



Satisfying Labour Demand through Migration

Luxembourg

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



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PREFACE

The opinions expressed in this report are those of the authors.

They do not necessarily reflect the positions of the Luxembourg Ministry of Family and Integration or the Ministry of Foreign Affairs.

The present report was produced by the Luxembourg National Contact Point within the European Migration Network (EMN) managed and coordinated by Christel Baltes-Löhr and Adolfo Sommaribas, University of Luxembourg. Members of the EMN NCP LU who were responsible for editing are: Sylvain Besch, CEFIS-Centre d' Etude et de Formation Interculturelles et Sociales (*Centre for intercultural and social study and training*); Claudia Hartmann-Hirsch, CEPS/Instead; Germaine Thill, STATEC; Sylvie Prommenschenkel, Ministry of Foreign Affairs, and Marc Hayot, Office luxembourgeois de l'accueil et de l'intégration (*Luxembourg reception and integration agency*), Ministry of Family and Integration.

SUMMARY

Economic immigration is considered by the European Union Member States as an important factor for resolving not only the problem of ageing of the general population of the Union but also the negative birth-rates and the lack of highly qualified labour. After the economic and financial crisis of the last three years the problem is not disappearing, even though the crisis had a direct impact on the labour markets of the Member States and on labour demand.

As a general principle, the issue of immigration is a primary competence of each Member State which has the right to regulate not only the volumes but also the forms and conditions of foreigners on the national labour market. This competence answers to its own political and economic interests. However, the European Union legislates throughout its various institutions and policies in an in-depth way on the subject with the objective of maintaining economic competitiveness and growth.

This is why the EMN decided to undertake a study on the subject in all of the Member States to analyse the phenomenon at the European level. All of the NCPs are writing this study according to the specific development criteria by EMN (NCP and the European Commission). These development criteria define the study's contextual framework, the methodology and the statistical data to be provided as well as the definitions to follow. They ensure the homogeneity of the studies undertaken by the different NCPs in order to be able to make a summary report at the European level. An exhaustive study on the national bibliography was undertaken on the subject, interviews with the economic players involved (government, unions and employers), a workshop to find out the opinion of civil society on the subject and several conferences to discuss the subject. However, in Luxembourg it was noticed that the statistical information has not yet been centralized and that it is located in different government institutions. The statistical data was incomplete and inconsistent with the international classification criteria (CITT-88). So, developing databases which fulfil the study criteria was discussed with The General Inspection of Social Affairs (IGSS) and the Employment Administration (ADEM).

With Luxembourg we observe differences compared with the adjacent countries. Being one of the smallest countries in the Union, Luxembourg has required foreign labour since the end of the 19th century, when the iron and steel industry developed on its territory. This need

arises from the shortage of as well as the lack of training of the national workforce. As a result, the development of the Luxembourg economy has been directly linked to economic migration. This phenomenon has remained constant up until now.

In addition, the establishment of the European institutions on Grand Ducal territory has not only had the effect of the migration of European civil servants and a highly qualified workforce settling in Luxembourg and in the Greater Region, to satisfy the requirements of these institutions.

However, Luxembourg, given its size and geographical position, has been able to benefit from highly particular economic migration. Given that the country is located in a very important crossroad of the Union, creating a border with the two great economic drivers of the Union (France and Germany), Luxembourg has always benefitted from a highly qualified workforce from the Greater Region. This highly qualified workforce is substantially attracted to the country for two reasons: 1) the more competitive salaries in the Luxembourg workplace; and 2) the chance to live in adjacent countries where the cost of living is lower than in Luxembourg: a situation which justifies moving borders.

So, all of these elements combined has enabled economic migration to be very particular. It is comprised of cross-border commuters, highly qualified workers, particularly those from countries of the Union. That is, Luxembourg has a "European" population, mainly cross-border commuters and with only a low proportion of migrants from third-countries - a situation in contrast with those of other Member States.

Globalization has also played an important role in the development of economic migration in the Luxembourg labour market. This has meant that the financial centre had to become highly specialised to be able to remain competitive in comparison with the other financial hubs and to retain its volume of business. To maintain its competitive advantage, Luxembourg needed highly qualified personnel that it had found up until now in the Greater Region.

The significant increase in the number of cross-border commuters in the last few decades has meant that the supply of specialised labour in the Greater Region has reduced. This situation and especially the exponential increase have been accompanied by the fact that the political

authorities have not been prepared any plans to react systematically to any labour shortage in the national labour market.

As a result, companies are obliged not only to look for highly qualified workers outside of the natural borders of the Greater Region, but also in third-countries. Labour from Luxembourg is found in general in the public sector. We can conclude that the administration in Luxembourg is managed by nationals and that its economic management is in the hands of foreigners.

Businesses, however, which need this type of highly qualified personnel, find themselves faced with structures and procedures which do not meet the flexible and dynamic requirements typical of a globalized financial centre. This could explain why the Luxembourg market does not appear to be highly attractive to this type of worker, unlike other financial centres such as Switzerland, New York, London, Bahrain, Dubai, Singapore and Hong Kong. We also detect similar problems regarding researchers in research centres.

The Government is therefore like the other economic players (employers and unions) starting to be aware of the problem of the shortage of qualified and highly qualified labour. The Government is increasingly displaying an intention to undertake concrete actions on this subject. Nevertheless, reforms remain up until now isolated and partial, without clearly responding to problems like illegal immigration, the migration of less qualified workers from third-countries, the national as well as foreign brain drain and the level of training of the Luxembourgish native population.

The results of this study may be useful for political managers to enable them to develop appropriate measures to better respond to the needs of the national and international economy, and in this way guarantee a position among the most flourishing economies of the European Union.

1. INTRODUCTION: OBJECTIVES AND METHODOLOGY

The European Migration Network – EMN¹ was established by the 2008/381/EC decision of the Council.² Its objective is to provide current, objective, reliable and comparable data on immigration and asylum. The EMN is also intended to provide information to the public in the wider sense on these issues.

By combining the gathering of information with their analysis, as in the case of this study, the EMN is contributing to produce better information and a better understanding of immigration and asylum in the European Union (EU) Member States. As the EMN's objective is to support the development of policies at the European level, these analyses must be relevant, in line with the current political initiatives or within the domains in which a lack of information has been identified and which could be the subject of new political initiatives in the future.

The EMN management committee approved the selection of the 'Satisfying Labour Demand through Migration' study in its 2010 work programme. The objective of the study is to understand the strategies developed to tackle the needs of the labour market and the shortage of labour of the Member States and to understand the effectiveness of these strategies as well as examining the impact of the recent economic crisis on these strategies.

Economic migration is considered by the Member States as a potentially important means to resolve the problems of ageing of the population in the European Union, and to be able to satisfy the increasing demand for highly qualified workers, although the economic crisis has had a major impact everywhere in the Union's territory.

If management of immigration is a skill proper to each Member State, in the sense that the latter may determine the volume of admission of immigrants to access the labour market, European policy and legislation have the particular objective of increasing the competitiveness of the Union's economy as a whole, to promote economic growth and strengthen a knowledge-based society.

This study will contribute to informing the political decision-makers about the different options for tackling the problem related to labour demand based on skills requirements over the long term and try to provide a response to the impact of the recent economic changes. In addition, the study gathers data on the effectiveness of the different strategies used in this respect.

¹ For further information on the European Migration Network, go to: <http://www.emn.europa.eu>.

² Decision of the Council of 14 May 2008 establishing a European migration network, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008D0381:FR:NOT>.

Each National Contact Point (NCP) of the EMN is undertaking a national study on this subject. This study is the contribution of the Luxembourg NCP (LU EMN NCP). National studies by other NCPs as well as the summary reports produced by them at the European level are available on the website of the EMN.

1.1. Methodology

All of the NCPs are undertaking this study according to the specific development criteria put together by the EMN (NCP and the European Commission). These criteria define the study's contextual framework, methodology, statistical data to be provided, and definitions to follow. They ensure the homogeneity of the studies undertaken by the different NCPs for the summary report at the European level.

For Luxembourg, the methodological description is quite detailed: here the reasons for which it has not been possible to respect all of the study's development criteria are explained, either because the data requested do not exist in Luxembourg, or because they are largely incomplete.

1.1.1. Interviews

The shortage of labour linked to the economic migration of third-countries is presently not discussed among Luxembourg's economic players³. So to compensate for a lack of information and statistical data, we have undertaken twelve in-depth interviews with players from the socioeconomic and political domains. The fundamental objective of this qualitative survey was to investigate the theme within the national context.

