

**Luxembourg National Contact Point  
of the European Migration Network**

**2008 Policy Analysis Report  
on Migration and Asylum**

**The opinions presented in this report are those of the NCP Luxembourg and do not represent the position of the Luxembourgish Ministry of Family and Integration or the Ministry of Foreign Affairs and Immigration**

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LE GOUVERNEMENT  
DU GRAND-DUCHÉ DE LUXEMBOURG  
Ministère de la Famille et de l'Intégration

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## Foreword

In accordance with article 9(1) of the Council Decision 2008/381/EC<sup>1</sup> establishing the European Migration Network (EMN), each EMN National Contact Point is required to provide an annual report describing the migration and asylum situation in the Member State, which shall include policy developments and statistical data.

One of the tasks for the National Contact Points is the writing of selected policy reports, small-scale studies and research studies in the field of migration and asylum at national level. These reports are designed to provide a concise overview of the respective subject in all participating countries and to serve both internal and external information needs by gathering information about legislation and policy debate in Luxembourg. Based on a common specifications template (drawn up by the European Migration Network<sup>2</sup>) for all National Contact Points, the report offers both a means for comparison and information exchange with other Member States of the European Union.

The present report has been made possible through input by the partners represented in the National Contact Point Luxembourg (EMN-NCP-LU), with respect to their specific competences<sup>3</sup>.

We trust that this document will prove to be useful for readers and we thank all contributors for their input and efforts in compiling a well-balanced and comprehensive report on Luxembourg's immigration policy of 2008.

Although the reports' language is English, it is important to note that in Luxembourg the administrative and legislative language is French and hence force, only the quoted laws in original language are legally binding.

The whole report was written under the close supervision of Assistant Professor Dr Christel Baltes-Löhr, University of Luxembourg and the cooperation and support of the national experts of the National Contact Point.

The research and writing process was assisted by the researchers Sylvain Besch, SeSoPI-Centre Intercommunautaire and Claudia Hartman-Hirsch, CEPS/Instead, the statistical expert Germaine Thill, STATEC and the government representatives Sylvie Prommenschenkel, Ministère des Affaires étrangères and Marc Hayot, Ministère de la Famille et de l'Intégration. Lígia Nóbrega, scientific collaborator of the EMN-NCP-LU, was responsible for compiling the report.

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<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:131:0007:0012:EN:PDF>

<sup>2</sup> <http://emn.sarenet.es/html/index.html>

<sup>3</sup> - Université du Luxembourg (coordination)  
- Office luxembourgeois de l'accueil et de l'intégration (Ministère de la Famille et de l'Intégration)  
- Direction de l'Immigration (Ministère des Affaires étrangères)  
- SeSoPI-Centre Intercommunautaire  
- Service central de la statistique et des études économiques (STATEC)  
- Centre d'Etudes de Populations, de Pauvreté et de Politiques Socio-économiques (CEPS/Instead)

## **Executive Summary**

The Policy Analysis Report on Migration and Asylum gives an overview of the key political debates and developments in the field of migration and asylum in Luxembourg during the year 2008.

The most important political reform was the introduction of the '*statut unique*' in 2008, which unified several social security insurances. This reform also resulted in the merger of two professional chambers (workers and employees) into the new '*Chambre des salariés*'<sup>4</sup>.

The evolution of immigration and demographic perspectives led the Luxembourg government to draw up new policies and to adapt its legal framework. Following wide debate and consultation with stakeholders, major policy and legislative developments in the area of migration and asylum in 2008 were drawn up, relating to the introduction of fundamental reforms with the approval of three new laws on immigration, integration and nationality<sup>5</sup>.

One of the most important institutional developments resulting of these reforms was the establishment of new governmental structures, such as the Luxembourg Agency for Reception and Integration ('*Office luxembourgeois de l'accueil et de l'intégration*'), aiming to support and improve the integration process of immigrants and to fight against discrimination.

A public debate on national identity and on the role of Luxembourgish language has risen during the discussions of the law on Luxembourg nationality<sup>6</sup>.

### ***1. Political Developments in Luxembourg***

#### ***1.1 General structure of the political system and institutional context relevant for migration and asylum***

This is the first Policy Analysis Report on Migration and Asylum produced by Luxembourg as a participant of the European Migration Network. Therefore, a detailed overview of the structure of Luxembourg's political system will be given in this section.

The Grand Duchy of Luxembourg has been a sovereign and independent state since the Treaty of London was signed on 19 April 1839<sup>7</sup>. The form of the government is a

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<sup>4</sup> See chapter 1.3 Institutional developments

<sup>5</sup> See chapter 2.2 General overview of the main policy and legislative debates that have occurred on migration and asylum issues during 2008

<sup>6</sup> [http://www.gouvernement.lu/publications/informations\\_gouvernementales/nationalite-luxembourgeoise-2009/nat\\_lux\\_2009\\_EN.pdf](http://www.gouvernement.lu/publications/informations_gouvernementales/nationalite-luxembourgeoise-2009/nat_lux_2009_EN.pdf)

constitutional monarchy under a system of parliamentary democracy. The crown is handed down through the House of Nassau with regard to the male succession<sup>8</sup>.

The first constitution of Luxembourg was drafted in 1841, two years after the independence of Luxembourg in 1839, followed by the constitutions of 1848 and 1856<sup>9</sup>.

During 2008, the text of the constitution has been amended<sup>10</sup> three times. The law of 31 March 2008<sup>11</sup> created a new article (32bis) which guarantees the democratic pluralism of political parties. The laws of 23 October 2008<sup>12</sup> amended two articles of the constitution in connection with the new law on nationality.

In December 2008, a major constitutional reform took place in Luxembourg. The government and Parliament decided unanimously to abolish the royal assent to laws that had existed in the Luxembourg constitution since 1848. It reduces the Grand Duke's legislative role under article 34 of Luxembourg's constitution from both sanctioning and promulgating laws, to merely their promulgation. The amendment came after the country's current monarch, HRH Grand Duke Henri, said he would not approve a bill passed by the Parliament earlier in 2008 that legalised euthanasia.

Several articles of the constitution deal with the rights of foreigners. Whilst article 10bis refers to the principle of equal treatment of Luxembourgers<sup>13</sup>, article 111 of the constitution provides that any foreigner resident in the territory of the Grand Duchy of Luxembourg enjoys the same protection given to persons and property, unless otherwise stipulated.

According to the Luxembourg Court of Appeal, the constitutional principle of equality before the law is applicable not only to Luxembourgers, but also to any individual affected by Luxembourg law<sup>14</sup>.

The linguistic situation in Luxembourg is characterised by the practice and recognition of three official languages: Luxembourgish, French, and German<sup>15</sup>. The national language is Luxembourgish (*'Lëtzebuergesch'*). German is taught from the very first year of primary

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<sup>7</sup> Calmes 1989

<sup>8</sup> <http://www.luxembourg.public.lu/fr/politique/index.html>

<sup>9</sup> [http://www.legilux.public.lu/leg/textescoordonnes/recueils/Constitution/Page\\_de\\_garde.pdf](http://www.legilux.public.lu/leg/textescoordonnes/recueils/Constitution/Page_de_garde.pdf)

<sup>10</sup> Any revision of the constitution must have the approval of at least two thirds of the parliamentarians in two successive rounds separated by a break of at least three months, according to article 114 of the *'Constitution du Grand-Duché de Luxembourg'* 2009,

<http://www.gouvernement.lu/gouvernement/constitution-luxembourgeoise.pdf>

<sup>11</sup> Memorial A N° 37 of 2 April 2008, <http://www.legilux.public.lu/leg/a/archives/2008/0037/a037.pdf>

<sup>12</sup> Memorial A N° 213 of 28 December 2008, <http://www.legilux.public.lu/leg/a/archives/2008/0213/a213.pdf>

<sup>13</sup> *'Art. 10bis.*

*(1) Les Luxembourgeois sont égaux devant la loi.*

*(2) Ils sont admissibles à tous les emplois publics, civils et militaires; la loi détermine l'admissibilité des non-Luxembourgeois à ces emplois'*

<sup>14</sup> *'Cour d'Appel, 15 juillet 1999, N°21871 du rôle, non publié'*

<sup>15</sup> Law of 24 February 1984 on languages regime

<http://www.legilux.public.lu/leg/a/archives/1984/0016/a016.pdf#page=6>

school, while French is taught during the latter years of schooling. German is the main language for primary education, as well as for the first years of secondary classical and secondary technical education<sup>16</sup>.

The legislation and implementing regulations are in French. Only the French text is legally binding and prevails. In administrative and judicial matters, French, German or Luxembourgish should be used according to the preferred language of the citizen. The language of parliamentary debates is Luxembourgish. The press is mostly in German but the proportion in French has increased due to the immigration from Romanophone countries and the increase of cross-border workers.

Since 7 October 2000, Grand Duke Henri has been the Head of State and enjoys complete political immunity. The constitution grants the Grand Duke the right to approve and sign laws<sup>17</sup>, and to organise his government freely, i.e. to create ministries, divide up ministerial departments and appoint their members – based on election results and coalition negotiations<sup>18</sup>.

Since the elections of 13 June 2004<sup>19</sup> the government of Luxembourg has consisted of a coalition between the Christian Social Party (*'Parti Chrétien Social'* - CSV) with 9 ministers and the Luxembourg Socialist Workers' Party (*'Parti ouvrier socialiste luxembourgeois'* - LSAP) with 6 ministers (3 women and 12 men)<sup>20</sup>.

### ***1.1.1 Government ('Gouvernement')***<sup>21</sup>

The government sets out the guidelines of Luxembourgish policy. It deliberates all important matters within the Council of Government, including topics dealing with migration and asylum issues.

Executive power is exercised by the Grand Duke and the Council of Government which includes the prime minister, who serves as head of government. The government is composed by 19 ministries under the responsibility of 15 ministers, secretaries of state and a delegate minister. Ministers often hold more than one portfolio according to the following list:

- Ministry of State
- Ministry of Finance
- Ministry for Foreign Affairs and Immigration
- Ministry of Agriculture, Viticulture and Rural Development

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<sup>16</sup> Ministère de l'Éducation nationale et de la Formation professionnelle 2009

<sup>17</sup> Art. 33-38 '*Constitution du Grand-Duché de Luxembourg*' 2009, <http://www.gouvernement.lu/gouvernement/constitution-luxembourgeoise.pdf>

<sup>18</sup> Art. 76-79 idem footnote 17

<sup>19</sup> <http://www.elections.public.lu/fr/elections-legislatives/2004/index.html>

<sup>20</sup> <http://www.gouvernement.lu/dossiers/viepol/formation-gouvernement-2004/index.html>

<sup>21</sup> Le Gouvernement du Grand-Duché de Luxembourg 2006

- Ministry of the Middle Classes, Tourism and Housing
- Ministry of Family and Integration
- Ministry of Equal Opportunities
- Ministry of National Education and Vocational Training
- Ministry of Justice
- Ministry of Labour and Employment
- Ministry of Culture, Higher Education and Research
- Ministry of the Economy and Foreign Trade
- Ministry of Health
- Ministry of Social Security
- Ministry of Environment
- Ministry of Transport
- Ministry for Home Affairs and Town and Country Planning
- Ministry of the Civil Service and Administrative Reform
- Ministry of Civil Engineering

Legislative power resides in the joint action of Parliament (*'Chambre des députés'*), government and Council of State (*'Conseil d'Etat'*). Each entity serves a separate function. Legislative initiative may be originated either by one of the deputies or by the government. Nevertheless, it is the Grand Duke who formally submits laws to the Parliament. Thus, Ministers can only introduce laws on behalf of the Grand Duke.

Two types of legislative initiatives are distinguishable:

- The governmental initiative: the preliminary bill is drawn up by the relevant ministry (*'projet de loi'*), approved by the Council of Government (*'Conseil de Gouvernement'*), examined by the Council of State and put to the vote before Parliament where the government normally holds the majority
- One or more members of Parliament also possess a right of parliamentary initiative which is exercised by bringing in a bill (*'proposition de loi'*) which is submitted to the Conference of Presidents of the Parliament, which decides on its referral to a committee. The text of the proposal is submitted to the Council of State for its opinion and sent to the government for its position.

Subsequently, these two types of legislative initiatives are submitted to a consultative procedure involving the Council of State and the professional chambers as well as other stakeholders, if considered necessary by the government. Other stakeholders can introduce opinions on draft laws.

The legislative procedure concludes with the vote of the members of Parliament. The law adopted by Parliament enters into force after it has been granted the Royal Assent of the Grand Duke and published in the compendium of legislation known as the *'Mémorial'*.



### ***1.1.2 Parliament ('Chambre des Députés')***<sup>22</sup>

Parliament is made up of 60 members elected for a 5 year term by means of universal suffrage on a regional basis and a system of proportional representation.

From June 2004 to June 2009, the following political parties were represented<sup>23</sup> in Parliament:

- Christian Social Party (*'Parti Chrétien Social' - CSV*) : 24 seats
- Luxembourg Socialist Workers' Party (*'Parti ouvrier socialiste luxembourgeois' - LSAP*) : 14 seats
- Democratic Party (*'Parti démocratique' - DP*) : 10 seats
- The Green Party (*'Les Verts' - Déi Gréng*): 7 seats
- Alternative Democratic Reform Party (*'Alternativ Demokratesch Reformpartei' - ADR*): 4 seats
- Independent member: 1 seat.

Parliament's primary function is to vote on laws submitted by the government and to monitor the executive branch. Debates in Parliament concern: the discussion of bills, of government policies, in-depth debates on particular policies (*'débats d'orientation'*) such as 'immigrant children in the Luxembourg school system' and parliamentary questions. Parliamentary Commissions prepare documentation for the debates.

### ***1.1.3 Council of State ('Conseil d'Etat')***<sup>24</sup>

Luxembourg's legislative system is unicameral. Therefore, the Council of State plays an important role in the legislative procedure<sup>25</sup>, which is unique in the European Union.

The Council of State is composed of twenty-one councillors. The main function of the Council of State is to give its opinion on all bills, together with their amendments, and to examine any draft grand ducal regulation submitted to it<sup>26</sup>. In Luxembourg's unicameral system, the Council of State exerts the moderating influence of a second legislative assembly. It is required to voice its opinion on all items of legislation, that is, to pronounce on all bills brought in before Parliament prior to voting by its members.

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<sup>22</sup> Le Gouvernement du Grand-Duché de Luxembourg 2006

<sup>23</sup> <http://www.luxembourg.public.lu/fr/politique/paysage-institutionnel/chambre-deputes/index.html>

<sup>24</sup> Le Gouvernement du Grand-Duché de Luxembourg 2004

<sup>25</sup> 'Rapport d'activité du Conseil d'Etat, 2008/2009', <http://www.conseil-etat.public.lu/fr/>

<sup>26</sup> A regulation defines conditions for the execution of laws

#### ***1.1.4 Professional Chamber of employers and employees<sup>27</sup>***

Luxembourg has a typical old standing corporatist structure with professional chambers<sup>28</sup> having an impact on policy making and on legislative procedures. Their main purpose is to defend the interests of the professional groups they represent.

They have the right to submit proposals to the government on matters for which they are competent. Their opinion must be sought on any bills or grand ducal and ministerial regulations relating to their sphere of competence.

There are six professional chambers in the Grand Duchy, three of which represent employers:

- Chamber of Commerce (*'Chambre de commerce'*)
- Chamber of Private Employees (*'Chambre des employés privés'*)
- Chamber of Civil Servants and Public Employees (*'Chambre des fonctionnaires et employés publics'*)
- Chamber of Trades (*'Chambre des métiers'*)
- Chamber of Labour (*'Chambre du travail'*)
- Chamber of Agriculture. (*'Chambre d'agriculture'*) which have been institutionalised in 1924<sup>29</sup>.

Any person working in a profession covered by one of the professional chambers must join that chamber and every member, whether a Luxembourg national or foreigner, is entitled to vote or abstain from voting. Elections take place every 5 years.

#### ***1.1.5 Unions ('Organisations Syndicales')***

Unions in Luxembourg are grouped under the following five organisations<sup>30</sup>:

General Confederation of Civil Servants (*'Confédération générale de la fonction publique'* - CGFP)<sup>31</sup>. Membership opened to state and municipal civil servants; covers about 60 independent sub-groups.

General Federation of Municipal Service (*'Fédération générale de la fonction communale'*. - FGFC)<sup>32</sup>. Membership limited to municipal civil servants; regroups 19 organisations.

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<sup>27</sup> *'Chambre de commerce, Chambre des métiers, Chambre d'agriculture, Chambre des employés privés, Chambre du travail, Chambre des fonctionnaires et employés publics'*

<sup>28</sup> *'Histoire de la Chambre des salariés'*, <http://www.csl.lu/historique>

<sup>29</sup> Law of 4 April 1924, <http://www.legilux.public.lu/leg/a/archives/1924/0021/a021.pdf#page=1>

<sup>30</sup> <http://www.luxembourg.public.lu/fr/politique/concertation/syndicats/index.html>

<sup>31</sup> [www.cgfp.lu](http://www.cgfp.lu)

Luxembourg Confederation of Christian Trade Unions (*‘Confédération des syndicats chrétiens luxembourgeois - LCGB’*)<sup>33</sup>. Although it is nominally independent, it has long-standing political ties to the Christian Social Party (CSV) LCGB is the second-largest trade union federation in the country and open to all employees<sup>34</sup>. LCGB is a confederation that groups 3 trade unions and 10 other structures which operate in different professional sectors<sup>35</sup>.

Independent Trade Union Confederation of Luxembourg (*‘Confédération syndicale indépendante-Luxembourg’*, - OGB-L)<sup>36</sup>, which is close to the Luxembourg Socialist Workers’ Party (LSAP). It is also open to all employees<sup>37</sup> and includes fifteen trade unions, with different professions.

