing repression of genocide and recognised by a Luxembourgish or international jurisdiction.

5.1. DOCUMENTS RELATED TO ARTICLE 13, ACTION PROGRAM

The campaign launched by the “Commissariat du Gouvernement des Etrangers” (Governmental Commission for Aliens) of the Ministry of Family evokes article 13 of the Treaty of Amsterdam in its folder against racism (see chapter 8). However, it does not provide any detail on this article, nor it foresees its application at the national level.

Moreover the Luxembourg Government supports all the initiatives implemented by the international and European institutions. On March, 21 2002, on the occasion of the “International Anti-Racism Day”, the Luxembourg Ministry of Family, Social Solidarity and Youth recalled in a press release published on the Government’s Internet site: “At a European level, Luxembourg is actively involved in the committee dealing with the community action programme in the fight against discrimination (2001-2006). This programme is part of a series of preventive measures to fight against discrimination and aims at supporting and completing the efforts taken at community level and in member states to promote measures intended to prevent and to combat direct or indirect discrimination, which is founded on race or ethnic origin, religion or convictions, handicap, age or sexual orientation. The series of measures are applied in particular by reinforcing the means of action of organisations through assistance in the exchange of information and good practice, and the creation of a European network”⁸.

5.2. LEGISLATION FOR SPECIAL AREAS

AGE:

- At the European level: article 13 of the Treaty of Amsterdam, two directives 2000/78/CE and 2000/43/CE.
- At the national level: The transposition of these directives is apparently in hand (see higher in this report). There exists indeed, for the employers in Luxembourg, some assistance for the recruitment of unemployed persons older than a certain age. Indeed, the Funds for Employment assist the employers of the private sector to ensure the contributions of social security for the older employees. With this measure, the Funds for Employment supports the employment of older people.

⁸<http://www.gouv.lu>

HANDICAP:

- At the European level: article 13 of the Treaty of Amsterdam, two aforementioned directives.
- At the national level: Law amended of November 12, 1991 on the handicapped workers.

NATIONALITY:

The legislation regarding Luxembourg nationality has been changed in 2001. Residence condition was reduced from 10 to 5 years, and a certain knowledge of at least one of the three national languages has to be proved, but also a certain knowledge of the Luxembourgish..

DISCRIMINATION IN THE ELECTORAL PROCESS, PUBLIC ADMINISTRATION, AND THE MILITARY

Case law provides some illustrations of the recording of unlawfulness of such discrimination, namely on the grounds of gender. A judgment of the Council of State of December 13 1988 gives an example of sex discrimination: staff recruitment in primary education was traditionally carried out through the ISERP (Higher School of Pedagogic Studies and Investigation). The coexistence of two different recruitment lists led to the intended purpose, that is, to eliminate female candidates, and namely those who later lodged this case, to the benefit of the male candidates.

The Council of State case committee declared the decision of non-admission void, on the grounds of the provisions of the law of December 8 1981, which transposed into the Luxembourg law the Directive on the equality between men and women,

DISCRIMINATION IN THE ELECTORAL PROCESS

Luxembourg does not have legal provisions aiming to ensure and promote equal representation between men and women in terms of electoral mandates, but some political parties have nevertheless integrated a series of internal positively discriminatory mechanisms that ensure a more equal representation of men and women within their leading bodies and on electoral lists.

Gender is the only differentiation criteria; nationality is another important criteria but the relatively binding community influence somehow got it under control in different fields of application.

Since 28 December 1995, community nationals (Europeans) can, under some conditions be electors or candidates to municipal elections, yet they still cannot run for mayor or join the City Council.

With regard to public authorities, it is only after condemnation that the Court of Justice of the EC by means of a 2 July 1996 judgment in the C-473/93 case allowed community nationals to work in national public institutions, with the restriction that these functions do not imply any participation in the exercise of public power.

However, Luxembourg is considering opening access to a military career to some community nationals, in order to respect the quotas established by NATO.

The elimination of discrimination with regard to certain foreigners – Community nationals (Europeans)- has a negative effect however: it increases discrimination with regard to non-Community nationals in particular in the field of employment. Article 1 of Regulation EEC 1612/68 concerning freedom of movement for a worker to other Member States on the principle of national preference gives higher chances to Europeans. Unfortunately, it reduces the chances for Non-Eu nationals to find a working place.

DISCRIMINATION IN TAX MATTERS

Article 101 of the Luxembourg constitution expressly stipulates that:
No privilege shall be made in terms of tax regime. No exceptions or moderation shall be authorized, unless explicitly provided for by law.

DISCRIMINATION IN THE BUSINESS WORLD

Both the State and companies can act in a discriminatory way in business life. In the absence of a Constitutional standard imposing on the State the principle of non-discrimination, there are however certain rules which forbid the State to adopt a less favorable attitude towards foreigners than to Luxembourg citizens;

These rules come from community law as regards nationals of another Member State of the European Union. Article 14 of the European Agreement on Human Rights also fixes a limit on the risk of discrimination. Finally, article 1 of the Additional Protocol serves as a way of defense for legal entity ownership.

It is quite difficult to draw up an exhaustive list of rules and measures that are currently or potentially discriminatory. As an example, in the exercise of the profession of a lawyer, Luxembourg appealed against Directive 98 / 5 / EC that allows the permanent exercise of the profession of a lawyer in a Member state other than the one where the qualification was acquired, in appeal C 168-98 of the European Court of Justice.

It had used the possibility offered by article 173, paragraph 1, of the EC treaty (which, after modification, became article 230, paragraph 1, EC), to ask for the cancellation of a Directive of the European Parliament and Council, dated February 16th, 1998, aiming at facilitating the permanent exercise of the profession of a lawyer in a Member state other than the one where the qualification was acquired (OJ L 77, p. 36). Although the Court, by a November 7th, 2000 ruling has rejected the argument of the Grand Duchy, Luxembourg still hasn't taken all the necessary measures for the enforcement of the attacked Directive.

5.3. NON-EXISTING DATA, “GAP ANALYSIS”, DESCRIPTION OF NON-EXISTING LEGISLATION.

In Luxembourg, the national legislation against racism and discrimination has not changed since 1997.

In October 2001, a Deputy addressed the Parliament on the issue of the different aspects of discrimination related to nationality.

The Luxembourg government was required to answer to this question and the answers given by the Department (Ministry) of Family, of Social Solidarity and Youth, the Department of Justice and the Department of Transports were the following ones:

“The penalty disposition of the law of the 19th of July in 1997 about incrimination on the grounds of racism, is sufficient (strong enough) as a fighting tool”.⁹

“The project of law transposing the council directive 2000/43/CE of the 27 of November 2000 establishing a general framework for equal treatment in employment and occupation, in the national law is developing and should be ready for summer 2002.”¹⁰

According to the question in favour of the creation of independent controlling bodies or mechanisms of the principle of equality, the answer was the following:

“In the present state of reflections about the transposition of the council directive (2000/43/CE), it does not seem to be necessary to create other control mechanisms of the equality principle; the possibilities to turn to at this time seem in fact enough”.¹¹

One can eventually conclude that the Luxembourg Government estimates that the actual means are sufficient and that it does not have any will or intention to develop this subject by creating additional measures.

Another deputy addressed the subject of racial discrimination in Parliament. The co-ordinated answer by the Department of Family, Social Security and Youth, the Department of Justice and the Department of Transports repeats the same answer than the first one given by the department of Justice. An interesting element has however been added: The directive 2000/43/CE will be transposed to national law. This transposition has already started and should be finished by the end of 2003 but no official legislation or law project was divulged so far. We refer here to the end of this chapter where we give details about the actual state of affairs of the transposition.

⁹ Question n°687 and response of the Minister of justice, 22/08/2000

¹⁰ Question n°687 and response of the Minister of justice, 22/08/2000

¹¹ Co-ordinated response of the Department of Family, Social Security and Youth, the Department of Justice and the Department of Transports, to the parliamentary question n° 1345. 22.01.2002, *ibid.*p.5

LACK OF DEFINITION:

The law of 1997 presents a definition of discrimination. Nevertheless it doesn't distinguish between direct discrimination and indirect discrimination.

SANCTIONS:

The law of 1997 is a criminal law; thus the sanctions which result from this are penal sanctions. One would need the introduction of a civil law, which could introduce civil sanctions and thus make these sanctions more accessible and more effective..

We should refer here article 457 of the Luxembourg Penal code which stipulates a series of exceptions to the application of the law against racism of July 19, 1997. We consider important to specify this, given that in considering these exceptions we might run the risk of disregarding multiple discriminations.. Thus, the legislator gave the possibility to introduce laws which can consequently be discriminatory, in a direct or indirect way, without that being able to be in contradiction with the antiracist legislation and that were mentioned above.

Here, we will point out the definition given by the same law on discrimination, article 454 of the criminal Code:

"Discrimination is any distinction drawn between physical persons by virtue of their origin, the colour..." We must note that the "differentiation of treatment" indicated in the last paragraph of article 457¹² corresponds at the end to the term "discrimination", according to the same law. Thus, the exceptions envisaged by the law, and especially item 5 of article 457 leaves the possibility with the legislator of introducing "discriminations" that we allow ourselves to call "legal discriminations" (permitted by the law). These are the exceptions that often constitute a problem of discrimination in Luxembourg, since a great part of foreign people (Community and non-community) are concerned with such legal exceptions. We quote here some examples without going into details:

- entry and stay for Non-Europeans
- the system of the work permit
- access to public office

The first two points, entrance and residence for non-Europeans and the system of work permit are explained in the annexes of this report.