These interviews were conducted with representatives of the national authorities (4), employers' representatives (7) and union representatives (1). The reduced number of interviews is due to time constraints. We regret that we could only interview one union representative. The identity of the people interviewed remains anonymous.

The questionnaire used to carry out the interviews was developed in accordance with the

³ However, the Economic and Social Council has addressed this problem for several years now.

EMN standards (specifications) and according to the method of semi-structured interviews.⁴

1.1.2. Civil society workshop

A workshop was organised to receive the opinions of civil society. This workshop brought together eight people, namely representatives of the NGOs and Government representatives. The objective was to promote exchanges of opinion on the theme of economic migration at the national level.

A brainstorming session enabled a discussion on economic migration from the point of view of third-country nationals. The following aspects were discussed: education, regularisation of undocumented persons, the consequences of the financial crisis, the immigration policy, different factors influencing migration, the brain drain and the waste of skills. The degree of involvement of the different types of players in these discussions at the national level was also broached, as well as integration measures.

The workshop enabled subjects not publicly discussed to be raised and to create a place for exchange and informal meetings.

1.1.3. Conferences

The second national conference of the LU EMN NCP of 18 June 2010 enabled discussion of ideas for fulfilling the shortage of labour thanks to economic migration and to tackle the subject of temporary and circular migration.

The third national conference of the LU EMN NCP of 25 November 2010 was the opportunity to present the preliminary results of this study and to encourage discussion with attendees.

Lastly, these preliminary results were presented during the national conference of the FR EMN NCP on 6 December 2010 in Paris.

⁴ Flick, Uwe (2007): *Qualitative Sozialforschung*; Rowohlt-Taschenbuchverlag: Reinbek. Flick, Uwe (2004): *Triangulation*. VS Verlag für Sozialwissenschaften: Wiesbaden.

1.1.4. The statistical data

Within the framework of this study, the ISCO-88 classification (International standard classification of occupations) of the International Labour Office (ILO) is used for collecting statistical data, since it "is based on the nature of the work undertaken, the basic criteria being the level and specialisation of the skills required."⁵ The ISCO-88 code therefore enables employees to be classified by level of qualification.

Overall, it was asked to undertake an analysis of the reserve, and of the input and output of employees in Luxembourg by nationality (Luxembourgish, EU-15, EU-10, EU-2 and third-country nationals) and by level of qualification (highly qualified, qualified, low-skilled workers, researchers and seasonal workers) on 31 December of each year, from 2004 to 2009. Moreover, data was requested on the number of unfilled positions, according to the ten principal countries of origin and the main business segments. Beyond the study specifications, we also distinguished cross-border commuters in several tables due to the large portion of them among Luxembourg's paid employees.

Several difficulties were encountered at the national level with regards to the collection of statistical data.

In general, it is regrettable that, despite the abundance of the existing statistical data, it is difficult to find statistical data at the national level which corresponds to the criteria retained for this study and which would enable to guarantee the comparability of the data between the different Member States.

The IGSS data

The statistical section of this study is essentially based on data from IGSS (*General Inspection of Social Affairs*). Any paid worker in the labour force who earns remuneration must be affiliate to social security; this is why the IGSS database is the most exhaustive. It also takes into account employees who are third-country nationals without residence permits and who are registered with social security.⁶ The IGSS data corresponds to the employers' declarations. They list the employees affiliated with the Social Security body in Luxembourg according to their nationality, business segment – using the NACE [Statistical Classification of Economic Activities within the European Community] code – and profession – using the

⁵ International standard classification of occupations: ISCO-88: <http://www.ilo.org/public/english/bureau/stat/publ/isco88.htm>

⁶ Ministerial Point of View, interview 6, page 11, lines 13-20.

ISCO [International Standard Classification of Occupations] code. They also enable to obtain information on country of birth, country of residence, and employment start and end dates. They enable to establish on 31 December of each year the exact number of employees in Luxembourg and to put them together according to the following categories: UE-15,⁷ UE-10,⁸ UE-2,⁹ and third country nationals.

In this study, the category of highly qualified employees brings together groups 1 (members of executive and legislative bodies, senior executives in public administration as well as directors and senior company executives), 2 (the intellectual and scientific professions) and 3 (members of the intermediate professions) of the ISCO-88 code. The category of qualified employees is comprised of groups 4 (administrative type employees), 5 (staff from the services and shop and market vendors), 6 (farmers and workers qualified in agriculture and fishing), 7 (skilled tradesmen and workers in the skilled trade type professions) and 8 (operators of installations and machines and assembly workers). The category of low-skilled workers comprises group 9 (labourers and unqualified employees) of the ISCO-88 code.

However we must immediately note the gaps in the level of data from the IGSS. They do not enable, for example, to provide exhaustive information on the level of qualification of the people affiliated to Social Security for the entire period processed. The ISCO code was only introduced in 2004 for businesses. In 2004, only 9% of employees had an ISCO code. This proportion has since been increased, as the rule means that since 2004 all employees entering the labour market are allocated an ISCO code. In 2009, 66% of employees had an ISCO code. These incomplete data explain why a comparison over time of the level of qualification of employees proves very difficult. The data from the IGSS give information on the people declared with Social Security, but does not give any indication of the number of people authorised to work.

The NACE 1.1 code is, for its part, already more widely used in the IGSS data. In 2004, 8.2% of the employees declared to IGSS did not have a NACE 1.1 code. This was still the case for 5.8% of employees in 2009.

According to the study specifications, it was necessary to show the number of people working in certain specific CIPT categories (housekeepers and people in the catering services, caring staff and related jobs, doctors and related jobs (with the exception of qualified nurses),

⁷ EU-15 includes the following Member States: Germany, Austria, Belgium, Denmark, Spain, Finland, France, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, United Kingdom and, Sweden.

⁸ EU-10 includes the following Member States: Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Czech Republic, Slovakia, and Slovenia.

⁹ EU-2 includes the following Member States: Bulgaria and Romania.

qualified nurses and midwives, etc.) Faced with the major part of ISCO missing in the data from IGSS, the figures obtained are too low and are non-representative. Actually, the NACE code was used to put together employees according to their business segment.

In the input flows, we go from the initial reserve (the situation on 1 January 2004) comprised of people with a contract which started before 31 December 2003 and ended after 31 December 2003, to which is added annually new active employees and people with a new contract following a 6-month break since the last contract.

In the output flows, we list the people whose contract ended and who did not obtain a new contract within 6 months. Unemployed and early retirement people also generate an output.

Data from the Directorate of Immigration

According to the law of 29 August 2008 on the free movement of persons and immigration all demands for residence permits must be sent to the Directorate of Immigration. The conditions of obtaining certain residence permits have been changed, and other categories (such as researchers and highly qualified workers) were created, in such a way that it is impossible to draw conclusions relating to the evolution of these figures between 2004 and 2009. This explains the limited resort to data from the Directorate of Immigration.

Survey on the labour forces

As mentioned above, the missing data on the ISCO and NACE codes missing in the IGSS data limits the conclusions of the analysis at the level of qualification and business segment. We have therefore tried to compare the IGSS data with the data from the Labour Force Survey (LFS).

The LFS is an annual or biannual survey undertaken on a representative sample of resident employed workers in the labour market. The data corresponds to a situation auto-declared by the individuals. In Luxembourg, the LFS is conducted on some 8,500 households, namely 20,000 individuals. It is conducted in almost every Member State, which facilitated comparisons with the data on the labour market. It provides information on the structure of the population, employment, training and the search for work. This data has the advantage of providing information on the demographic, economic and social characteristics of employees, non-employed people and the inactive population. It also enables grouping together of employees into different categories (highly qualified, qualified, low-skilled and others), since

they use the ISCO code. Moreover, it provides information on the nationality of the active population, which enables the latter to be distinguished into several groups (EU-15, EU-10, EU-2, third-countries).

In the absence of exhaustive data, we are relying on the figures relating to the workforce, so as to be able to compare them with the trends observed from the IGSS data.

After several attempts, we realized that comparability between the IGSS and LFS data remains very limited. Actually, apart from the problem of harmonization of the data (the IGSS data are the results of declarations made by employers and the LFS data are based on self-declarations from insured parties, the lack of exhaustiveness of the LFS data may distort the results concerning foreigners, and especially third-country nationals, due to their low numbers in Luxembourg. Lastly, we only have LFS data for the period 2004-2008.