Luxembourg Association of Bank Employees and Insurance (*‘Association Luxembourgeoise des Employés de Banque et Assurance’ - ALEBA’*)<sup>38</sup>. It is the main trade union for the Luxembourg financial sector, representing employees of financial institutions, as well as insurance companies.

Only two trade unions, LCBG and OGB-L are granted with the status of general national representativeness, so that they are enabled to sign collective agreements<sup>39</sup>.

Furthermore, two unions are granted national representation within specific sectors: CGFP for the public sector and ALEBA for the financial sector<sup>40</sup>. Thus, they can sign collective agreements in its respective sector.

Unions are also represented in the Tripartite coordination committee<sup>41</sup> (4 members of this committee are representing the trade unions at national level; one of them represents the public sector).

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<sup>32</sup> [www.fgfc.lu](http://www.fgfc.lu)

<sup>33</sup> <http://lrgb.lu/fr>

<sup>34</sup> According to article 1.1 of LCGB’s statutes, [http://lrgb.lu/uploads/wysiwyg/statuts/LCGB\\_statuts\\_fr.pdf](http://lrgb.lu/uploads/wysiwyg/statuts/LCGB_statuts_fr.pdf)

<sup>35</sup> <http://lrgb.lu/>

<sup>36</sup> <http://www.ogb-l.lu/>

<sup>37</sup> According to statutes n. 1.1 and 1.5, [http://www.ogbl.lu/html\\_fr/qui\\_sommes\\_nous/statuts/statuts.html](http://www.ogbl.lu/html_fr/qui_sommes_nous/statuts/statuts.html)

<sup>38</sup> <http://www.aleba.lu/>

<sup>39</sup> *‘représentativité nationale générale’*: Art. 4 and 5 of the law of 30 June, 2004, concerning collective labour relations, settlement of collective disputes and the National Conciliation Office (*‘Office national de conciliation’*), Memorial A, N° 119 of 15 July 2004, <http://www.legilux.public.lu/leg/a/archives/2004/0119/a119.pdf#page=2>

<sup>40</sup> *‘représentativité dans un secteur particulièrement important de l’économie’*, Art. 6 and 7, idem footnote 39

<sup>41</sup> Grand ducal regulation of 25 October 1989, amending the grand ducal regulation of 26 January, 1978, determining the functioning of the tripartite coordination committee, Memorial A, N° 9 of 7 March, 1978, <http://www.legilux.public.lu/leg/a/archives/1989/0073/a073.pdf#page=3>; <http://www.legilux.public.lu/leg/a/archives/1978/0009/a009.pdf#page=2>

### ***1.1.6 The Tripartite coordination committee ('Comité de coordination tripartite')***

The Tripartite coordination committee was launched in the aftermath of the steel crisis in order to tackle massive unemployment<sup>42</sup>. The mission of the tripartite committee has been enlarged over the years and deals with all employment issues in the broadest sense, including e.g. social security. This consultative body "sui generis" body brings together employers' organisations (chambers), unions and the government.

The resulting recommendations - based on non-public discussions<sup>43</sup> - are either implemented by the government or are placed before Parliament if they concern legislative procedures. Discussions are held with regard to specific policies and problems such as unemployment.

Consensual decision-making process allow Luxembourg, as well as other small states facing globalisation issues<sup>44</sup>, to avoid social conflict and thus contributing to its social peace and economic success.

### ***1.1.7 Economic and Social Council ('Conseil économique et social' - CES)***

The Economic and Social Council is an advisory body of the government responsible for studying the country's economic, social and financial problems<sup>45</sup>.

It delivers an annual activity report and other specific reports on economic, financial and social matters which are of interest to several economic sectors or which affects the national economy as a whole.

By the end of 2005 and at the request of the government, the Economic and Social Council launched a study on a comprehensive reform of the law of 28 March 1972<sup>46</sup> on foreigners and the definition of an immigration policy, to be followed by a policy of active integration.

The Economic and Social Council proposed a simplification of administrative procedures and an active and more clearly targeted policy in order to foster 'a well balanced immigration policy favouring those migrants who possess the relevant qualifications and skills beneficial to the economic development and which complement those of the native population'<sup>47</sup>.

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<sup>42</sup> Law of 26 July 1975, <http://www.legilux.public.lu/leg/a/archives/1975/0046/a046.pdf#page=6>

<sup>43</sup> Hirsch and Allegrezza 2007 and Clément 2008

<sup>44</sup> Katzenstein 1984

<sup>45</sup> Created by the law of 21 March 1966, modified by the law of 15 December 1986 and by the law of 15 June 2004, <http://www.ces.public.lu/fr/ces/historique/loi-1966.pdf>; <http://www.ces.public.lu/fr/ces/historique/loi-1986.pdf>; <http://www.ces.public.lu/fr/ces/historique/loi-2004.pdf>

<sup>46</sup> <http://www.legilux.public.lu/leg/a/archives/1972/0024/a024.pdf#page=2>

<sup>47</sup> <http://www.ces.public.lu/fr/avis/educ-forma/2006-immigration-integration.pdf>

### ***1.1.8 Municipalities***

As there are no provinces or departments in the Grand Duchy of Luxembourg, the only subdivision of the country are the municipalities.

The 116 municipalities are separate legal entities which manage their assets and raise taxes. There is an explicit policy to encourage the merging of small municipalities in order to improve the quality of services and efficiency.

- For European Parliament elections: EU citizens are eligible to vote and stand
- For municipal elections: Third country nationals can vote but not stand for elections; EU citizens can stand for municipal elections and become members of local authorities' council, but not lay assessors or mayors<sup>48</sup>.

### ***1.1.9 Mediation services***

#### **§ Ombudsman**

The Ombudsman is an independent authority, attached and responsible to Parliament. This service has been operational since May 2004 and was formally established by the law of the 22 August 2003<sup>49</sup>.

Individual cases can be introduced by an individual, an institution governed by private law, such as a voluntary organisation, a 'non-profit making organisation' or a company governed by private law (e.g. a 'public limited company' - S.A.).

Its function is to deal with citizens' who consider that an action by, or a procedure of, a public administration is prejudicial to their interests.

#### **§ Luxembourg committee for the rights of children ('Ombudskomitee fir d'Rechter vum Kand' - ORK)**

The Luxembourg committee for the rights of children has been operational since 1 January 2003 and was established by the law of 25 July 2002<sup>50</sup>.

ORK's mission is to ensure the safeguarding and promotion of children's rights and interests<sup>51</sup>.

These mediation services, the Ombudsman and the '*Ombudskomitee fir d'Rechter vum Kand*' cannot appear in court on behalf of citizens.

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<sup>48</sup> According to the law of 19 December 2008 which amended the electoral laws of 18 February, 2003, and of 4 February 2005, on the national referendum: "Once registered (one is registered forever), voting is mandatory", <http://www.legilux.public.lu/leg/a/archives/2008/0210/a210.pdf#page=2>

<sup>49</sup> <http://www.legilux.public.lu/leg/a/archives/2003/0128/a128.pdf#page=2>

<sup>50</sup> <http://www.legilux.public.lu/leg/a/archives/2002/0085/a085.pdf#page=2>

<sup>51</sup> Article 2 of the law of 25 July 2002, idem footnote 50

§ Consultative Commission for Human Rights ('Commission consultative des droits de l'Homme' - CCDH)

The Consultative Commission for Human Rights is an advisory body to the government created by Council of Government regulation ('*Règlement du gouvernement en conseil*') of 26 May 2000. Its legal basis was established by the law of 21 November 2008.<sup>52</sup> CCDH offers advice, studies, position papers and recommendations drawn up independently of the government on all matters of general importance related to human rights in the Grand Duchy. It draws the government's attention to measures which promote the protection and encouragement of human rights. The CCDH has no jurisdiction to deal with individual cases.

### **1.1.10 Other Governmental Organisations**

The Service for the Schooling of Foreign Children ('*Service de la scolarisation des enfants étrangers*')<sup>53</sup> was launched in the 1990s. It coordinates different activities, projects, measures and services like the CASNA (Reception Desk for Newly-Arrived Pupils, '*Cellule d'accueil scolaire pour nouveaux arrivants*') and the intercultural mediators ('*médiateurs interculturels*') which serve immigrant pupils for all schools (from nursery to secondary school levels, covering its three branches) with the objective of facilitating and improving integration into Luxembourg's school system. Given the high share of immigrant pupils, many specific and general measures exist in order to compensate for integration problems, mainly in language skills.

In 2005, the Ministry of National Education and Professional Training, within the Service for Schooling of Foreign Children, created the Reception Desk for Newly-Arrived Pupils - CASNA. The Reception Desk acts as the first intermediary between new foreign pupils and educational institutions providing guidance for newcomers aged 12 years old or above<sup>54</sup>.

The main objectives are:

- to give information about the different types of schooling, with their different academic levels and orientations
- to guarantee a follow-up until there is integration into a standard class
- to provide teachers with support by motivating these pupils.

The Service for Schooling of Foreign Children provides a service of intercultural mediators free of charge in various languages, upon request.

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<sup>52</sup> <http://www.legilux.public.lu/leg/a/archives/2008/0180/a180.pdf#page=2>

<sup>53</sup> [http://www.men.public.lu/ministere/annuaire\\_interne/scolari\\_enfant\\_etranger/index.html](http://www.men.public.lu/ministere/annuaire_interne/scolari_enfant_etranger/index.html)

<sup>54</sup> For those younger than twelve years of age, primary, kindergarden and nursery schooling are organised by local authorities; parents are requested to contact the relevant service of local authorities they have registered with and schooling is provided in the local school

### ***1.1.11 Non-Governmental Organisations (NGOs)***

In Luxembourg, there are two large scale non-governmental organisations (Caritas and Red Cross) which, among other services, deal with migrant and refugee problems and two major voluntary associations (ASTI and CLAE) which represent and support migrant interests.

#### **Caritas Luxembourg**

Caritas Luxembourg<sup>55</sup> has a social counselling service called Caritas Solidarity and Integration offering reception, information, guidance and support for foreigners and people in need. It is mainly devoted to international protection seekers, recognised refugees or recipients of social welfare benefits, rejected asylum seekers or persons without valid residence status, third country nationals with residence permits in Luxembourg, together with EU migrants.

Caritas Luxembourg raises public awareness and cooperates with other national and international organisations for the development of a common asylum and immigration policy through the implementation of advocacy actions, projects for refugee integration and support for voluntary return, housing<sup>56</sup>, a socio-educational, together with a translation service.

Caritas Luxembourg was the first NGO to provide a specific service for asylum seekers. Its refugee support started with the arrival of the Hungarians in 1956 and 1964, the Chileans and Vietnamese in the 1970s and the Polish at the beginning of the 1980s. Caritas' refugee service was established in 1991 in response to the arrival of applicants for international protection.

#### **Luxembourg Red Cross**

Support for migrants and, more specifically for refugees, has always been a concern of the Luxembourg Red Cross. In 2004, the refugee service was established to better meet their needs. The main goal of this service is caring for people seeking refugee status under the Geneva Convention of the 28 July 1951<sup>57</sup>.

Some of its major activities are to find people lost because of the atrocities of war, to provide a reception service and to manage three shelters<sup>58</sup> for applicants for international protection with the support of the Ministry of Family and Integration. Like other NGOs (Caritas, ASTI), the Luxembourg Red Cross supports those who are in prison under administrative detention due to their illegal situation and to make the

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<sup>55</sup> <http://www.caritas.lu/index.php?include=refugies> (site is currently being updated)

<sup>56</sup> For refugees with residence permits, isolated migrant workers or asylum seekers in special situations and sent by the ministry of Family and Integration

<sup>57</sup> <http://www.unhcr.org/pages/49da0e466.html>

<sup>58</sup> Reception centre "Don Bosco"; Shelter - Eich; Shelter Felix Schroeder -Rédange, [http://www.croix-rouge.lu/index.php?option=com\\_content&task=view&id=331&Itemid=403](http://www.croix-rouge.lu/index.php?option=com_content&task=view&id=331&Itemid=403)



monthly payment of social benefits granted to applicants for international protection procedure by the Luxembourg Reception and Integration Agency.

Since August 2007, an informal agreement was established with the government to accompany and observe the forced returns that are organised by the Luxembourg authorities.

**Association for the support of immigrant workers (*‘Association de soutien aux travailleurs immigrés’* - ASTI)<sup>59</sup>**

ASTI is an independent NGO working on the ground, in a multicultural neighbourhood of the city of Luxembourg. Its 600 members - of all political parties and more than 20 nationalities - give ASTI the means to be independent. Founded in 1979 to fight for equal rights for foreigners, and for the right to vote in particular, ASTI has developed political activities based on community social work with children, youth, adults, as well as the development of teaching materials and the management of a documentation and intercultural centre.

Furthermore, ASTI forges national and international partnerships with other organisations to fight for equal access to education, equal rights, the ending of discrimination and support for refugees and undocumented migrants. During the last years ASTI has coordinated several activities as mentioned here below.

**Committee of foreigners’ liaison and action (*‘Comité de liaison et d’action des étrangers’* - CLAE)<sup>60</sup>**

CLAE was founded in 1985. It develops projects rooted in an active approach to immigrant rights by promoting access to social and political rights related to citizenship and the recognition of migrant cultural values and different forms of expression.

In 2008, CLAE organised the 25th Festival of migration, cultures and citizenship. This festival has become an important event in the cultural life of the country, a meeting place of diverse members of Luxembourg society, contributing to the cultural richness of the Grand Duchy of Luxembourg. This cultural event is held under the auspices of the patronage of the high level Luxembourg authorities<sup>61</sup>.

**Luxembourgish Refugee Council (*‘Collectif réfugiés’*)<sup>62</sup>**

The Luxembourgish Refugee Council was established in 1990 and is an informal platform which includes various private organisations involved in the situation of refugees, migration, human rights, development, social issues and fight against racism.

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<sup>59</sup> <http://www.asti.lu/>

<sup>60</sup> <http://www.clae.lu/>

<sup>61</sup> Sous le Haut Patronage de Leurs Altesses Royales Le Grand-Duc et La Grande-Duchesse, de M. Lucien Weiler, Président de la Chambre des députés, de M. Hans-Gert Poettering, Président du Parlement européen, de M. Terry Davis, Secrétaire Général du Conseil de l’Europe, du Gouvernement luxembourgeois et de la Ville de Luxembourg

<sup>62</sup> *‘Letzebuurger Flüchtlingsrot’*, The Luxembourgish Refugee Council has no permanent secretariat; it works within a rotating system held by each of the Platform members. During 2008 it was held by ASTI, <http://www.asti.lu/>



Its goal is to give voice to people who left their country and seek international protection in Luxembourg.

The main objectives of the Luxembourgish Refugee Council are:

- to discuss the refugee situation and their own initiatives
- to raise public awareness about the refugee situation in Luxembourg, namely through position papers and demonstrations
- to submit ideas and proposals to the government, political parties, parliamentary fractions and international organisations.

### **Migration and integration platform**

This informal platform issues opinions on draft laws on immigration and integration policy. It is coordinated by ASTI and regroups non governmental organisations and trade unions.

#### ***1.1.12 Welfare regime***

Luxembourg's welfare system is based on Bismarckian principles and was launched in the 19<sup>th</sup> century and covered several aspects, namely health insurance for workers<sup>63</sup>, an accident insurance<sup>64</sup>, a pension and disability insurance<sup>65</sup> and a dependents' insurance<sup>66</sup>. The first three insurances have been expanded to cover other target groups over successive decades.

The Bismarckian tradition based on the corporate-conservative welfare model<sup>67</sup> has been examined by different researchers<sup>68</sup>, some of whom have found parallel trends in Scandinavian models<sup>69</sup>. Luxembourg's cash benefit system has not suffered cutbacks over the last two decades, but instead has witnessed the expansion of benefits and the introduction of new insurance schemes and improvement in standards. This has been possible because of increases in social welfare contributions, due to a growing economy and the relative modest uptake by immigrants and cross border workers<sup>70</sup>.

Access to welfare insurance is provided to all economically active immigrants (EU citizens and third country nationals) and members of their nuclear family. Such access is

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<sup>63</sup> 'assurance obligatoire des ouvriers contre les maladies', law of 31 July 1901, <http://www.legilux.public.lu/leg/a/archives/1901/0053/a053.pdf#page=1>

<sup>64</sup> 'assurance obligatoire contre les accidents', law of 5 April 1902, <http://www.legilux.public.lu/leg/a/archives/1902/0020/a020.pdf#page=1>

<sup>65</sup> 'assurance pension-vieillesse et invalidité', law of 6 May 1911, <http://www.legilux.public.lu/leg/a/archives/1911/0037/a037.pdf#page=1>

<sup>66</sup> 'assurance dépendance', law of 19 June 1998, <http://www.legilux.public.lu/leg/a/archives/1998/0048/a048.pdf#page=2>

<sup>67</sup> Welfare issues are mostly negotiated in corporate tripartite or quadripartite committees

<sup>68</sup> Euzeby 2001, Kerschen 2001, Scuto 2001, Martin and al 2008, Hartmann-Hirsch 2010

<sup>69</sup> Hartmann-Hirsch 2009 and Klenk 2010

<sup>70</sup> Hartmann-Hirsch and Ametepé 2009

due to the Bismarckian principle of linking insurance schemes to economic activity (employee or self-employed). Non-economically active EU citizens have to prove that they have independent economic means. For third country nationals, access to certain benefits is contingent upon residence status. Access to social welfare benefits can be dependent upon a stay of 5 years<sup>71</sup>. Social services such as childcare provision are offered either free of charge or are co-financed (according to the income and composition of the household), with non-eligible clients having to pay the entire amount.

