

REPORT
on the Free Movement of Workers
in Luxembourg in 2007

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Introduction

Following are the highlights of 2007:

- *Transposition of Directives*

During 2007 the Grand Duchy of Luxembourg adopted several legislative texts transposing the Community Directives that should have been adopted several years prior. In fact, in 2007 alone, Luxembourg was found against in four European Court of Justice decisions for not having timely transposed several Community directives within the prescribed time limit. Specifically, the Court's 14 June 2007 decision faulted Luxembourg for not having timely transposed Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community; the 29 November 2007 decision, for non-transposition of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents; the Court's 6 December 2007 decision, for non-transposition of Directive 2003/86/EC on the right to family reunification ; and finally, the 13 December 2007 decision against Luxembourg for non-transposition within the time limit of 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.¹ In response to these unfavorable rulings, Luxembourg adopted the following provisions:

- Grand-Ducal Regulation of 21 December 2007, modifying the Grand-Ducal Regulation of 28 March 1972, related to conditions of entry and stay of certain categories of foreigners which are the subject of international agreements² partially transposing Directive 2004/38/EC on the free movement of persons. Among other new provisions, the regulation abolishes the residence permit requirement for other European Union Member State nationals, with the exception of Romanian and Bulgarians to whom the transitory measures still apply.
- The 7 November 2007 bill on the free movement of persons and immigration³ that shall transpose several Community directives, and specifically Directive 2004/38/EC; Directive 2003/86 of 22 September 2003 on the right to family reunification; Directive 2003/109 of 25 November 2003 concerning the status of third-country nationals who are long-term residents; Directive 2004/81 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; Directive 2004/114 of 13 December 2004 on the conditions of admission of third-country national for the purpose of studies, pupil exchange, unremunerated training or voluntary service; and, Directive 2005/71 of 12 October 2005 on a specific procedure for admitting third-county nationals for the purposes of scientific research.

¹ See Arrêt de la Cour du 14 juin 2007, *Commission/Grand-Duché de Luxembourg*, case C-321/06; arrêt de la Cour du 29 novembre 2007, *Commission/Grand-Duché de Luxembourg*, case C-34/07; arrêt de la Cour du 6 décembre 2007, *Commission/Grand-Duché de Luxembourg*, case C-57/07; arrêt de la Cour du 13 décembre 2007, *Commission/Grand-Duché de Luxembourg*, case C-294/07.

² *Règlement grand-ducal du 21 décembre 2007 modifiant le règlement grand-ducal modifié du 28 mars 1972 relatif aux conditions d'entrée et de séjour de certaines catégories d'étrangers faisant l'objet de conventions internationales*, Memorial A- N° 245, p. 4541 du 31 décembre 2007.

³ *Projet de Loi portant sur la libre circulation des personnes et l'immigration du 7 novembre 2007*, N° 5802.

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- The bill to transpose Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community and modifying Chapter IV of Title I of Book IV of the Labour Code, the purpose of which is, obviously, to transpose the European directive to the extent that the directive provides for procedures for informing and consulting employees with respect to personnel policy and decisions effecting major changes in the company's organization and employment contracts. The lateness with which the bill was adopted is due to the fact that the earlier bill on the same topic was formally opposed by the Luxembourg Council of State due to the unequal treatment granted to the salaried employees of the various companies because the Government introduced the information and consultation procedure in only those companies with 50 or more employees. The earlier bill had already received negative comments from the employers' professional chambers. For these reasons, the Government decided to introduce this new bill which is still under discussion.

- Enlargement

With respect to Enlargement policy, it must be mentioned that since 1 November 2007 the Luxembourg labour market has been opened to workers from the eight new Member States entering the European Union in 2004 (Estonia, Latvia, Lithuania, Poland, the Czech Republic, Slovakia, Hungary and Slovenia). Bulgaria and Romania, however, will not yet be affected by the complete opening of the labour market and, according to a statement by the Ministry of Foreign Affairs and Immigration, they will continue to be subject to transitory measures until 2011.⁴ The Direction of Immigration of the Foreign Ministry gave some specifications to the national Ombudsman on the terms and conditions for the procedures to follow regarding access to the Luxembourg labour market by nationals of the new Member States. The Ombudsman has received several complaints in that respect. The result has been that the work permit is issued more favorably for certain sectors, under a more minimalistic and simplified procedure, without the actual abolition of the work permit requirement. Currently, the target sectors for this opening are agriculture, viticulture, and the hotel and restaurant industries. In its annual report, the Ombudsman states that for the other sectors, the procedure for obtaining a work permit would be relaxed and the waiting periods shortened according to the labour market needs. Nonetheless, a work permit must always be applied for.⁵

⁴ See http://www.gouvernement.lu/salle_presse/actualite/2007/09/20schmit_travailleurs/index.html.

⁵ *Rapport d'activité de l'Ombudsman 2006-2007*; see <http://www.ombudsman.lu/data/RA-2006.pdf>.

Chapter I

Entry, Residence, Departure, Remedies

1. ENTRY

On 21 December 2007, Luxembourg adopted a “Grand-Ducal Regulation amending the 28 March 1972 Grand-Ducal Regulation relating to conditions of entry and stay of certain categories of foreigners which are the subject of international agreements”,⁶ that transposes Directive 2004/38 of 29 April 2004. The provisions of this Regulation were part of a more general reform contained in the 31 October 2007 bill on the free movement of persons and immigration, but the lateness in approval of the bill required that the Luxembourg government approve the bill’s provisions as a regulation prior to actually passing the bill. The government’s decision to legislate on a topic as important as immigration and foreign policy, one that embodies fundamental rights, constitutionally protected as such, through Grand-Ducal regulations and not through the drafting of actual legislation has been criticized by the Chamber of Labour Representatives and Private Employees.⁷

The countries targeted by the regulation are the European Union Member States, European Economic Area Member States (the 27 European Union Member States, Iceland, Lichtenstein and Norway) and the Swiss Confederation. The regulation affects salaried employees, members of the independent professions, service providers, students, persons who are not eligible for residency under other Community law provisions and family members of the persons named above, regardless of their citizenship.

Under the regulation, family members include: the spouse, the partner duly-registered under the Law of 29 July 2004 on the legal effect of certain partnerships, direct descendants, direct descendants of the spouse or partner under 21 years of age or who are dependants of the spouse or partner, as well as direct ascendants who are dependants of the spouse or partner.

Nationals of the European Union and assimilated countries and their family members who are nationals of one of those countries have the right to enter Luxembourg upon the simple presentation of a nationally-issued piece of identification.

Third-country national family members, however, may enter Luxembourg and stay with a valid passport and the required visa, as necessary, but for only up to three months.

The first new element introduced by the new Grand-Ducal Regulation, is the abolition of the obligation for European Union citizens, nationals of assimilated countries and their family members, regardless of their nationality, to fill out an arrival declaration for a stay of less than three months.

2. RESIDENCE

For a stay longer than three months, the new “Grand-Ducal Regulation amending the 28 March 1972 Grand-Ducal Regulation relating to conditions of entry and stay of certain categories of foreigners which are the subject of international agreements”, distinguishes be-

⁶ *Journal Officiel du Grand-Duché de Luxembourg*, Memorial A, N° 245, 31 December 2007.(***)

⁷ *Avis de la Chambre des employés privés au Projet de Loi sur la libre circulation des personnes et de l’immigration*, p. 4, and *Avis de la Chambre de travail*, p. 2 ff.

See <http://www.chd.lu/fr/portail/role/lois/detail.jsp?order=descend&project=0&mode=number&page=2> .

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tween: a) EU and assimilated country nationals and their family members who are nationals of one of those countries, and b) third-country national family members.

- a) With respect to the first category, the new regulation provides for the abolition of the residence permit requirement. The residence permit is replaced by a certificate of registration that must be obtained from the competent municipal administration authority of the place of that individual's residence within three months of arrival. The competent municipal administration authority transmits the request to the Immigration Directorate of the Foreign Ministry who must immediately issue the certificate of registration (Art. 3).
- b) However, for third-country national family members, the regulation continues to require that the individual apply within three months of arrival for a family member residence permit from the competent municipal administration authority where the individual resides, for stays longer than three months. After verification of the documents provided to support the request, the competent municipal administration authority will issue a copy of the request as receipt of filing of the request. The receipt serves as a residence permit for a maximum period of six months. The residence permit is issued by the minister for a period of five years, or for as long as the planned length of stay of the individual of which they are dependants, if that planned stay is less than five years.

Another new element introduced by the 21 December 2007 regulation is the ability to acquire the right to permanent residency after an uninterrupted stay of five years. In this case as well, the regulation distinguishes between a) UE or assimilated county nationals and family members who are themselves nationals of one of those countries, b) third-country national family members.

- a) The UE or assimilated country nationals will acquire a right to permanent residency after an uninterrupted stay of five years. The family members who are themselves nationals of one of those countries have the same right to permanent residency, but they must produce all of the documentation proving that they have stayed with the family member who they have accompanied to, or come to join in, Luxembourg, under the same conditions of duration and legality (art. 6). If all the conditions specified under the regulation are fulfilled, they can apply for a permanent residence certificate.
- b) Third-country national family members also have the right to permanent residency, but they must produce proof of an uninterrupted stay in the country with the EU or assimilated country national. In this case, they must apply for permanent residency with the minister who, after verification of the documents, must issue the permanent residence card within six months of filing of the application. This card, in contrast to the residence certificate of EU and assimilated country nationals and family members from those countries, must be renewed every ten years.

3. DEPARTURE

The right of entry and stay for EU and assimilated country nationals and their family members can only be limited for reasons of public order (*ordre public*), security or health. The mere existence of criminal convictions is not automatically reason enough to restrict the freedom of movement (Art. 8).

The illnesses that can justify restriction of the freedom of movement are those established by Article 9 of the Grand-Ducal Regulation. The occurrence of an illness after three

months from the entry into the country does not justify an expulsion decision. That is also the case in the event of the expiration date of the identity card (Art. 9 of the 21 December 2007 regulation).

The decisions refusing entry into or residence in Luxembourg, and expulsion decisions for public order reasons trigger the obligation to leave the country within at least one month after the date of notification (Art. 10 of the 21 December 2007 regulation).

4. REMEDIES

There are no specific legal remedies for decisions refusing entry into or residence in Luxembourg, or expulsion decisions taken for reasons of public order, security or health by the Immigration and Foreign Affairs Minister (art. 8 by the 21 December 2007 regulation). Common law thus applies. Remedies for these types of decisions are those provided by the general procedural rules for administrative tribunals under the Law of 21 June 1999. Those types of decisions are notified by the competent administrative tribunal and must state the applicable remedies and the time within which an action must be brought. An action for annulment can be brought before the Administrative Tribunal, whose judgments are subject to appeal to the Administrative Court within the ordinary time limits and in the ordinary manner. Actions brought before the Administrative Tribunals and the Administrative Court do not have suspensive effect.

Chapter 4 of the bill on the free movement of persons and immigration on the refusal of entry procedures provides detailed provisions regarding the appeal mechanisms for refusals of entry, residence and expulsion.

The legislator's decision to include the appeal procedure provisions for an application that is refused in the same legislative text as the procedures for refusal, should be considered a very positive development. To date, the application of common law raised doubts in the minds of the adjudicator and the person concerned by the refusal regarding the correct application of principles of legal security as well as the certainty of the applicable law.

Draft legislation, circulars, etc.

On 7 November 2007 the Government introduced bill No. 5802 on the free movement of persons and immigration that would amend the Law of 28 March 1972 regulating entry, stay, medical examination and employment of the foreign work force in Luxembourg.⁸ It was urgent for Luxembourg to incorporate the European provisions on the subject under penalty of infringement proceedings. The proposed bill intends to incorporate a number of directives, among which are 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.

The text of the bill distinguishes between free movement as applied to citizens of the UE, the European Economic Area and the Swiss Confederation and their families, from the immigration policy as applied strictly to third-country nationals.⁹ Chapter 2 of the bill transposes Directive 2004/38 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 into Lux-

⁸ In 1970, the percentage of foreigners in the total population 18.4%. Since the 1970s, that percentage has increased to reach nearly 42% at the beginning of 2007.