Another very important point is the transposition of directives 2000/78/ EC and 2000/43/ EC into the national law. With regard of the Racial Equality directive, it would have had to be transposed into the national law the latest July 13, 2003. A part of the directive is covered by our national legislation, however the latter does not cover all measures of the directive. In July, around the date of transposition, certain newspapers addressed this

12 Art. 457 "7. with the differentiation of treatment envisaged by or rising from another legal disposition."

issue as well as ASTI and ENAR (European Network against Racism), which have both given their opinion on the directives and the lack of transposition at the national level.¹³

6. Impact of anti-discrimination legislation

6.1. INSTALMENT OF INSTITUTIONS, SPECIALISED BODIES

6.1.1. CSP – RAC

CSP-RAC: The Permanent Special Commission Against Racial Discrimination (CSP-RAC) was created in 1996 by the National Council for Foreigners.

The National Council for Foreigners operates with the Government Foreign Persons Commission. It works as a consultative body and is encharged with the study of the problems concerning foreigners and their integration. It also comments on different legislative proposals and regulation in relation to policy regarding foreigners.

The Council consists of the Government Foreign Persons Commissioner, four representatives of the Inter-Ministerial Committee co-ordinating policy in favour of foreigners, two representatives of the Inter-Communal Association, four representatives of employers organisations, four representatives of the most representative union organisations, fourteen representatives of foreigners, and one representative of refugees.¹⁴ Within the Council, there are three committees:

- - A special permanent committee charged with studying questions relating to cross-border workers
- - A special permanent committee charged with handling subjects related to the communal consultative committees for foreigners (there must be such a committee in each commune where the population includes more than 20% foreigners)
- - A special permanent committee against racial discrimination (CSP-Rac)

We consider it useful to see how the claims office, installed by the CSP-Rac works: in fact, “the CSP-Rac has not yet received any real claim. Until April 2002, the CSP-Rac has only received a very restricted number of files. According to the Convention against Racial Discrimination none of these cases could be considered as a complaint due to the fact that there is no discrimination (no discrimination defined by the legislation).

¹³ Note : By the 24 of May 2004, the directives have still not been transposed to national law.

¹⁴ The Grand Ducal Regulation dated 29 March 1995 determines the terms of appointment of representatives of foreigners as well as their nationality breakdown. See annex for details

Generally, the other cases were not within the competence of the complaints office, because there was no violation of rights according to the Convention.”¹⁵

This phenomenon can be explained by the fact that this Committee was established by the National Council for Foreigners and depends on the Luxembourg Government. An independent body could be more successful and consequently more effective. It could also show more objectively the situation regarding racism and discrimination in Luxembourg¹⁶.

6.1.2. Human Rights commission

At its session on 28 April 2000, the Council of Government adopted the Regulation relating to the institution of a Consultative Commission on Human Rights. This commission is a consultative body of the Government. It gives opinions and draws up studies on the request of the Government, but also on its own initiative. Its work is made public.

The Commission on Human Rights published its opinion on a draft European Union Charter on Fundamental Rights on October 5, 2000. In that opinion, the Commission gave a series of recommendations to be applied at national level. Concerning Article 9 of the draft Charter, the Commission recommended that the government should think about a more liberal policy of visas and residence permits. This should especially be applied when a European Union citizen residing on national territory wishes to marry a citizen of a third country state who is illegal in Luxembourg. (undocumented migrant). It also recommended accepting to register in schools the children whose parents are in an irregular situation. It gave a complete range of recommendations on making the expulsion procedure in Luxembourg less severe, and to give access for foreigners to education. It asked the Government to implement as soon as possible a policy, which restores the integrity of the right to education.¹⁷

6.1.3. Ombudsman ¹⁸

July 16, 2003, the Luxembourg House of Commons adopted the bill relating to the setting in place of a mediator in Luxembourg. The mediator should be a facilitator between the administrations and the civil society. The idea of setting up a mediator emphasises the will of the government to create the conditions of a more participative population, allowing the citizen to express his complaints. Any citizen who estimates that a public authority did not work in accordance with the mission which it must ensure or contravenes the texts in force, can ask that the affair is brought to the mediator. This can

¹⁵ GRINBERG O., CSP-RAC (April 2002), the *Special Permanent Committee against Racial Discrimination in Luxembourg*

¹⁶ An independent body would be more successful as we think that results fall short from expectations. We cannot really say that CSP-rac is very successful in its work, as their own report state the fact that they did not treat one case until now. The reason should be explained by the CSP-Rac itself, as we do not have details about their work.

¹⁷ Consultative Commission on Human Rights, opinion on the draft European Union Charter on Fundamental Rights, 5 October 2000

¹⁸ www.gouv.lu/salle_presse/actualite/2003/07/16mediateur/index.html

be interesting in cases of discrimination on behalf of the public office. The mediator is attached to the House of Commons and is an independent authority, which depends neither on the administration, nor on the government.

6.1.4. E-mail address Ministry of Family

Within the framework of the campaign launched by the Ministry for the Family in July 2003 (see chapter 8), concerning the two European directives 2000/78/Ce and 2000/43/CE, the same Ministry created the following e-mail address: ounidiskriminatioun@fm.etat.lu

This address is available to any person who estimates to have been victim of discrimination or which simply wishes to have information on this subject.

We do not have any information if complaints have been sent to this e-mail address or how many.

6.2. DESCRIPTIVE DATA ON RECORDED COMPLAINTS REGARDING RACIAL/ETHNIC/RELIGIOUS/CULTURAL DISCRIMINATION IN VARIOUS SECTORS

6.2.1. Recorded complaints¹⁹

As we already explained in each report within the framework of RAXEN, we are confronted constantly with the inexistence of data and figures on racial, ethnic, religious or cultural discriminations. The only figures available are provided by the Grand Ducal police force and are limited to the number of complaints, which were introduced concerning an act of discrimination or racism. Considering the fact that we do not have any other element, we allow ourselves to again include these figures in this report.

- In 2000, 12 complaints were registered on the basis of the Law against racism. Of these 12 complaints, in 11 cases the offenders were identified.
- (The 12 complaints related to the acts of 19 parties, of whom:
 - 13 Luxembourg citizens (residing in Luxembourg)
 -
 - 6 non-Luxembourg citizens (residing in Luxembourg)

Of the 19, 15 were adults (9 men and 6 women) and 4 minors (4 boys)

¹⁹ Grand Ducal Police, report on activity 2000, p.15, (2000), <http://www.police.lu>
Information given by the vice-chairman of the the Grand-Ducal Police (phonecalls)
Grand Ducal Police, report on activity, 2001 <http://www.police.lu>

The 12 complaints represent 0.1% of all complaints registered in 2000.

For these 12 complaints, there were 6 victims: 2 men and 4 women, of which 4 were Luxembourg citizens living in Luxembourg and 2 non-Luxembourg citizens also living in Luxembourg.

This category of complaint is classified under complaints for offences against a person, which constituted 10.3% of all offences in 2000.

The exact reasons for these complaints are unknown to us as they are not made public.

In 2001, 16 complaints were registered on the basis of the Law against racism. Of these 16 complaints, the offenders in 12 cases were identified.

The 16 complaints related to the acts of 21 parties, of whom:

- 9 Luxembourg citizens (residing in Luxembourg)
- 7 non-Luxembourg citizens (residing in Luxembourg) and 3 non-Luxembourg citizens (not residing in Luxembourg) and 2 of unknown nationality.

Of the 21, 17 were adults (16 men and 1 women) and 4 minors (3 boys and 1 girl)

The 16 complaints represent 0.1% of all complaints registered in 2001.

For these 16 complaints, there were 6 victims: 2 men, 3 women and a minor, of which 1 was a Luxembourg citizen living in Luxembourg and 5 Luxembourg citizens not living in Luxembourg.

All this complaints had somehow a racial background, most of the time a racial offence. Two of these offences came by post, the victims found in their letterbox post-cards with racist contents..

In 2002, 11 complaints were registered on the basis of the Law against racism. Of these 11 complaints, the offenders in 10 cases were identified.

(The 11 complaints related to the acts of 14 parties, of whom:

- 6 Luxembourg citizens (residing in Luxembourg)
- 4 non-Luxembourg citizens (3 residing in Luxembourg) and 1 non-residing
- 3 without precision on residing and nationality

Of the 13, 12 were adults (9 men and 3 women) and 2 minors (2 boys)

The 11 complaints represent 0.1% of all complaints registered in 2002.

No figures at all are available for 2003.

Year	Number of complaints	Actors - Nationality	Actors – Age	Victims Nationality
2000	12	13 Luxembourg. 6 non-Luxembourg	15 adults 4 minors	4 Luxembourg 2 non-Luxembourg
2001	16	9 Luxembourg	17 adults	5 Luxembourg

		7 non-Luxembourg	4 minors	
2002	11	6 Luxembourg 4 non-Luxembourg 3 without info	13 adults 2 minors	/

No information about the type of incidence is known.