By way of illustration, a comparison of the IGSS and LFS data according to the different business segments (on the basis of the NACE code), enabled to identify between the two data sources, on one hand, certain identical trends, and on the other, trends which are notably opposing, in particular with regard to data on foreigners. Actually, for sectors like agriculture or public administration, they clearly appears to be dominated by nationals, whatever the data source. Even if the proportions vary from one database to the other and from one year to the other, the trends remain near-identical. On the other hand, for the other sectors, in particular transport, commerce, the banking sectors, and hotels and catering, the differences are great. We know according to the STATEC data that the financial sector is mainly dominated by cross-border commuters¹⁰. So the results obtained diverge considerably here, not only depending on the data sources but also, and for the same database, depending on the years. So, according to the LFS data, we observe from 2005 an increase in the proportion of nationals in the banking sector. On the other hand, the proportion of nationals falls from this same year when we use the IGSS data. This disparity could notably be due to the fact that the people interviewed during the LFS survey have to have a landline and it is likely that nationals are more likely to fulfil this condition than foreigners (of which a good number have fixed-term contracts).

¹⁰ According to the IGSS data in 2009 cross-border workers represented 50.8% of the total, while foreign residents 28% and national residents represented only 21.2%. See table no. 2.

The ADEM data

The interview with the Employment Agency (ADEM) displayed several limitations in the comparability and exhaustiveness of the data, particularly as regards the data on vacant and filled positions. First and foremost, the biggest gap resides in the fact that only 40% of vacant positions are declared to ADEM, as a survey by CEPS/INSTEAD observes¹¹, whereas there is a legal obligation for businesses to do so. For certain positions declared vacant, the collaboration between ADEM and the company stops at the sole administrative declaration, whereas for others, it is extended by the active involvement of ADEM in canvassing for candidates.¹² In the cases where ADEM has not contributed to the candidate's placement, it is not possible to make the connection between a position which was vacant and a position which was filled, for a number of reasons. Firstly:

- 1) Positions filled are not necessarily registered, since companies are not bound to inform ADEM of them.
- 2) The description of the vacant position and that of the filled position do not always resemble each other. So a company may recruit a person whose profile is different from the job description (for example: a company wishes to recruit a senior worker but will recruit a junior worker without ADEM being informed of it). Likewise, a business may look to recruit staff for another of its subsidiaries.
- 3) The company may not indicate the sector of the job offer.
- 4) The salary does not really enable the link to be made between a vacant position and a filled position, since it is not always notified in the job offer.

It must also be noted, that there is not, at the level of ADEM, a definition or a criterion which enable to determine a vacant unfilled position. Notwithstanding the low coverage of vacant positions declared to ADEM, companies may declare a wide range of positions to be filled for a short duration (e.g. cleaners to replace staff on summer holidays) or, conversely, leave certain offers open in order to better manage the permanent rotation of personnel which exists for certain positions.

As a result, it is not possible to provide statistical data on vacant unfilled positions which would enable an evaluation of the shortage of labour to be undertaken. On the other hand, in

¹¹ Anne-Sophie Genevois, CEPS/INSTEAD, Population & emploi n°45 (Population & work, issue 45), November 2009, "Place de l'ADEM dans les recrutements des entreprises implantées au Grand-Duché" (The position of ADEM in recruitments for companies installed in the Grand Duchy), page 3.

¹² Anne-Sophie Genevois, CEPS/INSTEAD, Population & emploi n°45 (Population & work, issue 45), November 2009, "Place de l'ADEM dans les recrutements des entreprises implantées au Grand-Duché" (The position of ADEM in recruitments for companies installed in the Grand Duchy), page 2.

appendix 3.11, for information purposes only, a summary table of the positions declared vacant according to the main business segments of companies (flow) is available for the 4th quarter of the year (October-November-December) from 2008 to 2010.

Seasonal workers

Next to the categories of highly qualified, qualified and low-skilled workers, the study specifications also require information on the categories of seasonal workers and researchers. Unfortunately, in Luxembourg, we do not have any statistical data on these categories of workers. The law of 29 August 2008 does not make provision for a specific status for the seasonal worker, whether s/he is an EU citizen or a third-country national. Its legal framework is set out in articles L.122-3, 122-4, 122-5, 122-7, 131-8, 131-11 and 211-13 of the Labour Code.¹³

The Directorate of Immigration does not have data in this domain, nor does IGSS.

Researchers

Unfortunately we cannot provide statistical data on researchers. As a matter of fact, neither the NACE code nor the ISCO code enables researchers to be identified. So they do not appear in the IGSS files. In addition, due to the legislative change made in 2008, which introduced a category of specific residence permit for researchers from third-countries, it is only possible to have statistical data on researchers from third-countries for the year 2009,¹⁴ but not to bring to light trends over the last few years.

Skilled tradesmen

Although the skilled tradesmen group is not mentioned in the study specifications, we wish to specify that this sector is not identified as such in the NACE nomenclature. Skilled tradesmen are divided between the commerce group and the industry group.¹⁵ The skilled trades sector

¹³ Law of 31 July 2006, Mémorial A, Issue 149 of 29 August 2006, <http://www.legilux.public.lu/leg/a/archives/2006/0149/a149.pdf#page=2>

¹⁴ In 2009, 15 people received residence permits as researchers, 15 people received residence permits and 56 people obtained authorisation to work as researchers ('Rapport politique sur les migrations et l'asile 2009' (*Political report on migration and asylum 2009*), page 33). A person staying to work as a researcher may have several work permits.

¹⁵ Employers' point of view, interview 5, page 1, lines 45-46.

was, nevertheless, comprised of 71,589 people in 2009,¹⁶ namely around 20% of the labour force in Luxembourg. As a result, the Chamber of Commerce has produced its own statistics.

1.1.5. Definitions

Given that the final objective of the study is to be able to undertake comparisons between the different Member States of the EU, it is necessary to homogenize the vocabulary used. This is why we are going to use the glossary of the EMN on asylum and migration¹⁷

Within the context of this study, the following definitions will be used:

Highly qualified migrant

Within the context of the EU, this is a person who is:

- recruited in a Member State and protected in his/her status of worker within the framework of the national legislation on employment and/or complying with national practices, whatever the legal connection, for the purposes of exercising genuine and effective work, for or under the management of someone else;
- remunerated;
- and who possesses the appropriate specifically required skills, backed up by higher professional qualifications.¹⁸

Within the international context: a person, falling within, categories 1, 2 and 3,¹⁹ in classification ISCO-88 of the ILO, such as for example managers, senior executives, people in intellectual and scientific professions, and technicians. These people move around within the internal labour market of transnational companies and international organisations, or look for jobs in the (international) labour markets which recruit individuals whose skills are uncommon.

¹⁶ Chambre des Métiers (Chamber of Skilled Trades) Luxembourg, 'Artisanat: Annuaire statistique 2009' (*Craft Trades: Statistical directory 2009*), Centre de promotion et de recherche (*Centre of promotion and research*), March 2010, page 22.

¹⁷ The EMN's glossary on asylum and migration is available on the website: <http://www.emn.europa.eu>.

¹⁸ See the EMN's glossary on asylum and migration <http://www.emn.europa.eu>.

¹⁹ For further details on the definitions of categories 1, 2 and 3 of ISCO-88, see the definitions given on the ILO website: <http://www.ilo.org/public/english/bureau/stat/isco/isco88/1.htm>; <http://www.ilo.org/public/english/bureau/stat/isco/isco88/2.htm> and <http://www.ilo.org/public/english/bureau/stat/isco/isco88/3.htm>.

Qualified migrant

Within the context of this study, the term *qualified migrant* resembles categories 4 to 8 of code ISCO-88, i.e.:

- Major group 4: clerks²⁰
- Major group 5: service workers and shop and market sales workers²¹
- Major group 6: skilled agricultural and fishery workers²²
- Major group 7: craft and related trades workers²³
- Major group 8: plant and machine operators and assemblers.²⁴

Low-skilled migrant

Within the framework of this study, the term *low-skilled migrant/worker* refers to the major group 9 in code ISCO-88,²⁵ namely unskilled workers and unqualified workers.

Researcher

For the definition of the term *researcher*, which does not appear in the ISCO-88 classification, we use the definition given in Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research: "researcher" means a third-country national holding an appropriate higher education qualification, which gives access to doctoral programmes, who is selected by a research organisation for carrying out a research project for which the above qualification is normally required.²⁶

²⁰ See the major group 4 definition at <http://www.ilo.org/public/english/bureau/stat/isco/isco88/4.htm>.

²¹ See the major group 5 definition at <http://www.ilo.org/public/english/bureau/stat/isco/isco88/5.htm>.

²² See the major group 6 definition at <http://www.ilo.org/public/english/bureau/stat/isco/isco88/6.htm>.