⁹ Third-country nationals represent 5.72% of the foreign population, even with their increase in number from 9,200 in 1991 to 27,300 in 2007.

embourg law. The text introduces the following residence permit categories: salaried worker, highly qualified worker, self-employed worker, athlete, for student, pupil, intern/trainee and volunteer, researcher, and third-country national family members and long-term resident. The third-country national salaried worker may apply for the work permit himself in order to obtain a residence permit, in contrast with the current situation in which the employer files the application. However, the obligation to seek the certification from the Employment Administration as currently provided under the Law of 1972, continues to be a requirement for allowing a salaried position to be occupied by a third-country national. That administration must verify that there is no candidate with similar qualifications available on the national, or even European labour market, who could possibly occupy the position in question.

The bill also incorporates 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. It creates its own legal regime on the conditions of entry and stay of those persons. It further includes the implementation of Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research with the aim of facilitating admission of researchers into Luxembourg and relaxing the residence permit formalities.

The text also incorporates Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. Family reunification is not currently provided for in any Luxembourg legislative text. The conditions to be complied with have thus developed through administrative practice. The bill finally sets forth the conditions for obtaining a residence permit for third-country national family members.

The same holds true for Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, which is transposed by that bill. The status of long-term resident is acquired, exceptions apart, after a period of five years of legal, uninterrupted residence in Luxembourg prior to the filing of the application in question.

However, several problems arise when one examines the text of the bill. As a general matter, it is not necessarily commendable that this bill would attempt within the same legislative text to transpose into Luxembourg law several European directives that should have been transposed years ago, directives that would guarantee the fundamental rights of certain categories of individuals. The importance of these directives and the rights they protect should have dictated the transposition of each directive individually in order to avoid confusing rules that could, in practice, lead to the discriminatory and arbitrary application of the European provisions. One should also highlight the worrying question of the interaction between the standards of the Grand-Ducal Regulation of 21 December 2007, the standards of the bill in question, and the measures for carrying out the provisions referred to in the bill.

Judicial practice

One interesting incident concerning the direct application of Directive 2004/38 that, at the time the decision was issued had not yet been transposed, is the 10 October 2007 decision issued by the Administrative Tribunal,¹⁰ dealing with an appeal filed by an EU citizen from Portugal, requesting the annulment of a decision by the Ministry of Foreign Affairs and Immigration, denying a residence permit to the appellant's daughter who was a minor. The Luxembourg ministerial authority justified its denial by the fact that in reality the appellant's

¹⁰ Tribunal administratif 10 October 2007, n° 22589 du rôle. See <http://www.ja.etat.lu/22589.doc>.

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daughter apparently no longer lived in Luxembourg after 2002, the year in which she decided to study in Portugal and returned to Luxembourg to reside with her mother only during the school year vacation. In receiving the request for the decision's annulment, the Administrative Tribunal directly applied Directive 2004/38/EC invoked by the appellant who argued that among the conditions provided for by Article 7 of the directive in respect of the recognition of an EU citizen's right of residency for more than three months, the appellant's daughter fulfills that of "family member", being "a direct descendant less than twenty-one years of age or who is a dependant", Article 2, paragraph 2 c) of the directive. And in a superfluous manner, the Tribunal once again emphasized among its arguments that in reality, the directive operated to abolish the residence permit requirement for EU citizens, simply leaving to the Member State involved the right to require the citizen to register with the competent authorities.

Another Administrative Tribunal decision, that of 3 October 2007,¹¹ applied Directive 2004/38/EC, but this time dismissed an appeal filed by a French citizen requesting the annulment of a decision of the Ministry of Foreign Affairs and Immigration denying her a residence permit. The minister reasoned that because the appellant did not fall into one of the categories provided for by the Grand-Ducal Regulation of 28 March 1972, on the conditions of entry and stay of EU citizens due to the fact that she did not work and could not show proof of income equal to the minimum guaranteed income as defined in Article 3 of the Law of 26 July 1986. The appellant requested that Community law provisions, among which was Directive 2004/38/EC, be applied to her case, in light of the fact that she considered herself among the categories of individuals listed in Article 7 of the Directive, those receiving social security payments, because of a duly-certified disability for which she received payments from the French authorities, and her other financial resources (her daughter's net monthly income and a monthly allowance from her ex-husband) that allowed her to live in Luxembourg. In dismissing her appeal, the Tribunal stated that the Community law provisions subject the right to freedom of movement and to the right of residence to an individual's being employed as either a salaried or self-employed worker, and having financial resources sufficient to avoid becoming a burden on the host country's social security system, or as a student. In dismissing the appeal, the Tribunal did not take into consideration the appellant's argument that Article 7 of the directive did not define "sufficient resources" and that the income she received each month should be deemed sufficient under that article. The Tribunal's decision did not apply Community law to her situation and thereby grant her the right to legally reside in Luxembourg, because the Tribunal deemed that she had neither sufficient financial resources, nor professional employment in Luxembourg, and moreover she could not substantiate her request on the basis of being unfit to work following having been a salaried or self-employed worker in Luxembourg.

Another notable Administrative Tribunal decision is that of 3 October 2007¹² dealing with an appeal for annulment of the Minister of Foreign Affairs and Immigration's denial of entry and residence in Luxembourg of a Portuguese citizen and ordering him to leave the country because of his prior criminal record, considered a danger to public security and order. The Tribunal, deemed that Article 27 et seq. of Directive 2004/38/EC was applicable to this case and that the minister's decision limiting the right to entry and stay was contrary to Community law and to the Grand-Ducal Regulation of 28 March 1972 in light of the fact that the contested decision did not specify the extent to which the appellant represented a real

¹¹ Tribunal administratif 3 October 2007, n° 22514 du rôle. See <http://www.ja.etat.lu/22514.doc>

¹² Tribunal administratif, 3 October 2007, n° 22526 du rôle. See <http://www.ja.etat.lu/22526.doc>.

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and current threat, one sufficiently serious as to threaten the fundamental interest of Luxembourg society.

Several 2007 decisions of the Administrative Tribunal confirm the application of Directive 2004/38 and, in general, of the Community law applicable to situations regarding the free movement of workers as specified by the European Court of Justice's jurisprudence in that they affirm that an EU citizen's right of entry and residence can only be limited when the detriment the foreigner (non-Luxembourg citizen) represents to public order is exceptionally serious and could compromise a fundamental social interest of the host Member State.¹³

Miscellaneous

Just recently (15 January 2008) the Association for Support of Immigrant Employees (*Association de Soutien aux Travailleurs Immigrés*), or ASTI, filed a complaint against Luxembourg with the Commission of the European Communities for non-compliance with the regulation.¹⁴ ASTI claims that the Government did not correctly transpose several important aspects of European Directive 2004/38/EC such as the duty to apply the principle of equal treatment, the right of third-country national family members of an EU citizen to a salaried position, acquisition of permanent residency, protection against expulsion and procedural safeguards.

¹³ See also, the Administrative Tribunal decisions of 23 April 2007, n. 22246 du rôle, of 24 October 2007, n. 22767 du rôle, du 3 October 2007, n. 22526 du rôle et of 28 March 2007, n. 21628 du rôle; <http://www.ja.etat.lu/0-index.doc>.

¹⁴ See: <http://www.europaforum.public.lu/fr/actualites/2008/01/asti-plainte/plainte-asti.pdf>.

Chapter II

Access to Employment

1. EQUAL TREATMENT IN ACCESS TO EMPLOYMENT

The 4 July 2007 Grand-Ducal Regulation¹⁵ confirmed the provisions of Grand-Ducal Règlement of 31 July 2006, amending the amended Grand-Ducal Regulation of 12 May 1972, determining the measures applicable to the employment of foreign workers in Grand Duchy of Luxembourg.¹⁶

The main improvement to the legislation concerns the repeal of the work permit requirement for EU citizen workers' spouses. This means that spouses of EU citizens, whether they be themselves an EU citizen or a third-country national no longer need a work permit. Incidentally, this principle also applies to Swiss nationals or nationals of EFTA countries and to recognized refugees. It further covers the situation of a Luxembourg citizen married to a third-country national, thus putting an end to any reverse discrimination. Moreover, while the splitting of work permits into 4 categories (A-1 year, B-4 years, C-unlimited, D-trainees) has been maintained as has the general prohibition from changing one's employer, the latter constraint has been somewhat attenuated. Article 3bis now allows workers having obtained a work permit to freely change their employer and workers with a C-permit may even change profession.

As concerns access to the labour market, the entity that deals with the organisation and coordination of job offers and requests in the Employment Administration (*Administration de l'emploi*, or ADEM), is governed by a law that dates back to 1976, and has been amended several times, placing the Administration under the authority of the Minister of Labour and Employment.¹⁷ ADEM's missions are essentially to promote the optimal use of the labour force, in coordination with economic and social policy; to recruit workers abroad; to apply legislation relating to the prevention and elimination of unemployment, and to the granting of full unemployment indemnities; to organise and ensure the professional orientation of young and adult workers; to become involved in the reconversion and reemployment of the workforce; to assure the training, reeducation and professional integration of handicapped persons into the workforce; and, to assure the orientation, training, placement, reeducation and external reclassification of workers with reduced labour capacity. In an effort to develop a national employment policy, the law gives ADEM the task of collaborating with professional chambers and the professional employer and worker organisations. The law also created a National Employment Commission,¹⁸ established with the labour minister charged with advising Government on the definition and implementation of the employment policy.

¹⁵ *Règlement grand-ducal du 4 juillet 2007* modifiant le règlement grand-ducal modifié du 12 mai 1972 déterminant les mesures applicables pour l'emploi des travailleurs étrangers sur le territoire du Grand-Duché de Luxembourg, published in *Mémorial A-N°112* of 6 July 2007, p. 2052.

¹⁶ *Règlement grand-ducal du 31 juillet 2006* modifiant le règlement grand-ducal modifié du 12 mai 1972 déterminant les mesures applicables pour l'emploi des travailleurs étrangers sur le territoire du Grand-Duché de Luxembourg.
<http://www.legilux.public.lu/leg/search/resultHighlight/index.php?linkId=2&SID=c9b783b8f644c11d782531015da5c678>.

¹⁷ Loi du 21 février 1976 concernant l'organisation et le fonctionnement de l'Administration de l'Emploi et portant création d'une Commission nationale de l'Emploi, *Mémorial A- N°7* du 26 février 1976.

¹⁸ Art. 32 de la Loi du 21 février, modifié par la Loi du 12 mai 1987. *Mémorial A-N° 37* du 30 mai 1987, p. 576.

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In partnership with CEPS/INSTEAD, the state public research centre (*Centre de recherche public de l'État*), ADEM participates in the EURES network. The activities are transnational in nature, in collaboration with the employment public services (*Services Publics pour l'Emploi*, or SPE) of the 27 UE countries and cross-border workers, with the participation of the EUREX cross-border members from Lorraine (F), Saarland (D), Rheinland-Pfalz (D) and Luxembourg.

As a general matter, it must be noted that for 2007, the percentages of jobseekers according to their origin are very similar to the percentages seen in 2006 and 2005. The percentage of jobseekers from the original EU countries is 85.7% (86.9% in 2006); from the 10 new Member States 155 persons registered with ADEM, and registration has more than doubled with respect to last year, according to information from the Ministry of Labour and Employment's 2007 Activity Report. With respect to the educational level of the jobseekers, it must be pointed out that it differs depending on the citizenship: the Portuguese jobseekers are the largest category with a lower educational level (79%), followed by the Italians (nearly 52.8%). Conversely, the percentage of Belgian jobseekers with a post-secondary education is greater (41.4%).