Special provisions are applied to applicants for international protection (AIPs) concerning health insurance:

- the authorities take responsibility for health insurance in the case of AIPs during the first three months of their stay which is the waiting period for those who register on a 'voluntary' basis
- the authorities also pay contributions for the 'voluntary' health insurance (*'assurance volontaire'*) over the whole period of the application procedure
- refugees have full access to all benefits just like citizens; they are entitled to social assistance as soon as they are awarded refugee status.

## ***1.2 General political developments during the reference period***

In 2008, there were neither local nor national elections and no government reshuffle, with the exception of the elections for the new professional chamber (*'Chambre des salariés'*<sup>72</sup>).

## ***1.3 Institutional developments***

In 2008, the most important institutional developments were related to the three new laws on immigration, integration and nationality.

### ***1.3.1 Law of 29 August 2008 on free movement of persons and immigration - grand ducal regulation of 5 September 2008***

Under the grand ducal regulation of 5 September 2008 related to the law of 29 August 2008 on the free movement of persons and immigration<sup>73</sup>, three new bodies were created which act as advisory bodies to support the decision processes of the minister in charge of immigration.

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<sup>71</sup> Coordinated text of 22 June 2004 of the law of 29 April 1999, establishing a right to a guaranteed minimum income, as amended, Memorial A N° 103 of 22 July 2004,

<http://www.legilux.public.lu/leg/a/archives/2004/0103/a103.pdf#page=2>

<sup>72</sup> See chapter 1.3 institutional developments

<sup>73</sup> <http://www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf#page=2>

§ Foreigners' Advisory Commission ('*Commission consultative des étrangers*')<sup>74</sup>

Its mission is to advise the minister on the withdrawal or refusal of a renewal of a residence permit, except in an emergency.

Each Foreigner's Advisory Commission comprises three members, namely:

- a magistrate
- a member appointed by the minister in charge of integration
- a member appointed by the minister because of his/her experience in the field of migration based on a list submitted by organisations defending the rights of foreigners.

§ Advisory Commission for Employees ('*Commission consultative pour travailleurs salariés*')<sup>75</sup>

Its main mission is to check whether the legal conditions authorising the renewal of residency for employed workers or for awarding a work permit to third country nationals have been met. The Advisory Commission for Employees consists of ten members who have been seconded from the relevant ministries.

§ Advisory Commission for the Self Employed ('*Commission consultative pour travailleurs indépendants*')<sup>76</sup>

The Commission's opinion is required before any decision can be taken to grant or renew a residence permit for self employed persons. The Advisory Commission for the Self Employed consists of representatives from several ministers and bodies concerned in this matter.

Negative decisions from the minister in charge of immigration, as is the case in all administrative decisions, can be appealed by applying to the court of first instance (administrative tribunal) and the appellate jurisdiction (administrative court).

### ***1.3.2 Law of 16 December 2008 on reception and integration of foreigners in the Grand Duchy of Luxembourg***

The law of 16 December 2008 on reception and integration of foreigners in the Grand Duchy of Luxembourg, which became legally binding on 1 June 2009, created the Luxembourg Reception and Integration Agency ('*Office luxembourgeois de l'accueil et de l'intégration*' - OLAI). This agency is a public body answering to the ministry responsible for implementing Luxembourg's integration policy. It is responsible for developing a voluntary integration policy for foreigners.

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<sup>74</sup> Grand ducal regulation of 5 September 2008 concerning the composition and functioning of '*commission consultative des étrangers; commission consultative pour travailleurs salariés; commission consultative pour travailleurs indépendants*' <http://www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf#page=2>

<sup>75</sup> Idem footnote 73

<sup>76</sup> Idem footnote 73

OLAI became operational on 1 June 2009 and replaces the previous Government Commission for Foreigners, (*'Commissariat du Gouvernement aux étrangers'* - CGE) established by the amended law of 27 July 1993<sup>77</sup>.

OLAI's mission is<sup>78</sup>:

- to implement and coordinate the policy on reception and integration
- to facilitate the process of integrating foreigners
- to implement and manage the Welcome and Integration Contract (*'Contrat d'accueil et d'intégration – CAI'*,<sup>79</sup>)
- to fight against all forms of discrimination (awareness raising campaigns)
- to study migration flows
- to provide support to applicants for international protection (counselling and social welfare)
- to manage accommodation centres.

On a national level the OLAI collaborates closely with:

- the ministries involved in integration matters through the inter-ministerial committee on integration (operational chair and secretariat)
- the municipalities, civil society actors, namely foreigners' organisations and those working in favour of foreigners, as well as research institutes.

At the european level, OLAI represents the Grand Duchy of Luxembourg in:

- the European Union (e.g.: EMN)
- the Council of Europe
- the Organisation for Economic Co-operation and Development
- United Nations;
- the Organisation for Security and Co-operation in Europe.

OLAI is the responsible authority for implementing:

- the European Refugee Fund
- the European Fund for the Integration of third country nationals.

OLAI is the national contact point:

- on integration with respect to the European Commission
- in the fight against discrimination as regards to the Community programme 'Progress'

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<sup>77</sup> <http://www.legilux.public.lu/leg/a/archives/1993/0055/a055.pdf#page=2>

<sup>78</sup> <http://www.olai.public.lu/>

<sup>79</sup> See chapter 2.3.8 Integration

There is no specific body dealing with cooperation between Luxembourg administrations but different inter-ministerial committees do exist. For example, the Luxembourg Reception and Integration Agency is the coordinating body - operational chair and secretariat - of the inter-ministerial committee in charge of integration policy.

§ National Council for Foreigners (*'Conseil National pour étrangers'*)<sup>80</sup>

The National Council for Foreigners operates under the auspices of the Luxembourg Reception and Integration Agency. The Council is made up of 30 full members (plus 30 alternates), i.e. 15 (+15) Luxembourg nationals and 15 (+15) foreigners (the foreign countries represented are proportional to the resident population of that country in Luxembourg). This consultative body studies, either on its own initiative, or at the government's request, problems concerning foreigners and their integration in Luxembourg society. It offers the government its opinion on all laws relating to integration policy or matters which might be of interest to foreigners. Moreover, it offers a forum for discussion and reflection resulting from open discussions between the various communities.

§ Other important key actors are the Communal Advisory Commissions for Foreigners (*'Commissions communales consultatives pour étrangers'*)

At a local level, meeting places between Luxembourg citizens and foreigners have been established through the setting up of Communal Advisory Commissions for Foreigners. Municipalities whose residential populations include more than 20% of residents from abroad are obliged to set up such a commission, which is renewed after each local election (the last of which took place in October 2005).

The Commissions are in charge of the interests of foreign residents at the local level. Their main objective is to encourage foreigners take part in the life of the commune, to propose solutions to the specific problems of migrants and their families, to encourage mutual understanding between Luxembourg citizens and foreigners and to facilitate the administrative relations between foreigners and the services of the municipal authorities.

Their functioning is defined by a grand ducal regulation which established a balanced composition of the Commission<sup>81</sup>.

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<sup>80</sup> Previously established by article 20 of the law of 27 July 1993 and in the new law of 16 December 2008, see: articles 17-22, <http://www.legilux.public.lu/leg/a/archives/1993/0055/a055.pdf>; <http://www.legilux.public.lu/leg/a/archives/2008/0209/a209.pdf#page=2>

<sup>81</sup> Article 3 of the grand ducal regulation of 5 August 1989 establishing the organisation and functioning of advisory commissions for foreigners, Memorial A No 59 of 5 September 1989, <http://www.legilux.public.lu/leg/a/archives/1989/0059/a059.pdf#page=4>

The new law on integration<sup>82</sup> replaces these Commissions by the local Commissions for Integration, (*Commissions consultatives d'intégration*), which will be compulsory for all municipalities.

### ***1.3.3 Luxembourg's Equality Commission ('Centre pour l'égalité de traitement' - CET)***

Luxembourg's Equality Commission<sup>83</sup>, launched by the law of 28 November 2006<sup>84</sup>, has been operational since October 2008. It is composed of five members, including the president.

The Centre carries out its activities independently and its purpose is to promote, analyse and monitor equal treatment between all persons without discriminating on the basis of race / ethnic origin, sex, sexual orientation, religion, beliefs, disability or age.

In carrying out its mission, the Centre can:

- publish reports, issue opinions and recommendations, and carry out studies touching on all matters relating to discrimination
- produce and supply all information and documentation within the framework of its mission
- lend assistance to people who feel that they have been the victim of discrimination by providing them with an advisory and orientation service which inform the persons regarding their individual rights, the legislation, case law and the means for claiming their rights.

CET's members perform their duties with complete independence and neutrality. It is not entitled to go to court on behalf of its complainants.

CET delivers an annual report on its activities to the government and to Parliament.

### ***1.3.4 Law of 13 May 2008***

According to the law of 13 May 2008<sup>85</sup>, the single term 'employee' in the private sector has replaced the separate status of 'employee' and 'manual worker'. This reform has brought substantial modifications to labour law and social security structures.

Since 15 May 2008, the '*Chambre du travail*' has merged with the '*Chambre des employés privés*' to become the '*Chambre des salariés*'. The first elections for the '*Chambre des salariés*' took place on 12 November 2008 and registered a 36%

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<sup>82</sup> <http://www.legilux.public.lu/leg/a/archives/2008/0209/a209.pdf#page=2>

<sup>83</sup> <http://www.cet.lu/en/CET/Praesentation>

<sup>84</sup> Which transposes the Directives 2000/43/EC on the equal treatment of persons, irrespective of racial or ethnic origin, and 2000/78/EC establishing a general framework for equal treatment in employment and occupation, <http://www.legilux.public.lu/leg/a/archives/2006/0207/a207.pdf>

<sup>85</sup> <http://www.legilux.public.lu/leg/a/archives/2008/0060/a060.pdf#page=2>

participation. The largest union, OGB-L, won 36 seats and the second largest union in Luxembourg, LCGB, 16 seats. ALEBA received 5 seats and all other candidates 3 seats<sup>86</sup>.

The chamber currently represents 400.000 members, including employees and retirees, residents and non-residents. It is composed of 60 elected members divided into 9 socio-professional groups.

## ***2. Policy and Legislative Developments in the area of Migration and Asylum***

### ***2.1 General structure of the legal system in the area of migration and asylum***

The general structure of the legal system in the area of migration and asylum comprises four major laws on asylum, immigration, integration and nationality. In 2008, fundamental reforms were approved to ensure a coherent policy.

#### ***2.1.1 Asylum***

Regarding asylum/international protection, the law of 5 May 2006<sup>87</sup> provides the legal framework on the right to asylum and complementary forms of protection, together with the following grand ducal regulations:

- Grand ducal regulation of 1 September 2006, laying down the terms and conditions for the granting of social welfare to applicants for international protection<sup>88</sup>
- Grand ducal regulation of 21 July 2006 determining the conditions under which applicants for international protection have access to training<sup>89</sup>
- Grand ducal regulation of 22 April 1996 which implements articles 8 and 9 of the law of 3 April 1996 establishing a procedure for the examination of an asylum application<sup>90</sup>

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<sup>86</sup> <http://www.csl.lu/fonctionnement/assemblee-pleniere>

<sup>87</sup> 'loi du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection', <http://www.legilux.public.lu/leg/a/archives/2006/0078/a078.pdf#page=2>

<sup>88</sup> 'fixant les conditions et les modalités d'octroi d'une aide sociale aux demandeurs de protection internationale', Memorial A No. 171 of 22 September 2006, <http://www.legilux.public.lu/leg/a/archives/2006/0171/a171.pdf>

<sup>89</sup> 'déterminant les conditions dans lesquelles les demandeurs de protection internationale ont accès à la formation prévue à l'article 14 de la loi du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection', Memorial A No. 131 of 31 July 2006, <http://www.legilux.public.lu/leg/a/archives/2006/0131/a131.pdf>

<sup>90</sup> 'portant application des articles 8 et 9 de la loi du 3 avril 1996 portant création d'une procédure relative à l'examen d'une demande d'asile', Memorial A No. 30 of 7 May 1996, <http://www.legilux.public.lu/leg/a/archives/1996/0030/a030.pdf#page=2>



- Grand ducal regulation of 21 December 2007 establishing a list of safe countries of origin within the provisions defined by the law of 5 May 2006 on the right of asylum and complementary forms of protection<sup>91</sup>
- Grand ducal regulation of 29 April 1999 which modifies the grand ducal regulation of 12 May 1972 determining the applicable measures to the employment of foreign workers<sup>92</sup>.

The law has transposed the following European Union Directives:

- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted<sup>93</sup>
- Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof<sup>94</sup>
- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status<sup>95</sup>
- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers<sup>96</sup>.

The main objectives of the authorities were to transpose the aforementioned directives, to introduce subsidiary protection, to shorten procedures in order to provide applicants for international protection (AIPs) with an answer within a reasonable period of time, and to define, in a more explicit way, the rights and obligations of both the AIPs and the authorities.

The minister in charge of immigration is responsible for the recording and processing of AIPs, for temporary protection and is empowered to rule on them. The minister decides on the attribution of status and on the repatriation of failed asylum seekers, which includes failed AIPs. Furthermore, the minister can grant ‘a tolerance measure’ to failed AIPs, if repatriation is not possible.

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<sup>91</sup> *‘fixant une liste de pays d’origine sûrs au sens de la loi modifiée du 5 mai 2006 relative au droit d’asile et à des formes complémentaires de protection’*, Memorial A No. 245 of 31 December 2007, <http://www.legilux.public.lu/leg/a/archives/2007/0245/a245.pdf>

<sup>92</sup> *‘portant modification du règlement grand-ducal du 12 mai 1972 déterminant les mesures applicables pour l’emploi des travailleurs étrangers sur le territoire du Grand-Duché de Luxembourg’*, Memorial A No. 48 of 3 May 1999, <http://www.legilux.public.lu/leg/a/archives/1999/0048/a048.pdf#page=7>

<sup>93</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>

<sup>94</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF>

<sup>95</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>

<sup>96</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF>



The Advisory Commission for International Protection (*'Commission consultative pour la protection internationale'*) may give its opinion within the time limit set by the government on any proposed legislation or regulations relating to international protection and any proposal which it considers relevant for international protection and, in particular, improvement of the situation of applicants for AIPs.

The minister may refer to the Advisory Commission for International Protection for advice on an individual request for international protection.

The AIP enjoys legal aid and translation services free of charge during the procedure, and later on during the litigation process.

A standard and accelerated procedure exists to process AIPs. The right to appeal varies if applications are considered to be:

- inadmissible ('first country of asylum' and 'safe third country')
- unfounded in cases of standard procedure
- unfounded in cases of accelerated procedure<sup>97</sup>

As previously mentioned, OLAI organises support for AIPs and manages or delegates the management of shelters for AIPs to non-governmental organisations like the Luxembourg Red Cross and Caritas Luxembourg.

The vocational guidance service from the Employment Administration Agency<sup>98</sup> (*'Administration de l'emploi – ADEM'*) provides information and advice to the AIP on work-related training.

AIPs are allowed to take up employment in private and public sectors or undertake self-employed activity, subject to rules generally applicable in the relevant sector once refugee status has been granted.

Activities such as training opportunities linked to adult employment, vocational training and practical experience in the workplace are offered to AIPs under certain conditions which are the same as those applicable to Luxembourg nationals.

Beneficiaries of the 'tolerance measure' have, in addition to the right to social welfare, the right to take up employment in a particular sector. However, this latter right is subject to changing circumstances in the labour market which gives priority to citizens of the European Union, European Free Trade Area (EFTA) citizens, third country nationals from countries with specific agreements and third country nationals who receive Luxembourg unemployment benefits.

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<sup>97</sup> Articles 17, 19 and 20 of the law of 5 May 2006,

<http://www.legilux.public.lu/leg/a/archives/2006/0078/a078.pdf#page=2>

<sup>98</sup> <http://www.adem.public.lu/adem/index.html>

### 2.1.2 Immigration

The law of 29 August 2008<sup>99</sup> on the free movement of persons and immigration became legally binding on 1 October 2008 and followed the adoption of the draft law number 5802<sup>100</sup>.

The former law of 28 March 1972<sup>101</sup> covered only general conditions relating to immigration and distinguished between EU and non-EU nationals but did not take into account diverse migrant situations such as the importance of reunifying families, self-employed workers, students, researchers and others. It required that both work permits and residence permits should be authorised simultaneously<sup>102</sup>.

The new law on immigration has led to a fundamental reform of the modified legislation of 1972. The main new elements of this law are:

- the transposition of 6 European Directives<sup>103</sup>
- the abolition of the system requiring dual residence and work permits for non-EU citizens<sup>104</sup>
- the introduction of a double system of authorisation (authorisation to stay and residence permit) for third country nationals<sup>105</sup>
- more specific categories have been defined for non-EU citizens with their own set of conditions<sup>106</sup>
- the refusal procedures of entry and permission to stay were redefined as well as repatriation and expulsion conditions.

The Immigration Directorate of the Ministry for Foreign Affairs and Immigration decides on granting authorisation to third country nationals to stay and also the granting of residence permits, and both decisions are subject to appeal procedures.