²³ See the major group 7 definition at <http://www.ilo.org/public/english/bureau/stat/isco/isco88/7.htm>.

²⁴ See the major group 8 definition at <http://www.ilo.org/public/english/bureau/stat/isco/isco88/8.htm>.

²⁵ See the major group 9 definition at <http://www.ilo.org/public/english/bureau/stat/isco/isco88/9.htm>.

²⁶ Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, <http://eur-lex.europa.eu/Notice.do?val=414235:cs&lang=fr&list=465980:cs,447071:cs,420779:cs,420777:cs,414235:cs.&pos=5&page=1&nbl=5&pgs=10&hwords=&checktexte=checkbox&visu=#texte>

Seasonal workers

The definition of the term *seasonal worker*, which does not appear in the ISCO-88 classification, is given by the EU Council Resolution of 20 June 1994 on the limitation on admission of third-country nationals to the territory of the Member States for employment purposes: ‘workers who are resident in a third-country but employed in an activity dependent on the rhythm of the seasons in the territory of a Member State on the basis of a contract for a specified period and for a specific job.’²⁷

Internal labour market

The internal labour market is comprised of all of the people who work in Luxembourg, independently of their place of residence.

Employee

On 1 January 2009, the law of 13 May 2008 introducing a unique status²⁸ for workers in the private sector came into force. With the introduction of a unique status within the private sector, the distinction between the regimes of *blue-collar worker* and *white-collar worker* disappears. There is only one regime for the private sector, that of *employees*.²⁹

1.2. Analysis of the literature

There are a number of works on the labour market in Luxembourg and in the Greater Region, as well as on the issue of genuine and false cross-border workers, but very little literature analyses the shortage of labour in connection with third-country nationals. The emphasis is generally placed on cross-border workers who fulfil in a huge way job vacancies in Luxembourg.

Migration is not a new phenomenon in Luxembourg. It has existed since Roman times. However, the starting point of contemporary migration to Luxembourg can be set at around 1842, the year in which Luxembourg became a member of the German customs union

²⁷ Council Resolution of 20 June 1994 on limitation on admission of third-country nationals to the territory of the Member States for employment
http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/133068_fr.htm

²⁸ <http://www.legilux.public.lu/leg/a/archives/2008/0060/a060.pdf#page=2#page=2>; see also Art.121-1 of the Labour Code.

²⁹ <http://www.luxembourg.public.lu/fr/actualites/2009/01/01-statut-unique/index.html>

(Zollverein). At that time, Luxembourg was experiencing strong economic growth that needed a high quantity of labour. From the end of the 19th century, Luxembourg had an exceptional labour market characterised by the quantitative and qualitative impact of foreigners on employment, on the economy and on other societal domains (Pauly, 2010). We observe from the beginning dual immigration characterized by low-skilled and highly qualified immigrants (von Kunitzki, 1981 and 2007), which was developed in the steel industry: in this sector Germans occupied management positions whereas Italians worked in less-qualified jobs in the mines. Luxembourg has always conducted a proactive European immigration policy (in the beginning white, Catholic immigrants), to the point that today Luxembourg records the highest percentage of European migrants and the lowest rate of third-country nationals: 86.1% of EU migrants, 7.2% of European migrants outside of the EU and 6.7% of migrants from third-countries (Thill-Ditsch, 2010). So the proportion of non-EU low-skilled nationals is extremely small (less than 4% of the resident population: Hartmann-Hirsch and Ametepe, 2010).

Luxembourg has never stopped economic immigration, even after the crisis in the steel industry in the 1970s. Following the steel industry crisis in the middle of the 1970s, foreign management promoted the emergence of the financial centre (von Kunitzky, 1981 and 2007). In the last few years, Luxembourg – like the other developed countries – has tried to attract highly qualified immigrants (OECD-SOPEMI, the last few years). The OECD (2009: 14ss.) notes that Luxembourg is one of the three countries which has succeeded in this selective policy (OECD, 2003: 105ss) with the effect that the proportion of highly qualified immigrants has doubled in the last ten years. At the present time, the proportion of immigrants is larger and more qualified than that of qualified nationals (Hartmann-Hirsch and Ametepe, 2010). The proportion of foreign business managers is over 70% (Fehlen and Pigeron Piroth, 2009 and Fehlen 2010).

The levels of education of nationals and foreigners have been the subject of numerous studies for several years now:

Zanardelli (2004), for example, has demonstrated that nationals and foreign residents were slightly less qualified than cross-border workers. Among certain groups of foreign residents (Belgians and Germans), levels of education were higher than those of nationals and of other foreign residents. The Portuguese appear at the bottom of the scale.

Hartmann-Hirsch (2007 and 2008) presents another categorisation showing that nationalities essentially from the Northern Hemisphere (Japan, Canada, USA, Scandinavia, United

Kingdom etc.) are those who in Luxembourg have the highest salaries and levels of education. To conclude, these people have higher levels of education than highly qualified Luxembourgers.

Fehlen and Pigeron-Piroth (2009) and Fehlen (2010) have outlined the transnationalization of this internal labour market given the inflow of foreign managers which represents around three quarters of the economic leaders.

Various studies demonstrate that the competitive sector is controlled by foreigners and that the excellent results of this transnationalized economy are, for the most part, only made possible because of the contribution from foreigners (Fontagne, 2004 and 2009; Hartmann-Hirsch and Ametepe, 2010)³⁰.

Firstly we observe a circular migration of men who are single and in good health³¹ which would last until the Second World War, even until the 1950s. Luxembourg gradually moved towards family immigration following negotiations with the Italian authorities, and also under the impetus of the stipulations of free movement of the treaties of Paris (1951) and Rome (1957) (Cordeiro, 1976; Pauly 2010; Hartmann-Hirsch, 2010). Moreover, Luxembourg signed two labour agreements with Portugal³² and Yugoslavia in 1970. From the 1980s, with the development of the financial centre, another movement occurred, that of cross-border workers from three neighbouring countries which took on a much wider scope than the migratory movements.

Different studies and publications (Langers, 2006) enabled the observation on one hand, of a continued increase in immigrants after the Second World War, and on the other, segmentation of the labour market with business segments which were and still are for the most part occupied either by nationals (public administration), or by migrants (construction, restoration, etc.), or by cross-border commuters (financial sector). It is important to mention in particular the study on political orientation by the Honourable Deputy Mr Marcel Glesener sponsored by the Government, whose objective was to assess the potentialities and future development regarding the offer and demands and needs of the labour market (Glesener, 2004)³³.

³⁰ This is also the opinion of the employers. Employers' point of view, interview 9, page 4, lines 34-41.

³¹ This is the case of the first Italians who came to work in the mines. This is also the case of the Dutch who came to work in agriculture.

³² At the time of the Portuguese military government, Luxembourg had an office in Lisbon, a situation which facilitated the coming of Portuguese workers.

³³ Interrelations between immigration and the labour market in Luxembourg for a society with common well-being.

Since the 1980s cross-border work has constituted the biggest source of manpower for the Luxembourg labour market.

According to European law, cross-border workers are: all employees and independent workers who exercise their profession in an EU Member State and who live in another Member State, in which they return as a general rule each day – or at least once a week (EEC No. 1408/71). This definition guarantees as the social protection of the workers concerned. "The notion of cross-border commuters in fiscal law is more restrictive and comprises a geographical criterion, according to which a person works and lives in a defined border area"³⁴.

We must distinguish between different types of cross-border commuters:

1) Atypical / typical cross-border commuters

With the difference of the typical cross-border worker, who commutes between his/her region of origin and his/her workplace, the term "atypical cross-border commuter" is applied to the people who come to work in their region of origin.

Atypical cross-border workers are people who have set up their place of residence in a neighbouring country, like for example the growing number of Luxembourgish people who are settling in Germany, Belgium and France. In the corresponding literature, they are also designated as "false cross-border commuters" (Cocher / Perrin 1993: 13)³⁵.

2) Native cross-border commuters or cross-border commuters by adoption

We distinguish between "cross-border commuters who have grown up in their present region of residence (native cross-border commuters) and those who grew up in a more distant region and who have established their place of residence near to the border of the country in which

Political orientation study by Mr Marcel Glesener sponsored by the Government following the declaration of the Prime Minister Mr Jean-Claude Juncker on the state of the Nation. Scientific support provided by the Intercommunity Sesopi-Centre in collaboration with the Social Training Institute, Luxembourg, 2004.