2. LANGUAGE REQUIREMENT

The multi-linguism that characterised Luxembourg for years was legally recognised by a 1984 law.¹⁹ The law defines Luxembourgish as the national language, French as the legislative language, while French, German and Luxembourgish all have the common status of being the administrative and judicial languages. Knowledge of the three languages is one of the conditions required by private-sector employers and it allows one access to the labour market. In light of the fact that most EU citizens are likely to have an in-depth knowledge of French and/or German, the requirement of knowledge of Luxembourgish, French and German to obtain employment can engender discrimination against EU citizens who would not likely have an in-depth knowledge of the three required languages. In fact, whatever the language and required qualification, in comparison to foreign residents, Luxembourgish salaried workers have much less difficulty in using the country's three official languages.²⁰

Half of salaried workers on the labour market (48%) state that they use the Luxembourgish language, and one third (35%) state that they use French as their first language in the workplace. In the public sector, 81% of salaried employees use Luxembourgish as their main language, followed by French (12%) and German (5%). In contrast, according to a study by the Center for Population, Poverty and Socio-Economic Policy Studies (*Centre d'Etudes de Populations, de Pauvreté et de Politiques Socio-Economiques*, or CEPS) in the private sector (that to which the European institutions are connected), the two main languages are Luxembourgish and French, used by approximately 40% of salaried workers.²¹ If the analysis is done according to citizenship, private sector salaried employees, including those of the European institutions, one confirms that for 70% of Luxembourgers, the main workplace language remains Luxembourgish followed by French (23%) and German. For foreign salaried employees, however, the main workplace language is French (54%), followed by Luxembourgish, English, Portuguese, German and Italian.

¹⁹ Loi du 24 février 1984 sur le régime des langues. Memorial A-N°16, du 27 février 1984, p. 196. See <http://www.legilux.public.lu/leg/a/archives/1984/0016/1984A01961.html>.

²⁰ S. BREULHEID, A.S. GENEVOIS, C. KLEIN, La situation linguistique sur le marché du travail, *Vivre au Luxembourg*, n. 21/2006, Ed. CEPS, p. 1 et ss.

²¹ Idem.

The possibility of language discrimination is even more obvious for the families of Community civil servants, who, because of their lack of knowledge of Luxembourgish and/or German feel excluded from many cultural, social and sports activities organised in the country.

In this respect, it must be noted that in the context of the European Strategy for Employment, the Luxembourg government decided to financially support the integration efforts of foreigners through learning Luxembourgish. To that end, the Ministry of Labour and Employment was conferred budgetary credits for 2007 with the objective of organizing a Luxembourgish language course that would promote the foreigner integration policy. In 2007, the companies that requested subsidies for the organisation of courses were for the most part companies from the medical field, social service and healthcare, legal advisory, computer technology, commercial and industrial sectors. The reason for their requests was to improve the daily and professional life integration of their foreign employees. The targeted groups are mostly French, Belgian and German citizens.²²

The bill on the hosting and integration of foreigners²³ provides that the Luxembourg Office of Hosting and Integration (*Office Luxembourgeois de l'Accueil et de l'Intégration*, or OLAI) in collaboration with the Ministry of National Education and Professional Training, among the specific measures designed to organise the hosting and reception of foreigners, can, after verification of a foreigner's linguistic capabilities, offer language training, along with instruction in civics and integration, and issue a certification on that training (Art. 11).

3. RECOGNITION OF DIPLOMAS

Text(s) in force

Two pieces of legislation concerning the profession of lawyer were adopted during 2007. One law adopted on 21 June amended the Law of 10 August 1991 on the legal profession and transposed certain provisions of Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.²⁴ Additionally, the Law of 21 June 2007,²⁵ amending the Law of 13 November 2002 transposing into Luxembourg law Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate the practice of the profession of lawyer on a permanent basis in a Member State other than that in which the

²² See *Rapport d'Activité 2007* du Ministère du Travail et de l'Emploi.

²³ Projet de loi concernant l'accueil et l'intégration des étrangers au Grand-Duché de Luxembourg. Dépôt le 31/12/07.

See <http://www.chd.lu/fr/portail/role/lois/detail.jsp?order=descend&project=0&mode=number&page=2>.

²⁴ Loi du 21 juin 2007 portant modification de la loi modifiée du 10 août 1991 sur la profession d'avocat, et transposant certaines dispositions de la Directive 2003/8/CE du Conseil du 27 janvier 2003 visant à améliorer l'accès à la justice dans les affaires transfrontalières par l'établissement de règles minimales communes relatives à l'aide judiciaire accordée dans le cadre de telles affaires. Mémorial A-N° 101 du 26 juin 2007, p. 1854. See <http://www.legilux.public.lu/leg/a/archives/2007/1012606/index.html>.

²⁵ Loi du 21 juin 2007 portant modification - 1. de la loi du 13 novembre 2002 portant transposition en droit luxembourgeois de la Directive 98/5/CE du Parlement européen et du Conseil du 16 février 1998 visant à faciliter l'exercice permanent de la profession d'avocat dans un État membre autre que celui où la qualification a été acquise et portant: 1. modification de la loi modifiée du 10 août 1991 sur la profession d'avocat; 2. modification de la loi du 31 mai 1999 régissant la domiciliation des sociétés; - 2. de la loi modifiée du 29 avril 1980 réglant l'activité en prestations de service au Grand-Duché de Luxembourg, des avocats habilités à exercer leurs activités dans un autre État membre des Communautés européennes; - 3. de la loi modifiée du 31 mai 1999 régissant la domiciliation des sociétés. Mémorial A-N° 101 du 26 juin 2007, p. 1856. See <http://www.legilux.public.lu/leg/a/archives/2007/1012606/index.html>.

qualification was obtained, setting forth the rules for registration of the European lawyer with the Bar Association of the Grand Duchy of Luxembourg.

As regards the application of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, several legal texts were adopted in 2007 setting forth the criteria for accreditation and the terms for recognition of qualifications. Specifically, on 24 August 2007 a Grand-Ducal Regulation amending the 10 September 2004 Grand-Ducal Regulation setting forth the criteria for accreditation of foreign titles and degrees in law, medicine, dentistry, veterinary medicine and in pharmaceuticals; and, with a view to internship admissions for secondary education professor studies, in the social sciences, philosophy and letters as well as in the natural and physical sciences physiques et mathématiques, was adopted. The regulation also amends the minimum length of theoretical and practical studies in medicine.²⁶

In addition, the 7 June 2007 Grand-Ducal Regulation determines the studies necessary for obtaining the qualification, the terms of recognition of foreign qualifications and the conditions for the exercise of the professions of orthoptist²⁷ and psychomotor therapist.²⁸

Draft legislation, circulars, etc.

For the profession of lawyer, Luxembourg adopted a bill²⁹ transposing the provisions of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications and Council Directive 2006/100/EC of 20 November 2006 adapting certain Directives in the field of freedom of movement of persons, by reason of the accession of Bulgaria and Romania. The bill amends the Law of 10 August 1991 that, for the profession of lawyer, determines the general system of higher education qualification recognition that approves professional training for a minimum period of three years, thereby adapting it to the requirements of Directive 2005/36/EC. The bill would also complete the Law of 10 August 1991, by specifying the conditions that would authorize the Luxembourg authorities to require that an EU citizen be subject to an aptitude test under the same law and, in conformity with the Directive, upholding a substantial difference in the duration, or subjects, covered by the training for the attorney-at-law title (*avocat à la Cour*) in Luxembourg. By including the titles of Romanian and Bulgarian lawyers, the bill also aims to ensure the transposition of Directive 2006/100/EC of 20 November 2006 adapting

²⁶ Règlement grand-ducal du 24 août 2007 modifiant le règlement grand-ducal du 10 septembre 2004 fixant les critères d'homologation des titres et grades étrangers - en droit, médecine, médecine dentaire, médecine vétérinaire et en pharmacie et, en vue de l'admission au stage pour le professorat de l'enseignement secondaire, - en sciences humaines et en philosophie et lettres, - ainsi qu'en sciences naturelles et en sciences physiques et mathématiques; See <http://www.legilux.public.lu/leg/a/archives/2007/1731409/index.html> .

²⁷ Règlement grand-ducal du 7 juin 2007 déterminant pour la profession d'orthoptiste: 1. les études en vue de l'obtention du diplôme, 2. les modalités de reconnaissance des diplômes étrangers, et 3. l'exercice de la profession. See <http://www.legilux.public.lu/leg/a/archives/2007/0941806/index.html> .

²⁸ Règlement grand-ducal du 7 juin 2007 déterminant pour la profession de rééducateur en psychomotricité: 1. les études en vue de l'obtention du diplôme, 2. les modalités de reconnaissance des diplômes étrangers, et 3. l'exercice de la profession. See <http://www.legilux.public.lu/leg/a/archives/2007/0941806/index.html> .

²⁹ Projet de loi transposant, pour la profession d'avocat, les dispositions de la Directive 2005/36/CE du Parlement européen et du Conseil du 7 septembre 2005 relative à la reconnaissance des qualifications professionnelles et de la Directive 2006/100/CE du Conseil du 20 novembre 2006 portant adaptation de certaines directives dans le domaine de la libre circulation des personnes, en raison de l'adhésion de la Bulgarie et de la Roumanie. See <http://www.chd.lu/servlet/DisplayServlet?id=61358&path=/export/exped/sexdpata/Mag/029/640/062389.pdf> .

certain Directives in the field of freedom of movement of persons, by reason of the accession of Bulgaria and Romania.

Judicial practice

The application of Directive 2005/36/EC also creates problems with respect to the definition of qualifications that could be accredited, as demonstrated by the Administrative Tribunal's decision of 5 December 2007, that annuls a decision of the Secretary of State, Culture, Higher Education and Research declaring that the plaintiff's philology degree awarded by the University of Vienna could not be accredited because of the difference in the subjects taught for that diploma and the subjects required by the Law of 18 June 1969 on higher education and the accreditation of foreign higher education titles and degrees, and the 10 September 2004 Grand-Ducal Regulation setting forth the criteria for the accreditation of foreign titles and degrees.³⁰ The Tribunal admitted the appeal arguing that the 10 September 2004 Grand-Ducal Regulation did not define the subjects to be covered in that area of studies as specifically as it defined those in other areas such as medicine and law. However, a 5 December 2007 decision from the same Tribunal dismissed an appeal from that individual against the Minister of National Education and Professional Training's decision to exclude her from the admission exam ("concours") for a teaching internship in her specialization of German because her degree was not accredited, the same appeal against a non-accreditation decision to which we refer above and which had been admitted by the Tribunal.³¹

Miscellaneous (administrative practices, etc.)

Several problems resulting from the failure to apply Community law should be resolved in the next few months. One of these concerns the Commission's decision to file a complaint with the European Court of Justice against several Member States, among which is Luxembourg, for not allowing access to the profession of notary to non-Luxembourg Member State nationals. According to the Commission, that citizenship requirement is contrary to the freedom of establishment provided by Article 43 of the EC Treaty and unjustified under Article 45 of the Treaty, that provides an exception for activities associated with the exercise of public authority. Additionally, Luxembourg must provide a response to the reasoned opinion sent to it by the Commission for not having provided a legal appeal mechanism for lawyers who establish themselves in the country or provide their services here under their home-title professional title, a mechanism that is required by Directive 98/5/EC of the Parliament and Council.

³⁰ Tribunal administratif 5 décembre 2007, n° 22703 du rôle ; See <http://www.ja.etat.lu/22703.doc> .

³¹ Tribunal administratif 5 décembre 2007, n° 22704 du rôle; See <http://www.ja.etat.lu/22704.doc> .

Chapter III

Equal Treatment on the Basis of Nationality

1. WORKING CONDITIONS, SOCIAL AND TAX ADVANTAGES (DIRECT, INDIRECT DISCRIMINATION)

Text(s) in force

The legal framework is governed by the Law of 28 November 2006 that transposes Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.³² The law does not deal with unequal treatment based on one's nationality. The law's conditions regarding access to employment (as either a salaried employee or self-employed individual); access to professional orientation and training; employment and working conditions, including those for dismissal and remuneration; social welfare benefits, including social security and healthcare; employee benefits; and, education and access to goods and services, apply to all persons public and private, natural and legal, including public bodies (Art. 2). The Law established a Centre for Equal Treatment, the mission of which is to promote, analyse and supervise equal treatment. In order to carry out its mission the Centre can publish reports, issue opinions and recommendations, produce and provide information and documentation, furnish assistance to persons who consider themselves as victims of discrimination by making available a counseling and guidance service (Art. 8 et seq.).