However, the Public Prosecutor in Luxembourg has not taken any decision on these complaints, and there are any court proceedings relating to them so far. We may conclude that the complaints were classified without further action. The possibility remains that the complaints ended in criminal mediation which exists in Luxembourg for the purpose of finding an agreement between the offender and the victim and to avoid long drawn out court proceedings. Given that in the two cases (Court and mediation), there was no sentence, the complaints leave no trace at judicial level.

While speaking about the number of complaints in Luxembourg, it seems essential to us to also explain the system of complaints, which possibly accounts for the restricted number of complaints:

The charge of the proof is based on the person who claims to be the victim of the infringement of the principle of equality. The victim has to prove that the material act constitutes such infringement.

If in the 1997 Law, there is reason to establish the intentional element necessary to the existence of an offence, the 2000 law, even if outside the scope of criminal law, presumes the existence of the intentional element.

Only the victim of a discriminatory act, harassment or abuse of authority can take legal action to terminate or obtain reparation for such wrongdoings.

The procedure to be followed may vary according to the field in which the victim intends to take legal action, that is, either criminal or employment law (in this case, there is still a distinction to be made between the private and the public sector).

When the incriminated acts are punishable by criminal law, the victim may lodge a complaint before the State Prosecutor or before the examining magistrate.

In the first occurrence, the Prosecutor may not prosecute without any possible appeal; the situation is entirely different in the case of a complaint submitted to the examining magistrate.

When a lawsuit comes under the authority of employment law, the victim must lodge a complaint before the employment court, by means of which he/she will explain the facts that motivated his/her endeavor, as well as the results he/she wishes to obtain. The Court of Appeal shall rule on this case in appeal.

Where the public sector is concerned, the competent court to statute is the administrative tribunal, which must be referred to in writing. The administrative Court is competent in appeal.

RECOURSE AND SANCTIONS ARE EQUAL IN BOTH THE PRIVATE AND PUBLIC SECTORS.

When the victim of a discriminatory act estimates that the unlawful act is based on a law contrary to the principle of equality stipulated in the Constitution, in the context of any jurisdictional procedure, it can oppose the exception of anti-Constitutionality of this law. There is no way to appeal any decision of the Constitutional Court.

The party that feels injured by a discriminatory act must submit the formal and positive proof of the materiality of such fact, by all possible means, such as testimonies, confessions or writs.

AS FAR AS POTENTIAL REPARATIONS ARE CONCERNED, ONE HAS TO DISTINGUISH:

In criminal law, the individual guilty of discriminatory acts shall be sanctioned by a criminal punishment and will have to give compensation to the victim of his/her prejudice.

In the field of employment law, the victim who requires immediate termination of his/her work contract because of gross misconduct by their employer will require compensation.

If the employer had taken the initiative of termination, the law (under article 5 2000 and article 29 paragraph 4 of the 1989 law) provides for a reintegration procedure because of the nullity of such dismissal.

EXECUTION MEANS FOR JUDGMENTS RENDERED IN THIS FIELD ARE NOT SPECIFIC.

It is necessary to add here a concern of our share, which relates to the minimal number of complaints, which are to be found in Luxembourg. The number does not really seem to correspond to reality, but is largely lower than our opinion. With regard to the explanation of this phenomenon, the reason or at least one of the principal reasons consists in the fact that the population does not always seem to be very well informed of their rights. Thus, we have noticed during our practical experience within the work of ASTI, that the public takes note especially of their right at the moment when a problem appears and which is shown by the media. At the time of an incident raised by the press, the interest for the legal framework returns or rises. Thus, the law is recalled at special occasions, for example the day against racism. Very recently, the press published an article on a restaurant, which apparently does not accept black customers. This article was followed of a recall of the existence of the law antiracist of July 19, 1997, as well as few extracts of this law.²⁰

²⁰ De Feierkrop, 05.09.2003, <http://www.feierkrop.lu> the case did not have any further background, and no continuation.

6.3. DATA ON COURT CASES, JURISPRUDENCE

6.3.1. Jurisprudence 1612/68

ASTI through the information service, which is offered to the non-Europeans, found some lack of application of the European rule CE 1612/68 (free movement of persons). In the case that a non-European member would marry a member of the European Union, he would be a victim of discrimination in the employment sector. The non-European partner had to wait for a certain period of time before he could work and needed a work permit for every salary activity he wanted to have.

The European legislation has not been applied in every case. This national jurisprudence has only been introduced on June, 27 2001, due to a case treated at the administrative court. The couple concerned won the case and jurisprudence (decision of the administrative court without recourse from the side of the government) has emerged in this domain. Nowadays, the non-European partner of a member of the European Union has free access to the labour market with no need to wait and without having a working permit.

Nevertheless, practically, this right is still not applied in all cases. It seems that in many of them, the Department of Employment as well as the Department of Justice do not respect this right. Even after many interventions done by ASTI (letters, press conference, phone calls, etc) this right for the mixed couples does not exist in practice. In January 2002, ASTI contacted the Department of Employment through a letter. Until today, no answer has been given.

Regarding the case of a Luxembourger marrying a non member of the European Union, the concerned person is ruled by the national law and is forced, consequently, after a waiting time of three years, to ask first for a working permit. The free movement of persons cannot be applied in this case.

6.3.2. Other jurisprudence

On two occasions, Luxembourg courts dealt with facts described as racist.

The first case related to an insulting poster²¹ stuck on the entrance door to a building and referring to an occupant of that building. On November 27, 2000, the Court of Summary Jurisdiction in Luxembourg decided that the elements constituting the offence under Article 457-1 of the Code had not been established. It ruled in fact that the affirmations on the poster did not constitute racial discrimination with regard to the victim.

On a second occasion, more within the context of Criminal Law, the District Court of Luxembourg heard a case introduced by two Portuguese associations in Luxembourg. These associations accused the Luxembourg Football Federation ("Fédération

²¹ with insulting remarks concerning the non-respect of the person for her neighbours, the poor education of her children and threats if she continued to make noise during the night.

Luxembourgeoise de Football” - FLF) of having discriminated against Portuguese sports associations, by refusing them the right to join.

On June 16, 1999, the General Assembly of the Luxembourg Football Federation (“Fédération Luxembourgeoise de Football” – FLF) refused membership to three Portuguese clubs in Luxembourg. Finally the fight for their integration went to court. Each time the clubs concerned were in conformity with the requirements of the FLF, the latter added new conditions. The Portuguese clubs no longer agreed with this discrimination, which they deemed to be contrary to community legislation. So they introduced a case against the decision of FLF not to integrate those clubs. The case is still to be concluded.

7. Strategies, initiatives and good practices for further developing legislation against discrimination, racism and exclusion, for equal treatment, diversity and integration

7.1. COMMITTEES, INVESTIGATIONS ETC

7.1.1. Campaign by the Ministry of Family

In July 2003, the Ministry of Family launched a campaign to inform and sensitise the public opinion against discrimination on the labour market. More specifically, the "Commissariat du Gouvernement aux Etrangers" (Governmental Commission for Foreigners), under supervision of the Ministry of Family launched posters and booklets which aim to inform the public. The entire campaign is based on directives 2000/78/CE and 2000/43/CE. 5 booklets were presented :

- discrimination on the level of the age
- discrimination on the level of the sexual orientation
- racial discrimination
- discrimination on the level of the handicap
- discrimination on the level of the religion.

The booklets present extracts of laws, testimonies of victims, useful addresses, definitions, etc.

7.1.2. Civil Party

Here one should quote article VI of the law of July 19, 1997 which says that: "any association, of national importance approved by the Minister of Justice can exert the rights recognised to the civil part with regard to the facts constituting an infringement according to articles (...) 454, 455, 456, 457, 457-1, 457-2, 457-3 and 457-4 of the penal code and carrying a direct or indirect damage with the collective interests which they have the aim of defending, even if they do not justify social interest which defence is ensured by the public prosecutor. However, when the infringement was made towards people considered individually, the association will be able to exert the rights recognised to the civil part only in the condition that these people declare expressly and by written not to be opposed to it." The organisations and "interest groups" thus have the possibility of intervening directly in favour of a person who declares himself victim of racial discrimination.

7.1.3. Existence of organised interest groups

Relevant institutions:

Association de Soutien aux Travailleurs Immigrés asbl (ASTI asbl)

10-12, rue Auguste Laval

L-1922 Luxembourg

Tel.: ++352 43 83 33

www.asti.lu

NGO supporting immigrants, undocumented migrants and asylum seekers. The main work is intercultural fieldwork and political actions.

European Network Against Racism

26, rue de Gasperich

L-1617 Luxembourg

www.enar-en.org

No specific work regarding the national situation. Taking part in international work.