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<sup>99</sup> <http://www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf#page=2>

<sup>100</sup>

[http://www.chd.lu/wps/PA\\_1\\_084AIVIMRA06I432DO10000000/FTSShowAttachment?mime=application%2fpdf&id=981499&fn=981499.pdf](http://www.chd.lu/wps/PA_1_084AIVIMRA06I432DO10000000/FTSShowAttachment?mime=application%2fpdf&id=981499&fn=981499.pdf)

<sup>101</sup> <http://www.legilux.public.lu/leg/a/archives/1972/0024/a024.pdf#page=2>

<sup>102</sup> This up-date refers to the amended law of 5 May 2006 on asylum, and complementary forms of protection, the Labour Code and the Criminal Code and to the repealing of the amended law of 28 March, 1972 on the entry and staying of foreigners, medical control of foreigners and the employment of foreign labour and the law of 28 October 1920 intended to curb the excessive influx of foreigners at the Grand Duchy, <http://www.legilux.public.lu/leg/a/archives/2006/0078/a078.pdf#page=2>

<sup>103</sup> See chapter 3.1 Progress made during 2008 in the transposition of EU legislation in the field of migration and asylum into national law and administrative practices

<sup>104</sup> See chapter 2.3.4 Economic Migration

<sup>105</sup> See chapter 2.3.1 Control and Monitoring of Immigration

<sup>106</sup> See chapter 2.3.6 Other legal migration

### 2.1.3 Integration

The former amended law of 27 July 1993<sup>107</sup> established the Government Commission for Foreigners (*'Commissariat du Gouvernement aux étrangers'* - CGE). The amended law of 1993 interpreted a 'foreigner' as being any person of non-Luxemburgish nationality who resides on the territory of the Grand Duchy of Luxembourg, including asylum seekers and stateless persons. Among other objectives, CGE promoted cultural exchanges, organised the National Conference for Foreigners and coordinated the National Council for Foreigners.

The new integration law of 16 December 2008<sup>108</sup> has a broader purpose than the amended law of 27 July 1993. It goes beyond the right of foreigners to social welfare by also creating a legal basis for the fight against discrimination.

The former amended law of 1993 was intended to facilitate the integration of foreigners in Luxembourg, although it did not define in detail the complex term of 'integration'. This gap was closed by the new law, which specifies a clearer definition for the authorities to promote an interdependent relationship between members of society, participation in all activities and the sharing of common values.

In Luxembourg, integration is now seen as a bilateral process in which both, immigrants and the host society, make efforts to assure a common living. Each of them must be open to the 'otherness' in order to ensure the functioning and the development of the society.

With this new law, different instruments are introduced to promote integration, such as the multi-annual national plan of integration (*'plan pluriannuel d'integration'*)<sup>109</sup> and the Welcome and Integration Contract (*'Contrat d'accueil et d'intégration'*)<sup>110</sup>. It also redefines the composition of the National Council for Foreigners (*'Conseil National pour étrangers'*) and creates the local Commissions for Integration (*'Commissions consultatives d'intégration'*).

### 2.1.4 Nationality

According to the previous nationality law of 24 July 2001<sup>111</sup> the acquisition of Luxembourg nationality was only possible through the renouncement of the previous nationality. This law foresees different procedures: naturalisation, option, recovery and automatic acquisition of the quality of Luxembourger.

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<sup>107</sup> Law of 27 July 1993 concerning integration of foreigners in the Grand Duchy of Luxembourg and social support of foreigners, Memorial A N ° 55 of 28 July 1993,

<http://www.legilux.public.lu/leg/a/archives/1993/0055/a055.pdf>

<sup>108</sup> <http://www.legilux.public.lu/leg/a/archives/2008/0209/a209.pdf#page=2>

<sup>109</sup> This national action plan will be officially presented in 2010

<sup>110</sup> See chapter 2.3.8 Integration

<sup>111</sup> <http://www.legilux.public.lu/leg/a/archives/2001/0101/2001A20281.html?highlight>

To be eligible for naturalisation, a minimum period of five years' continuous residence (preceding the application for naturalisation) in Luxembourg was required. Naturalisation was granted by a law voted by the Parliament<sup>112</sup>.

The new law on nationality of 23 October 2008<sup>113</sup> adapted the legislation to the changes that had occurred more recently in Luxembourg society and contributed to a more harmonised integration of resident foreigners.

It introduced the principle of multi-nationality, reinforced the conditions of previous residency and linguistic abilities required to obtain Luxembourgish nationality, and introduced civic instruction. The administrative procedure replaced the legislative procedure<sup>114</sup> and the acquisition by option was abolished.

## ***2.2 General overview of the main policy and legislative debates that have occurred on migration and asylum issues during 2008***

### ***2.2.1 Immigration and integration policy reform***

As already mentioned, the legal reform operated in 2008, aimed to create a coherent policy in the field of migration.

The legislation needed to be adapted to contemporary developments by providing specific conditions for different categories of foreigners such as highly qualified and/or independent workers.

The overall objective of this reform was to link policies outlined by these three new laws and to provide the country with a common perspective on migration policy<sup>115</sup>.

The new law on nationality has raised a lot of interest and launched controversial debates. Certain actors became prominent defenders of increasing rights for immigrants. The '*Chambre de Commerce*' as well as the '*Conseil d'Etat*'<sup>116</sup> requested an easier access to naturalisation, highlighting the enormous contribution of foreigners to Luxembourg's economy.

The main comments, recommendations and opinions concerned the following issues:

- conditions regarding Luxembourgish language skills and their recognition through official tests
- the previous permission to stay 7 years instead of the current 5 year period, and

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<sup>112</sup> See chapter 2.3.7 Citizenship and Naturalisation

<sup>113</sup> <http://www.legilux.public.lu/leg/a/archives/2008/0213/a213.pdf#page=2>

<sup>114</sup> Grand ducal regulation of 31 October 2008, Memorial A n° 165 of 7 November 2008,

<http://www.legilux.public.lu/leg/a/archives/2008/0165/2008A2320A.html?highlight>

<sup>115</sup> [http://www.gouvernement.lu/salle\\_presse/actualite/2004/07/29coalition/index.html](http://www.gouvernement.lu/salle_presse/actualite/2004/07/29coalition/index.html)

<sup>116</sup> <http://www.conseil-etat.public.lu/fr/avis/2008/03/47393/47393.pdf>

- changes with regard to naturalisation, option and marriage.

The immigration law was preceded by the opinion of the Economic and Social Council (12 October 2006) requested by the Prime Minister and a large consultation of the *'forces vives de la nation'*. The *'Chambre de Commerce'*, *'Chambre de Travail'* and the Migration Platform pleaded in favour of more significant immigration policies.

The main focus of criticism was related to the following aspects:

- inequality of treatment in certain cases between EU citizens and third country nationals and differentiating between immigrants with different types of work and residence permits
- conditions for students to have access to work permits
- conditions governing the return of immigrants as within the previous framework these were handled through administrative channels without a specific legal basis. Since 1 October 2008, a grand ducal regulation of 5 September 2008<sup>117</sup> legally defines the handling of return
- many references to the grand ducal regulations allowing a greater flexibility of the executive power to determine the terms and conditions of entry and residence and the request for the grand ducal regulations to be made available during the parliamentary debate.

The following aspects of the integration law have been discussed<sup>118</sup>:

- the establishment of one single ministry on immigration and integration
- the reform of the National Council for Foreigners
- the Welcome and Integration Contract (CAI<sup>119</sup>) within the broad debate on language and identity issues
- the extension of the missions of the *Office luxembourgeois de l'accueil et de l'intégration'* (OLAI) in the field of discrimination<sup>120</sup>.

### **2.2.2 Political participation**

For some years journalists and researchers have highlighted the low percentage of foreign representatives in the Luxembourg Parliament compared to the numbers of foreigners (42,6 percent of the total population)<sup>121</sup>. Immigrants can participate in municipal, but not

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<sup>117</sup> See chapter 1.3 Institutional developments

<sup>118</sup> See chapter 1.3 Institutional developments

<sup>119</sup> See chapter 1.3.2 Law of 16 December 2008 on reception and integration of foreigners in the Grand Duchy of Luxembourg

<sup>120</sup> See OLAI's mission under chapter 1.3.2 Law of 16 December 2008/reception and integration of foreigners

<sup>121</sup> "État de la population, Le Luxembourg en chiffres ", STATEC, 2009,

<http://www.statistiques.public.lu/fr/publications/horizontales/luxChiffresFR/luxChiffresFR.pdf>

in national elections<sup>122</sup>. The level of participation of immigrants in previous elections was low<sup>123</sup>; one of the problems highlighted by NGOs was the rigorous conditions needed to register as a voter. An amendment of the legal framework was adopted in the law of 19 December 2008<sup>124</sup> which set the following criteria:

- European elections: the number of years of residence required for EU citizens in Luxembourg has been lowered from five to two years
- European and municipal elections: the residency period needed for voter registration has been reduced from 15 months (European-wide) or 18 months (municipal) to 86 days before the elections.

### 2.2.3 National identity and the language situation

The debate on national identity and language acquisition was linked to the discussion on the reform of immigration and integration policies. Both the granting of dual nationality<sup>125</sup> and the process of integration<sup>126</sup> required competence in Luxembourgish<sup>127</sup>. There was an ongoing debate as to 'Lëtzebuergesch's' status and role as an integrating factor. Luxembourg's use of language is being increasingly widened and the predominance of English in the labour market is a fact. Luxembourgish appears to be less used in the private sector, but is the predominant language in public service<sup>128</sup>.

The language criterion as *a sine qua non* for gaining Luxembourg nationality has been criticised by the 'Chambre de Commerce' which argues that there are different categories of immigrants with diverse backgrounds, professional and personal aims. This debate continues, notwithstanding the legal changes. Two political parties the CSV<sup>129</sup> and the ADR<sup>130</sup> took a positive position on Luxembourgish and integration in 2008.

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<sup>122</sup> Law of 18 February 2003,

<http://www.legilux.public.lu/leg/a/archives/2003/0030/a030.pdf?SID=1e7242935237022dc21a181a00c69d78>

<sup>123</sup> Sesopi 1999, 2005

<sup>124</sup> <http://www.legilux.public.lu/leg/a/archives/2008/0210/a210.pdf#page=2>.

<sup>125</sup> Law of 23 October 2008, <http://www.legilux.public.lu/leg/a/archives/2008/0158/a158.pdf#page=2>

<sup>126</sup> Law of 16 December 2008, <http://www.legilux.public.lu/leg/a/archives/2008/0209/a209.pdf#page=2>

<sup>127</sup> The national language according to law of 24 February 1984,

<http://www.legilux.public.lu/leg/a/archives/1984/0016/a016.pdf#page=6>

<sup>128</sup> Klein 2007

<sup>129</sup> CSV, "Eng Offensiv fir eis Sprooch, Pressecommuniqué vun der CSV zur Lëtzebuenger Sprooch", 30 September 2008, <http://csv.lu/actualites/4610.html>

<sup>130</sup> ADR, Lëtzebuergesch: Déi eenzeg Sprooch fir Integratioun a sozialen Zesammenhalt am Grand-Duché Pressekonferenz, 21 May 2008, [http://www.adr.lu/cgi-bin/cms?\\_SID=739366d704cbff2308ae7633e32498cbbf57a8de00024614678176&\\_sprache=de&\\_bereic h=artikel&\\_aktion=detail&idartikel=100692](http://www.adr.lu/cgi-bin/cms?_SID=739366d704cbff2308ae7633e32498cbbf57a8de00024614678176&_sprache=de&_bereic h=artikel&_aktion=detail&idartikel=100692)

#### ***2.2.4 Asylum***

Luxembourg authorities promoted a voluntary return policy for failed asylum seekers.

The migration and asylum debate in Luxembourg cannot be compared to mainstream discussions in other countries since a generally widespread positive attitude is usually expressed by political leaders, as well as participants in the economic sector and by the media.

In general, expressions of xenophobia are highly unwelcome, presumably due to the importance of migrants and cross border workers, in recognition of their contribution to the economy. There is a considerable dependence on migrants to ensure the economic development in Luxembourg, along with their contributions to welfare schemes and the public budget. Thus, it appears to be 'politically inadvisable' to express xenophobic statements. Racism sometimes appears on the internet and from time to time in printed press media. An explanation for this main tolerant attitude towards the migrants might be the highly developed consensual tradition concerning policy decisions in Luxembourg.

Years	1998	1999	2000	2001	2002	2003	2004	2005	2006	007	2008
<b>Arrivals:</b>											
N° of files	893	1425	365	423	671	1210	1346	669	380	291	299
N° of individuals	1707	2920	627	690	1048	1550	1577	803	523	426	463
Individuals/file	1.91	2.05	1.72	1.63	1.56	1.28	1.17	1.20	1.38	1.46	1.55
<b>Country of origin/percentages:<sup>1</sup></b>											
Ex-Yugoslavia	93.6	95.5	66.5	59.0	64.6	44.6	29.1	37.5	43.4	65.7	57.0
Africa	1.4	0.7	6.9	10.8	12.8	32.3	53.8	38.5	24.1	13.6	17.0
Former SU + EE*	2.2	2.6	20.0	20.2	15.3	15.9	10.3	11.4	18.6	14.5	5.4
Others	2.8	1.2	6.6	10.0	7.3	7.2	6.8	12.6	13.9	6.2	20.6
<b>Recognitions, ASP, Returns:</b>											
Recognitions - n° of files	18	-	7	39	25	38	47	40	30	90	93
- n° of individuals	43	29	17	89	44	62	82	97	37	160	107
Subsidiary protection										7	0
Tolerance status			16	-	43	43	88	368	230	155	200
Residence permit for humanitarian reasons/ASP	-	-	26	353	35	106	219	206	121	224	139
AOT <sup>2</sup>	-	-	-	-	-	-	-	-	67	176	170
Stock of asylum seekers	1900	3668	3600	3600	3100	3229	2400	1850	1700	1600	1040
Returns (individuals)	-	55	290	183	234	708	381	310	295	146	233
Forced returns (individuals)	-	-	-	40 21.9%	44 18.8%	98 13.8%	56 14.7%	144 46.5%	170 57.6%	69 47.3%	104 44.6%

Tab. 1: Arrival, recognition and returns of asylum seekers

Figures for years 2001-2007 have been provided by the 'Direction de l'immigration/Ministère des Affaires étrangères et de l'immigration : 'L'évolution des demandes d'asile/de protection internationale au Luxembourg entre 2000-2007' ; 'L'évolution des demandeurs d'asile/de protection internationale par pays/régions d'origine (2000-2007)' ; <http://www.mae.lu/fr/Site-MAE/Immigration/Chiffres-cles-en-matiere-d-asile>

Figures for years 1998, 1999, 2000 and 2008 have been provided by the National Statistical Institute of Luxembourg (STATEC); 'Retours des demandeurs d'asile selon les pays de provenance 2001 – 2008' ; 'Demandeurs d'asile par pays d'origine 1998 – 2008' ; [http://www.statistiques.public.lu/stat/ReportFolders/ReportFolder.aspx?IF\\_Language=fra&MainTheme=5&FldrName=4&RFPath=66](http://www.statistiques.public.lu/stat/ReportFolders/ReportFolder.aspx?IF_Language=fra&MainTheme=5&FldrName=4&RFPath=66)

\* EE= Eastern Europe before accession

Stock: persons benefitting from social aid<sup>131</sup>

1) Percentages are calculated on the basis of the total arrivals

2) Temporary work permit – 'Autorisation d'occupation temporaire'

<sup>131</sup> Grand ducal regulation of 1 September 2006 and previous grand ducal regulation of 4 July 2002, <http://www.legilux.public.lu/leg/a/archives/2006/0171/a171.pdf#page=5>; <http://www.legilux.public.lu/leg/a/archives/2002/0084/a084.pdf#page=2>



In 1999, Luxembourg was the European country with the highest share of arrivals in proportion to its inhabitants<sup>132</sup>. Arrivals dropped thereafter until they peaked again in 2003/04, followed by a continuing decrease. One might consider the first important wave of returns in 2003.

The arrivals - mainly of families - in 1998/99 gradually changed to increasing numbers of single persons (peaking in 2004) followed by a reversed trend (cf. row: 'individuals/file').

In 1998 and 1999 the main part arrivals came from the Balkan; in 1970 Luxembourg signed a workforce treaty with the former Republic of Yugoslavia strengthening the relations already existing between those two countries. The migration flow from African Countries was significantly increasing.

Luxembourg was one of the countries with the lowest share of recognitions with regard to arrivals and stocks<sup>133</sup>. There is an increase of recognitions in 2007 and 2008 in terms of absolute figures: arrivals and stocks have diminished considerably. The law of 5 May 2006 whose objective was to facilitate administrative procedures might also have been a key factor.

According to article 14 of the law of 18 March 2000<sup>134</sup>, the tolerance measure had been granted, 'if the physical execution of the removal is impossible due to current circumstances'<sup>135</sup>. Afterwards it has been authorised by article 22 of the law of 5 May 2006.

This had been applied to the following persons:

- Kosovo minorities (all minorities in Kosovo being the largest group the Bosnians in Kosovo)
- people from regions at war / in conflict
- people who shall return to countries where transportation is not safe enough
- young people rejected in the final year of their apprenticeship or training school (so that they can complete the current academic year).

Temporary residence permits (ASP)<sup>136</sup> have been granted for humanitarian reasons, for reasons of ill health, for family reasons, etc. on a discretionary basis. Since 2005, the government has ruled:

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<sup>132</sup> Eurostat (2002)

<sup>133</sup> Eurostat (2002)

<sup>134</sup> *'Si l'exécution matérielle de l'éloignement s'avère impossible en raison de circonstances de fait, le ministre de la Justice peut décider de le tolérer provisoirement sur le territoire jusqu'au moment où ces circonstances de fait auront cessé.'*

<http://www.legilux.public.lu/leg/a/archives/2000/0025/a025.pdf#page=2>

<sup>135</sup> *'si l'exécution matérielle de l'éloignement s'avère impossible en raison de circonstances de fait'*

<http://www.legilux.public.lu/leg/a/archives/2006/0078/a078.pdf#page=2>

<sup>136</sup> *'autorisations de séjour provisoires pour raisons humanitaires, pour des raisons de maladie, pour des raisons familiales, etc.'*

- “exceptional cases of families who arrived since 1 August 2001 with at least 1 child who has completed secondary school”<sup>137</sup>
- young people who were failed AIPs in their last year of apprenticeship or in the last year of secondary education
- persons having rights with respect to private and family life, according to article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>138</sup>
- adults with long term residence in Luxembourg, mainly those from Serbia-Montenegro
- these persons had to make proof of a work contract the ASP could be renewed.