During the course of 2007, the Parliament approved the Law of 21 December 2007 that transposes Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.³³ The law introduces the concept of "direct discrimination" and "indirect discrimination", of "harassment" and "sexual harassment" and applies to all natural and legal persons in the public and private sectors, including public bodies, that provide access to good and services and/or that provide goods and services made available to the general public.

Draft legislation, circulars, etc.

Two noteworthy bills have been put before the Chamber of Deputies:

³² Loi du 28 novembre 2006 portant 1. transposition de la directive 2000/43/CE du Conseil du 29 juin 2000 relative à la mise en œuvre du principe de l'égalité de traitement entre les personnes sans distinction de race ou d'origine ethnique; 2. transposition de la directive 2000/78/CE du Conseil du 27 novembre 2000 portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail; 3. modification du Code du travail et portant introduction dans le Livre II d'un nouveau titre V relatif à l'égalité de traitement en matière d'emploi et de travail; 4. modification des articles 454 et 455 du Code pénal; 5. modification de la loi du 12 septembre 2003 relative aux personnes handicapées.

See <http://www.legilux.public.lu/leg/a/archives/2006/0207/a207.pdf#page=2>.

³³ Loi du 21 décembre 2007 portant 1. transposition de la directive 2004/113/CE du Conseil du 13 décembre 2004 mettant en œuvre le principe de l'égalité de traitement entre les femmes et les hommes dans l'accès à des biens et services et la fourniture de biens et services.

See <http://www.legilux.public.lu/leg/a/archives/2007/2322112/index.html>.

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- The bill transposing Council Directive 76/207/EC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, as amended by Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002.³⁴ In order to take into account the Community requirements under the new directive, the Luxembourg lawmaker found it necessary to add, using this bill, definitions consistent with those in these directives, especially the definitions of “direct discrimination” and “indirect discrimination”, of “harassment” and of “sexual harassment”. Also included were certain minor amendments to the provisions on the legislation applicable to maternity leave or leave for adoption, thereby allowing the provisions of Directive 2002/73/EC to be included. The bill deals with defining the scope of the principle of equal treatment between men and women and to broaden it to all sectors, public and private, including to public bodies. Among the appeal procedures provided, it is worth noting that of giving national non-profit associations, the purpose of which is to combat discrimination, the right to file a petition with a civil or administrative tribunal on behalf or in support of a plaintiff, in order to assure the most effective victim protection, thus transposing Article 6 (3) of Directive 76/207/CEE, as amended by Directive 2002/73/EC.
- On 13 October 2006, a bill recognizing the principle of dual citizenship was introduced in the Chamber of Deputies. The aim of this bill is to permit immigrants to acquire Luxembourg citizenship without having to give up their citizenship of origin and to allow them to fully participate in Luxembourg political life.³⁵ The bill is still pending in Parliament.

2. OTHER OBSTACLES TO FREE MOVEMENT OF WORKERS

The European Commission decided on 27 June 2007 to bring Luxembourg, and other member States, before the Court of Justice on the grounds that these Member States permit only their own nationals to practise as notaries. In the view of the Commission, this nationality requirement is contrary to the freedom of establishment provided for in Article 43 of the EC Treaty and cannot be justified by reference to Article 45, which exempts activities related to the exercise of official authority.

In an answer to a parliamentary question regarding the compliance of the legislation on the notary profession with freedom of establishment, the Minister of Justice, Luc Frieden, declared that Luxembourg does not share the view of the European Commission and that the tasks delegated to notaries by the State are related to the exercise of Luxembourg’s sovereignty, thus conferring on notaries the status of public officer. It is thus fully justifiable for the Luxembourg government to maintain certain requirements for the notarial profession, such as that of Luxembourg nationality. In the Justice Minister’s opinion, this situation is a

³⁴ Projet de loi portant: 1. transposition de la directive 76/207/CEE du Conseil relative à la mise en oeuvre du principe de l’égalité de traitement entre hommes et femmes en ce qui concerne l’accès à l’emploi, à la formation et à la promotion professionnelles, et les conditions de travail telle que modifiée par la directive 2002/73/CE du Parlement Européen et du Conseil du 23 septembre 2002; 2. modification du Code du Travail; 3. modification de l’alinéa 1 de l’article 2 de la loi du 14 mars 1988 relative au congé d’accueil, 4. modification de la loi modifiée du 16 avril 1979 fixant le statut général des fonctionnaires de l’Etat. See <http://www.chd.lu/archives/ArchivesPortlet?selectedDocNum=0&secondList=&action=document> .

³⁵ Projet de loi sur la nationalité luxembourgeoise déposé le 13 octobre 2006. See <http://www.chd.lu/archives/ArchivesPortlet?selectedDocNum=21&secondList=&action=document> .

result of the general delegation of public sector authority to public officers, including notaries, to protect the public interest of the State.

3. SPECIFIC ISSUES

Cross-border workers

With respect to the cross-border workers, we must first emphasize that the mobility of workers is a significant reality in Luxembourg, as demonstrated by impressive influx of cross-border workers, mostly because of the country's geographic location. According to data from the Ministry of Work and Employment,³⁶ on 31 March 2007, the percentage of non-resident salaried workers employed domestically was 42.6% compared to 30.5% for salaried employees with Luxembourg citizenship. Among the non-resident workers, the majority come from France (50.5%), followed by the Belgian (23.4%) and German (23.4%) cross-border workers. According to data from the Ministry, non-Luxembourgish workers make up approximately 70% of the nation's employed the labour force. The developments in Luxembourg's domestic salaried employment over the last five years from 2002 to 2007 (until 31 March 2007) shows that the majority of the cross-border workers work in the real estate sector, providing rentals and services to companies (7,711), followed by the financial intermediation services sector (5139), then by the commercial sector, automobile and home appliance repair (4,094), construction (4,035), transport and communications (3,593), health and social services (2,260) and the manufacturing sector (2,035).³⁷ In contrast, the growth of salaried national residents (Luxembourgers) is concentrated in the healthcare and social services sectors (2,605) and the Administration (2,513). Also to be noted are the approval of the Law of 1 August 2007 approving the Agreement on Social Security and the additional protocol on the recovery of social security payments and contributions and return of wrongly allocated benefits, signed in Paris on 7 November 2005.³⁸ The agreement, entered into under Article 8 of Regulation No. 1408/71 (CEE) and implementing regulation No. 574/72 (CEE) on the application of social security schemes to employed persons and their families moving within the Community, contains specific provisions for, inter alia, cross-border worker family members, who can also benefit from in-kind benefits.

The biggest cross-border commuter discrimination issue is considered to be the lower wages they are paid in comparison to residents. The usual explanation is that these workers request lower salaries when starting in a job because in their home country the standard of living is lower than in Luxembourg and the salaries are also lower in those countries. However, while a Luxembourg employer's conduct in this respect is not often a clear breach of the law or of EU legislation, it does result in de facto discrimination.

The administrative practice of the employment administration ADEM (*Administration de l'Emploi*), is to keep two separate lists of unemployed persons; one for Luxembourg resi-

³⁶ Rapport d'activité 2007 du ministère du Travail et de l'Emploi. See http://www.gouvernement.lu/publications/informations_gouvernementales/rapports_activite/rapport-activite-2007/18trav/rapport.pdf.

³⁷ Rapport d'activité 2007 de l'Administration de l'Emploi (Adem), p. 4. See http://www.adem.public.lu/actualites/2008/03/rapport_annuel_2007/index.html. The Statistics Chapter of this report provides a complete picture of the situation.

³⁸ Loi du 1er août 2007 portant approbation de la Convention entre le Grand-Duché de Luxembourg et la République française sur la sécurité sociale, et du Protocole additionnel relatif au recouvrement des cotisations et contributions de sécurité sociale et à la répétition des prestations indûment versées, signés à Paris, le 7 novembre 2005. See <http://www.legilux.public.lu/leg/a/archives/2007/1451608/index.html>.

dents, and one for cross-border workers. One can witness *de facto* discrimination against the jobseekers included on both lists as residents are generally given priority treatment by the ADEM with respect to ADEM services. Thus, Luxembourg residents are more readily called upon when some employment offers are presented to jobseekers.

The relationships between Luxembourg and the neighbour states in the social security field are mainly provided by the Regulation 1408/71 which settles the principle that the frontier worker and the members of his family may obtain benefits in kind in the territory of the resident State and also in the territory of the competent State.³⁹

Nevertheless due to its specific geographical location and its small surface area (Luxembourg is one of the European countries that welcome a large number of cross-border workers from France, Belgium and Germany), Luxembourg's legislators have decided to go beyond the European text and offer the members of a cross-border worker's family the same choices as the worker would receive. In other words, members of a worker's family, when that worker and his or her family reside in Belgium, but the worker is employed in Luxembourg and affiliated with Luxembourg's health care system, may receive benefits in Belgium or in Luxembourg at the expense of one of Luxembourg's sickness funds.⁴⁰ The recent French-Luxembourg Convention on social security pursues a double aim: to reinforce the administrative collaboration between the institutions of both countries and to increase the social rights for their citizens. Cross-border migration justifies this approach. More than 50,000 cross-border workers come from France. This Convention is about sickness benefits, pensions and long-term care. Article 3 recognizes the rights of family members of a cross-border worker residing in France and working in Luxembourg. However, regulation by an international instrument would make it impossible in the future to unilaterally change a worker's status and thus would legally reinforce this right. For family members of cross-border workers residing in Luxembourg and working in France, it would create a new right. Article 4 is about sickness benefits for pensioners (including former cross-border workers) residing in France or in Luxembourg. EU Regulation 1408/71 provides that beneficiaries can only receive in-kind sickness benefits in the Member State in which they reside and that they can get medical treatment in the other Member State only if it is a "medically necessary treatment" (emergency). Article 4 includes "planned treatment" abroad, which means that pensioners will have the right to go especially for medical treatment to the other Member State. It will apply to persons, who receive two pensions, one from Luxembourg and one from France. It will also apply to their family members.

With its far-reaching legislation, Luxembourg anticipated a right that will be recognized for all European cross-border workers once the amended European coordinating Regulation 883/2004 enters into force. Indeed, the new text foresees that the members of the frontier workers' families shall have a right to seek benefits in either their State of residence or affiliation.

In addition, several Member States provide an impetus to further cooperation by increasing information to patients, contracting health care providers outside their borders or setting up collaboration projects like the "Euregio" projects.⁴¹ "Euregio" projects are a partnership of cross-border cooperation aimed at facilitating economic and social cohesion in

³⁹ For a general view of the concept of residence in the national legislation see N. KERSCHEN, Thematic Questionnaire on Residence. The case of Luxembourg. TRESS network, 24 April 2008.

⁴⁰ Loi portant approbation de la Convention entre le Grand-Duché de Luxembourg et le Royaume de Belgique sur la sécurité sociale des travailleurs frontaliers et du Protocole final, signés à Arlon, le 24 mars 1994, 6 janvier 1995, Memorial A, 13.01.1995, pp. 5-13.

⁴¹ R. Busse, Border-crossing Patients in the EU, *eurohealth*, 2002, vol. 8, n° 4, p. 20.

Europe, by favouring common action of representatives of the concerned border regions with European financial support.⁴²

In any case, there are still examples of residence clauses in the social Luxembourg's security legislation that could be contrary to the jurisprudence of the Court of Justice in case C-212/05, Hartmann, as they imply discrimination of cross-border workers. On the one hand, there is the maternity allowance ("allocation de maternité"),⁴³ which was considered compatible with Community law by the 31 May 2001 Judgment of the Court, *Ghislain Leclere and Alina Deaconescu v. Caisse nationale des prestations familiales*.⁴⁴ On the other hand, the "forfait education" established by the Law of 28 June 2002 on pensions for parents⁴⁵ who do not work at all and who take care of a child under four years, with the condition that both the parent and the child reside in Luxembourg, thus excluding cross-border workers, was considered incompatible.