Commissariat du Gouvernement aux Etrangers (Ministère de la Famille)

12-14, avenue Emile Reuter

L-2919 Luxembourg

Tél: ++352 478 3681

e-mail: ounidiskriminatioun@fm.etat.lu

Governmental body responsible for the social help for asylum seekers. (financial help, accommodation, food)

CLAE, 26

Rue de Gasperich,

L-1617 Luxembourg

++352 29 86 86

Fax: ++352 29 86 01

NGO supporting undocumented migrants, intercultural fieldwork, support of associations for foreigners

SESOPI,

5 Avenue Marie-Therese,

L- 2132 Luxembourg

++352 447 43 503

Fax: ++352 447 43 515

Research centre

8. Summary and Conclusions

It initially seems important to us to specify that the anti-racial and anti-discrimination legislation, as described in this report, is rather broad and covers a whole series of possible discrimination. We explain in this report the sanctioned acts and the punishment. However, the best law is not sufficient if it proves to be difficult, or even impossible, to apply it. We tried to stress this point throughout this report: the public is not enough informed of its rights, the victims rather often do not dare to lodge complaints, the system to lodge a complaint proved to be complicated, there is a lack of specialized organizations to accompany the victims during the procedures,, etc. Secondly, we want to conclude by returning to the primary obstacle at the level of research in the field of racism or discrimination. As a lack is to be noted in the Grand Duchy of any centralised system for the gathering of data or a research centre on human sciences, researchers, students or others, persons working on precise subjects are obliged to make their consultations outside official sources. They have to contact associations and research centres, which do not *a priori* seem to have any direct link with the subject. Although the elements provided by these sources may never appear in a report as scientific and representative data, they nonetheless enable a reliable overview to be obtained of the real situation. A particularly methodological approach is however difficult in view of the scattered information. We therefore endeavoured to consult a maximum number of sources and to compare the scientific data provided by official sources and the ones coming from the associations and unions, which enabled us to produce a report, which best reflects the situation concerning our legislation.

AT NATIONAL GOVERNMENTAL LEVEL

The national framework has to be modulated by Luxembourg so as to ensure that both civil and administrative law expressly and specifically forbid any discrimination based on race, ethnic origin or nationality, religion and belief, and provide for a series of legal and other effective jurisdictional means, including the creation of specialized national bodies.

The Government should also intervene by giving power to an independent body (as mentioned in the race directive) that will supervise the conformity of new and existing legislation with non-discriminatory principle on the grounds of race, ethnic or national origin, religion or belief, particularly in connection with potentially discriminatory effects for members of groups exposed to racism or xenophobia. As regards legislation in force, Luxembourg should regularly review its judicial framework so as to prevent all unexpected or involuntary discriminatory effect that may happen. Such an evaluation of the law would therefore contribute to the integration of equality issues.

MINISTRY OF JUSTICE AND GRAND DUCAL POLICE

The exact data collected on the number and nature of racist incidents or racist and xenophobic offenses, on the number of cases subject to legal prosecutions or the grounds to oppose these suits, and on the outcome of the prosecutions would also allow efficient control, knowledge and limitation of the phenomena related to racism, xenophobia and related intolerance – their scope, causes and occurrence -, as well as the effects of the measures taken to that point to control such phenomena. Information collected in this way should be of a nature as to allow those who receive it to draw constructive

comparisons between states and help these as well as bodies active in the struggle against racism to define a plan of action.

INDEPENDENT BODY

Information provided by national, regional and international organizations should be coordinated there where their impact is greater against the instigators of acts of intolerance and where effective measures can be strengthened.

Finally, collection and analysis of existing data would allow the collection of source data from states, third countries, national and European NGOs, research bodies and international organizations. The existence of specialized independent bodies at a local, regional and national level, in the struggle for equality of treatment regardless of ethnic or racial origin and religious background favors government policy in the struggle against racism and enables advice and formulation of recommendations to government bodies, formulate recommendations aimed at the amendment of legislation concerning religious, ethnic and racial discrimination, to survey the situation in the country, to carry out enquiries and studies on discrimination, and at the same time, undertake public education, raise public awareness and contribute to training programs for certain targeted groups. It is needless to say that the members of such specialized independent bodies should be representative of the global population and leave it up to these bodies to set their own priorities with the necessary financial resources, competence and capacity so as to ensure a smooth and effective function.

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ANNEX TO TABLE 1 :

population in Luxembourg - History of immigration in Luxembourg

Since the end of the 19th century, Luxembourg has been a country of immigrants. The exploitation of iron ore around 1870 put an end to the agricultural era of poverty and emigration. That exploitation brought about a period of economic and demographic growth, when immigrants were to make a decisive contribution.

Two distinct immigration models were practiced in Luxembourg: the first was rotation and the second family immigration.

THE FIRST MODEL: ROTATION

Immigration is synonymous in Luxembourg with industrialisation: from the discovery of iron ore and its exploitation, Luxembourg called upon an immigrant work force: the majority of workers in the steel industry were Germans and Italians until the First World War.

Workers were hired for a specific term, for two or three years. They then had to leave, to be replaced by others. It was not a matter of bringing wife and children: this was a work force made up of single men.

Concern for a population immigration did not appear until the end of the Fifties.

THE SECOND MODEL: FAMILY IMMIGRATION

When at the end of the Fifties the declining birth rate was being felt, at a time when the economy had need of a new work force, and when many Italian masons, leaving in the autumn for Italy to return in the spring, found work in Friuli, the lack of work force was accentuated. The Luxembourg government then favoured family reunification. This had a transient effect on the Italians, but an immediate effect on the new immigrants, the Portuguese.

This arrival of families posed new questions both with regard to housing and to schooling. It was only in this period that schools were called upon to adapt to the new situation.

Asylum seekers in Luxembourg

ASYLUM PROCEDURE IN LUXEMBURG

Who is in charge of handling the asylum request?

In Luxembourg, the “Ministère de la Justice” (Ministry of Justice) is responsible for dealing with asylum applications. The “Commissariat du Gouvernement aux Etrangers” (CGE) (Commissariat of the Government for the foreigners) / “Ministère de la Famille, de la Solidarité Sociale et de la Jeunesse” (Ministry of the Family, Social Solidarity and Youth) is responsible for the reception of the person seeking asylum (lodging, material and financial aid, medical aid, advice and social and medical follow-up)

Where can you make your asylum request?

The asylum request can be done either at the border (e.g. at Luxembourg airport), either inside the country. The request done at the border will be transmitted, as soon as possible, to the Ministry of Justice. Actually, most applications are made inside the country as there are no outside borders anymore.

Inside the country, the application must be done at the “Bureau d’accueil pour demandeurs d’asile”.

Has an asylum seeker the right to have an interpreter?

From the first day on, the asylum seeker has the right to be assisted, on a free basis, by an interpreter for each interview.

Has an asylum seeker the right to have a lawyer?

Yes. The Asylum seeker can choose a lawyer and he may benefit from the free legal assistance. He may request a lawyer as soon as he makes his application. During the first interview he is informed of his right to be assisted by a lawyer.

In order to have a lawyer, the asylum seeker can contact one of the organisations working with the asylum applicants and refugees (see attached list).

In order to benefit from the free legal assistance, related application forms are available at the “Service Central d’Assistance Sociale” (Central Social Assistance Service)

In the case of a minor seeking asylum, a lawyer will be automatically assigned, who will have to be there during the all proceedings. No interview can be done without the lawyer being there.

Any minor is reported to the “Juge des Tutelles” (Judge of the Guardianship), by the Social Service of the CGE, in order to name a guardian (the guardian may be either a graduated monitor or a social worker or a member of the minor’s family living in Luxembourg).

How is the recording of the asylum request taking place?

Once at the Reception Office for asylum seekers, an interview with an agent of the Justice Ministry will take place in front of a member of the Criminal Investigation Department. The goal is to clarify the seeker’s identity, how he came to Luxembourg and to get his first declarations on the reasons why he ran away. Usually, adults of the family are interviewed separately. The asylum seeker may ask a lawyer and a translator for this first interview. He is informed of these rights.

He must deliver his identity paper, passport, wedding act, driving licence, etc. All asylum seekers of at least 14 years old receives a certificate of the registering of the request (pink

sheet), which will work as an identity card. The minors under 14 years old are automatically recorded on the head of the family's pink sheet. This "pink sheet" must be renewed each month at the Reception Office for Asylum Seekers, until the end of the asylum proceedings (Galerie Kons, 5th floor).

The Criminal Investigation Department must then check the seekers identity, his trip to Luxembourg and the sincerity of his declarations. They can interview the asylum seeker later and even take pictures and/or his fingerprints if his identity could not be verified. The Criminal Investigation Department must make a report and send it to the Reception Office for Asylum Seekers of the Ministry of Justice.

If Luxembourg is responsible for the asylum request according to the Dublin Convention, the asylum seeker will be summoned for an interview with a person of the Ministry of Justice, within two days up to a few months following the introduction of the request (average: 3 months). In case the asylum seeker does not answer to the summon twice, without advising the Ministry of Justice, his asylum request will be considered as non-founded. Therefore, he must go to every summon and interview.

Usually, communications of the Ministry for justice are sent in the form of a registered letter to the asylum seeker and to his lawyer.

Which country is responsible for the asylum request?

In 1990, the EU Member States signed the Dublin Convention, which serves to establish the EU Member State responsible for the analysis of the asylum request. This Convention has been made in order to prevent "in orbit refugees" (asylum seekers sent from one member state to another, without any one of them acknowledging being competent), as well as multiple requests either successive or simultaneous. The member states are, on the 1st May 2002, Germany, Austria, Belgium, Denmark, Spain, Finland, France, Greece, Ireland, Italy, Luxembourg, The Netherlands, Portugal, the United Kingdom and Sweden.