Since the application of the law of 5 May 2006 (article 14)<sup>139</sup>, an AIP can receive:

- an ‘*autorisation d’occupation temporaire*’ (AOT) for 6 months (renewable) or
- an apprenticeship (CITP, CATP, CCM<sup>140</sup>).

An AIP can ask for an AOT after a 9 month stay; a minor applicant can request this status immediately after his arrival.

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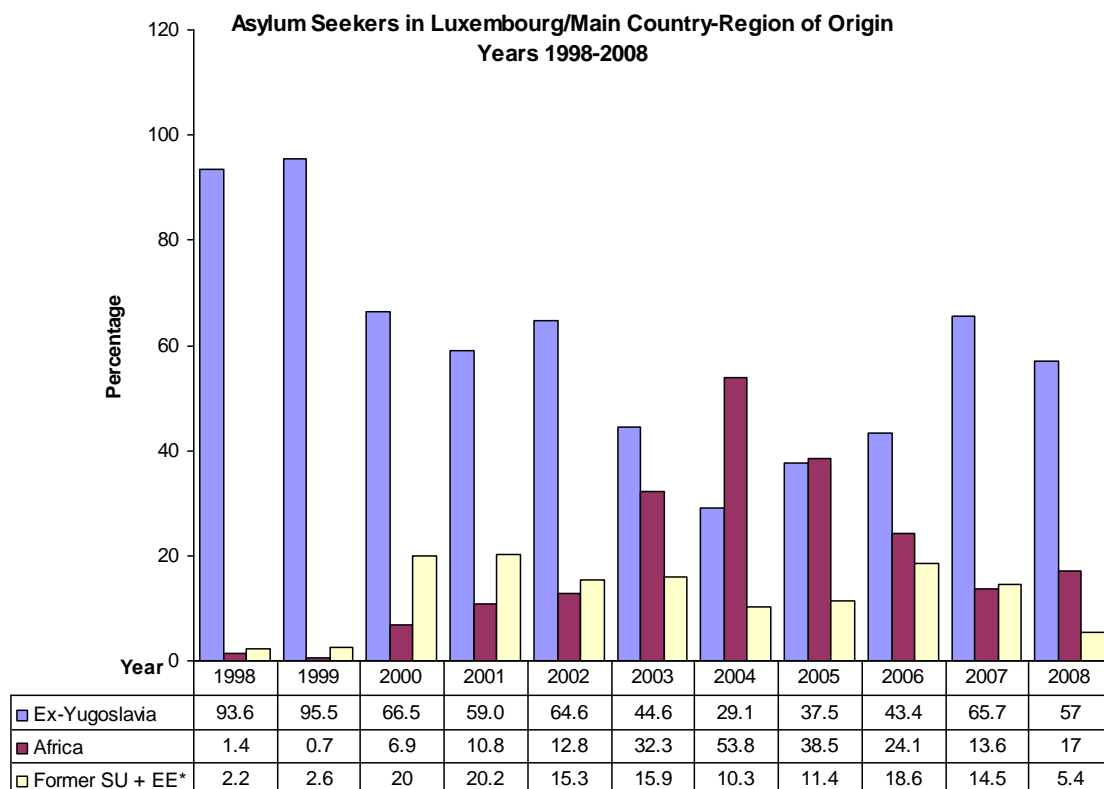
<sup>137</sup> “Bulletin d’information et de documentation (2005) Gouvernement du Grand-Duché du Luxembourg”

[http://www.gouvernement.lu/publications/download/bulletin\\_2005.pdf](http://www.gouvernement.lu/publications/download/bulletin_2005.pdf)

<sup>138</sup> <http://conventions.coe.int/treaty/EN/Treaties/html/005.htm>

<sup>139</sup> <http://www.legilux.public.lu/leg/a/archives/2006/0078/a078.pdf#page=2>

<sup>140</sup> CITP: ‘*Certificat d’initiation technique et professionnelle*’ (Technical and Vocational Professional Certificate); CATP: ‘*Certificat d’aptitude technique et professionnelle*’ (Technical and Vocational Professional Aptitude Certificate), CCM: ‘*Certificat de capacité manuelle*’ (Manual Capacity Certificate)



Tab. 2: Asylum Seekers in Luxembourg/Main Country-Region of Origin; Years 1998-2008<sup>141</sup>

Figures for years 2001-2007 have been provided by the 'Direction de l'immigration/Ministère des Affaires étrangères et de l'Immigration : 'L'évolution des demandes d'asile/de protection internationale au Luxembourg entre 2000-2007' ; 'L'évolution des demandeurs d'asile/de protection internationale par pays/régions d'origine (2000-2007)' ; <http://www.mae.lu/fr/Site-MAE/Immigration/Chiffres-cles-en-matiere-d-asile>

Figures for years 1998, 1999, 2000 and 2008 have been provided by the National Statistical Institute of Luxembourg. (STATEC); 'Retours des demandeurs d'asile selon les pays de provenance 2001 – 2008' ; 'Demandeurs d'asile par pays d'origine 1998 – 2008' ; [http://www.statistiques.public.lu/stat/ReportFolders/ReportFolder.aspx?IF\\_Language=fra&MainTheme=5&FdrName=4&RFPath=66](http://www.statistiques.public.lu/stat/ReportFolders/ReportFolder.aspx?IF_Language=fra&MainTheme=5&FdrName=4&RFPath=66)

\* EE= Eastern Europe before accession

Stock: persons benefitting from social aid<sup>142</sup>

1) Percentages are calculated on the basis of the total arrivals

2) Temporary work permit – 'Autorisation d'occupation temporaire'

In 2008 the expulsions of rejected asylum seekers or illegal persons in Luxembourg were, once again, a major topic brought up by non governmental organisations, parliamentary questions and the press. Criticism concerned mainly the forced return of families with children during school period, the expulsion of well integrated persons in Luxembourg

<sup>141</sup> These figures concern only refused asylum seekers; see chapter 2.3.11 Return Migration

<sup>142</sup> Grand ducal regulation of 1 September 2006 and previous grand ducal regulation of 4 July 2002, <http://www.legilux.public.lu/leg/a/archives/2006/0171/a171.pdf#page=5>; <http://www.legilux.public.lu/leg/a/archives/2002/0084/a084.pdf#page=2>

who had been settled for several years as well as the lack of legislation regarding the modalities and the execution of expulsion decisions before the adoption of the immigration law.

## ***2.3 Details of Policy and legislative developments***

### ***2.3.1 Control and Monitoring of Immigration***

The new law on free movement of persons and immigration introduced a dual system of authorisations for third country nationals<sup>143</sup>. Before entering Luxembourg, third country nationals have to apply for an authorisation to stay which allows them to come to Luxembourg and, if some additional conditions are fulfilled, (such as a medical check-up and the proof of an adequate accommodation) are granted a residence permit. The execution modalities of some of these provisions on conditions are laid down in grand ducal regulations.

In order to control whether the conditions for entering and staying in Luxembourg are met, the new law on free movement of persons and immigration foresees provisions on controls. The law states that these controls are not systematic for European Union citizens. The Police is mandated to carry out these controls and the monitoring of foreign persons. Furthermore the *'Inspection du Travail et des Mines'* is responsible for monitoring the application of all provisions related to work of foreigners. The minister in charge of immigration is entitled to have direct access to some specific electronic databases containing personal data such as visa applications, affiliation to social security and job applicants. The grand ducal regulation of 26 September 2009 is providing the modalities of implementation of this stipulation.<sup>144</sup>

In order to put into practice the new law, the Immigration Directorate of the Ministry for Foreign Affairs and Immigration, in charge of handling the requests of foreigners, has implemented a new computer system which, once it is fully operational, should provide more and a better quality statistical information on immigration flows, thus allowing a better monitoring of the immigration flows to Luxembourg.

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<sup>143</sup> Articles 34 to 98 of the law of 29 August 2008,

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

<sup>144</sup> Grand ducal regulation of 26 September 2009, establishing the necessary personal data for the implementation of the law of 29 August 2008, on the free movement and immigration, and determining the personal data which the minister in charge of immigration can access having the purpose the implementation of the law, <http://www.legilux.public.lu/leg/a/archives/2008/0145/a145.pdf#page=3>

### **2.3.2 Refugee Protection and Asylum**

As laid down by the governmental programme 2004-2009<sup>145</sup>, Luxembourg government wants its asylum policy to follow the principles of strict application of Geneva Convention<sup>146</sup>, thus according protection to those who are persecuted in their home country on the basis of the reasons stated by the Convention or who are in need of a subsidiary protection. Returns of persons to whom an international protection was refused remain for Luxembourg government a necessary complement to its asylum policy.

Regarding the provisions applicable to third country nationals, refugees, asylum claimers and beneficiaries of a tolerance are excluded from the field of application of the law on free movement of persons and immigration with some exceptions. Beneficiaries of international protection (either refugee status or subsidiary protection) are entitled to ask for family reunification under the provisions of this law. Unaccompanied minors who are beneficiaries of international protection are granted the right to family reunification under special provisions. Furthermore asylum claimers and beneficiaries of a tolerance may apply for some specific authorisations to stay either for humanitarian reasons or for exceptional reasons, allowing a regularisation as described in chapter 2.3.9 on Illegal Immigration.

These measures were welcomed by Luxembourgish Refugee Council and the Consultative Commission for Human Rights.

The law on free movement of persons and immigration<sup>147</sup> provides some amendments of the asylum law:

- by introducing equality of treatment between beneficiaries of either refugee status or subsidiary protection in the domain of access to labour market
- on tolerance granting by conditioning it explicitly to material reasons independently of will of the applicant.

### **2.3.3 Unaccompanied Minors (and other vulnerable groups)**

In 2003, Luxembourg experienced the first arrivals of unaccompanied minor asylum applicants. They were welcomed and specifically cared with the support of European Refugee Fund<sup>148</sup> projects (ERF). The former '*Commissariat du Gouvernement aux étrangers*' (CGE) and current '*Office luxembourgeois de l'accueil et de l'intégration*'

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<sup>145</sup> <http://www.gouvernement.lu/dossiers/viepol/formation-gouvernement-2004/index.html>

<sup>146</sup> <http://www.unhcr.org/pages/49da0e466.html>

<sup>147</sup> Law of 29 August 2008, <http://www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf>

<sup>148</sup> [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/114567\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/114567_en.htm)

(OLAI)<sup>149</sup> is the responsible authority for the reception of immigrants and asylum seekers as well as for the ERF. CGE and NGOs elaborated incrementally principles for the reception and framing of unaccompanied minor asylum applicants. Article 12 of the international protection law<sup>150</sup> foresees specific disposals for guardianship, asylum procedures, etc. The immigration law<sup>151</sup> stipulates in its articles 68 to 77 conditions for family reunion in general as well as specific conditions for unaccompanied minors (awarded with the status of international protection).

### **2.3.4 Economic Migration**

The former immigration law<sup>152</sup> defined Luxembourg's immigration policy with regard to European citizens and to third country nationals. It was launched in the context of, mainly Portuguese but also Yugoslavian immigration with a working class background (both were at that time third countries and Luxembourg had signed a convention of labour force exchange with them), but also to conform to European Union regulations and directives.

Within this law, 4 work permits were granted within a stepwise integration process:

- Permit A: first 12 months with 1 employer
- Permit B: next 4 years within the same sector
- Permit C: entire labour market
- Permit D: apprenticeship (3 years).

Permit A and B could be renewed. Thus, at earliest, a third country national was given full access to the entire labour market after 5 years.

The request for the work permit had to be done by the employer. The request for the authorisation to stay had to be introduced by the employee.

The Luxembourg labour market relies on migrants and cross border commuters to an extent of 66 percent (25 percent of migrants and 41 percent of cross border commuters) and 73 percent of the competitive sector<sup>153</sup>. The main group of migrants are Portuguese workers – a long standing economic family migration since the late 1960s.

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<sup>149</sup> See chapter 1.3.2 Law of 16 December 2008 on reception and integration of foreigners in the Grand Duchy of Luxembourg

<sup>150</sup> Law of 5 May 2006, <http://www.legilux.public.lu/leg/a/archives/2006/0078/a078.pdf#page=2>

<sup>151</sup> Law of 29 August 2008, <http://www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf>

<sup>152</sup> Law of 28 March 1972, and its grand ducal regulations

<http://www.legilux.public.lu/leg/a/archives/1972/0024/a024.pdf#page=2>

<sup>153</sup> STATEC, 'Emploi et Chômage, Travailleurs étrangers occupés au Grand-Duché de Luxembourg selon la nationalité 1974 – 2008' and 'Travailleurs frontaliers occupés au Grand-Duché de Luxembourg selon la résidence et la nationalité (en 1 000 personnes) 1974 -2008',

[http://www.statistiques.public.lu/stat/ReportFolders/ReportFolder.aspx?IF\\_Language=fra&MainTheme=2&FldrName=5&RFPPath=37](http://www.statistiques.public.lu/stat/ReportFolders/ReportFolder.aspx?IF_Language=fra&MainTheme=2&FldrName=5&RFPPath=37)

The immigration law contains a major reform of economic migration and provides different rules for different types of economic migration.

A longstanding claim of associations and trade unions were met such as the abolition of dual residence permits - work permits, by creating the residence permit for an employed person. This application must be submitted by the person, whereas before the permit application must be lodged by the employer. Under the old regime, the first work permit was valid for only one employer and one occupation, while according to the new law, the authorised worker can work only in an area and a single profession, but with any employer.

The law provides four conditions for an authorisation to stay as employed person<sup>154</sup>: the respect of the Community priority, a work contract for a declared vacant position near Employment Administration Agency (ADEM)<sup>155</sup>, the exercise of the economic activity should serve the economic interests of the country. The conditions are checked by the Employment Administration Agency and the Advisory Commission for Employees<sup>156</sup> (CCTS) specified by grand ducal regulation<sup>157</sup>. First the minister in charge of immigration requests the ADEM's opinion which must respond within 3 weeks, and then the opinion of the CCTS is also requested.

The first residence permit, '*travailleur salarié*', is valid for a maximum of one year, for only one profession with any employer. The residence permit renewed for the first time is assigned for two more years under the same restrictions. From the 2<sup>nd</sup> renewal on, the residence permit has the duration of three years and is valid for any sector and any profession.

Special provisions have been introduced for transferred and seconded workers. They are exempt of the four conditions for the residence permit for an employee. Some specific temporary occupations such as artists or sportsmen are also exempt of a residence permit if their occupation is less than three months a year<sup>158</sup>.

Highly skilled workers also benefit from more simplified procedures and favourable conditions to access the labour market<sup>159</sup>. This applies to jobs requiring knowledge or special abilities and third country nationals' professionals who hold a higher education diploma or with a specialized professional experience of at least 5 years. Unlike other employees, it must only justify the legal conditions of entry, work contract related to the qualifications and remuneration at least equal to an amount set by grand ducal regulation. The opinion of the ADEM and CCTS is not required. Furthermore, the person may be granted with a residence permit for a maximum of three years, renewable upon request,

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<sup>154</sup> Art. 42 of the immigration law of 29 August 2008,

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

<sup>155</sup> "Administration de l'Emploi" - ADEM, <http://www.adem.public.lu/>

<sup>156</sup> "Commission consultatives pour travailleurs salariés" - CCTS

<sup>157</sup> Art. 43 of the immigration law, idem footnote 153

<sup>158</sup> Art. 35 of the immigration law, idem footnote 153

<sup>159</sup> Art. 45 of the immigration law, idem footnote 153

for a period of three years. This article intends to anticipate the Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third country nationals for the purposes of highly qualified employment<sup>160</sup>.

The law provides the possibility to exempt to the Community priority and to grant residence permit to third country nationals to work in a particular sector or profession where there are recruitment difficulties which can be defined by grand ducal regulation. So far, no grand ducal regulation is in force, hence this possibility is not applicable by now.

The law also lays down conditions for residence permit for self employees who need to have the necessary qualifications to carry out their activity. A proof of adequate resources for their activity is needed and the activity has to serve the interest of the country. The opinion of the Advisory Commission for the Self Employed must be requested. The residence permit for self-employed can also be issued for a period of three years renewable upon request for a period of three years.

Even if there is a consensus on the need to reform the work permits system, the main criticism of the new law focuses on a still too restrictive access to the labour market. The Chamber of Commerce shows the most critical position and requests more opening up in favour of a "foreign image of a society and economy seeking to attract foreign companies and / or foreign labour"<sup>161</sup>.

Thus, several stakeholders (mainly '*Chambre de Commerce*' and '*Chambre des employés privés*') suggested:

- deleting the requirement that the activity should serve the economic interests ('*Chambre de Commerce, Chambre des Métiers, Conseil d'Etat*')
- criticising the failure to include in the working contract conditions the employment promises ('*Chambre de Commerce, Chambre des Métiers*', Migration Platform)
- highlighting the too heavy administrative procedures related to a dual opinion of ADEM and the CCTS ('*Chambre de Commerce*')
- asking for the abolition of the CCTS' opinion at the first renewal ('*Chambre de Commerce, Chambre des employés privés*')
- criticising too vague notions such as the sector concept ('*Chambre de Commerce, Chambre des Métiers*')
- pleading in favour of a less restrictive definition for highly skilled worker ('*Chambre de Commerce, Chambre des Métiers, Conseil d'Etat*')
- pleading in favour of more extensive work conditions, mainly longer job experiences for students who finished their university degree in Luxembourg ('*Chambre de Commerce*')

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<sup>160</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:155:0017:0029:EN:PDF>

<sup>161</sup> Parliamentary doc. 5802,

[http://www.chd.lu/wps/PA\\_1\\_084AIVIMRA061432DO10000000/FTSShowAttachment?mime=application%2fpdf&id=981499&fn=981499.pdf](http://www.chd.lu/wps/PA_1_084AIVIMRA061432DO10000000/FTSShowAttachment?mime=application%2fpdf&id=981499&fn=981499.pdf)



- asking for less restrictive work permit conditions for labour secondment (*‘Chambre de Commerce, Chambre des Métiers’*)
- shortening the restriction of residence of three years to one economic sector (Migration Platform and the *‘Chambre des Métiers’*)
- adopting a less restrictive definition of the concept of highly qualified workers (in line with the opinions of employers' associations and the Council of State).