³⁴ See in Cristian Wille, *Travailleurs Frontaliers*, Observatoire Interrégional du marché de l'Emploi (Cross-border Commuters, Interregional observatory of the labour market), University of Luxembourg, http://geo.uni.lu/joomla/index.php?option=com_content&task=view&id=1360&Itemid=194

³⁵ Wille, Christian, *op.cit.*

they work (adoptive cross-borders) (Berger 2005). This distinction often plays a role within the scope of the rise in prices of rent and property in the border region.³⁶

3) Virtual cross-border commuters

‘We designate as virtual cross-border commuters interim workers, who are properly recorded in the official statistics as cross-border commuters, but who de facto do not cross any national border (Wille / Kuntz 2006). So for example Belgians who are registered with a Luxembourgish interim agency and therefore registered as cross-border workers in the Luxembourgish statistics, but who are sent to a French company.

It is equally conceivable that cross-border commuters are posted by a Luxembourgish interim agency in a company near to their place of residence, and that this way these workers are barely indistinguishable from local employees. The temporary assignment of workers is practised in Luxembourg because it generates benefits for the company which is recruiting (Clement 2008).³⁷

Within the scope of this study we will use the definition of the typical cross-border commuter. Fehlen and Jacquemart (1975) are the first to have produced a detailed statistical analysis demonstrating that cross-border commuters were more mobile and more flexible than residents.

Jacques Brosius (2004 and 2005) demonstrates significant salary gaps between resident workers and cross-border commuters. At the origin of these gaps, we find the salary expectations of the cross-border commuters determined by the salary levels of the region of origin which have as an effect a modest salary demand in Luxembourg (Brosius 2005)³⁸. Following subsequent negotiations, there are very few cross-border commuters who have been able to regain this 'loss' during their years of work in Luxembourg (Brosius, 2005).

Faced with a labour market which is characterised by extremely high job creation, different bodies fear exhaustion of the "pool" of cross-border labour and highlight the restrictions to cross-border mobility due to the increasingly greater geographical distances between the place of residence and the workplace. This is why the Ministry of Sustainable Development and Infrastructures has developed the concept "mobil 2020 – Mobiliteit dei beweegt" which takes

³⁶ Wille, Christian, op.cit.

³⁷ Wille, Christian, op.cit.

³⁸ In this same way, Wille, Christian, op.cit.

into account not only the travel requirements which exist within the Grand Duchy, but also meets the demand generated by the present daily movements of some 147,500 cross-border commuters employed in the Luxembourg economy", to ensure fluidity of the workforce in the Grand Duchy³⁹.

'The forecasts drawn up by STATEC regarding the long term employment development requirements in Luxembourg are to be taken into consideration urgently. Luxembourg actually bases its economic development and employment growth strategy on high demographic growth objectives. If these requirements now involve the Grand Duchy in a strategy of high incitation to immigration, they also entail significant development of cross-border employment: estimated at + 85,000 over 25 years.

These forecasts should result in great tensions in the labour market on one hand, in comparison with the quantitative evolution of the active population and on the other, as regards its qualifications.'⁴⁰

None of the partners of the Greater Region will escape the problem of the renewal of its active population. Luxembourg however already assumes the Greater Region area's inability to provide for its labour requirements particularly as regards higher qualifications.

The Luxembourg labour market is experiencing certain weaknesses particular regarding long-term unemployment. Since the 1990s, the OECD (OECD Economic Studies, Luxembourg) and the European Commission (Joint Employment Reports) have highlighted Luxembourg's high long-term unemployment rates (OECD, 1997). These rates concern women and especially older workers. Luxembourg has significantly rejuvenating its employees (Genevois and others, 2005), specifically in the financial sector, but unemployed people of a certain age find themselves in a difficult situation due to a lack of qualifications. Inactivity proves to be a phenomenon of nationals rather than foreigners. Foreign residents, whether they are men or women, display employment rates higher than those of nationals, men or women (National Reform Plan, 2008: 43).

³⁹Ministry of Sustainable Development and Infrastructures, 2009 activity report, p. 670.
<http://www.developpement-durable-infrastructures.public.lu/fr/publication/rapport-activites/rapport-activites-2009.pdf>

⁴⁰ Plenary Session of 26 June 2007, Economic and Social Council of Lorraine. - Communication.- L'enjeu transfrontalier au cœur du développement de la Lorraine. Une urgence (The cross-border challenge of development of the Lorraine region: An emergency issue). Luxembourg, p. 40.
<http://www.ces.public.lu/fr/collaborations/rapp-ces-lorraine.pdf>

In 2008, according to data from the Labour Force survey, Portuguese nationals displayed 72% employment rate, the highest, followed by nationals from other countries in the European Union. Luxembourg residents have, according to them, employment rates from 61% and 65%, depending on whether they are born in Luxembourg or abroad. The lowest employment rate is recorded in nationals from countries outside of the European Union (Statnews, No. 15/2009).

On the one hand, according to the same source, the unemployment rate among Portuguese was 6%, that of Luxembourgers 3% and that of third-country nationals 29%⁴¹.

According to certain employers, unemployment in Luxembourg is starting to become structural⁴², and therefore long-term unemployment. In 2009, ADEM evaluated 47.5% the share of jobseekers registered less than 6 months, compared with 19.1% for those registered between 6-12 months and 33.4% for those registered for over 12 months. ADEM concludes “while it is well-known that a risk of worsening of long-term unemployment exists insofar as where the possibilities of absorption of the incoming flow of jobseekers by the measures in favour of employment proposed could prove to be limited and genuine suitable job opportunities to be offered to the registered population are too few. Moreover, it should be recalled that in 2008, the number of job offers registered with ADEM reduced and the flow of unemployed registered people with ADEM increased.”⁴³

One of our interlocutors thinks that one of the factors which contribute to this structural unemployment is the lack of qualifications.⁴⁴

⁴¹ This unemployment rate occurs fundamentally with people who have come to Luxembourg for reasons of international protection (16%) or for family reasons (8%). Statnews No. 15/2009, 29 April 2009, page 2. This data must however be considered with care, because the BTT survey is not sufficiently representative for non-EC members and because many nationals from third-countries are legally excluded from the job market.

⁴² Employers' point of view, interview 9, page 13, lines 13-14.

⁴³ ADEM Annual Report, 2009, page 43,
http://www.adem.public.lu/publications/rapports/rapport_annuel_2009.pdf

⁴⁴ Employers' point of view, interview 9, page 13, lines 37-38.

2. A VIEW OF THE ECONOMIC MIGRATORY POLICY IN LUXEMBOURG

2.1. In context – Luxembourg: a country welcoming European nationals

Intra-European mobility of workers has been favoured since the Treaties of Paris⁴⁵ (1951) and Rome⁴⁶ (1957) and then developed with the Treaty on the European Union (92/C 191/01) and more recently with the Treaty on the functioning of the European Union (TFEU).

2.1.1. Historical context

Luxembourg occupies a strategic geographical position, located at the crossroads of two of the biggest countries which constitute the two economic drivers of the European Union.

Since the Romans settled on its territory, Luxembourg has become a strategic point for ensuring the link between Reims and the City of Trier, and as a result migratory flows have been prevalent on the territory.

In the Middle Ages, the migrations constituted a genuine structural phenomenon. The

⁴⁵ The Treaty of Paris of 18 April 1951 (Treaty establishing the European Coal and Steel Community) in Article 69 stated:

1. Member States undertake to remove any restriction based on nationality upon the employment in the coal and steel industries of workers who are nationals of Member States and have recognized qualifications in a coalmining or steelmaking occupation, subject to the limitations imposed by the basic requirements of health and public policy.

2. For the purpose of applying this provision, Member States shall draw up common a definition of skilled trades and qualifications, determining by common agreement the limitations provided for in paragraph 1, and shall endeavour to work out arrangements on a Community wide basis for bringing offers of employment into touch with applications for employment.

3. In addition, with regard to workers not covered by paragraph 2, they shall, should growth of coal or steel production be hampered by a shortage of suitable labour, adjust their immigration rules to the extent needed to remedy this state of affairs; in particular, they shall facilitate the reemployment of workers from the coal and steel industries of other Member States.

4. They shall prohibit any discrimination in remuneration and working conditions between nationals and migrant workers, without prejudice to special measures concerning frontier workers; in particular, they shall endeavour to settle among themselves any matters remaining to be dealt with in order to ensure that social security arrangements do not inhibit labour mobility.