If the asylum seeker has already made a request in another EU State, or if he has an entry or residence visa from another EU Member State, it is the other state that is competent for the asylum request. If there is no visa, the responsible State is the one in which the asylum seeker entered first. If Luxembourg finds that another State is responsible, a request is sent to take the person in charge, to the competent State. In that case, the Asylum Seeker will be sent back to that State. The Asylum seeker may appeal to the Administrative court against this decision; however, the appeal has no suspensive effect. It means that the Asylum Seeker may be sent back before the Administrative Court takes its decision. In 2001, Luxembourg made 33 Asylum seekers transfers to other EU Countries.

Luxembourg must send its "Taking in Charge" request to the assumed responsible State within 6 months, otherwise Luxembourg is responsible and the Minister must take a decision about this request. The Asylum Seeker will then be summoned to an interview with the Justice Ministry (between a few days to a few months later).

What steps must be done then?

Once the request has been registered, the Asylum Seeker must go to the CGE with its pink sheet (12-14, av, Emile Reuter). During the first meeting, the immediate lodging, daily maintenance and health needs are evaluated. During the whole procedure, Asylum

seekers are entirely in the care of the CGE.. Qualified staff, according to each personal situation does a social and/or sanitary follow-up.

The Asylum Seeker must go to the CGE at least once a month (by appointment only) in order to get his monthly allowance. An employee of the Reception Service will take care of all the material and financial aspects. After each monthly visit, the Asylum Seeker is informed of the date and time of the next meeting.

What is the CGE's Social Service mission (social workers, nurses, and graduated monitors)?

Their work consists in giving to individuals and families:

- General information on the asylum procedure progress, on the rights and obligations of the Asylum Seeker, on the social help and on various aspects concerning their lives in Luxembourg.
- A social, sanitary, individual educational helps from a prevention point of view, depending on the problem.

Has the Asylum Seeker the right to social help?

Each Asylum Seeker, for as long as he does not have his own revenues, can receive specific asylum seeker's social help, which consists in various measures and household benefits. It is drawn up according to the household composition, the age and health of its members.

Asylum seekers are not entitled to family allowances (child benefit, maternity benefit, birth allowance, and education allowance).

Has the asylum seeker the right to lodging?

Yes, asylum seeker who cannot afford to finance their lodging, have the right to have one, put at their disposal by the CGE during the whole proceedings. The lodging can be:

- In a reception home owned by the State and run by the CGE (Don Bosco, Heliar Institute, the annex of the healthcare home in Differdange)
- In a home owned and run by a third party (Caritas, Youth hostels, private...)
- In hotel, pubs and boarding houses
- Or in lodging placed at their disposal by the municipality. It is the CGE who gives out lodging to the asylum seekers.

Once the lodging is assigned, the asylum seeker must go to the municipality (population office) in order to give his address and to have a seal on his asylum request-recording certificate (pink sheet). The seal must be renewed each month in the same office.

Has the asylum seeker the right to medical help?

Yes. During the first meeting at the CGE or during the first week after his arrival in Luxembourg, the asylum seeker receives a "general ticket", valid for a month. With it, he may consult any general practitioner, specialist and pharmacist, with a medical prescription. There are also special tickets for dentists that the asylum seeker may get at the CGE. For families with children, children are indicated on the ticket. The "general ticket" is renewed whenever necessary, until the end of the period after which the person

may access to the voluntary medical insurance. At that time, the CGE helps the asylum seeker in his administrative steps to get a voluntary health insurance from the CMO¹ (Caisse de Maladie des Ouvriers/ Workers Health Insurance); the monthly fee is paid by the CGE.

The free medical help includes the costs due to the visit to general and specialist practitioners, hospitalisation costs and surgery, chemist's costs and other medical prescriptions. The CGE uses the same refunding rates as the health care fund; the patient must pay the difference. In case of young children illnesses, chronic or lengthy disease, the CGE can grant special help.

For dental cares the patient is asked to pay around 30% of the costs.

Does the asylum seeker have the right to a monthly financial allowance?

- Yes, but the allowances vary depending on the kind of lodging given.
- If the lodging is made in an independent house, it means that people must provide for themselves, help is 100%
- If the accommodation is made full board, they get monthly pocket money.

Independent accommodation – Monthly Rates 100% (01/05/2002)

1 adult	273 Euros
household with 2 adults	476 Euros
child between 0 and 12 years old	124 Euros
child between 12 to 18 years old	161 Euros
other adult in the household	199 Euros

Full-board accommodation – Monthly pocket money (01/05/2002)

adult	50 Euros
child	25 Euros

Once the asylum seeker receives a first negative answer to his request, the financial help is decreased by 20%.

How can the asylum seeker move in Luxembourg?

The asylum seeker is granted, after 3 months living in Luxembourg, a transport ticket valid for the whole national public transport. He may move freely around the country, but he is not allowed to leave the country.

Each year, during the month of January, the asylum seeker receives a special certificate from the CGE. With it and a picture, he may get a free transport ticket from the CFL office (Luxembourg railways), in the railway station of the town where he lives. For the asylum seekers, which arrive in Luxembourg during the year, they receive transport tickets valid 1 month until the month of January, when they will receive their one-year ticket.

¹ CMO : 125, route d'Esch, L- 1471 Luxembourg

Does a clothing help exist?

Each asylum seeker receives tickets for free clothes, given by the Red Cross. Caritas also offers free tickets for Kleederstuff in Esch/Alzette and Diekirch.

The CGE may grant, in exceptional situations, gift vouchers for new clothes and shoes.

For the birth of a child, 124 Euro are given to pregnant women in order to buy essential items for the baby. Beds for babies and young children are available for families.

Must the asylum seekers children go to school? Do specific help for asylum seekers children schooling exists?

Schooling of asylum seekers children is compulsory until the age of 15, whatever the parents status is. In Luxembourg, schooling in primary and secondary school is free, that means that the parents don't pay an entrance fee.

For the beginning of term, in September, parents receive, from the CGE, a contractual amount, by child, depending on the type of teaching:

Pre-school:	25 Euros
Primary:	50 Euros
Secondary:	75 Euros

For primary school students, books are free. For secondary and high school, reimbursement is granted.

In order to make the asylum seekers children integration easier, the Education Ministry has, since 1999, intercultural mediators to which he can refer if in need. The mediators are natives from the Balkans, from where most asylum seekers in Luxembourg come.

From 16 years old on, asylum seekers may take free French or German language courses at the Language Center of Luxembourg/ National Education Ministry). They can register when showing the asylum seeker certificate given by the Justice Ministry (pink sheet). Number of seats is limited. There are also several associations giving free language courses for asylum seekers (see attached list).

Does the asylum seeker have the right to work?

No. The asylum seeker does not have the right to work in the Grand-Duchy of Luxembourg during the whole proceeding, appeals proceedings included.

Do the asylum seeker have the right, according to the Geneva Convention, to family regrouping?

No. He must get the refugee status first.

How is the examination of the request taking place?

The analysis of the asylum request may take from a few months to a few years. During the whole time, the asylum seeker is in the care of the CGE, which is part of the Family Ministry.

Once the request is registered, the asylum seeker will be convoked, by letter, to the Ministry of Justice (this summon may take place from two days to a few months after the

request is done). In case the asylum seeker does not answer the summon twice, without advising the Ministry of Justice, his asylum request will be considered as non-founded. Therefore, he must go to every summon and interview.

At the Ministry, an agent will interview the asylum seeker. The hearing consists of an interview during which the asylum seeker must describe, truly and completely, his story, the risk he is exposed to in his country, how he arrived in Luxembourg, etc. He must not simply describe the political situation in his country, but tell his own personal route and the reasons that made him run away from his country. For the hearing, the asylum seeker can have an interpreter and a lawyer; he may wait until the lawyer is present before answering the questions. The hearing is very important as it gives the asylum seeker the opportunity to explain problems faced in his native country and the facts proving that he is personally endangered if he went back to his native country.

During the hearing, the Ministry agent writes down the declarations. The hearings report will be submitted to the asylum seeker as a hearing protocol. It may happen that further hearings are necessary, then, the seeker may be summoned several times.

He must carefully read or listen to the hearing protocol and it is important for interpreter and lawyer to be there. If he thinks of something he hasn't said yet or of something he wanted to say in another way, he must say it and correct it. It is always possible to modify the protocol before signing it.

The hearing report is sent to the Minister, who will have to take a decision. The Ministers' decision is personally conveyed to the asylum seeker and his lawyer if he has one.

Decisions

The request is unacceptable

The request might be considered unacceptable if the asylum seeker went through other countries, non-EU members (called third receiving party countries), before arriving in Luxembourg. In this case the asylum seeker will be sent back to that country.

Third receiving party countries are countries which signed the Geneva Convention and in which the asylum seeker:

- Already received protection or had the opportunity to ask for protection.
- Must be safe from driving out measures according to the Geneva Convention and must be treated according to the humanitarian norms.
- Must not be under persecution and where his safety and freedom won't be endangered.

Luxembourg must take into account the third party country practices on the subject before sending an asylum seeker there.