Sportsmen/sportswomen

The bill of 7 November 2007 on the free movement of people creates specific residence permit categories, most notably for Sportsmen/sportswomen in an effort to respond to the demands of Luxembourg athletic federations and clubs that wish to contract third-country national Sportsmen/sportswomen. The measures contemplated by the bill would facilitate the entry and residence of Sportsmen/sportswomen, given that their residence is linked à priori to their status as Sportsmen/sportswomen. The bill provides that the Minister can grant a residence permit for a period longer than three months to a third-country national who engages exclusively in the activity of Sportsmen/sportswomen or trainer if the Sportsmen/sportswomen has entered into a contract with an accredited federation or affiliated club, provided that the contemplated remuneration is not lower than the statutory minimum wage and that the individual has health insurance coverage. When the third-country national Sportsmen/sportswomen fulfills all of those conditions, that person can obtain a Sportsmen/sportswomen residence permit, good for one year, and renewable upon request, after having presented proof that he has obtained adequate housing (Art. 54 of the bill).

There are no legal provisions concerning nationality quotas or specific treatment of foreigners on transfer fees.

Football statistics 2007

- 1) Granting of first licences to football players in Luxembourg in 2007: of a total of 2,470 new licences, 1,269 licences have been granted to foreign players and 1,201 to Luxembourg players;
- 2) Statistics of the Fortis League (first division in Luxembourg): of 224 players (14 teams, 81 players are of Luxembourg nationality and 143 are foreign.

⁴² A. Coheur, Integrating Care in the Border Regions. An Analysis of the Euregio Projects, *eurohealth*, 2001, vol. 7, n° 4, p. 10-12.

⁴³ Law of 30 of April 1980 (<http://www.secu.lu/legis/legis/FL30480.htm>).

⁴⁴ Case C-43/99, ECR 2001, I-4265.

⁴⁵ See <http://www.secu.lu/legis/legis/SL20020623.htm>.

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1) STATISTICS ON GRANTING INITIAL LICENCES BY THE FLF

Nationality	Numbers	Nationality	Numbers
Luxembourg	1201	Italy	81
Arménia	1	Kosovo	1
Austria	2	Kosovo Albania	3
Belgium	61	Macedonia	5
Bosnia	32	Malta	2
Brasil	7	Moldavia	1
Bulgaria	1	Montenegro	16
Cameroon	5	Morocco	4
Canada	3	Nigeria	2
Capo Verde	22	Paraguay	1
Comores	1	Philippines	1
Congo	3	Poland	5
Croatia	2	Portugal	662
Czech Republic	1	Romania	2
Denmark	13	Russia	3
Dominican Republic	1	Scotland	1
England	19	Senegal	2
Ex-Yugoslavia	53	Serbia	5
Finland	7	Serbia Montenegro	15
France	104	Slovakia	1
Germany	35	Spain	13
Greece	6	Sweden	10
Guinea	3	Switzerland	2
Guinea Bissau	2	Togo	1
Holland	17	Tunisia	3
Hungary	3	Turkey	1
Iceland	8	United States of America	5
India	1	Uruguay	1
Iraq	1	Unspecified	3
Ireland	3		

Total: 2,470 first licences in 2007, out of which 1,201 Luxemburgers (48.62%) and 1,269 foreign (51.38%).

STATISTICS ON NATIONALITY OF PLAYERS OF FORTIS LEAGUE ON 30/03/2008

Nationality	Numbers	Nationality	Numbers
Luxembourg	81	Guinea	2
Argentina	1	Italy	3
Belgium	10	Morocco	2
Bosnia	2	Nigeria	1
Burkina Faso	1	Poland	1
Capo Verde	7	Portugal	24
Congo	4	Serbia	1
Croatia	1	Slovenia	1
Eritrea	1	Togo	1
France	51	Turkey	1
Germany	17	Yugoslavia	11

TOTAL 224

The Maritime sector

Luxembourg adopted the 5 March 2007 Grand-Ducal Regulation transposing Directive 2005/45/EC of the European Parliament and of the Council of 7 September 2005 on the mutual recognition of seafarers' certificates issued by the Member States.⁴⁶ The recognition of a certificate or of an appropriate certificate issued by another European Union Member State is performed by a maritime commissioner who is the competent authority to issue the stamp attesting to that recognition. Under the regulation, seafarers requesting the recognition of certificates with a view to carrying out a management function must have the knowledge required by Luxembourg legislation for the function for which they seek the authorisation.

The legal provisions concerning working conditions in the maritime sector do not make a distinction between the citizenship or the residence of the maritime workers. Nevertheless, Article 132 of the Law of 9 November 1990, creating a public maritime register, as amended and completed by the Law of 17 June 1994,⁴⁷ requires residence in Luxembourg as a condition for obtaining the official certification as a manager of a maritime enterprise. Every maritime enterprise must have such a manager.⁴⁸

Researchers / artists

Nothing to report more for 2007 that had an impact on the free movement of workers.

4. RELATIONSHIP BETWEEN REGULATION 1408/71 AND ARTICLE 39 AND REGULATION 1612/68

The Luxembourg labour market attracts more and more cross-border workers from Belgium, France and Germany (123,500 in 2006). They represent 41.3% of all contracted workers. Moreover, workers from EEC Member States residing and working in Luxembourg fill 24.2% of all positions (72,500 in 2006). There were also 10.000 EC and international officials in Luxembourg in 2007. This development has a very important impact on the Luxembourg social security system. Cross-border workers have problems with in-kind sickness and family benefits; EC officials have difficulties with pension rights.

A subsequent problem is that of Luxembourg residents who work as cross-boundary workers outside of Luxembourg and who require emergency medical services in the bordering countries such as France, Belgium or Germany (E 106 for France and Germany, BL1 for Belgium). Luxembourg citizens often go to doctors in the other EU Member States, or, when there are shortages, go to hospitals in France or Germany with the authorisation of the Luxembourg authorities (E 112).

⁴⁶ Règlement grand-ducal du 5 mars 2007 transposant la directive 2005/45/CE du Parlement européen et du Conseil du 7 septembre 2005 concernant la reconnaissance mutuelle des brevets de gens de mer délivrés par les États membres et modifiant la directive 2001/25/CE, et modifiant le règlement grand-ducal du 16 novembre 2001 transposant la directive 94/58/CE du Conseil du 22 novembre 1994 concernant le niveau minimal de formation des gens de mer telle que modifiée par la directive 98/35/CE du Conseil du 25 mai 1998, Memorial A- N° 43 du 28 mars 2007, p. 789. See <http://www.legilux.public.lu/leg/a/archives/2007/0432803/index.html>

⁴⁷ Loi du 17 juin 1994 modifiant et complétant la loi du 9 novembre 1990 ayant pour objet la création d'un registre public maritime luxembourgeois (Memorial A 63 of 13 of July 1994, see <http://www.legilux.public.lu/leg/a/archives/1994/0063/a063.pdf#page=2>)

⁴⁸ Article 130 of the aforesaid law.

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While in the beginning – in any case prior to the European Court of Justice decision in *Kohll v. Decker* – Luxembourg took a protectionist approach to its social security system, at a later stage, Luxembourg sought to equip itself with the legislative tools necessary to respect Community law on the subject, especially through the use of bilateral agreements.

There is, however, a new problem emerging in Luxembourg: the refusal to issue residence permits to family members (essentially elderly ascendants) of a European citizen working in Luxembourg on the grounds that the family member does not fulfil the requirement for having “sufficient resources” under Directive 2004/38/EC. Article 1 of the Law of 28 March 1972, states that “entry and the residence in Luxembourg can be refused to a person, who does not have personal financial resources sufficient to cover the cost of travel and stay”. RGD of 28 March 1972 added that members of the European Union would have the right to reside in Luxembourg if they fulfil the double requirement of having a pension that exceeds the Luxembourg guaranteed minimum wage (“Revenu Moyen Garanti”) and that they have the right to in-kind sickness benefits. Article 10 of the RGD also states that the family member who is a pensioner and whose pension does not exceed the Luxembourg minimum wage, may produce a document proving income from a descendant to supplement his or her financial resources.

Text(s) in force

Two bilateral agreements on social security have been ratified by the Luxembourg Parliament, those with Morocco and France. The bilateral agreement with Morocco⁴⁹ is a traditional agreement providing for the principle of integrity of the applicable legislation, equal treatment, the aggregation of insurance periods, the export of benefits and the mutual assistance among the relevant administrative institutions. The agreement with France⁵⁰ applies the improvements to common legislation as provided by Community Regulation 1408/71 on the coordination of social security regimes. Additional specific provisions that reinforce administrative collaboration and create broader rights are planned. For example, pensioners’ rights to healthcare are broadened, regardless of whether they have been cross-border workers or not. Also, for the granting of a pension, the periods worked in a third country with which there is an international agreement in common will be counted; the implementation procedures of tribunals, or recovery of payments and restitution of benefits unduly conferred are specified, particularly through the use of an additional protocol.

Judicial practice

One noteworthy social welfare decision is the 16 February 2007 family welfare benefit decision of the Superior Social Insurance Council (*Conseil Supérieur des Assurances Sociales*, or C.S.A.S.), concerning the parental leave payment. The C.S.A.S. dismissed the appeal filed by the National Family Benefit Fund (*Caisse nationale des prestations familiales*) of a decision of the Social Insurance Arbitral Council (*Conseil arbitral des assurances sociales*) that

⁴⁹ Loi du 1^{er} août 2007 portant approbation de la Convention de sécurité sociale entre le Gouvernement du Grand-Duché de Luxembourg et le Gouvernement du Royaume du Maroc, signée à Luxembourg le 2 octobre 2006. V. Mémorial A-N° 146 du 17 août 2007.

⁵⁰ Loi du 1^{er} août 2007 portant approbation –de la Convention entre le Grand-Duché de Luxembourg et la République française sur la sécurité sociale et –du Protocole additionnel relatif au recouvrement des cotisations et contributions de sécurité sociale et à la répétition des prestations indûment versées, signés à Paris, le 7 novembre 2005. V. Mémorial A-N° 145 du 16 août 2007.

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recognised the right in the defending party to an indemnity for a relative to whom the Fund denied parental leave. In fact, the National Family Benefit Fund had denied the parental leave request for the reason that the requesting party's wife had already received an education benefit, she would not be working in Luxembourg and would not be registered with the Luxembourg social security in her own right, thus she could not expect to receive benefits from Luxembourg. The C.S.A.S. justified its denial by arguing that the provisions of the national law of 1999, as amended by the Law of 21 November 2002, allow each parent to benefit from parental leave provided that one of the parents did not engage in a salaried activity, that such parent take advantage of the educational benefit while the other parent could take advantage of the parental leave after the educational benefit had ended. Thus, the C.S.A.S. confirmed the European Court of Justice's jurisprudence by ruling that the person could not receive the two benefits concurrently, which was not the case in this situation.

Another noteworthy case regarding pension insurance is that concerning a request for a disability pension by an individual subject to either French or Luxembourg law for having signed up in both countries. The problem that arose was that under French law, the amount of the disability benefit is independent of the period of time for which the individual has been insured, while under Luxembourg law the amount of the disability benefit is linked to the period of time for which the individual has been insured. The Social Insurance Arbitral Council deemed that the situation at hand fell within the scope of Article 40 of Community Regulation 1408/71, and that the decision taken by the French Insurance entity, was binding on the Luxembourg entity.

Chapter IV

Employment in the Public Sector

1. ACCESS TO THE PUBLIC SECTOR

In general, one can note that despite the opening of some jobs in the public sector by the Law of 17 May 1999, following the criteria set forth in the ECJ's 2 July 1996 decision in *Commission v. Grand Duchy of Luxembourg*, the proportion of Luxembourg nationals holding civil service jobs is 99%. Only 1% of the civil servant public sector jobs are held by other EU nationals.

1.1 Legislation

No new enacted law could be identified with any consequences on the free movement of workers in the European Union.

The access of EU Member State nationals to public service posts continues to be regulated by:

- The Law of 17 May 1999⁵¹ that sets forth the following public service sectors for which the Luxembourg nationality requirement does not apply: research, teaching, healthcare, ground transportation, postal and telecommunication services, and the provision of water, gas and electricity. The law requires that a candidate prove adequate knowledge of the three administrative languages (French, Luxembourgish and German) for the post for which he or she is applying, with the exception of the posts for which one or another of those languages is not deemed necessary due to the nature or level of responsibility of those posts.
- Grand-Ducal Regulation of 5 March 2004 determining the posts in the State administrations and public establishments entailing the direct or indirect exercise of public authority, the services the aim of which is to preserve the general interest of the State, or those involving other public law legal persons.⁵² Only the Regulation determines which posts are not subject to this requirement in the teaching, postal and telecommunication sectors. The rest are all closed sectors, where only Luxembourg citizens are entitled to become civil servants. Nevertheless, the principle of free movement of workers should involve all public positions, with the exception of positions linked to national sovereignty. It must be also noted that the state is authorized to recruit every year, through the annual budget law, for motivated reasons linked to the service, foreign persons in the so-called open and closed sectors. EU citizens are recruited as employees of the state, a separate category from civil servants.