5. The Commission shall guide and facilitate action by Member States in applying this Article.

6. This Article shall not affect the international obligations of Member States.'

⁴⁶ Treaty establishing the European Economic Community of 25 March 1957. In articles 48 and 49 this treaty stipulates the free movement of workers. Claudia Hartmann-Hirsch says that "From its beginnings, European integration was based on the free movement of workers either within the coal and steel sector, and over the entire job market". See Claudia Hartmann-Hirsch, 'A propos de la transnationalisation du marché de l'emploi: Est-elle 'policy driven' ou 'market driven' (About transnationalization of the job market: Is it policy-driven or market-driven?)', ASTI 30+, Luxembourg, 2010, 124.

impressive number of hospices was due to the needs of pilgrims and other travellers who had no accommodation for the night⁴⁷. The importance of the fortress became the prime factor of attraction to attract foreign migrants, who were fleeing wars and diseases, but which also happened for economic reasons. 'Traditionally the armies were actually followed by workers who knew that following military destruction it was necessary to rebuilt and that at that time the regions damaged by the war lacked manpower and were ready to hire the first people who came to accelerate the effort.'⁴⁸ This migration was not only comprised of soldiers, mercenaries but also qualified workers like the Tyroleans who introduced the art of sharpening slate to Luxembourg⁴⁹. Since the Middle Ages, migration to Luxembourg was very particular: It was not, like in other places, a rural-urban migration, but rather a regional and international migration. Luxembourg became a centre of attraction for foreign workers who were looking to obtain better living conditions than those of their regions of origin⁵⁰.

Control of the fortress meant that the different European powers had to move their armies onto the territory, also resulting in international '*sui generis*' migration⁵¹. With the development of the industrial revolution during the first half of the 19th century and the development of the iron and steel industry in the following decades, cross-border immigration became more pronounced. This migration was facilitated by the German Customs Union of 1842, the introduction of the railway, the demilitarization of the country and political consolidation made possible by the Treaty of London of 11 May 1867.⁵²

⁴⁷ Pauly Michel, *Le phénomène migratoire, une constante de l'histoire luxembourgeoise* (The migratory phenomenon, a constant of Luxembourg history), ASTI 30+, Luxembourg, 2010, p. 63.

⁴⁸ Pauly, Michel, *op. cit.*, p. 64.

⁴⁹ *Ibidem*.

⁵⁰ There were people from the Tyrol, the Ticino (the case of Joseph-Antoine Pescatore), Lorraine, Savoy, etc.

⁵¹ In other words, following the wars the soldiers of the conqueror settled, as they were often mercenaries and easily agreed to leave military service. Pauly, *op. cit.*, p. 65. Furthermore, the fortress changed hands after the wars between the powers and the garrison changed as a logical consequence..

⁵² See *Mémorial*, First part, Issue 19, of 25 June 1867, which ratified the Treaty of London which stipulates::
ARTICLE I. His Majesty the King of the Netherlands, Grand Duke of Luxemburg, maintains the ties which attach the said Grand Duchy to the House of Orange-Nassau, in virtue of the Treaties which laced that State under the Sovereignty of the King Grand Duke, his descendants and successors.

The Rights which the Agnates of the House of Nassau possess with regard to the Succession of the Grand Duchy, in virtue of the same Treaties, are maintained.

The High Contracting Parties accept the present Declaration, and place it upon record.

ARTICLE II. The Grand Duchy of Luxemburg, within the Limits determined by the Act annexed to the Treaties of the 19th April, 1839, under the Guarantee of the Courts of Great Britain, Austria, France, Prussia, and Russia, shall henceforth form a perpetually Neutral State.

It shall be bound to observe the same Neutrality towards all other States.

The High Contracting Parties engage to respect the principle of Neutrality stipulated by the present Article.

That principle is and remains placed under the sanction of the collective Guarantee of the Powers signing Parties to the present Treaty, with the exception of Belgium, which is itself a Neutral State.

This economic and political context facilitated the transport of goods and people as well as cross-border commerce.

Given the size of the country, its reduced population and the lack of qualified personnel to execute the functions that the industrial revolution demanded, Luxembourg needed foreign labour. The first flow of immigration came from Germany: it supplied qualified workers, engineers and administrators to develop the steel industry. It was a durable sustainable immigration because the Germans came to work in Luxembourg with their families, settled in the Grand Duchy later on⁵³.

The industry needed another type of labour to undertake less qualified tasks. A kind of circular migration was set up with Italy. Their contracts were fixed-term: they should return home at the end of the contract, even if the contract could be renewed and that they could come back afterwards. This population of migrants could move around throughout the entire Greater Region (Saarland, Lorraine, Trier, and the Province of Luxembourg) with the search for the best work conditions in the steel industry.

This situation continued up until the end of the Second World War. After the conflict, German immigration stopped. The administration of the steel industry and other decision-making positions were taken by nationals. There was a growing need for labour for agriculture and industry. It was necessary to rebuild the country's infrastructure which had suffered during the war. In 1945, Luxembourg tried to attract Italian workers but the Italian Government

ARTICLE III. The Grand Duchy of Luxemburg being neutralized, according to the terms of the preceding Article, the maintenance or establishment of Fortresses upon its Territory becomes without necessity as well as without object.

In consequence, it is agreed by common consent that the City of Luxemburg, considered in time past, in a military point of view, as a Federal Fortress, shall cease to be a fortified city.

His Majesty the King Grand Duke reserves to himself to maintain in that city the number of troops necessary to provide in it for the maintenance of good order.

ARTICLE IV. In conformity with the stipulations contained in Articles II and III, His Majesty the King of Prussia declares that his troops actually in garrison in the Fortress of Luxemburg shall receive orders to proceed to the Evacuation of that place immediately after the exchange of the Ratifications of the present Treaty. The withdrawal of the artillery, munitions, and every object which forms part of the equipment of the said Fortress shall commence simultaneously. During that operation there shall remain in it no more than the number of troops necessary to provide for the safety of the material of war, and to effect the dispatch thereof, which shall be completed within the shortest time possible.

ARTICLE V. His Majesty the King Grand Duke, in virtue of the rights of Sovereignty which he exercises over the City and Fortress of Luxemburg, engages, on his part, to take the necessary measures for converting the said Fortress into an open city by means of a demolition which His Majesty shall deem sufficient to fulfill the intentions of the High Contracting Parties expressed in Article III of the present Treaty. The works requisite for that purpose shall be commenced immediately after the withdrawal of the garrison. They shall be carried out with all the attention required for the interests of the inhabitants of the city.

His Majesty the King Grand Duke promises, moreover, that the Fortifications of the city of Luxemburg shall not be restored in future, and that no Military Establishment shall be there maintained or created....

⁵³ Pauly, op. cit., p. 65.

blocked it. It 'reproached the Luxembourg Government for having put under sequestration the assets of all the Italians under the pretext that they were fascists... (⁵⁴And) required two-year work contracts to guarantee the Italian emigrants a certain degree of job stability, whereas the Luxembourg Government wanted to limit their work permits to six months'. In 1948, Luxembourg signed the first bilateral agreement with Italy which foresaw an annual contingent of Italian workers and the option of fixed-term, renewable work contracts. However, this agreement did not allow the Italians to settle definitively in the Grand Duchy nor to bring their families⁵⁵. Faced with the prospects of finding better work conditions and pay in Germany and/or Switzerland, the Italians preferred to go to these countries. Furthermore, the economic upturn in Northern Italy pushed many Italian workers to go there at the end of the 1950s.

The agreements with Italy were maintained until the coming into force of the Treaty of Rome in 1957, which opened up the opportunity of free movement of workers in member countries of the European Economic Community.

Likewise, Luxembourg signed an agreement in 1950 with the Catholic provinces of Nord Brabant and Limburg in the Netherlands to recruit the necessary workers for the agricultural sector⁵⁶.

With the entry into force of the Treaty of Rome on 1 May 1958, these agreements became superfluous. The economic development of the country did not stop and the labour requirements were still present. Portuguese immigration was put in place since the start of the 1960s and, in 1970, the Government signed a bilateral agreement with Portugal. This agreement enabled family reunification after three months of work and if the Portuguese worker had suitable accommodation⁵⁷. This migration was comprised of a low-skilled labour force concentrated in the agriculture, construction and cleaning sectors. In the wake of

⁵⁴ Pauly, op. cit., p. 67.

⁵⁵ Successive agreements were signed with Italy which relaxed the original conditions and enabled family grouping, granting subsidies to businesses to ensure proper accommodation and greater contingents, without which this would not have been sufficient to attract them.

⁵⁶ See Pauly op. cit., p. 68. The Luxembourgish government wanted to limit immigration. In the agreement, the government inserted the stipulation that "in the first place taking into considering for being placed in Luxembourg unmarried agricultural workers originating from the provinces of the Brabant septentrional and from Limbourg and which professed the Catholic religion". See Thill, Jos, *Les agriculteurs néerlandais: un groupe spécifique d'immigrants au Luxembourg dans les années cinquante* (The Dutch farmers: a specific group of immigrants to Luxembourg in the fifties)', Luxembourg: *Histoires croisées des migrations* (Overlapping stories of migrations), Migrations 20, 2002, p. 70-92.