The request is judged obviously unjustified:

The request may be rejected if:

- The asylum seeker is not considered being in the “refugee” category as defined in the Geneva Convention, that is, if he does not refer to the fear of being persecuted because of one of the five reasons (race, Religion, nationality, membership in a particular social group or political opinions) found in the definition of the refugee.
- The asylum seeker uses a false identity, if he makes false declarations or if he doesn't mention that a request has already been made in another country.
- The authorities consider that the asylum seeker comes from a safe country where there is no, generally speaking, serious persecution risks, or that he could get effective protection in another part of his own country (intern flight), the request is declared obviously unjustified.

Resort

In those cases, the asylum seeker may introduce via a lawyer, a cancelling resort before the Administrative Court. The resort must be done within a month after the notification. This resort has a suspensive characteristic, which means that the asylum seeker may not be sent back until the Court decides. The Administrative Court only controls the legality of the Minister decision and does not decide on the contents of the case. He may confirm or cancel the Minister decision:

- If the Court confirms the negative Ministers decision, the asylum seeker may appeal before the Administrative Court within a month after the notification. The appeal also has a suspensive effect. If the Administrative Court confirms the Minister decision, the decision is final and the asylum procedure is closed.
- If the Court cancels the Ministers decision, the file is sent back to the Justice Ministry, who must decide on the contents of the case.

Request treated on the contents

The authorities analyse whether the asylum seeker corresponds with the criteria of the refugee definition of the Geneva Convention: fear of being persecuted because of:

- Race
- Religion
- Nationality
- Membership in a particular social group
- Political opinions

There is persecution if the life or freedom are endangered for one of those.

The applicant is excluded from the asylum procedure if he committed an important crime in his native country or in another country.

The Minister makes a decision on the validity of the asylum request, decision that will be communicated in writing to the asylum seeker:

- If the decision is positive, the Minister grants the acknowledged refugee status according to the Geneva Convention. Acknowledged refugees have the right to a

residence permit with the right to work and to guaranteed minimum revenue (RMG), independently of the length of time he is in the country. The acknowledged refugee may be reunited with his family (husband or wife, minor children)

- If the decision is negative, a resort may be made before the Administrative Court, within a month from the notification date. The resort has a suspensive effect.

The Administrative Court analyses the content of the request:

- If the answer is positive, the Minister's decision is not valid anymore.
- If the administrative Court confirms the Ministers decision, appeal may be made before the Administrative Court within a month after the notification. If the Administrative Court reforms the minister's decision, the refugee status is given. If the Administrative Court confirms the minister's decision, the refugee status is refused; the asylum seeker will be asked to leave the country.

In case the Government Department estimates that it is impossible for the asylum seeker to return to his country, the Department may grant the residence permit for humanitarian reasons. The Minister may also decide to temporarily tolerate the asylum seeker in the country, if the moving away is impossible. In that case, the asylum seeker receives a tolerance certificate that serves as identity card. This certificate grants social help.

In Luxembourg, there are several legal situations:

- The asylum seeker according to the Geneva Convention
- The acknowledged refugee according to the Geneva Convention. He receives a foreigner identity card valid 5 years, which may be renewed. He is allowed to work and has the right to the family reunion.
- The asylum seeker who has seen his request refused. Normally, he is asked to leave the country and is not considered as an asylum seeker anymore and cannot have social help. However he still receives material help, in the form of vouchers, for 15 days. This help may be renewed several times if the person has concrete projects to go back home or if other relevant reasons exist.
- The temporary protection system may be established in case of numerous arrivals from armed conflict, war or generalised violence situation zone. The whole temporary protection system may not last more than 3 years. This status has been created with the new law on asylum of the 18th March 2000. During the whole temporary protection duration the asylum request stay suspended but may start again, if the asylum seeker wants, once the temporary protection is over. People benefiting from the temporary protection receive the same help as the asylum seekers and may ask to be reunited with their family.
- The new law on asylum of the 18th March 2000 establishes that asylum seekers who have been rejected and for whom the departure to another country is materially impossible, may be granted a tolerance certificate. This certificate may be renewed, serves as identity card and grants social help.
- The refugees who have been rejected and those for whom the temporary protection has been refused may ask to the Ministry of Justice a residence permit for humanitarian reasons, on a legal basis according to the European or International Conventions (CEDH). In several cases, residence authorisations may

also be given for humanitarian reasons. These do not have a legal basis and it is the Justice Minister who decides. In practise, people who are allowed to stay for humanitarian reasons may ask for a work permit.

Data on asylum seekers

As regards refugees, we will limit ourselves here to the recent past, in order not to go beyond the context of this report. We would only note that according to available statistics²², the number of asylum seekers over the past century was very low. The conflict in the Balkans led for the first time to a major wave of refugees to Luxembourg. From 1992 to 1995, by government decision, Luxembourg introduced additional legislation, first of all for persons coming from the former Yugoslavia and then for those coming from Bosnia, opening the possibility of rapid regularisation for some 2,000 persons concerned by integration into the employment market. It was only in 1996 that legislation was introduced to govern the application of the Geneva Convention. When later Luxembourg saw the massive influx of some 5,000 people fleeing the war in Kosovo, placing Luxembourg in 1999 at the top of the list of countries on the basis of the number of asylum seekers per inhabitant, refugees were and still are obliged to seek asylum according to the Geneva Convention and must submit to a relatively protracted procedure. In brief, Luxembourg, which had previously had recourse to well governed immigration following the conclusion of work force agreements with various countries, saw itself confronted by arrivals who had not been invited, and who in addition were generally of the Muslim religion. According to the law on residence and work in Luxembourg, these asylum seekers must be clearly distinguished from immigrant workers, in view of the fact that they are excluded from the employment market (they do not have a right to a work permit in Luxembourg).

It is also necessary to take into account the great dominance of white Europeans on the employment market in Luxembourg. This is clearly the result of a planned immigration policy followed by successive governments favouring certain nationalities and religions. The major proportion of immigrants were recruited in the traditionally catholic countries of Southern Europe, first of all Italy and then Portugal. In the year 2000, the proportion of refugees from Yugoslavia went from 89% to 44% of the overall number of asylum seekers, 628 in all. It should otherwise be mentioned that the rate of recognition in Luxembourg is the lowest. In 2000, for example, 1,942 decisions were taken, and in 0.9% of cases only status was granted under the Geneva Convention.²³

This massive influx of Balkan refugees aroused some fears among Luxembourg society, and reawakened old prejudices, fed by the security discourse among certain Luxembourg and foreign politicians. We will come later to some surveys recently carried out, which demonstrate this factor.

For the year 2001, 423 asylum applications were made, for a total of 686 persons. Of those 686, 396 came from the Balkan region.

²² Ministry of Justice

²³ Sesopi Intercommunity, <http://www.sesopi-ci.lu>

The black population in Luxembourg is not very high and is constituted primarily by persons originally from the Cape Verde Islands, a great many of whom came with Portuguese nationality, given the islands were once a Portuguese colony.

Today, 37% of the Luxembourg population are non-nationals, but only 4.8% of the total population are non-community foreigners (around 22,000 people). As at 31 March 2001 the overall active population consisted of 39% Luxembourg citizens and 61% foreigners. The Minister for Justice Luc Frieden presented on October, 17 2003 last statistics relative at the requests of asylum recorded in Luxembourg and the returns of applicants of asylum « déboutés »: the number of requests is in rise since 2002, the number of countries of origin also increases and Ex-Yugoslavia remains by far the most important country of origin of the applicants of asylum. In 2003, 586 returns of applicants of asylum « déboutés » were organised.

Since 2002, the number of requests has amounting to 1.042 per 2002 and 1.010 for the period from January to September 2003. For the statements of the minister, one has to expect more than 1.300 requests for asylum for 2003.

The majority of the applicants of asylum comes from the countries of Ex-Yugoslavia (352 in 2003), preceding by far Bielo-russia (54), Albania (51) and Algeria (51). 43 applicants are originating in Russia and 30 of Georgia.

Parallel to the increase in the number of requests, the diversity of the countries of origin of the applicants of asylum is accentuated, noticed the minister Luc Frieden. The number of African countries among the countries of origin also increases.

Returns of applicants of asylum «déboutés»

For the period of 2001 to 2003, the government considerably increased the number of returns of applicants of asylum « déboutés » towards their country of origin, which increased by 180 in 2001 to 586 in 2003.

Moreover, 107 people were transferred in other countries of the EU, qualified to treat the requests for asylums of these people (Convention of Dublin). These figures do not hold account of the people who are turned over voluntarily in their country, without the assistance of the government.

All in all, although one cannot speak of a complete absence of phenomena of racial violence in Luxembourg, it can nonetheless be confirmed that such cases are rather rare. The consensus mentality of the Luxembourg people, the custom of living together rather harmoniously in a multicultural society since the beginning of the last century, awareness actions on the part of the Government and social actors to some extent explains this.