The existence of legislation does not mean that a foreigner's access to public service is respected in practice. The laws mentioned continue not to be applied, especially at the local government administration level, as we can see from a parliamentary question posed by Dep-

⁵¹ Loi du 17 mai 1999 concernant l'accès des ressortissants communautaires à la fonction publique luxembourgeoise, Memorial A-N° 62, p. 1409.

⁵² Règlement grand-ducal du 5 mars 2004 déterminant les emplois dans les administrations de l'État et les établissements publics comportant une participation directe ou indirecte à l'exercice de la puissance publique et aux fonctions qui ont pour objet la sauvegarde des intérêts généraux de l'État ou des autres personnes morales de droit public, Memorial A- N° 30, du 11 mars 2004, p. 420.

uty Jacques-Yves Henckes on 13 December 2007, to the Public Service and Interior Ministers.⁵³ From this parliamentary question, one can conclude that the State and certain local governments, in contrast to the Law of 17 May 1999 and the Grand-Ducal Regulation of 5 March 2004, continue to require Luxembourg citizenship for posts, most notably in the areas of teaching, ground transport and water, gas and electricity distribution, as well as generally for the posts referred to as local government officials. On the questioning of the abovementioned Deputy regarding the ability of EU Member State nationals with an adequate knowledge of the three administrative languages to present their candidacy for any State or local government official post in the areas provided for by the law, the questioned Ministers affirmed that they knew of no situation in which access to one of the areas defined by the law was denied to an EU Member State national outside of the exceptions set forth by the applicable legislation. They stated that it was not necessary to further specify the terms of the law either by Grand-Ducal Regulation or by ministerial circular. The Ministers, in reaffirming the Government's commitment as set forth in its 2004 statement to further open certain categories of public service posts to non-nationals, stated that a legislative reform on the topic was currently under discussion.

1.2 Nationality as condition for access to positions in the public sector

During 2007, several job announcements for State, public entity or public establishment posts, made reference among their general hiring criteria, to Luxembourg citizenship, even for posts that did not entail any direct or indirect participation in the exercise of public authority and to services the object of which was the preservation of the general interests of the State.⁵⁴ Being State recruitment efforts, the announcements in the press always include notice on the vacancies advertised for the Ministry of National Education and Vocational Training according to which "the posts are open to EU Member State nationals; for all other posts, Luxembourg citizenship is required". Thus, one can require Luxembourg citizenship for posts such as the following: swimming instructor, heating installer and fitter; nursery gardener-landscaper, cook, foreman-instructor painter, foreman-instructor cook; mechanical metal worker, locksmith, electrician, refrigeration engineer and fitter, technical training operators in chemistry, civil engineering, electronics, computer science, etc. The criteria for determining the posts reserved to Luxembourg nationals and those open to EU Member State citizens is purely formal and very restrictive toward EU Member State nationals, i.e. whether they depend from the field of the Ministry of Education, and without any material consideration of the duties of the posts.⁵⁵

In general, local government administrations do not respect the Community law criteria either and require Luxembourg citizenship for the posts of, among others, administrative operator for the Departments of Public Works and Budget Service,⁵⁶ of receptionist⁵⁷ or worker "under the status of handicapped labourer".⁵⁸

⁵³ <http://www.chd.lu/fr/portail/role/question/detail.jsp?project=7&mode=date&order=descend&page=13>.

⁵⁴ Thus, for example economist and computer engineer positions for the Financial Sector Supervisory Commission (*La Voix*, 24 mars, supplément Jobsearch, p. 7).

⁵⁵ For examples, see announcements published in *La Voix*, supplément Jobsearch, le 1 septembre (p. 3) et le 13 octobre (p. 8).

⁵⁶ *La Voix* du 24 mars, supplément Jobsearch, p. 9, commune d'Esch-sur-Alzette.

⁵⁷ *La Voix* du 28 mars, p. 53, commune de Bascharage.

⁵⁸ *La Voix* du 11 avril, p. 6, commune de Bertrange.

1.3 Language requirement

The Grand-Ducal Regulation of 5 March 2004 determines the posts in the State administrations and the public establishments for which the knowledge of one or other of the three administrative languages is not deemed necessary due to the post's nature and level of responsibility.⁵⁹ In determining the posts for which knowledge of the three languages is not necessary, the Regulation only refers to the teaching sector. There is a judicial vacuum with respect to the other sectors covered by the Law of 1999.

1.4 Recruitment procedures

In Luxembourg, Article 2 of the general statute on civil servants stemming from the modified Law of 16 April 1979, provides the qualifications necessary for recruitment.⁶⁰ One of these is to have the required diplomas and professional training. Then admission to a post depends on an examination, a *concours*. Several regulations describe how these *concours* are organized, as a function of the career in question.⁶¹ If the candidate is admitted, then a two-year training period starts. All persons admitted are then considered trainees.

2. EQUAL TREATMENT

Text(s) in force

In labour law there are no specific provisions relating to the recognition of professional advantages, apart from a right to higher indemnities for unjustified dismissal.

As far as public servants are concerned, the government is working on changing the principle of the statute which grants bonuses linked to seniority only up to 12 years of service.

There are no provisions relating to foreign acquired professional experience.

⁵⁹ Règlement grand-ducal du 5 mars 2004 déterminant les emplois dans les administrations de l'État et les établissements publics pour lesquels la connaissance de l'une ou de l'autre des trois langues administratives n'est pas reconnue nécessaire en raison de la nature et du niveau de responsabilité de ces emplois, Mémorial A- N° 30, du 11 mars 2004, p. 422.

⁶⁰ See http://www.legilux.public.lu/leg/textescoordonnes/compilation/code_administratif/VOL_3/FONCTIONNAIRES/A_STATUT_ETAT.pdf.

⁶¹ High, mid-level or low-level official.

Chapter V

Members of the Family

1. RESIDENCE RIGHTS

The Grand-Ducal Regulation of 21 December 2007 transposed Directive 2004/38/EC, establishing the conditions for entry and residence in Luxembourg for family members of EU Member State workers. The regulation and the new elements it introduced into Luxembourg law have been analysed above in Chapter I.

Concerning the Government's family reunification policy and following a parliamentary question,⁶² the Foreign Affairs and Immigration Deputy Minister confirmed that the legislation currently in force and its implementing regulations did not contain a specific provision on that subject, but that the Directorate of Immigration of the Foreign Ministry, at the instructions of the minister, applies the criteria from Directive 2003/86 of 22 September 2003 on the right to family reunification. The bill on the free movement of persons and immigration (examined in Chapter 1) with which Luxembourg transposes the Council Directive 2003/86/EC, sets forth the conditions for third-country national family members to obtain a residence permit.

2. ACCESS TO WORK

Nothing to report for 2007 that would affect the free movement of EU Member State nationals. Until the 7 November 2007 bill on the free movement of persons and immigration (see Chapter I) is voted into law, the applicable legislation is still the amended Law of 28 March 1972, and the Grand-Ducal Regulation of 28 March 1972.

3. ACCESS TO EDUCATION AND STUDY GRANT

It was found out that the principle of interdiction of any form of discrimination based on nationality as affirmed by Article 12 of the Treaty of Amsterdam has not been taken into account by the various Luxembourg institutions, among which are the University of Luxembourg and the Auguste Van Werveke-Hanno Fondation (the latter depends upon the Ministry of Culture, Higher Education and Research) that, among their conditions for granting of higher education scholarships, require that the recipient be a Luxembourg citizen.⁶³

Draft legislation, circulars, etc.

See the bill on the free movement of people and immigration examined in Chapter I.

⁶² Question parlementaire n° 2140 du 30 novembre 2007 de Monsieur le Député Felix Braz. See <http://www.chd.lu/fr/portail/role/question/detail.jsp?project=7&mode=date&order=descend&page=15>.

⁶³ See www.cedies.public.lu.

Judicial practice

An interesting case is that in which Administrative Tribunal, in its decision of 14 February 2007,⁶⁴ annulled the Minister of Foreign Affairs and Immigration's denial of a work permit to the separated, but still married, wife of an EU Member State national who held Cape Verdian citizenship. The plaintiff alleged that, among other things, the decision violated her right to free movement within the EU as guaranteed by Article 11 of the 12 May 1972 Grand-Ducal Regulation determining the applicable measures for the employment of foreign workers in Luxembourg, and by Regulation 1612/68, establishing the derivative right of the spouse of a worker benefiting from free movement to have access to any salaried position within the EU Member State within which the EU Member State worker is established, even if the spouses were to be separated. The Tribunal did not accept the governmental delegate's arguments contesting the existence of a family life between the spouses and, in view of the Court of Justice jurisprudence on the subject (CJCE 13 February 1985, *Diatta v. Land Berlin*, case 267/83, Rec. 567), affirmed that in using the word "spouse", Regulation 1612/68 refers to a relationship based on marriage and that "the conjugal link is not broken as long as it has not been formally terminated by the competent authority, this not being the case with spouses that are merely separated".⁶⁵

An 20 September 2007 Luxembourg Administrative Tribunal order dismisses an application for suspension of enforcement, filed by a Portuguese citizen and a Cape Verdian citizen, of a decision to turn back the individual, or even a decision of expulsion, underlying, in response to the second decision, the decision to place the detained individual in a temporary residence center for foreigners with irregular immigration status.⁶⁶ The two applicants asserted the existence of a marital relationship dating from 2002 and the existence of a family life as defined under Article 8 of the European Convention on Human Rights and, among other arguments, considered that the repatriation would constitute an obstacle to the Portuguese citizen's right to free movement to which she is entitled as a EU citizen. The Tribunal rejected the application for suspension of enforcement by contesting the existence of a family life and affirming that "at the current stage of the investigation into the matter, it is unclear to what extent Community law, particularly the right of EU Member State nationals and their non-EU spouses to free movement and employment in the other EU Member States, would be violated, given that Mr. ... is not the married spouse of Ms. ..., and that her right to free movement and employment in the Member State of her choice is not questioned by the contested measure".⁶⁷ This affirmation is in contrast with paragraph 2, letter b) of Article 3 of Directive 2004/38 of 29 April, that by individualising its beneficiaries, affirms the duty of the host Member State to facilitate the entry and residence of the "partner with which the EU citizen has a lasting, duly-attested relationship"⁶⁸ taking into account that, in effect, several statements attesting to the existence of a community of life as a couple and a statement of responsibility of the woman for her partner had been filed.

Also worth noting is a 5 December 2007 Luxembourg Administrative Tribunal decision dismissing an appeal for annulment of a Foreign Affairs and Immigration Minister decision denying a residence permit to a Tunisian citizen married to a French citizen, who, at the time the residence permit request was filed, held a residence permit valid until 2009. After the

⁶⁴ Tribunal administratif 14 février 2007, n° 21469 du rôle. See <http://www.ja.etat.lu/21469.doc>.

⁶⁵ P. 6 de l'arrêt précité.

⁶⁶ Tribunal administratif du 20 septembre 2007, n° 23439 du rôle.

⁶⁷ Idem.

⁶⁸ Article 3, point 2, lettre b) de la directive 2004/38/CE du Parlement européen et du Conseil du 29 avril 2004.