### **2.3.5 Family Reunification**

The new law on free movement of persons and immigration<sup>162</sup> transposes the Council directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States<sup>163</sup> as well as the Council directive 2003/86/CE on the right to family reunification<sup>164</sup>, thus providing clearer conditions and criteria on family reunification for European Union citizens and third country nationals.

In order not to compromise in a disproportionate manner the right on private and family life, the new law also contains the possibility to grant an authorisation to stay to persons who are not fulfilling the conditions on family reunification but who have intense personal or family links.

In some aspects, the law goes beyond the standards foreseen by the directives. The provisions on family reunification for family members of a European Union citizen are also applicable to the non-Luxembourgish family members of a Luxembourgish person. The waiting time for third country nationals to be eligible for family reunification is one year whilst the directive allows a maximal duration of 2 years. No waiting time is applicable for some special categories as highly qualified workers and researchers<sup>165</sup>.

The law provisions define the family members eligible for family reunification. Concerning partnerships, the law recognizes as a family member the partner in the framework of an official declared partnership if this partnership respects the basic conditions set out in Luxembourg legislation on declared partnerships<sup>166</sup>. The question of whether to include partners not bound by a declared partnership but who can prove a stable and sustainable relationship was one topic discussed during the adoption of the law.

<sup>162</sup> <http://www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf#page=2>

<sup>163</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0038:en:NOT>

<sup>164</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:EN:PDF>

<sup>165</sup> Art. 71 of the immigration law, <http://www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf#page=2>

<sup>166</sup> Mit dem Gesetz zu eingetragenen Partnerschaften wurden auch eheähnliche Gemeinschaften zwischen Gleichgeschlechtlichen ermöglicht. Gesetz vom 9. Juli 2004: Pacte civil de solidarité (PACS)

The law also defines the conditions to be fulfilled by the third country national asking for his family members to join her/him. The third country national must prove an adequate accommodation for herself/himself and her/his family members, sufficient and stable financial resources. During the consultation process ahead of the adoption of the law, some associations and organisations asked for a more flexible interpretation of these criteria and of the waiting time provision in order not to harm the right on family life of the concerned people<sup>167</sup>.

European Union citizens joining their family members in Luxembourg, like any other European Union citizen, also have to prove sufficient resources ‘not to become a burden for the system of social assistance’ as stated by the law. The minimum level of resources required is adapted to the Luxembourg minimum income, which is fairly high in comparison to other European Union Member States.

### ***2.3.6 Other legal migration***

The new law on free movement of persons and immigration rules the entry and the stay of European Union citizens and of third country nationals<sup>168</sup>. As regards to third country nationals, the law introduces different types of authorisations to stay, going beyond the existing categories. Whilst the criteria of some of these categories are based on provisions coming from European Union legislation that was implemented by the law, some others have been added at the national level (e.g. sportsmen) to take into account special situations not covered by other categories but where specific criteria seem appropriate.

The following eight categories are foreseen by the law:

- Employee. This category includes some sub-categories such as transferred and highly qualified workers (anticipating the basic ideas of the blue card directive)<sup>169</sup>
- Independent/self-employed
- Sportsman
- Student, pupil, trainee and volunteer (basis: Council directive 2004/114/CE of 13 December 2004 on the conditions of admission of third country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service<sup>170</sup>)
- Researcher (basis: Council directive 2005/71/CE of 12 October 2005 on a

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<sup>167</sup> The criteria are defined by the grand ducal regulation of 5 September 2008,

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

<sup>168</sup> <http://www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf#page=2>

<sup>169</sup> See chapter 2.3.4. Economic Migration

<sup>170</sup> See chapter 3.1 Progress made during 2008 in the transposition of EU legislation in the field of migration and asylum into national law and administrative practices

- specific procedure for admitting third country nationals for the purposes of scientific research<sup>171</sup>)
- Family member (basis: Council directive 2003/86/CE of 22 September 2003 on the right to family reunification<sup>172</sup>)
  - Private or exceptional reasons (including the case of stay for medical treatment)
  - Long term resident (basis: Council directive 2003/109/CE of 25 November 2003 concerning the status of third country nationals who are long-term residents<sup>173</sup>).

One of the main issues discussed during the adoption of the law was the applicable conditions to students as well as their rights once they are beneficiaries of an authorisation to stay as student. For the '*Chambre de Commerce*', the '*Chambre de Travail*' and the Migration Platform, the level of requirements in terms of own resources was perceived as too demanding and the restrictions put in place regarding work of students during their studies were also seen as too tight (no right to work during the first year of studies, restriction to 10 hours a month during the following semesters). The opportunity given to students having finished their studies in Luxembourg, wishing to work in Luxembourg and applying for an authorisation to stay as salaried worker for a maximum of 2 years, was welcomed by the Migration Platform whilst the '*Chambre de Commerce*' asked for more than these 2 years (opinion 5802<sup>174</sup>).

### ***2.3.7 Citizenship and Naturalisation***

In the government statement of 4 August 2004, the Prime Minister issued the government's approach on integration and social cohesion in which the introduction of multiple nationalities was a key element.

The new law on naturalisation has been debated at the public and political level and had already been filed the 13 October 2006. It has been adopted on the 15 October 2008 by 38 votes to 21 against and 1 abstention.

It has undergone two rounds of amendments, the first adopted in 2007 by the Legal Committee, the other in 2008<sup>175</sup>.

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<sup>171</sup> Idem footnote 169

<sup>172</sup> Idem footnote 169

<sup>173</sup> Idem footnote 169

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[http://www.chd.lu/wps/PA\\_1\\_084AIVIMRA06I432DO1000000/FTSShowAttachment?mime=application%2fpdf&id=981499&fn=981499.pdf](http://www.chd.lu/wps/PA_1_084AIVIMRA06I432DO1000000/FTSShowAttachment?mime=application%2fpdf&id=981499&fn=981499.pdf)

<sup>175</sup> Law of 23 October 2008 on Luxembourgish nationality, <http://www.legilux.public.lu/leg/a/archives/2008/0158/a158.pdf>

According to the authors of the law, the draft aims to strengthen the integration of foreigners in Luxembourg.

Previously to the legal renewal, conditions and procedures for the acquisition of Luxembourgish nationality were regulated by the law of 22 February 1968<sup>176</sup> which was amended in particular by the law of 24 July 2001<sup>177</sup>. Several ways to acquire the Luxembourgish nationality were foreseen: naturalisation, option, recovery and automatic acquisition of the quality of Luxembourger. To be eligible for naturalisation, the old law kept a period of effective residence in Luxembourg for at least five consecutive years immediately preceding the application for naturalisation.

Naturalisation was granted by a law voted by the Parliament<sup>178</sup>.

The old law provided the possibility to acquire nationality by option in 6 cases<sup>179</sup>.

To obtain Luxembourg nationality by naturalisation or by option, it was also necessary to:

- renounce to the original nationality
- proof sufficient integration, which means an active and passive knowledge of at least one of the languages foreseen by the law of 24 February 1984<sup>180</sup> on the language system and basic knowledge of Luxembourgish, backed by certificates or official documents.

The acquisition of Luxembourg nationality by option was abolished by the law of 23 October 2008<sup>181</sup>. To be eligible for naturalisation one must now justify a period of 7 years of residence in Luxembourg - the naturalisation candidate must have resided in the country for at least 7 years, which must be consecutive and immediately precede the application - and show proof of sufficient integration<sup>182</sup>, which means:

- sufficient active and passive knowledge of at least one of the languages foreseen by the law of 24 February 1984<sup>183</sup> on the languages regime and successfully pass

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<sup>176</sup> <http://www.legilux.public.lu/leg/a/archives/1968/0007/a007.pdf#page=3>

<sup>177</sup> <http://www.legilux.public.lu/leg/a/archives/2001/0101/a101.pdf#page=2>

<sup>178</sup> Article 6 of the law of 22 February 1968,

<http://www.legilux.public.lu/leg/a/archives/1968/0007/a007.pdf#page=3>

<sup>179</sup> Article 19 of the law of 22 February 1968, The 6 cases of option are: the child born in the country of a foreign author, the child born abroad of an author who had the status of Luxembourgish origin, the foreigner who marries a Luxembourger; a child born abroad to a foreign author and have completed the all compulsory schooling in the Grand Duchy of Luxembourg, the child who is the subject of an adoption by a Luxembourger who had not lost their original nationality; the foreigner who is older than eighteen years old whose author, when that age was reached exercised over him the custody either alone or jointly with another author acquires or recovers the quality of Luxembourgish

<sup>180</sup> <http://www.legilux.public.lu/leg/a/archives/1984/0016/a016.pdf#page=6>

<sup>181</sup> Memorial A N°158 of 27 October 2008,

<http://www.legilux.public.lu/leg/a/archives/2008/0213/a213.pdf>

<sup>182</sup> Articles 6 and 7 of the law of 23 October 2008 on Luxembourgish nationality,

<http://www.legilux.public.lu/leg/a/archives/2008/0158/a158.pdf>.

<sup>183</sup> <http://www.legilux.public.lu/leg/a/archives/1984/0016/a016.pdf#page=6>

- an evaluation test in spoken Luxembourg language. The skill level to be reached for the listening and speaking is defined by the aforementioned law<sup>184</sup>
- at least three citizenship courses must have been followed. One course on Luxembourg institutions and a course on fundamental rights must be attended.

Two categories of people are exempted from the Luxembourgish language test and the attendance of civic courses:

- those who have completed at least 7 years of their schooling within the Luxembourg public education system or the private education system
- those who obtained a residence permit for Luxembourg territory prior to 31 December 1984 and who have resided at least that date in Luxembourg.

Within the amendment of the constitution of 30 April 2008, Parliament voted the removal of article 10 stipulating that naturalisation is granted by the legislature. On 15 October 2008, the second constitutional vote took place.

The law of 23 October 2008 on Luxembourg nationality is new in that it creates appeal procedures, and more particularly the establishment of a two-tier jurisdiction. This involves a reinforcement of the rights of citizens wishing to acquire Luxembourg nationality.

Given that the ministerial order to refuse a naturalisation constitutes an administrative decision, authority is attributed to the administrative jurisdictions<sup>185</sup>.

The new law introduces further substantive changes:

- it recognises the ground dual right thus the child born in Luxembourg and whose parents are non-Luxembourgish, but one of them was born in Luxembourg, is a Luxembourger
- naturalisation shall be granted or refused by the Minister of Justice within 8 months.

Two grand ducal regulations were adopted under this law<sup>186</sup>:

- Grand ducal regulation of 31 October 2008 concerning the organisation of citizenship courses to follow in order to be eligible for naturalisation
- Grand ducal regulation of 31 October 2008 concerning the organisation of tests and certification of communicative competence in Luxembourgish spoken language to be eligible for naturalisation.

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<sup>184</sup> The skill level to be reached in Luxembourgish is the language level B1 of the Common European Framework of Reference for Languages for listening and A2 of the same framework for speaking

<sup>185</sup> Le Gouvernement du Grand-duché de Luxembourg 2009

<sup>186</sup> Memorial A N° 165 of 7 November 2008,  
<http://www.legilux.public.lu/leg/a/archives/2008/0165/a165.pdf>

The first one attributes the organisation of the citizenship courses to the Ministry of National Education and Vocational Training, Adult Training Service (*'Service de la formation des adultes'*). These courses are held in several secondary schools established throughout the country's different regions. It also establishes an indirect link between the law on nationality and the integration law; insofar as article 2 (1) states that the courses are open primarily to applicants for naturalisation. It is secondly targeting the foreigners who have signed the Welcome and Integration Contract (CAI<sup>187</sup>).

The second regulation entitles the *'Institut national des langues'* (formerly *'Centre de langues Luxembourg'*) to assess and certify competence levels in the spoken Luxembourg language in view of naturalisation being granted. It organises evaluation tests several times per year.

The Council of State and the *'Chambre de Commerce'* criticised the restrictive approach of the law<sup>188</sup>. During the discussion on the new draft law organised by the *'Chambre de Commerce'* on 12 February 2008, its President described the reform as generous but insufficient and criticised the fact that the duration of residence had been increased from 5 to 7 years. There was an opposition by the Council of State to the requirement for the duration of residence up to 7 years and even a formal opposition was launched because the skill level to be reached in Luxembourgish was not determined by law.

The removal of the option possibility by the spouse of a Luxembourgish citizen was another point of criticism expressed by the Council of State, the *'Chambre de Commerce'* and ASTI.

In a first set of amendments made by the Legal Affairs Committee in 2007<sup>189</sup>, the 'double ground right' was introduced. This proposal was welcomed by the Council of State however it was still considered too timid.

In the second set of amendments, the exemption of the linguistic knowledge test and the attendance of civic instruction courses were introduced for those who have resided in Luxembourg prior to 31 December 1984, the skill level to be reached in Luxembourgish was defined and a provision that the costs of attending courses of Luxembourgish language and citizenship courses are borne by the state was adopted.

At a joint press conference (8/10/2008) held one week before the adoption of the law, the two opposition parties (Democratic Party, The Green Party) expressed their points of disagreement including linguistic requirements and the minimum compulsory period of residence of 7 years.

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<sup>187</sup> See chapter 1.3.2 Law of 16 December 2008 on reception and integration of foreigners in the Grand Duchy of Luxembourg

<sup>188</sup> Opinion 5620 of 18 March 2008,

<http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=5620#>

<sup>189</sup> Parliamentary doc. 5620,

[http://www.chd.lu/wps/PA\\_1\\_084AIVIMRA0614327110000000/FTSByteServletImpl/?path=/exp/ort/exped/sexpdata/Mag/038/564/053673.pdf](http://www.chd.lu/wps/PA_1_084AIVIMRA0614327110000000/FTSByteServletImpl/?path=/exp/ort/exped/sexpdata/Mag/038/564/053673.pdf)

### **2.3.8 Integration**

As already mentioned, the evolution of immigration and demographic profiles in the Grand Duchy of Luxembourg led the government to reform the law<sup>190</sup>.

The law of 16 December 2008<sup>191</sup> on reception and integration of foreigners in the Grand Duchy of Luxembourg is the 3<sup>rd</sup> element of immigration policy reform of 2008, as it follows the adoption of the law of 29 August 2008 on the free movement of persons and immigration and the law of 23 October 2008 on Luxembourgish nationality.

OLAI becomes the responsible body for the coordination of the inter-ministerial committee on integration, establishing the multi-annual national action plan on integration and fight against discrimination. It grants social assistance to certain foreigners and is responsible for the monitoring of migration in the Grand Duchy of Luxembourg and will submit a national report on integration of foreigners every five years.

The Welcome and Integration Contract is proposed to foreigners who are legal residents of the Grand Duchy of Luxembourg and wish to stay on a long term basis. The government provides language and civic instruction courses, as well as measures for social and economic integration.

The law amends the composition of the National Council for Foreigners<sup>192</sup> (CNE). The number of foreign representatives is increased from 15 to 23, including a representative of refugees, defined according to the Geneva Convention of the 28 July 195<sup>193</sup>. Following criticism by the Council of State, the law has established a quota of seven representatives of third country nationals.

The CNE also includes one representative of the inter-municipal trade union from the municipalities in Luxembourg (SYVICOL)<sup>194</sup>, four employer representatives, four representatives of the largest trade unions and two representatives of civil society.

The inter-ministerial committee on integration is no longer a part of the CNE. The mandate has been increased from 3 to 5 years.

The debate on the integration law was much less controversial and less publicised than the debate on the nationality law.

The most strongly debated theme during the legislation process was the CAI: nearly all organisations which gave their opinion on the bill stressed the importance of the CAI

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<sup>190</sup> See chapter 2.2.1 Immigration and integration policy reform

<sup>191</sup> <http://www.legilux.public.lu/leg/a/archives/2008/0209/a209.pdf#page=2>

<sup>192</sup> See chapter 1.3.2 Law of the 16 December 2008 on reception and integration of foreigners in the Grand Duchy of Luxembourg

<sup>193</sup> <http://www.unhcr.org/pages/49da0e466.html>

<sup>194</sup> <http://www.syvicol.lu>



being offered to foreigners. However, they questioned whether or not it was compulsory for third country nationals since the first draft of the law established a direct link between the renewal of residence permits and the degree of integration.<sup>195</sup>

According to the Council of State and the Migration Platform, the degree of integration should not depend only on the signature or the fulfilment of the terms of the contract.

The aim of the CAI<sup>196</sup> is to enable the fluent functioning of the integration process rather than imposition by coercion<sup>197</sup>, namely by giving the foreigner who signs the CAI an easier access to obtaining Luxembourg nationality<sup>198</sup>. A widely discussed issue was the accessibility to these kinds of measures in the context of CAI<sup>199</sup> and the adaptation of these measures to meet the needs of a very heterogeneous population<sup>200</sup>.