Cross-borderers

In this context, the extremely favourable economic situation of the Grand Duchy should not be ignored. The rate of unemployment is very low, to be exact 2.8% according to the

latest data from the Employment Service, for September 2002²⁴. It moreover emerges from the 2002 report by the Economic and Social Council that the employment market has experienced considerable momentum, for example with an increase in jobs of 6.5% between October 2000 and October 2001, or the creation of 15,000 additional posts. These figures are not exceptional to the extent that the same body states that since 1990 there has been a constant progression of salaried employment, with growth varying from 3.5% to 6.5%. So once a specific phenomenon is encountered: in order to cope with job demand, employers must have recourse more and more to a work force from the border regions. At present around 100,000 employees residing in border regions (commonly called cross-borderers or cross-border workers) have a job in Luxembourg, 53% of these coming from France, 29% Belgium and 18% Germany.

List of organisations consulted

ASTI, 10-12 Rue Auguste Laval, L-1922 Luxembourg,
++352 43 83 33
Fax: ++352 40 08 71

CLAE, 26 Rue de Gasperich, L-1617 Luxembourg
++352 29 86 86
Fax: ++352 29 86 01

SESOPI, 5 Avenue Marie-Therese, L- 2132 Luxembourg
++352 447 43 503
Fax: ++352 447 43 515

CARITAS, B.P. 1721, L-1017 Luxembourg
++352 40 21 31

National Council for Foreigners, 12-14 Avenue E. Reuter, L- 2919 Luxembourg
++352 478 65 28
Fax: ++352 478 36 72

Special Commission against Racism – CSP-RAC, 12-14 Avenue E. Reuter, L- 2919 Luxembourg
++352 478 65 28
Fax: ++352 478 36 72

²⁴ Employment Service, Luxembourg, <http://www.adem.lu>

Undocumented migrants: RESIDENCE PERMIT

Fundamental principles

According to the Grand-Ducal Regulation of 28 March 1972, concerning the entry and residence of foreigners, the national authorities can refuse the entry and residence in Luxembourg to an individual who wants to cross internal borders, when:

- He/she is not able to produce the necessary documents: a valid passport and visa for entry where required;
- He/she could represent a threat to the public policy, national security or public health;
- He/she does not have sufficient financial means to pay the residence and travel's charges;

The latter point means that the authorisation of residence is only granted when the applicant has sufficient means of subsistence.

HOW TO PROVE THE MEANS OF SUBSISTENCE?

The individual has two ways to prove that he/she has the adequate means of subsistence: he/she can either prove that he/she depends on someone else, or that he/she works.

Only the spouse, minor children and elderly parents can prove that they depend on someone else. People other than the spouse, the parents, and the children cannot assume the financial responsibility for the applicant.

In order to prove that the work provides him/her with sufficient means of subsistence, a third country national must be in possession of a work permit or have been authorised to work as self-employed.

Therefore, it exists a parallelism between the grant of a residence permit and of a work permit.

First of all, it is necessary to apply for a work permit before introducing a request for the grant of the authorisation of residence (except in case of self-employment)

Regarding the authorisation of residence for students, see the form on studies.

THE AUTHORISATION OF RESIDENCE (MODALITIES)

A written request for the grant of the authorisation of residence has to be lodged with the Ministry of Justice. The applicant has to join to the request the proof of the means of subsistence (work contract, work permit, form specifying the person who is financially responsible for the applicant (déclaration de prise en charge)).

If the Ministry of Justice grants the authorisation of residence, the latter will be a temporary authorisation valid for one year. The authorisation may be prolonged, provided that the means of subsistence are still possessed.

After three years of residence, that is to say after the grant of 3 temporary authorisations for one year, or in case of grant of a B permit, the third country national is entitled to apply for a foreigner identity card, which is valid for 5 years.

At each renewal of the authorisation, the individual has to prove his/her means of subsistence.

Judicial review

Appeals can be lodged with the Administrative Tribunal against a refusal or if the Ministry of Justice does not take a decision within 3 months.

FORMALITIES WHICH THIRD COUNTRY NATIONALS WHO RESIDE IN LUXEMBOURG HAVE TO TAKE CARE OF:

Duration of the envisaged residence	3 months	12 months	More than 12 months
Formalities to be taken care of	The arrival has to be declared within 3 days to the local authorities of the municipality where residence will be taken up; If the individual does not pursue a gainful activity, the inscription in the landlord's register stands as declaration of arrival	Within 3 days after being granted authorisation of residence, the individual has to make a declaration of arrival to the local authorities of the municipality where residence will be taken up;	Within 3 days after being granted the authorisation which entitle the third country national to apply for an identity card, he/she has to submit a request for a foreigner identity card to the municipality where residence will be taken up; The latter stands as declaration of arrival
Delivering of the residence permit	The declaration of arrival's receipt valid for 3 months	The receipt of the declaration of arrival by way of residence permit valid for 12 months	The receipt of the request for an identity card by way of the residence permit valid for 1 year; Foreigner identity card valid for 5 years.
Conditions		Proof of the means of subsistence	Proof of the means of subsistence
Change of residence	Declare the departure to the local authority Declaration of arrival in the new municipality within 3 days	Declare the departure to the local authority Declaration of arrival in the new municipality within 3 days	Declaration of departure to the local authority Declaration of arrival in the new municipality within 8 days
Permit's renewal	The request has to be submitted to the Ministry of Foreign Affairs on the ground of a valid reason	The request has to be submitted, at least one month before the expiration of the permit, to the Ministry of Justice	The request has to be submitted, within one month after the permit has expired, to the municipality of residence
Formalities to be taken care of in case of absence from Luxembourg longer than 6 months		Declare the departure to the municipality	Declare the departure to the local authority; Give back the identity card
Expiration and withdrawal of the residence permit		Residence outside Luxembourg for more than 6 months	Residence outside Luxembourg for more than 6 months

LOSS OR REFUSAL TO GRANT THE PERMIT

The grant of the authorisation of residence or its renewal is refused when the third country national cannot prove the adequate means of subsistence. The authorisation of residence is no longer valid in case of absence for more than 6 months.

And what about self-employed people?

The right of entry of third country nationals coming for the purposes of self-employed activity is settled in the law of 1972, as it has been modified by the Law of 4 November 1997.

The request for self-employment has to be submitted before the Chamber of Commerce, which will send the application to the Ministère des Classes Moyennes (Ministry of Classes Moyennes).

Third country nationals who are legally resident in Luxembourg have to follow the same procedure required from EU citizens wishing to acquire the status of self-employed in Luxembourg.

Third country nationals who wish to establish themselves in the Grand-Duché for the purpose of self-employment have to follow the following procedure.

The applicant has to apply to the Chamber of Commerce, which will send the file to the Ministry of Classes Moyennes. The latter may give a provisional agreement or not (the Ministry will not give a definitive agreement because the applicant does not yet have an authorisation of residence). Second, the applicant has to submit a request for a self-employed residence permit (the form can be found in the Ministry of Justice), joining the agreement of the Ministry of Classes Moyennes.

Even if the Law does not expressly provide it, the Ministry has introduced the following conditions and limits:

Constitute a bank guarantee of 12.350 Euro per adult, deposited in favour of the Ministry of Justice;
the right to family reunification can be recognised only after a minimum of 3 years of legally residence.

The forms and the list of the necessary documents and conditions to be fulfilled for the grant of the right to pursue a trade activity are available at the Chamber of Commerce (<http://www.cc.lu>)

MAIN POINTS

The authorisation of residence is linked to the proof of sufficient means of subsistence;
The authorisation is linked to the grant of a work permit;
The applicant can prove that he/she depends on someone else only in case of marriage (on the spouse) or if he is a minor child or an elderly parent (in case of family reunification)

WORK PERMIT

GENERAL FRAMEWORK

According to the Grand-Ducal Regulation of 28 march 1972²⁵, concerning the entry and residence of foreigners, third country national workers who wish to engage in an economic activity in Luxembourg may not to take up and pursue a paid, intellectual or manual, employment unless they have obtained permission to do so. Moreover, they are bound to apply for an authorisation also in case of change of employer or occupation.

Third country nationals who are spouses of EU citizens (nationals of a Member State) do not need to have (en principe) a work permit. (see form on marriage)

HOW TO OBTAIN A WORK PERMIT?

It is up to the future employer to submit the application for a work permit.

- First, the employer has to declare to the Employment Administration (ADEM) that a job is available. The right of third country national workers to answer to any offer of employment is subject to the priority that Member State workers registered as belonging to the labour force of Luxembourg enjoy over them;
- Therefore, only if ADEM does not propose a EU worker may they be offered the job;
- The employer has to submit to ADEM two copies of an engagement's declaration. This declaration countersigned by the employee stands as a request for the grant of a work permit. The employer has to join to the declaration a copy of the work contract, not yet signed, and a letter explaining the reasons of his choice (particular skills which are not easy to find in the EU labour market, as for example sushi's cooking, do improve the chances of obtaining a work permit);
- The future employee has to send to ADEM a copy of his/her passport.

During the procedure for the grant of the work permit (which will normally take from 6 to 8 weeks), the work contract cannot be signed and the employee is not entitled to work. Only after the application has been accepted and the work permit is issued, may the worker can be engaged.

The obtention of a work permit

The work permit is granted by the Ministry of Labour on the advice of the "commission d'avis spécial" (a special commission). ADEM plays the role of a mediator between the employer, the worker and the Ministry. Indeed, the employer and the worker will not have any direct contact with the Ministry.