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residence permit application for her spouse was filed in December 2004, and prior to issuance of the permit, the French citizen had decided to be domiciled in France. The Tribunal justified its dismissal by arguing that while the appellant could at some point in time, as spouse of an EU Member State citizen, have the right to a Luxembourg residence permit, that right was a derivative right that “arises from the residence right of the EU Member State citizen spouse”,⁶⁹ such that after his spouse changed residence, the appellant no longer had any justifiable reason upon which to base his right to obtain a residence permit. Indeed, even when the Tribunal in its argument has not taken this into account, in application of the 23 September 2003 Court decision (*Secretary of State for the Home Department v. Akrich*, case 109/01, Rec. 2003), when a citizen of a first EU Member State, married to a third-country national with whom he/she lives in a second Member State, returns to the Member State of which he/she is a citizen to take up a salaried position and his/spouse, because of not having legally resided in a Member State, does not benefit from the right of free movement within the Community, the first Member State competent authorities must, in evaluating the spouse’s application to enter and reside in that country, take into account the right to the respect for family life under the meaning of Article 8 of the ECHR, from the moment the marriage is a *bona fide* marriage.⁷⁰

⁶⁹ Tribunal administratif du 5 décembre 2007, n° 22336a et 22911 du rôle, p. 5. See <http://www.ja.etat.lu/22336a.doc>.

⁷⁰ See point 61 de l’arrêt de la Cour du 23 septembre 2003, *Secretary of State for the Home Department contre Hacene Akrich*.

Chapter VI

Relevance/Influence/Follow-up of Recent Court of Justice Judgments

During 2007 there were several decisions of the European Court of Justice that found against the Luxembourg State for non-transposition of various European directives by the prescribed deadline. Specifically, the Court's 14 June 2007 decision that faulted Luxembourg for non-transposition of Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community;⁷¹ the Court's 29 November 2007 decision, finding against Luxembourg for non-transposition of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents;⁷² the Court's 6 December 2007 decision, finding against Luxembourg pour non-transposition of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification;⁷³ and the Court's 13 December 2007 decision finding against Luxembourg for non-transposition of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of the citizens of the Union and their family members to move and reside freely within the territory of the Member States.⁷⁴

To comply with its obligations, Luxembourg adopted different bills and a Grand-Ducal Regulation. On 1 January 2008, the Grand-Ducal Regulation of 21 December 2007, determining the conditions of entry and stay of certain categories of foreigners which are the subject of international agreements, partially transposing Directive 2004/38/EC entered into force. Please see Chapter I for a more detailed discussion. A 4 October 2007 bill transposes Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community, and to that end amending the Labour Code.⁷⁵ Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, Directive 2003/86/EC on the right to family reunification, and again, Directive 2004/38/EC, were transposed by a 7 November 2007 bill concerning the free movement of persons and immigration that should repeal the 28 March 1972 law currently in force.⁷⁶ For a more detailed analysis, please see Chapter I.

⁷¹ Arrêt de la Cour (septième chambre) du 14 juin 2007. *Commission/Grand-Duché de Luxembourg*; case C-321/06. See <http://curia.europa.eu>.

⁷² Arrêt de la Cour du 29 novembre 2007 (septième chambre), *Commission/Grand-Duché de Luxembourg*, case C-34/07. See <http://curia.europa.eu>.

⁷³ Arrêt de la Cour du 6 décembre 2007 (septième chambre), *Commission/Grand-Duché de Luxembourg*, case C-57/07. See <http://curia.europa.eu>.

⁷⁴ Arrêt de la Cour du 13 décembre 2007 (septième chambre), *Commission/Grand-Duché de Luxembourg*, case C-294/07. See <http://curia.europa.eu>.

⁷⁵ Projet de loi portant: 1. transposition de la directive 2002/14/CE du Parlement Européen et du Conseil établissant un cadre général relatif à l'information et la consultation des travailleurs dans la Communauté européenne; 2. modification du chapitre IV du titre premier du livre IV du code du travail. See <http://www.chd.lu/servlet/DisplayServlet?id=62124&path=/export/exped/sexpdata/Mag/034/633/063332.pdf>.

⁷⁶ Projet de loi 1) portant sur la libre circulation des personnes et l'immigration ; 2) modifiant - la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection ; - le Code du travail ; - le Code pénal ;3) abrogeant - la loi modifiée du 28 mars 1972 concernant 1. l'entrée et le séjour des étrangers ; 2. le contrôle médical des étrangers ; 3. l'emploi de la main d'oeuvre étrangère ; - la loi du 28 octobre 1920 destinée à endiguer l'affluence exagérée d'étrangers sur le territoire du Grand-Duché. See <http://www.chd.lu/fr/portail/role/lois/detail.jsp?order=descend&project=0&mode=number&page=2>.

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With regard to the Court's decisions of 18 July 2007, C-212/05, *Hartmann*, and C-213/05, *Geven*, concerning the residence requirement for the granting of the German child-raising allowance, see the analysis in Chapter III, paragraph 3, "Specific issues", in relation to a similar condition established by Luxembourg's legislation.⁷⁷

⁷⁷ See p. 22.

Chapter VII

Policies, Texts and/or Practices of a General Nature with Repercussions on the Free Movement of Workers

Within the context of the EU Enlargement process and with a view to supporting the countries still in the membership process (Croatia, Turkey and FYROM) and the western Balkan potential candidate countries (Albania, Bosnia-Herzegovina, Serbia, Montenegro and Kosovo), Luxembourg in 2007 adopted laws approving the protocols regarding some of these countries. Adopted were:

The Law of 10 April approving the agreement between the Benelux countries and Bosnia and Herzegovina regarding the return and readmission of persons with an irregular immigration status and its implementation protocol⁷⁸ that define the conditions for the return of their own citizens and the readmission of citizens from third countries and of stateless persons that do not, or no longer, fulfill the conditions for entry and residence in the countries of the two parties concerned. Article 14 of this law provides for the creation of a committee of experts charged with following the implementation of the agreement, and making suggestions or suggesting amendments or even creating or recommending measures aimed at combating illegal immigration. The committee is composed of one representative for each of Belgium, Luxembourg, the Netherlands and Bosnia-Herzegovina.

The Law of 10 April approving the agreement between the Benelux countries and the Macedonian government on the readmission of persons with irregular residency status and its implementation protocol⁷⁹ in which the conditions for readmission of its own citizens and those from a third country that do not, or no longer, comply with the conditions for entry or residence of the country in which they are currently. Article 15 of the Law also provides for the creation of a committee of experts charged with surveying the implementation of the agreement, and making suggestions or suggesting amendments to the agreement, or even creating or recommending measures aimed at combating illegal immigration. The committee is made up of three representatives for the Benelux countries and three representatives for the Macedonian government.

The Law of 1 August approving the implementation protocol for the Accord between the European Community and the Republic of Albania on the readmission of persons in irregular residence status in Albania or the Benelux countries.⁸⁰

Yet another law transposing a European directive, the Law of 21 December 2007 transposing Directive 2002/15/CEE of the European Parliament and of the Council of 11 March

⁷⁸ Loi du 10 avril 2007 portant approbation de l'Accord entre les Etats du Benelux (le Royaume de Belgique, le Grand-duché de Luxembourg, le Royaume des Pays-Bas) et la Bosnie et Herzégovine relatif à la reprise et à la réadmission des personnes en situation irrégulière (Accord de reprise et de réadmission) et de son Protocole d'application, signés à Sarajevo, le 19 juillet 2006.

See <http://www.legilux.public.lu/leg/a/archives/2007/0622004/index.html>.

⁷⁹ Loi du 10 avril 2007 portant approbation de l'Accord entre les Gouvernements des Etats du Benelux (le Royaume de Belgique, le Grand-duché de Luxembourg, le Royaume des Pays-Bas) et le Gouvernement macédonien relatif à la réadmission des personnes en séjour irrégulier (Accord de réadmission) et de son Protocole d'application, signés à Voorburg, le 30 mai 2006.

See <http://www.legilux.public.lu/leg/a/archives/2007/0612004/index.html>.

⁸⁰ Loi du 1er août 2007 portant approbation du Protocole d'application de l'Accord entre la Communauté européenne et la République d'Albanie concernant la réadmission des personnes en séjour irrégulier dans la République d'Albanie ou les Etats du Benelux (le Royaume de Belgique, le Grand-Duché de Luxembourg, le Royaume des Pays-Bas), signé à La Haye, le 9 juin 2005.

See <http://www.legilux.public.lu/leg/a/archives/2007/1441608/index.html>.

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2002 on the organisation of the working time of persons performing mobile road transport activities⁸¹ that specifically deals with road transport activities covered by the new EC regulation, No. 561/2006, of the European Parliament and of the Council of 15 March 2006 on the harmonization of certain social legislation relating to road transport. The law under analysis reinforces these dispositions by defining the working hours, the uptime, breaks, rest and night shifts of drivers. The law attempts to transpose as literally as possible the directive's provisions, taking into account the distinctiveness of the sector especially with regard to the organisation and duration of work.

⁸¹ Loi du 21 décembre 2007 portant 1. transposition de la directive 2002/15/CEE du Parlement européen et du Conseil du 12 mars 2002 relatif à l'aménagement du temps de travail des personnes exécutant des activités mobiles de transport routier; 2. modification du Code du travail.
See <http://www.legilux.public.lu/leg/a/archives/2007/2483112/index.html>.

Chapter VIII

EU Enlargement

1. INFORMATION ON TRANSITIONAL ARRANGEMENTS REGARDING MEMBER STATES WHO JOINED THE EU IN 2004

Changes in national law and practice in all EU Member States since previous national reports

Luxembourg adopted a bill transposing Directive 2005/36/EC for the profession of lawyer,⁸² the provisions of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications and Directive 2006/100/EC of 20 November 2006 adapting certain Directives in the field of freedom of movement of persons, by reason of the accession of Bulgaria and Romania. One of the goals of the bill is to assure the transposition of the Directive to include the Romanian and Bulgarian lawyer titles.

Changes in position with regard to the second phase of the transitional arrangements

On 20 September 2007, Nicolas Schmit, Minister-delegate of Foreign Affairs and Immigration, announced that the Government had decided to open all labour market sectors to workers from the eight new Member States that joined the EU in 2004 (Estonia, Latvia, Lithuania, Poland, the Czech Republic, Slovakia, Hungary and Slovenia). In fact, the government decided to completely open the labour market starting on 1 November 2007.

Following a parliamentary question from Deputy Felix Braz concerning the evaluation of the Luxembourg transitory measures limiting the free movement of the European workers of the 10 new Member States, the Minister of Foreign Affairs and Immigration claimed that during the course of the previous 12 months, certain means of adaptation with a view to providing broader access had been put into place. The minister also stated that since 1 May 2006, the work permit policy had not only provided labour sufficient to as well as those sectors with an insufficient workforce such as the agriculture, viticulture and hotel, restaurant and café (HORECA) sectors, but the policy also allowed to surface the need for collaboration with the employment administration services in those sectors as well as in the financial sector, especially with respect to highly qualified specialists.⁸³

According to information from the Minister of Foreign Affairs and Immigration, 346 work permits were issued between 1 May 2006 and the end of January 2007 to citizens from the Member States that joined the EU on 1 May 2004,⁸⁴ the majority of which were issued in

⁸² Projet de loi transposant, pour la profession d'avocat, les dispositions de la Directive 2005/36/CE du Parlement européen et du Conseil du 7 septembre 2005 relative à la reconnaissance des qualifications professionnelles et de la Directive 2006/100/CE du Conseil du 20 novembre 2006 portant adaptation de certaines directives dans le domaine de la libre circulation des personnes, en raison de l'adhésion de la Bulgarie et de la Roumanie. See <http://www.chd.lu/servlet/DisplayServlet?id=61358&path=/export/exped/sexpdata/Mag/029/640/062389.pdf>

⁸³ Question parlementaire n° 1685 du 13 avril 2007 de M. Félix Braz. See <http://www.chd.lu/servlet/ShowAttachment?mime=application%2fpdf&id=889202&fn=889202.pdf>.

⁸⁴ See Réponse du Ministre délégué aux Affaires étrangères et à l'Immigration à la question N° 1434 du 29 novembre 2006 de M. Laurent Mosar concernant l'ouverture du marché du travail luxembourgeois aux étrangers <http://www.chd.lu/archives/ArchivesPortlet?selectedDocNum=3&secondList=&action=document>.

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the company service sector (36), in the hotel and restaurant sector (20), in the financial intermediary sector (24), in the agriculture and hunting sector (19) and also for the unspecified sectors (36). The majority of the works permits were issued to Polish nationals (126), followed by Hungarian (22) and Czech Republic nationals (11).