The Council of State in highlighting the indivisible links between immigration, integration and citizenship, regretted that immigration and integration are treated in a law separate from that governing integration and the acquisition of citizenship. CNE and CLAE wanted a single ministry to deal with both immigration and integration components.

The other most discussed topics were:

§ the enlargement of OLAI's mission to include the fight against discrimination on different grounds, despite opposition from the Council of State. This dimension is also included in the multi-annual national action plan for integration and the fight against discrimination and in the five-yearly report sent to the Parliament<sup>201</sup>. The Parliamentary Commission did not follow the advice of the Council of State on this point by asking that only discrimination on the grounds of origin should be included in OLAI's area of competence

§ the reform of the CNE concerning the composition of its membership. CNE has disapproved this amendment and asked for the maintenance of equal numbers of national and non national members. Other fundamental issues have also been raised but did not have had any impact on the legislation:

- direct election of members of the CNE by foreigners to improve its representativeness<sup>202</sup>
- obligation to refer to the CNE as it does exist for professional chambers<sup>203</sup>

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<sup>195</sup> 'Chambre de Commerce', 'Chambre de travail', Migration Platform, 'Chambre des employés privés', 'Conseil National pour étrangers', Council of State

<sup>196</sup> 'Chambre de travail' and Migration Platform would rather prefer the use of the terms offer of welcome and integration

<sup>197</sup> Migration Platform, CLAE, 'Conseil National pour étrangers'

<sup>198</sup> Migration Platform, CLAE, 'Chambre des employés privés'

<sup>199</sup> 'Chambre de Commerce', 'Chambre de travail', Migration Platform, CLAE, Council of State

<sup>200</sup> 'Chambre des employés privés' Migration Platform, CLAE, Council of State

<sup>201</sup> Articles 6 and 7 of the integration law

<sup>202</sup> <http://www.legilux.public.lu/leg/a/archives/2008/0209/a209.pdf#page=2>

<sup>203</sup> CLAE



- sufficient operational resources<sup>204</sup>.

The government tries to promote other integration measures.

On 29 May 2008, a bill giving leave of absence from work to learn Luxembourgish was tabled in Parliament<sup>205</sup>.

The initial aim was to introduce additional special leave in order to allow workers of all nationalities, residents or non-residents in Luxembourg, working in the Grand Duchy of Luxembourg for at least 6 months, to learn or to improve their knowledge of Luxembourgish.

This linguistic allowance is for up to 200 hours.

Following the formal opposition of the Council of State, the Commission on Labour and Employment has expanded its scope to include the self-employed.

### ***2.3.9 Illegal Immigration***

The new law on immigration contains measures to prevent immigration fraud and to fight against illegal immigration. Hence, it reinforces the existing set of measures in this area. The immigration law foresees penalties for persons having, directly or indirectly, consciously facilitated or tried to facilitate the illegal entry, the illegal transit, or, in a profitable manner, the illegal stay of a third country national in Luxembourg or in another state of the European Union or from the Schengen area.

The law foresees fees against transport companies not respecting their obligation to transfer to Police information about the passengers they are transporting to Luxembourg. It foresees sanctions against employers of illegal immigrants. It also contains sanctions against persons using falsified documents, including the possibility of withdrawal of residence permit when it turns out that the applicant used false information or falsified documents.

As regards to regularisations, the law provides the possibility to grant a residence permit for exceptional reasons to persons illegally staying in Luxembourg if they fulfil some conditions, for instance staying and working in Luxembourg for at least 8 years.

Furthermore, regularisations are possible on a case by case basis for some exceptional circumstances, related to humanitarian reasons or the family situation of a person. There is no general regularisation.

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<sup>203</sup> Migration Platform

<sup>204</sup> Migration Platform, CLAE, ‘*Conseil national pour étrangers*’

<sup>205</sup> *Projet de loi N° 5886 portant introduction d’un congé linguistique*

<http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=5886>

The Ombudsman welcomed the clarification of the regulation criteria incorporated into the law while claiming to ensure objectivity and transparency of regulation criteria on a case by case basis<sup>206</sup>.

The Consultative Commission for Human Rights has reiterated its previously expressed criticism regarding the criminalisation of the support to unauthorised entry and residence, if those acts are driven by humanitarian causes, by requiring a margin of appreciation in the criminal courts for these cases. It also has invited the government to find a human and generous solution to those who are living in the country for several years without a residence permit or the status of tolerance.

### ***2.3.10 Actions against human trafficking***

2008 saw an important development concerning the fight against human trafficking. Three interrelated initiatives were launched which led to the approval, adoption or implementation of diverse international legal instruments.

A bill<sup>207</sup> was introduced on 26 March 2008 by the Ministry of Justice whose objective was to implement the Additional Protocol of the United Nations Convention against organized cross border crimes designed to prevent, suppress and punish human trafficking (2000), the Convention of the Council of Europe on the fight against human trafficking (2005), and the Framework Decision of the Council of the European Union concerning the fight against trafficking of human beings (2002).

This bill implemented the penal provisions of the three legal instruments mentioned above. It extended the definition of the human trafficking by including forms of exploitation at work and e.g. the removal of human organs. Furthermore it foresees increased penalties for trafficking offences.

A bill<sup>208</sup> was introduced on 22 April 2008 by the Ministry of Equal Opportunities whose objectives were to prevent human trafficking, to protect the rights of the victims of

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<sup>206</sup> <http://www.ombudsman.lu/>

<sup>207</sup> The bill concerning the trafficking of human beings (1) requiring approval: (a) of the Additional Protocol of the Un Convention against the organized transnational crimes sought to prevent, suppress and punish the trafficking of persons, in particular, women and children, was presented for signature from 12 – 15 December 2000 in Palermo and (b) of the Convention of the Council of Europe on the fight against the trafficking of human beings, signed in Warsaw on 16 May 2005; amending the penal code; and (3) amending the Criminal Code; parliamentary document N° 5860 of 15 April 2008  
[http://www.chd.lu/wps/PA\\_1\\_084AIVIMRA06I4327I10000000/FTSServletImpl/?path=/export/exped/sexpdata/Mag/090/666/068695.pdf](http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSServletImpl/?path=/export/exped/sexpdata/Mag/090/666/068695.pdf)

<sup>208</sup> The bill concerning assistance and protection of victims of human trafficking amending the new procedural civil code. Parliamentary document N°5874 of 6 May 2008  
[http://www.chd.lu/wps/PA\\_1\\_084AIVIMRA06I4327I10000000/FTSServletImpl/?path=/export/docpa2/447\\_res\\_0.doc](http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSServletImpl/?path=/export/docpa2/447_res_0.doc)

trafficking and to create a framework of protection and help for the victims. This bill deals with aspects of the prevention of trafficking and the protection of victims covered by the Additional Protocol of the UN Convention and the Council of Europe Convention cited above as well as the Directive 2004/81/CE. It seeks to transpose articles 7 and 9 of the Directive on assistance to victims who are nationals of a third country, while extending the scope of these provisions to the victims of Luxembourg nationals or of a member of the European Union. It provides a specific article on the guardianship of unaccompanied victims who are minors (article 4).

The immigration law entered into force on 1 October 2008 and deals in articles 92-98 with the granting of residence permits for victims of trafficking. It adopts into domestic law the European Directive of 29 April 2004 concerning residence permits issued to third country nationals who are victims of human trafficking or have been the subject of illegal immigration aid and who cooperate with the competent authorities.

The law has adopted the article of the directive on the granting of a reflection period for those victims of trafficking who cooperate with the authorities. The legislature adopted a period of 90 days, which exceeds the period allowed under the Convention of the Council of Europe. It provides, again under conditions of cooperation or testimony against the perpetrators, the granting of a residence permit for a period of 6 months, renewable once. The residence permit allows the victim to obtain paid employment if he or she is suitably qualified. The legislature also agreed that the minister in charge of immigration may issue a permit to stay for private and/or humanitarian reasons of exceptional gravity, upon expiry of the residence permit.

Furthermore, the Council of Government adopted on 23 May 2008, a draft grand ducal regulation establishing the conditions under which victims of trafficking have access to training<sup>209</sup>.

One of the main focus of criticism was related to the fact the provisions on the traffic of human beings was separately covered by three different laws<sup>210</sup>. Some organizations have expressed their regret<sup>211</sup> about the fact that the protection and care of the victim is dependent on collaboration with the judicial authorities, although they have commented positively the possibility of obtaining a residence permit for private reasons.

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<sup>209</sup> Preview of article 97 of the law of 29 August 2008 on immigration and free movement of persons and of article 5 of the draft Bill on assistance to and protection of victims of human trafficking

<sup>210</sup> 'Comité Interministériel de l'égalité des femmes et des hommes', parliamentary doc. 5874/03, 'Chambre des Métiers', parliamentary doc. 5874/05, 'Chambre de Travail', parliamentary doc. 5874/06, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=5874>

<sup>211</sup> Common opinion from 'Caritas Luxembourg, a.s.b.l. Femmes en détresse et de la Fondation Maison de la Porte Ouverte', parliamentary doc. 5874/04, <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=5874>

Public debate has been particularly marked by an aspect related to the human trafficking i.e. forced prostitution. Evidence has been given in several lawsuits<sup>212</sup> against pimps or former employers - who are nightclub owners - by Ukrainian women complaining to be forced to prostitution. A draft law on prostitution<sup>213</sup> introduced on 19 March 2008 by socialist members of the Parliament proposed the inclusion of a ban on the purchase of sexual services in the Penal Code. Various conferences on the subject<sup>214</sup> ahs been held. A public awareness campaign on prostitution has been lounded by the Ministry of Equal Opportunities on 24 April 2008, with the slogan "To pay a prostitute is financing the trade in human beings."

### **2.3.11 Return Migration**

Of both, the immigration and international protection laws, the returning of migrants is foreseen.

#### ***Immigration law***

The law on free movement of persons and immigration of 29 August 2008<sup>215</sup> contains detailed provisions on refusal procedures as well as on expulsions which is in line with the Council Directive 2001/40/EC<sup>216</sup> on mutual recognition of decisions on the expulsion of third country nationals and anticipating the general principles of the return directive<sup>217</sup>. The grand ducal regulation of 26 September 2008<sup>218</sup> is fixing rules on good behaviour applicable to officials who execute expulsion decisions. The Ministry for Foreign Affairs and Immigration and the Luxembourg Red Cross also signed a cooperation agreement on monitoring forced expulsions.

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<sup>212</sup> Parliamentary doc. 5860,

<http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=5860>

<sup>213</sup> Parliamentary doc. 5857,

[http://www.chd.lu/wps/PA\\_1\\_084AIVIMRA06I4327I10000000/FTSByteServingServletImpl/?path=/export/exped/sexpdata/Mag/097/633/069362.pdf](http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServingServletImpl/?path=/export/exped/sexpdata/Mag/097/633/069362.pdf)

<sup>214</sup> International Symposium '*Prostitution et société démocratique*', organised by the University of Luxembourg in coordination with '*Conseil national des Femmes (CNFL)*'

<sup>215</sup> <http://www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf#page=2>

<sup>216</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:149:0034:0036:EN:PDF>

<sup>217</sup> See article 116 of the law of 29 August 2008,

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

and the "return directive", <http://www.europarl.europa.eu/sides/getDoc.do?language=EN&type=IM-PRESS&reference=20080616IPR31785>

<sup>218</sup> <http://www.legilux.public.lu/leg/a/archives/2008/0145/a145.pdf#page=3>

### ***International protection law***

According to article 72 of the law of 5 May 2006<sup>219</sup> the possibility of the launching of a program of voluntary return to countries of origin explicitly foresees. However it is clearly stated that people who do not return voluntarily to their country of origin within the deadline set by the Minister will be expelled from the country. The law furthermore states that forced return is held in respect with human dignity. The Minister will consider specific humanitarian reasons which make return impossible or unreasonable in specific cases. In addition, the Minister may allow families with minor children attending school to remain in Luxembourg in order to complete the current school period.

Responding to an increase number of asylum seekers not willing to return, the government promotes voluntary return *inter alia* by offering cash assistance and by launching a European Refugee Fund project in 2007. Furthermore the government mandated the International Organisation for Migration (IOM) to carry out assistance to voluntary return and reintegration tailored to rejected asylum seekers coming from Kosovo (2008).

On 24 October 2008, the government submitted a draft law Nr. 5947<sup>220</sup> '*portant création et organisation du Centre de rétention*', creating the detention centre with the objective to clearly distinguish between ordinary prisoners and migrants, asylum seekers who will be returned.

The separation of the detention centre and the prison was a longstanding request of NGOs and international organisations. The new detention centre should be operational in autumn 2010.

Another discussed topic in the area of return policy during the adoption process of the law on free movement of persons and immigration was the question of the duration of retention.

The above mentioned law allows the retention for a maximum period of one month, with the possibility to extend the retention three times. Several associations and the Consultative Commission for Human Rights criticised a foreseen extension of this length of stay in retention. Finally it was reduced compared to the first draft.

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<sup>219</sup> <http://www.legilux.public.lu/leg/a/archives/2008/0145/a145.pdf#page=2>

<sup>220</sup> [http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=5947&backto=/wps/portal/public!/ut/p/c0/04\\_SB8K8xLLM9MSSzPy8xBz9CP0os3gXI5ewIE8TIwN302BXA6Og0CDPIF8TY3cf\\_Y\\_2CbEdFAFroNn8!/?](http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=5947&backto=/wps/portal/public!/ut/p/c0/04_SB8K8xLLM9MSSzPy8xBz9CP0os3gXI5ewIE8TIwN302BXA6Og0CDPIF8TY3cf_Y_2CbEdFAFroNn8!/)

In the area of returns, Luxembourg government tries to intensify its cooperation with other EU Member States. In 2008, Luxembourg participated in joint return flights managed by Frontex<sup>221</sup> and has also organised itself a common Benelux flight to Nigeria.

In 2008, the forced return of rejected AIPs or illegal persons in Luxembourg were, once again, a major topic brought up by non governmental organisations, parliamentary questions and the press. Criticism concerned mainly the returning of families with children during school period, the expulsion of well integrated persons in Luxembourg who have been settled for several years as well as the lack of legislation regarding the modalities and the execution of expulsion decisions before the adoption of the immigration law.

### ***2.3.12 Other policy areas/topics***

In the framework of the Global Approach to Migration<sup>222</sup> adopted by the European Council in 2005, Luxembourg participates in the mobility partnership established between the European Union and Cape Verde. On 5 June 2008, Luxembourg, together with the other participating European Union Member States (Spain, France and Portugal), the European Commission, the Presidency of the Council and the Cape Verdean government signed a Joint Declaration to establish the partnership. Cape Verde is also a privileged partner country of Luxembourg's development cooperation policy. In 2006, even before the launch of the mobility partnership, Luxembourg had started to implement a project called '*Migrer les yeux ouverts*' whose main objective was to inform persons wishing to migrate to Luxembourg on opportunities and challenges of taking such a step.

## ***3. Implementation of EU Legislation***

### ***3.1 Progress made during 2008 in the transposition of EU legislation in the field of migration and asylum into national law and administrative practices***

#### ***3.1.1 Law of 5 May 2006 on Asylum and complementary forms of protection implements:***

- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status<sup>223</sup>

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<sup>221</sup> <http://www.frontex.europa.eu/>

<sup>222</sup> [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/87642.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/87642.pdf)

<sup>223</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:01:EN:HTML>

- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted<sup>224</sup>
- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers<sup>225</sup>
- Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof<sup>226</sup>.

### ***3.1.2 Law of 29 August 2008 on free movement of persons and immigration implements***

- Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third country nationals for the purposes of scientific research<sup>227</sup>
- Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC<sup>228</sup>
- Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service<sup>229</sup>
- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification<sup>230</sup>
- Council Directive 2003/109/EC of 25 November 2003 concerning the status of third country nationals who are long-term residents<sup>231</sup>;

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<sup>224</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>

<sup>225</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0009:EN:HTML>

<sup>226</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0055:EN:HTML>

<sup>227</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32005L0071:EN:HTML>

<sup>228</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:EN:PDF>

<sup>229</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:375:0012:0018:EN:PDF>

<sup>230</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0086:EN:HTML>

<sup>231</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0109:EN:HTML>



- Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities<sup>232</sup>.

The transposition of some articles and guidelines was also partly taken from the following European Directives:

- Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third country nationals for the purposes of highly qualified employment, the Blue card directive<sup>233</sup>
- Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third country nationals<sup>234</sup>
- Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals<sup>235</sup>.

### ***3.2 Debates, both at political level and within wider society***

The proposal, presented by the European Commission, for a Directive of the European Parliament and the Council establishing common standards and procedures in Member States for returning illegally staying third country nationals<sup>236</sup>, the so-called ‘return directive’, was the subject to an intense political debate in Luxembourg.

The initiation of the debate came from six non governmental organisations<sup>237</sup> who challenged the public and policymakers in late April 2008 about the proposed Directive.

The government supported the compromise on the project at the Justice and Home Affairs Council meeting of 5 June 2008.

Three members of the European Parliament representing Luxembourg voted for the approval of the proposal and three voted against.

<sup>232</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0081:EN:HTML>

<sup>233</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:155:0017:0029:en:PDF>

<sup>234</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>

<sup>235</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:168:0024:0032:EN:PDF>

<sup>236</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005PC0391:EN:HTML>

<sup>237</sup> “Action des Chrétiens pour l’Abolition de la Torture” (ACAT), “Association de soutien au Travailleurs immigrés” (ASTI), Caritas, “Comité de Liaison et d’Action des étrangers” (CLAE), “Comité luxembourgeois pour une Paix Juste au Proche-Orient” (CPJPO) and SeSoPi



## Annex – Methodology, terms and definitions

### *AI.1 Methodology*

Covering the reference period from 1 January to 31 December 2008, this first national report provided an overview of the legal situation, policy developments and public debates in Luxembourg. The findings of this report will be used by the Commission for the production of a Synthesis Report, which will be accessible on the website of the European Migration Network (EMN)<sup>238</sup>.