²⁵ Law of 28 March 1972, (*Loi concernant (1) l'entrée et le séjour des étrangers ...*) (Mémorial A. 1972, p. 818).

The Ministry of Labour may require from the employer a bank guarantee of at least 1487 Euro, whose interests will be due to the employer quarterly.

The employer shall recover the guarantee:

- If the third country national leaves the country;
- If the third country national seeks new employment and the new employer deposits a new guarantee;
- After two years from the obtention of a C work permit (that is, after 7 years).

The different kinds of work permit which can be issued

KINDS OF PERMIT	A PERMIT	B PERMIT	C PERMIT	D PERMIT
Maximal duration	1 year	4 years	Unlimited	According to the duration of the training or apprenticeship period
Professional field of application	One profession (job)	One profession	All professions	For trainees and learners
Employer's field of application	One (specified) employer (several in case of part-time workers)	All employers	All employers	
Conditions for obtention		Completion of at least one year of uninterrupted residence and legal employment in the host country and a work contract of unlimited duration	Completion of at least five years of uninterrupted residence and legal employment in the host country	Training or apprenticeship for study's reasons

In case of possession of a B or C permit, any change of employer has to be previously notified to the Ministry of Labour

It is important to note that the grant of the different types of permit follows a rational scheme. The worker is first given an A permit, then a B permit and finally a C permit which gives more certainty to the worker.

Besides, the work permit and the authorisation to reside in Luxembourg are inextricably linked. As a matter of fact, the right of third country national to reside in Luxembourg depends on the possession of a work permit and normally the residence permit cannot be prolonged if the applicant does not have, at the time of the request, a work permit (but in particular cases, see form on marriage)

Moreover, the workers in possession of an A permit are not allowed to claim unemployment allowances. In fact, one of the conditions to be fulfilled for the grant of these social benefits is that the applicant is available for the labour market. However, the possession of an A permit means that the worker is actually linked to an employer and that he is no longer available for the labour market.

RENEWAL OF THE WORK PERMIT

One month before the expiration of the work permit the Ministry of Labour notifies it to the employer. Copy of the letter sent by the Ministry is also sent just for information to the employee. Thus, it is the task of the employer to apply for the renewal of the permit before its expiration.

In Luxembourg the right to access the labour market is not guaranteed through the automatic renewal of the work permit. Indeed it is strictly necessary that the employer applies for a B permit before the expiration of an A permit, and for a C permit before the expiration of a B permit.

The work permits (A, B, C) are withdrawn when the worker has left Luxembourg for more than six months. This is not the case if the absence is due to the job and the worker has to move abroad with the agreement of his employer in the context of his actual work relationship.

THE REFUSAL TO DELIVER A WORK PERMIT

Among the reasons which can justify a denial to give a work permit, the following are the most frequent:

non compliance with the procedure for the grant of the permit (for example the employer has not declared that a job was available);
the state, evolution and organisation of the labour market;
the priority given to EU citizens and to those of the E.E.A.²⁶

PERMIT'S WITHDRAWAL

The permit is withdrawn when:

the third country national has been issued a work permit on the basis of dishonest practices and false declarations on his part;
the third country national is working in an occupation that is not authorised by his work permit;
the authorisation of residence in Luxembourg has been revoked

JUDICIAL REVIEW

The decision refusing a request for a work permit can be appealed before the Administrative Tribunal.

And what about self-employed people?

Self-employed persons who wish to establish themselves in Luxembourg have to fulfil the special conditions concerning the authorisation of residence. (see form on residence permit)

²⁶ The European Economic Area comprises the European Union, Norway, Iceland and Liechtenstein.

MAIN POINTS

- The employer must declare to ADEM that a job is available;
- It is important to verify whether the future employer has already introduced a request for a work permit;
- Do not begin to work until the grant of the permit;
- Remind the employer of applying for the permit's renewal;
- A B work permit cannot be granted but after the grant of an A permit, and only if the contract has an indeterminate duration;
- The work permit and the residence permit are linked;
- A change of employer has to be notified to the Ministry of Labour, if the worker holds a B or C permit.

VISA

A short term tourist visa (visa "tourisme") is valid for a maximum period of three months. It does not entitle its holder to take up a gainful activity in Luxembourg.

Applications for a short term visa have to be submitted to the diplomatic mission of Luxembourg (or to the Belgian Embassy or Dutch Consulate) in the country of origin of the person wishing to enter in Luxembourg. Finally, the authorisation is issued by the Ministry of Foreign Affairs of Luxembourg.

Visa requirements:

Formalities to be taken care of by the host resident in Luxembourg	Form on the assumption of the financial responsibility (prise en charge) for the guest to be filled by the local authority where he or she has his/her residence; A certified letter of invitation to be transmitted to the guest
Formalities to be taken care of by the guest or by the tourist	Apply for a visa before the diplomatic mission of Luxembourg in the country of origin; Join to the application certified true copies of the documents requested by the Ministry of Foreign Affairs; Certified true copy of the passport for the envisaged residence duration; Evidences of the means of subsistence (statements of banking account, credit cards); Round trip travel ticket; Sometimes health insurance or a travel insurance can be required
Ancillary formalities to be fulfilled by the tourist	Proof of a reservation in hotel
Decision adopted by the Ministry of Foreign Affairs	When the file is complete, the Embassy or the consular mission will send the applications to the Ministry of Foreign Affairs in Luxembourg who will refuse or accept the request

The tourist visa cannot be prolonged (except in a very exceptional and rare cases). The host resident in Luxembourg has to guarantee that the guest will leave the country at the expiry of the visa.

FAMILY REUNIFICATION

On 22 September 2003, the Council has finally adopted the Directive on the right of third country nationals residing lawfully in the territory of the Member States to family reunification.²⁷ The Directive does not apply to members of the family of a Union citizen. This means that the conditions for the family reunification of third country national members of the family of an EU citizen are not determined by the Directive. Member States shall implement the Directive by 3 October 2005 at the latest. Before implementation, national legislation will continue to apply.

In Luxembourg there is no specific legislation concerning the right to entry and residence by family members of a third country national residing lawfully in Luxembourg in order to preserve the family unit. What is usually done is to apply for a residence permit for the family member for whom the reunification is sought. As for the grant of the authorisation of residence, the sponsor (the third country national, residing lawfully in Luxembourg, who applies for it) has to prove that he/she has the sufficient means of subsistence. Indeed, the sponsor has to assume the financial responsibility for the person whom he/she wishes to come to Luxembourg.

Thus, the authorisation may only be granted to minor children and to elderly parents who are no longer capable to provide for their own needs. Children over 18 years old and other members of the family (except the spouse) have to prove that they work and that they have the personal means of subsistence (see forms on work permit and residence permit)

DOCUMENTS REQUIRED:

- Copy of the passports (sponsor's passport and family members' passports);
- Documentary evidence of the family relationship (birth certificate);
- Documentary evidence of the parental authority when the family member for whom the authorisation is requested is a minor;
- Declaration of assumption of the financial responsibility for the family member (déclaration de prise en charge);
- Proof that the sponsor has stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family (copy of the work's contract; wage's slips);
- Proof that the sponsor has an adequate accommodation;
- Proof that there isn't in the country of origin any member of the family who could take care of the person for whom the application is submitted;
- Proof that the sponsor has regularly backed the family member.

The two latter conditions are required by the Ministry although they are not established by Luxembourg legislation. There is no specific legal basis for those two conditions.

The application has to be submitted to the Ministry of Justice.

²⁷ Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

MAIN POINTS

The family reunification only refers to parents and minor children (it cannot be used for brothers, sisters, etc...);

Evidence of sufficient means of subsistence and of an adequate accommodation;

Assumption of the financial responsibility for the family member.

VOTING RIGHTS OF NON-LUXEMBOURG NATIONALS IN LOCAL ELECTIONS HELD IN OCTOBER 2005

A new Election Act came into force in February 2003 in the Grand Duchy of Luxembourg. The Act allows non-Luxembourg nationals resident in the Grand Duchy of Luxembourg to vote and stand as candidates in local elections in 2005, regardless of whether they are EU citizens or not, without losing their voting rights in local elections in their country of origin.

THE MAIN CHANGES RESULTING FROM THE NEW LAW

Under the new law, non-EU nationals are permitted to register on the electoral roll for local elections for the first time.

The law also extends the application period for registration on the electoral roll until the end of March 2004.

It reduces the period of residence required of non-Luxembourg nationals who wish to register on the electoral roll in our country.

Lastly, it amends the age criterion in that voters merely need to have reached the age of 18 by the date of the elections.

CRITERIA FOR VOTING AND/OR STANDING AS A CANDIDATE IN LOCAL ELECTIONS

- *Applicants must be at least eighteen years old on the date of the elections.
- *Applicants must have civil rights and must not be disqualified from voting in the Grand Duchy of Luxembourg or in the State of origin.
- *Applicants must have been domiciled in the Grand Duchy of Luxembourg and have lived here for at least five years when applying to be included on the electoral roll.

Non-Luxembourg nationals who meet these criteria need to register on the electoral roll before 1st of April 2004.

HOW TO REGISTER ON THE ELECTORAL ROLL

You may obtain special forms to apply for registration from local authorities.