Case Law

Of note is the Luxembourg Administrative Tribunal decision of 19 November 2007 dismissing an appeal filed by a Czech Republic national requesting the annulment of a decision by the Minister of Foreign Affairs and Immigration denying her entry and residence in Luxembourg and enjoining her to leave the country within 15 days of service of the order.⁸⁵ The Tribunal confirmed the minister's order given that, the temporary and transitory measures regarding the Czech Republic's joining the EU were still in force at the time the order being appealed was issued (22 February 2005), and that the submission of Czech workers wishing to work in Luxembourg to the work permit application procedure, as provided in the Law of 28 March 1972, could not be considered a restriction contrary to Article 49 EC.

2. INFORMATION ON TRANSITIONAL ARRANGEMENTS REGARDING MEMBER STATES WHO JOINED THE EU IN 2007

On 1 January 2007, Bulgaria and Romania joined the EU. One problem that presents itself is whether the transitory provisions were extended to the two new Member States, an issue that is not at all self-evident. According to information from the Employment Administration's (*l'Administration de l'Emploi*, or ADEM) 2007 Report, a work permit will be granted with few obstacles for certain sectors by virtue of a minimalistic and simplified procedure, without abolishing the requirement for obtaining a work permit. The sectors falling within the scope of this sectoral opening are agriculture, viticulture and the HORECA sectors. With respect to the financial sector, the same flexibility will be applied in cases where persons have specific qualifications for which there is a need unsatisfied by the labour market.

During a Citizens Forum on the opening of the labour market organised by the European Parliament Bureau of Information in Luxembourg,⁸⁶ the Minister of Foreign Affairs and Immigration, Nicolas Schmit, claimed that the Government's decision to open all Luxembourg labour market sectors to workers from the eight new EU Member States, did not concern Bulgarian and Romanian nationals, who had to wait until 2008 or possibly 2011 to gain access to the Luxembourg labour market.⁸⁷ The minister specified that, nonetheless, Bulgarians and Romanians could already come to work in the HORECA and agriculture sectors.

Luxembourg adopted the Law of 24 July 2007 transposing Council Directive 2006/109/CEE of 20 November 2006 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, by reason of the accession of Bul-

⁸⁵ Tribunal administratif 19 novembre 2007, n° 22773 du rôle. See <http://www.ja.etat.lu/22773.doc>.

⁸⁶ Forum Citoyens organisé le 15 novembre 2007 à l'Abbaye de Neumünster. See <http://www.europaforum.public.lu/fr/actualites/2007/11/ouverture-debat/index.html>.

⁸⁷ See http://www.gouvernement.lu/salle_presse/actualite/2007/09/20schmit_travailleurs/index.html.

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garia and Romania,⁸⁸ and increases the number of representatives of salaried employees in the special negotiation group formed subsequent to the accession of Bulgaria and Romania.

⁸⁸ Loi du 24 juillet 2007 portant 1. transposition de la directive 2006/109/CEE du Conseil du 20 novembre 2006 portant adaptation de la directive 94/45/CE concernant l'institution d'un comité d'entreprise européen ou d'une procédure dans les entreprises de dimension communautaire et les groupes d'entreprises de dimension communautaire en vue d'informer et de consulter les travailleurs, en raison de l'adhésion de la Bulgarie et de la Roumanie; 2. modification du Code du travail.
See <http://www.legilux.public.lu/leg/a/archives/2007/1411408/index.html>.

Chapter IX Statistics

In 2007, the foreigner service of the Immigration Directorate issued 8.118 residence permits (including renewals) to third-country nationals, 26.963 residence permits (including renewals) to EU Member State citizens and their family members, and 2.473 special identity cards to UE officials.⁸⁹

The proportion of job applicants as a function of their nationality for 2007 is essentially very close to those observed in 2005 and 2006. The percentage of job applicants from the EU of 15 is 85,7% (86,9% in 2006). Also, 155 persons registered with the ADEM are from one of the new Member States. As one can see from the tables below, this figure represents a greater than two-fold increase in comparison with last year.

(A) Statistics on salaried employees working in Luxembourg⁹⁰

Luxembourg salaried employees according to NACE code and country of residence as at 31 March 2007				
	Residents		Cross-border	Total Salaried
	Lux.	Fgn.		
A Agriculture, hunting, forestry	560	644	455	1 659
B Fishing, aquaculture	1	2	1	4
C Extractives industries	86	90	144	320
D Manufacturing	8 323	6 114	19 635	34 072
E Production and distribution of electricity, gas and water	932	84	87	1 103
F Construction	3 306	14 353	16 620	34 279
G Commerce, automobile and household article repair	9 786	9 976	19 577	39 339
H Hotels and restaurants	1 349	6 902	4 416	12 667
I Transportation and communications	9 064	6 198	12 857	28 119
J Financial intermediation services	9 083	10 807	19 616	39 506
K Real estate, rental and services to companies	6 096	13 477	26 828	46 401
L Public administration	31 830	2 955	1 030	35 815
M Education	778	619	495	1 892
N Health and social welfare	9 900	4 837	6 665	21 402
O Collective and individual social services	2 932	2 384	2 568	7 884
P Domestiques services	526	3 323	472	4 321
Q Extra- territorial activities	69	350	166	585
Unspecified	462	739	1 112	2 313
TOTAL	95 083	83 854	132 744	311 681

Source : IGSS Doc. A. Tibesar - Cellule EURES de l'ADEM

⁸⁹ See http://www.gouvernement.lu/salle_presse/actualite/2008/04-avril/15-schmit/index.html.

⁹⁰ *Rapport annuel de l'Adem 2007.*

See http://www.adem.public.lu/actualites/2008/03/rapport_annuel_2007/index.html.

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*(B) Workers from EEC countries seeking employment in Luxembourg*⁹¹

Country	2001	2002	2003	2004	2005	2006	2007
Germany	8	16	19	21	11	3	5
Austria	2	4	1	3	0	4	2
Belgium	12	13	8	15	12	17	11
Denmark	9	10	6	7	9	6	4
Spain	2	0	6	2	2	2	2
Finland	0	3	0	1	0	3	0
France	8	16	21	14	21	22	19
Great Britain	0	1	0	0	1	1	1
Greece	0	0	0	0	0	0	0
Italy	0	0	0	0	0	0	0
Ireland	0	0	0	0	0	0	1
Island	0	0	1	0	0	0	1
Norway	0	0	0	0	0	1	0
Netherlands	0	1	2	0	1	0	1
Portugal	1	3	4	5	11	7	7
Sweden	4	1	1	6	1	0	0
Switzerland				1	2	3	1
Malta							0
Total	46	68	69	75	71	69	55

⁹¹ *Idem*, p. 108.

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(C) Job seekers by nationality

	31 December 2007		31 December 2006		31 December 2005	
TOTAL European Union of 27	8570	87,30%	9029	87,60%	8557	87,90%
EU of 15	8415	85,70%	8958	86,90%	8498	87,30%
Luxembourg	3389	34,60%	3632	35,20%	3382	34,70%
Portugal	3017	30,80%	3121	30,30%	2829	29,10%
France	706	7,20%	802	7,80%	821	8,40%
Italy	439	4,50%	489	4,70%	463	4,80%
Belgium	336	3,40%	406	3,90%	452	4,60%
Germany	271	2,70%	272	2,60%	267	2,70%
Netherlands	86	0,90%	81	0,80%	93	1,00%
Spain	72	0,70%	50	0,50%	59	0,60%
United Kingdom	32	0,30%	43	0,40%	62	0,60%
Greece	29	0,30%	23	0,20%	22	0,20%
Austria	10	0,10%	11	0,10%	11	0,10%
Denmark	9	0,10%	11	0,10%	14	0,20%
Sweden	9	0,10%	8	0,10%	9	0,10%
Ireland	6	0,00%	3	0,00%	9	0,10%
Finland	4	0,00%	6	0,10%	5	0,10%
New Member States (10)	155	1,60%	71	0,70%	59	0,60%
Poland	57	0,60%	42	0,40%	34	0,40%
Romania	36	0,40%	-	-	-	-
Hungary	18	0,20%	9	0,10%	9	0,10%
Slovakia	14	0,20%	6	0,10%	2	0,00%
Bulgaria	12	0,10%	-	-	-	-
Slovenia	7	0,10%	3	0,00%	3	0,00%
Czech Republic	4	0,00%	3	0,00%	6	0,10%
Estonia	3	0,00%	4	0,00%	2	0,00%
Lithuania	3	0,00%	1	0,00%	3	0,00%
Latvia	1	0,00%	3	0,00%	0	0,00%
OTHER COUNTRIES	1245	12,70%	1281	12,40%	1180	12,10%
TOTAL	9815	100%	10310	100%	9737	100%

Source: ADEM.

(D) Work permit decisions regarding the 8 new UE Member States (2006)

	Apprentice	Exemptions	Integrations	Permit A (max. validity: 1 year)	Permit B (validity: 4 years)	Permit C (unlimited validity)	Denials	Trainees	Total
Poland	1	14	2	70	16	22	52	46	223
Slovakia		1		23	3	1	6	21	55
Czech Rep.		5		16	3	2	6	20	52
Hungary	1	2		20	1	1	6	11	42
Slovenia				5	4	1		5	15
Estonia				3			2	7	12
Latvia		1		3			1	7	12
Total	2	23	2	144	28	27	75	127	428

Source : Rapport d'activité 2006 du Ministère des Affaires Etrangères et de l'Immigration.

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(E) Employed foreign workers in Luxembourg by nationality

EU Member State	2004	2005	2006
Austria	0.3	0.4	0.4
Belgium	34.8	36.1	37.4
Cyprus	0.0	0.0	0.0
Czech Republic	0.3	0.4	0.5
Denmark	0.6	0.6	0.6
Estonia	0.0	0.0	0.0
Finland	0.1	0.1	0.2
France	66.1	69.0	72.7
Germany	26.3	28.8	31.5
Greece	0.2	0.2	0.2
Hungary	0.3	0.3	0.3
Ireland	0.5	0.5	0.5
Italy	8.5	8.5	8.5
Latvia	0.0	0.0	0.0
Lithuania	0.1	0.0	0.0
Malta	0.0	0.0	0.0
Netherlands	2.2	2.4	2.4
Poland	0.5	0.6	0.7
Portugal	36.6	37.9	39.5
Slovakia	0.4	0.5	0.5
Slovenia	0.1	0.0	0.0
Spain	1.3	1.3	1.3
Sweden	0.4	0.4	0.5
United Kingdom	1.7	1.7	1.9

Source : *Annuaire statistique 2007* Statec.

(F) Cross-border workers employed in the Grand Duchy of Luxembourg by residence and nationality

Residence of cross-border workers	2004	2005	2006
Belgium	30.8	32.2	33.7
France	59.2	62.0	65.5
Germany	24.4	27.0	29.8
Cross-border worker nationalities			
Belgian	27.9	29.3	30.6
French	56.3	58.9	62.1
German	22.7	25.1	27.6
Italian	2.0	2.0	2.1
Other	5.4	5.9	6.7

Source : *Annuaire statistique 2007* Statec

Chapter X Miscellaneous

List of Internet sites

Legislation

- Government: <http://www.legilux.public.lu>; <http://www.gouvernement.lu/>
- Council of State: <http://www.ce.etat.lu/>
- Chamber of Deputies: <http://chd.lu/>

Court judgments

- Administrative courts: <http://www.jurad.etat.lu/>

Organes administratifs

- <http://www.ombudsman.lu/>
- <http://www.adem.public.lu/>

Reports

- Rapport d'activité de l'Ombudsman 2006-2007: http://www.ombudsman.lu/frameset_f/index.htm
- Rapport General sur la Sécurité Sociale au Grand-Duché de Luxembourg, 2006, Décembre 2007: <http://www.mss.public.lu/>
- Rapport sur la politique européenne du gouvernement 2006-2007: <http://www.mae.lu/>
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- J. LANGERS, Nationaux et étrangers résident au Luxembourg: analyse statistique de quelques différences socio-démographiques, *Revue Economie et Statistique*, n. 2/2006, Ed. Statec, p. 3 et ss.
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