The target group of the Policy Reports are policy makers on national and European levels as well academics and other stakeholders working in the field of migration. Based on a common template developed by the EMN members and the European Commission, the EMN Policy Reports facilitate comparison and information exchange with other European Union Member States.

Chapter 1 introduces the general structure of the political system regarding governmental and non-governmental organisations which somehow are related to migration and asylum matters. It gives also an overview of the general political and institutional developments in 2008.

Chapter 2 focuses on the political and legal developments and important political debates on migration, integration and asylum.

In Chapter 3 the implementation and interpretation of EU law in the field of asylum and migration are summarised.

The main sources of information used were:

- Information and support from the national experts;
- Follow-up of parliamentary debates, parliamentary questions and press documents;
- Systematic consultation of all press articles published in 2008 in the field of asylum, migration, integration;
- Consultation of opinions and positions from NGOs;
- Reference documents (e.g. Mediator report);
- Reports and websites of national ministries;
- Contacts with national organisations working on migration and asylum.

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<sup>238</sup> <http://emn.sarenet.es>

## *AI.2 Key Terms and Definitions*<sup>239</sup>

**Application for International Protection** - In the EU context, this means a request made by a third country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of Directive 2004/83/EC (Qualification Directive), that can be applied for separately.

Narrower Term: Application for Asylum

**Asylum (Right of)** - The right of the State, in virtue of its territorial sovereignty and in the exercise of its discretion, to allow a non-national to enter and reside, and to resist the exercise of jurisdiction by any State over that individual.

**Border crossing** – Means the physical act of crossing a Border either at a Border Crossing Point or another point along the border

**Citizenship** - Means the particular legal bond between an individual and his or her State, acquired by birth or naturalisation, whether by declaration, choice, marriage or other means according to national legislation.

**Country of Origin** - The country (or countries) which are a source of migratory flows and of which a migrant may have citizenship. In refugee context, from Directive 2004/83/EC, this means the country (or countries) of nationality or, for stateless persons, of former habitual residence.

**Detention** - Restriction on freedom of movement through confinement that is ordered by an administrative or judicial authority(ies) in order that another procedure may be implemented.

In an EU asylum context, this means confinement of an asylum applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement. This may occur during any stage of or throughout the asylum process, from the time an initial application is made up to the point of removal of an unsuccessful asylum applicant.

In an EU Return context, Member States may only detain or keep in a detention facility a third country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when: (a) there is a risk of absconding; or (b) the third country national concerned avoids or hampers the preparation of return or the removal process. Any detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence.

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<sup>239</sup> More information about Terms and Definitions used in the report can be found in the European and Migration Network Asylum and Migration Glossary, <http://emn.sarenet.es/html/index.html>

**Discrimination** – Is used on both senses:

- Indirect discrimination: occurs where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary;
- Racial discrimination: as defined in international law is "any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." Discrimination is prohibited by international law.

**Emigration** - In EU context, means the action by which a person, having previously been usually resident in the territory of a Member State, ceases to have his or her usual residence in that Member State for a period that is, or is expected to be, of at least twelve months.

**Expulsion** - This refers to the removal of:

- a) a third country national subject to an Expulsion Decision based on a serious and present threat to public order or to national security and safety, taken in the following cases:
  - conviction of a third country national by the issuing Member State for an offence punishable by a penalty involving deprivation of liberty of at least one year;
  - the existence of serious grounds for believing that a third country national has committed serious criminal offences or the existence of solid evidence of his intention to commit such offences within the territory of a Member State.
- b) a third country national subject to an Expulsion Decision based on failure to comply with national rules on the entry or residence of aliens.

**Family Reunification** - This refers to the establishment of a family relationship which is either:

- a) the entry into and residence in a Member State, in accordance with Council Directive 2003/86/EC, by family members of a third country national residing lawfully in that Member State ("sponsor") in order to preserve the family unit, whether the family relationship arose before or after the entry of the sponsor; or
- b) between an EU national and third country national established outside the EU who then subsequently enters to the EU.

Synonym: Family Reunion

**Foreigner** – In EU-context: a person who is not a national of a Member State of the European Communities.

Synonym: Alien, non-citizen, non-national

**Immigrant** - In EU context, means a person undertaking an immigration.

**Immigration** - In EU context, means the action by which a person establishes his or her usual residence in the territory of a Member State for a period that is, or is expected to be, of at least twelve months, having previously been usually resident in another Member State or a third country.

**Integration** - In EU context, integration is a dynamic, two-way process of mutual accommodation by all immigrants and residents of Member States (CBP1). The promotion of fundamental rights, non discrimination and equal opportunities for all are key integration issues. At EU level, integration policy is developed within the framework of Common Basic Principles - CBP (of which the previous broad definition is one).

**Migration** - In EU context, migration is a broader-term of an immigration and emigration, i.e. the action by which a person either:

- a) establishes his or her usual residence in the territory of a Member State for a period that is, or is expected to be, of at least twelve months, having previously been usually resident in another Member State or a third country; or
- b) having previously been usually resident in the territory of a Member State, ceases to have his or her usual residence in that Member State for a period that is, or is expected to be, of at least twelve months.

**Minor** - Person who, according to the law of their respective country, are under the age of majority, i.e. are not yet entitled to exercise specific civil and political rights.

**Nationality** - Means the legal bond between a person and a State and does not indicate the person's ethnic origin.

Synonym: Citizenship

**Naturalisation** - Any mode of acquisition after birth of a nationality not previously held by the target person that requires an application by this person or his/her legal agent as well as an act of granting nationality by a public authority. This definition does not include automatic acquisition that is not initiated by the individual concerned or his/her legal agent (even in cases where the individual has an option to decline this attribution of nationality) or acquisition of nationality based on a unilateral act by the target person (e.g. acquisition by declaration or option).

**Reception Centre** - Means any place used for the collective housing of asylum applicants

**Refugee** - According to the Geneva Convention, a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned before, is unable or, owing to such fear, unwilling to return to it.

Within an EU context, this refers specifically to a third country national or stateless person within the meaning of article 1A (above) of the Geneva Convention and authorised to reside as such on the territory of a Member State and to whom article 12 (Exclusion) of directive 2004/83/EC does not apply.

**Regularisation** - In EU context, means any state procedure by which illegally-staying third country nationals are awarded a legal status.

Synonym: Legalisation

**Removal** - Means the enforcement of the obligation to return, namely the physical transportation out of the country.

Synonym: Deportation (not preferred term to use)

Broader Term: Forced Return

Narrower Terms: Expulsion, Removal Order

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

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

**Return** - Broadly, this refers to the movement of a person returning to his/her country of origin, country of nationality or habitual residence usually after spending a significant period of time (i.e. excluding holiday visits, business meetings and typically considered to be for a period of time of more than three months) in another country. This return may or may not be voluntary.

In the context of the Return Directive (2008/115/EC), this means the process of going back - whether in voluntary compliance with an obligation to return, or enforced - to:

- one's country of origin; or
- a country of transit in accordance with Community or bilateral readmission agreements or other arrangements; or
- another third country, to which the third country national concerned voluntarily decides to return and in which he/she will be accepted.

Synonym: Return Migration

**Return (Forced)** - Defined as “the compulsory return of an individual to the country of origin, transit or third country (country of return), on the basis of an administrative or judicial act.

**Return (Voluntary)** - Defined as the assisted (in which case it would be Assisted Voluntary Return) or independent return to the country of origin, transit or third country, based on the free will of the returnee.

**Third Country** - A country or territory other than one within the European Union.

**Third Country National** - Means any person who is not a citizen of the Union within the meaning of article 17(1) of the Treaty, including stateless persons.

**Visa** - Means the authorisation or decision of a Member State required for transit or entry for an intended stay in that Member State or in several Member States.

### ***A 1.3 List of Abbreviations:***

AIPs – Applicants for international protection

ADEM – Employment Administration Agency

ADR - Alternative Democratic Reform Party, ‘*Alternativ Demokratesch Reformparte*’

ALEBA - Luxembourg Association of Bank Employees and Insurance, ‘*Association Luxembourgeoise des Employés de Banque et Assurance*’

AOT - Temporary work permit, ‘*Autorisation d’occupation temporaire*’

ASP - Residence permit for humanitarian reasons, ‘*Autorisations de séjour provisoires pour raisons humanitaires*’

ASTI - Association for the support of immigrant workers, ‘*Association de soutien aux travailleurs immigrés*’

CAI - Welcome and Integration Contract, ‘*Contrat d’accueil et d’intégration*’

CASNA - Reception Desk for Newly-Arrived Pupils, ‘*Cellule d’Accueil Scolaire pour élèves Nouveaux Arrivants*’

CCDH - Consultative Commission for Human Rights, ‘*Commission consultative des Droits de l’Homme*’

CCTS - Advisory Committee for Employees, '*Commission consultatives pour travailleurs salariés*'

CES - Economic and Social Council, '*Conseil économique et social*'

CET - Luxembourg's Equality Body, '*Centre pour l'égalité de traitement*'

CGE - Government's Commissioner for Foreigners, '*Commissariat du Gouvernement aux étrangers*'

CLAE - Committee of foreigners' liaison and action, '*Comité de liaison et d'action des étrangers*'

CGFP - General Confederation of Civil Servants, '*Confédération générale de la fonction publique*'

CSV - Christian Social Party, '*Parti chrétien social*'

DP - Democratic Party, '*Parti démocratique*'

ERF - European Refugee Fund

EU - European Union

LSAP - Luxembourg Socialist Workers' Party, '*Parti ouvrier socialiste luxembourgeois*'

FGFC – General Federation of Municipal Service, '*Fédération générale de la fonction communale*'

IOM – International Organisation for Migration

LCGB - Luxembourg Confederation of Christian Trade Unions, '*Lëtzebuenger Chrëschtliche Gewerkschaftsbond*'

NGOs – Non Governmental Organisations

OLAI - Luxembourg Agency for Reception and Integration, '*Office luxembourgeois de l'accueil et de l'intégration*'

ORK - Luxembourg committee for the rights of children, '*Ombudskomitee fir d'Rechter vum Kand*'

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- Zeitung vum Lëtzebuerger Vollek
- Le Quotidien
- Woxx
- Lëtzebuerger Land
- Contacto
- Correio

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Association Luxembourgeoise des Employés de Banque et Assurance

<http://www.aleba.lu/>

Association de soutien aux travailleurs immigrés

<http://www.asti.lu/>

Caritas Luxembourg

<http://www.caritas.lu/>

Centre pour l'égalité de traitement

<http://www.cet.lu/en/CET/Praesentation>

Chambre des salariés Luxembourg

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Comité de Liaison des Associations d'Étrangers

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[http://www.men.public.lu/ministere/annuaire\\_interne/scolari\\_enfant\\_etranger/index.html](http://www.men.public.lu/ministere/annuaire_interne/scolari_enfant_etranger/index.html)

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Loi du 22 février 1968 sur la nationalité luxembourgeoise

<http://www.legilux.public.lu/leg/a/archives/1968/0007/a007.pdf#page=3>

Loi du 28 mars 1972 concernant, l'entrée et le séjour des étrangers, le contrôle médical des étrangers, l'emploi de la main-d'oeuvre étrangère

<http://www.legilux.public.lu/leg/a/archives/1972/0024/a024.pdf#page=2>

Règlement grand-ducal du 12 mai 1972 déterminant les mesures applicables pour l'emploi des travailleurs étrangers sur le territoire du Grand-Duché de Luxembourg

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Loi du 26 juillet 1975 autorisant le Gouvernement à prendre des mesures destinées à prévenir des licenciements pour des causes conjoncturelles et à assurer le maintien de l'emploi

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<http://www.legilux.public.lu/leg/a/archives/1978/0009/a009.pdf#page=2>

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<http://www.legilux.public.lu/leg/a/archives/1986/0064/a064.pdf#page=2>

Règlement grand-ducal du 5 août 1989 fixant l'organisation et le fonctionnement des commissions consultatives communales pour étrangers

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<http://www.legilux.public.lu/leg/a/archives/2004/0119/a119.pdf#page=2>

Loi du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection

<http://www.legilux.public.lu/leg/a/archives/2006/0078/a078.pdf#page=2>

Règlement grand-ducal du 1er septembre 2006 fixant les conditions et les modalités d'octroi d'une aide sociale aux demandeurs de protection internationale.

<http://www.legilux.public.lu/leg/a/archives/2006/0171/a171.pdf>

Règlement grand-ducal du 21 juillet 2006 déterminant les conditions dans lesquelles les demandeurs de protection internationale ont accès à la formation  
<http://www.legilux.public.lu/leg/a/archives/2006/0131/a131.pdf>

Loi du 28 novembre 2006, égalité de traitement  
<http://www.legilux.public.lu/leg/a/archives/2006/0207/a207.pdf>

Règlement grand-ducal du 21 décembre 2007 fixant une liste de pays d'origine sûrs au sens de la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection  
<http://www.legilux.public.lu/leg/a/archives/2007/0245/a245.pdf>

Loi du 31 mars 2008 portant création d'un article 32bis nouveau de la Constitution  
<http://www.legilux.public.lu/leg/a/archives/2008/0037/a037.pdf>

Loi du 13 mai 2008 portant introduction d'un statut unique pour les salariés du secteur privé  
<http://www.legilux.public.lu/leg/a/archives/2008/0060/a060.pdf#page=2>

Loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration  
<http://www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf#page=2>

Règlement grand-ducal du 5 septembre 2008 relatif à la composition et au fonctionnement 1. de la commission consultative des étrangers; 2. de la commission consultative pour travailleurs salariés; 3. de la commission consultative pour travailleurs indépendants  
<http://www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf#page=2>

Règlement grand-ducal du 26 septembre 2008 déterminant le niveau de rémunération minimal pour un travailleur hautement qualifié en exécution de la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration  
<http://www.legilux.public.lu/leg/a/archives/2008/0145/a145.pdf#page=3>

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Règlement grand-ducal du 31 octobre 2008 concernant l'organisation des cours d'instruction civique à suivre pour être admis à la naturalisation  
<http://www.legilux.public.lu/leg/a/archives/2008/0165/a165.pdf>

Règlement grand-ducal du 31 octobre 2008 concernant l'organisation des épreuves et l'attestation de la compétence de communication en langue luxembourgeoise parlée pour être admis à la naturalisation  
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Loi du 21 novembre 2008 portant création d'une Commission consultative



des Droits de l'Homme au Grand-Duché de Luxembourg

<http://www.legilux.public.lu/leg/a/archives/2008/0180/a180.pdf#page=2>

Loi du 16 décembre 2008 concernant l'accueil et l'intégration des étrangers au Grand-duché de Luxembourg

<http://www.legilux.public.lu/leg/a/archives/2008/0209/a209.pdf#page=2>

Loi du 19 décembre 2008 portant modification de la loi électorale modifiée du 18 février 2003 et de la loi du 4 février 2005 relative au référendum au niveau national

<http://www.legilux.public.lu/leg/a/archives/2008/0210/a210.pdf#page=2>

Loi du 28 mai 2009 portant création et organisation du Centre de rétention

<http://www.legilux.public.lu/leg/a/archives/2009/0119/a119.pdf#page=2>

Constitution du Grand-Duché de Luxembourg

<http://www.gouvernement.lu/gouvernement/constitution-luxembourgeoise.pdf>

### **Parliamentary documents**

Projet de loi n. 5620 sur la nationalité luxembourgeoise

<http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=5620>

Projet de loi n.5802 portant sur la libre circulation des personnes et l'immigration

<http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=5802>

Projet de loi n. 5825 concernant l'accueil et l'intégration des étrangers au Grand-Duché de Luxembourg

<http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=5825>

Proposition de loi n. 5857 sur la prostitution

[http://www.chd.lu/wps/PA\\_1\\_084AIVIMRA06I4327I10000000/FTSByteServletI mpl/?path=/export/exped/sexpdata/Mag/097/633/069362.pdf](http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletI mpl/?path=/export/exped/sexpdata/Mag/097/633/069362.pdf)

Projet de loi n. 5859 portant modification de la loi électorale

<http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=5859#>

Projet de loi 5860 relatif à la traite des êtres humains

<http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=5860>

Projet de loi n. 5874 sur l'assistance, la protection et la sécurité des victimes de la traite des êtres humains

<http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=5874>

Projet de loi portant n. 5886 introduction d'un congé linguistique

<http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=5886>

Projet de loi n. 5947 portant création et organisation du Centre de rétention et modifiant  
<http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=5947>

## **European Union legislation**

Council Regulation (EC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1971R1408:20060428:en:PDF>

Council Directive 2000/43/EC of 29 June 2000 implementing the equal treatment between persons irrespective of racial or ethnic origin

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:EN:HTML>

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation establishing a general framework for equal treatment in employment and occupation

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:EN:HTML>

Council Directive 2001/40/EC of 28 May 2001 on mutual recognition of decisions on the expulsion of third country nationals

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:149:0034:0036:EN:PDF>

Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF>

Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF>

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

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:EN:PDF>

Council Directive 2003/109/EC of 25 November 2003 concerning the status of third country nationals who are long-term residents

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0109:EN:HTML>

Council Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0038:en:NOT>

Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:166:0001:0123:EN:PDF>

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

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0081:EN:HTML>

Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>

Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:375:0012:0018:EN:PDF>

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

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32005L0071:EN:HTML>

Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>

Council Decision of 14 May 2008 establishing a European Migration Network (2008/381/EC)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:131:0007:0012:EN:PDF>

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

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>

Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third country nationals for the purposes of highly qualified employment

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

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

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:168:0024:0032:EN:PDF>