⁵⁷ Art. 9 of the law of 11 April 1972 giving approval of the agreement between the Grand Duchy of Luxembourg and the Portuguese Republic relating to the employment of Portuguese workers in Luxembourg, signed in Lisbon on 20 May 1970, Memorial A, Issue 26 of 20 April 1972.

Portuguese immigration, a population of Cape Verdean origin in possession of Portuguese passports settled in the Grand Duchy (even though the Luxembourgish government made it clear to the Portuguese authorities that they didn't like the arrival of these people⁵⁸).

This type of migration broke with the white and Catholic migration⁵⁹ that Luxembourg was encouraging and as a result the Cape Verdeans were not always well-received (Carling 2002). The same phenomenon was repeated with the arrival in the 1970's of nationals from the former republic of Yugoslavia with whom another labour agreement was signed. This agreement did not contain a family reunification clause. This population of migrants was composed of Muslims and orthodox Christians.

In 1974 and 1975, the steel industry crisis obliged the Luxembourgish Government to redirect its economy towards other industrial activities but principally to the development of the financial and services sectors. Once more, the population of Luxembourg did not have enough workers or adequate qualifications to develop these sectors. Qualified labour was recruited predominantly in the Greater Region, Luxembourg offered better pay conditions than those offered in their residence regions. Cross-border work has increased exponentially in the last two decades.

The installation and development of the European institutions in Luxembourg have also contributed to the particularity of migration to Luxembourg, which is different from that of other EU countries. Migration to Luxembourg is characterised principally by European and cross-border migration as well as a low migratory population coming from third-countries.

The labour market in Luxembourg has experienced some segmentation: thus, the public administration is controlled by nationals and the private economic sectors are mainly managed by foreigners.

This situation explains the assessments of some social players according to which Luxembourg relies 'perhaps too much from abroad. ... foreigners are taking risks, taking the initiative... we are in a model where foreigners have invested, they have created jobs, this refills the State's coffers and [Luxembourgers may] have/make a peaceful life working for the State.' We observe that in Luxembourg, there are 'parallel societies being formed,'⁶⁰ to the point that Luxembourgers who work in the public sector are distanced from the problems,

⁵⁸ Pauly, *op.cit.*, p. 67

⁵⁹ Pauly, *op.cit.*, p. 67

⁶⁰ Employers' point of view, interview 9, page 4, lines 34-38.

they are barely concerned with the economic crisis and with unemployment and some of them ‘have even lost contact a little with the reality of the country’⁶¹

A problem of social cohesion arises, especially within a context where the political power is concentrated in the hands of nationals and foreigners have very little to say in the decision-making process at the national level⁶². This lack of cohesion is reflected in the social structure. There are three social strata: the first is comprised principally of foreigners (European Community or third-country nationals) who provide low-skilled or unskilled labour and who carry out difficult work; a middle class formed mainly of people working in the Luxembourgish civil service and a third class made up of highly paid specialists composed of European civil servants, managers and company executives and specialists in financial services.⁶³

2. Current context

The migratory situation is very particular in Luxembourg. On 1 January 2010, 43% of Luxembourg’s residents did not have Luxembourgish nationality, whereas the average for the other EU countries was 6.2%. Foreigners that are third-country nationals represent 14% of all foreigners. This is the lowest percentage among the Member States.⁶⁴ By way of comparison, in Germany and in France, around 65% of foreign residents are third-country nationals.⁶⁵

⁶¹ Employers’ point of view, interview 9, page 5, lines 5-8.

⁶² Employers’ point of view, interview 10, page 1, lines 43-50.

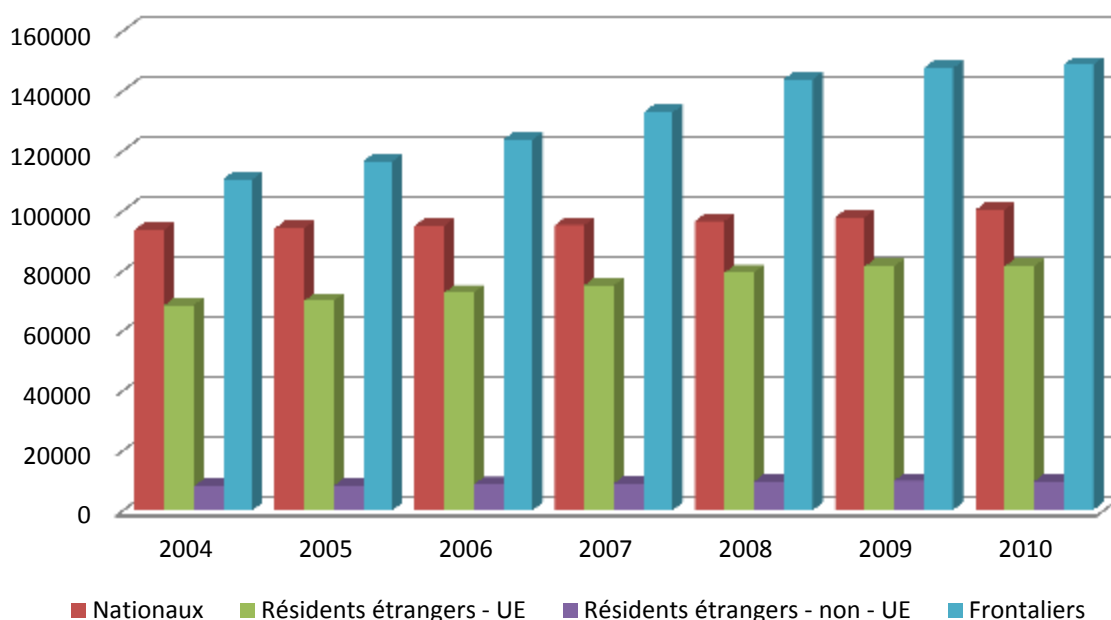
⁶³ Employers’ point of view, interview 10, page 2, lines 1-10. The most significant is the fact that the social ladder does not function at all between the three categories.

⁶⁴ STATEC, Germaine Thill-Ditsch, ‘Regards sur la population par nationalités’ (Observations on the population by nationalities), July 2010, page 1.

⁶⁵ Carlo Thelen, ‘L’économie luxembourgeoise et les étrangers, aujourd’hui et demain’ (The Luxembourg economy and foreigners, today and tomorrow), in ASTI 30+, Luxembourg 2010, page 225.

Graph 1:

Composition de l'emploi intérieur 2004 - 2010



Source: IGSS, 2010© EMN NCP LU

Breakdown of Domestic Employment

Nationals EU Foreign residents Non-EU Foreign residents Cross-border
commuters

Migration from third-countries is very low in Luxembourg in comparison with European and cross-border migration. However, we must take into account the fact that unskilled third-country nationals – many of which come from refugee migration fleeing in particular the conflicts in the Balkans – are most affected by unemployment and non-employment⁶⁶

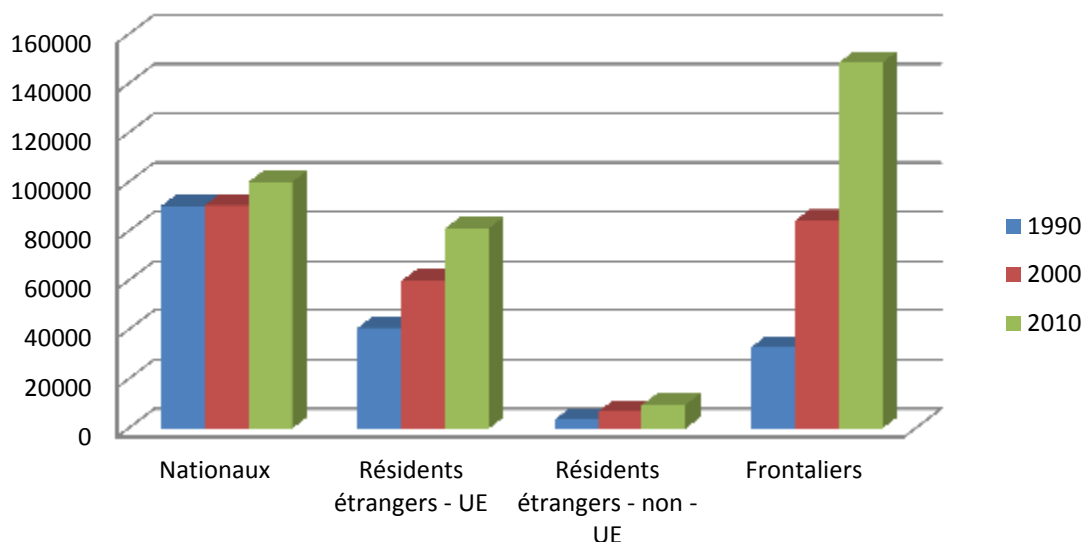
Immigration is the exclusive component of Luxembourg's demographic vitality. According to the 'forecasts of STATEC, people of non-Luxembourgish nationality will be in the majority within less than 20 years.'⁶⁷ The trend is foreseeable if we look at the evolution of the composition of the Luxembourg labour force since 1990.

⁶⁶ Statnews, No. 15/2009, page 2.

⁶⁷ Economic and Social Council/Immigration (October 2006), Opinion 'Pour une politique d'immigration et d'intégration active' (For a policy of immigration and active integration), page 20.

Graph 2:

Composition de l'emploi intérieur 1990 - 2000 - 2010



Source: IGSS, 2010© EMN NCP LU

Breakdown of Domestic Employment

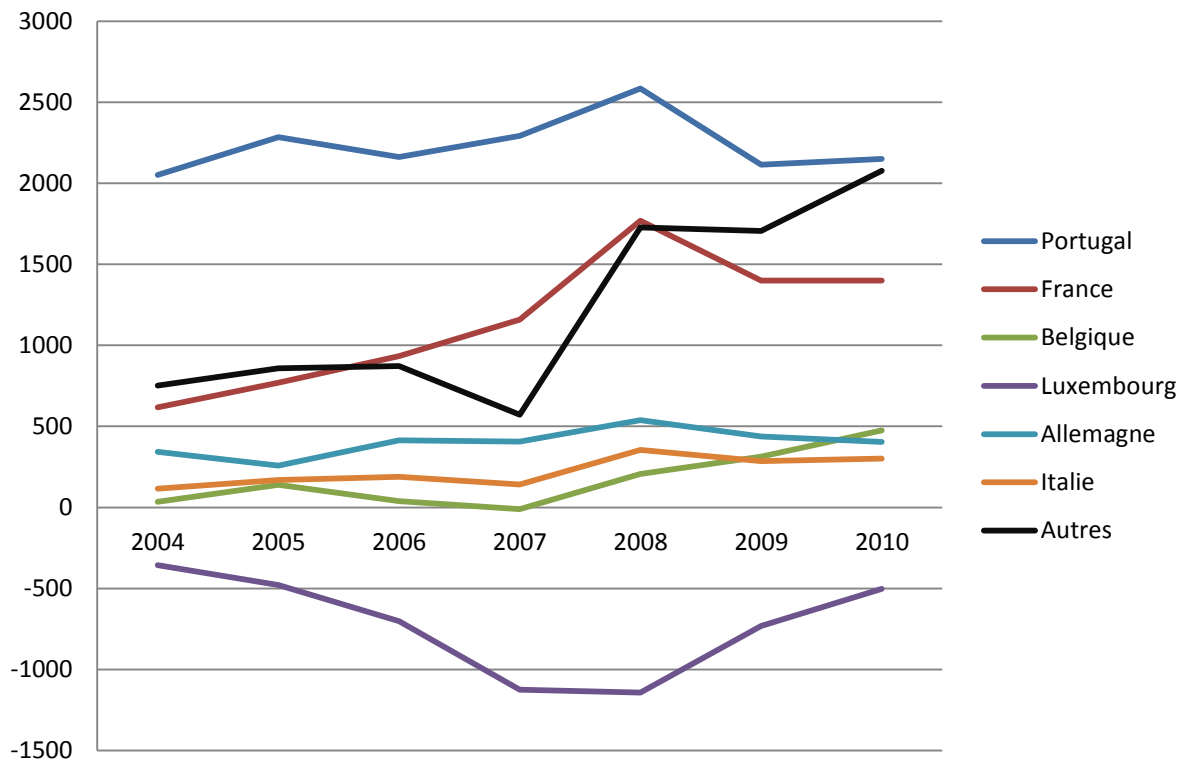
Nationals EU Foreign residents Non-EU Foreign residents Cross-border commuters

The labour market also demonstrates the important role played by immigrants in Luxembourg. As a matter of fact, in December 2009, three quarters of employees in the private sector in Luxembourg were non-Luxembourgish. The Chamber of Commerce comments on this figure, saying: 'The workforce of a State is its prime economic wealth. Brainpower remains practically the only raw material that the Grand Duchy has, but in insufficient quantities.'⁶⁸

The financial and economic crisis has had a certain impact on migratory movements to Luxembourg. In 2009, we can see a reduction in arrivals, a situation which changes once again from 2010. Migration rates felt the effect on them: in 2008, the global net migration was 7,700. It fell to 6,583 one year later, bouncing back to 7,660 in 2010.

⁶⁸ Economic bulletin of the Chamber of Commerce, Issue 7, June 2009, 'Actualités et tendances' (News and trends), page 37.

Graph 3: Net migration by nationality 2004 – 2010



Source: STATEC 2010 © EMN NCP LU

Note: The six main nationalities are represented in the graph: Portugal, France, Belgium, Luxembourg, Germany, Italy, Other

Certain interlocutors think that ‘it is necessary to restore the brand image’ of Luxembourg.⁶⁹

Finally, a later particularity of Luxembourg resides in cross-border work. In 2010, cross-border commuters represented 43.8 % of employees in Luxembourg.

⁶⁹ ‘We are relying on missions of economic promotion to restore its image a little’ Employers’ point of view, interview 9, page 9, lines 20-26.

Table 1: Breakdown of Domestic Employment 2005 - 2010

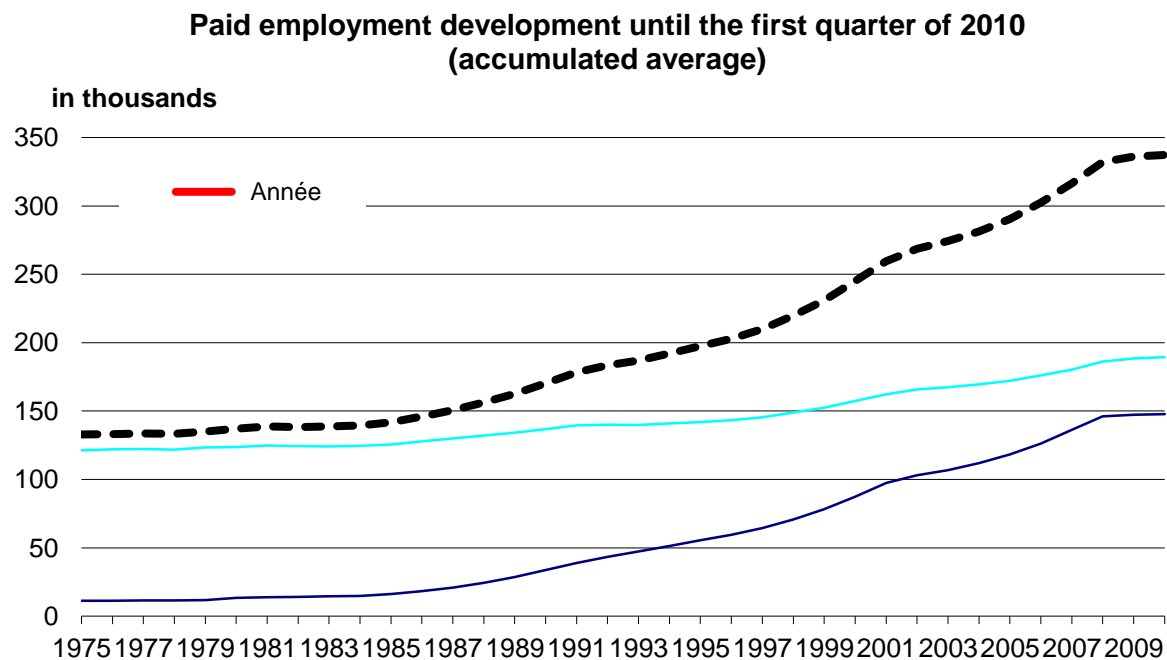
	2004	2005	2006	2007	2008	2009	2010
Nationals	93,561	94,000	94,900	95,100	96,400	97,670	100,104
EU-Foreign residents	68,361	69,800	72,500	75,000	79,200	81,273	81,330
Non-EU Foreign residents	7,880	8,100	8,500	8,900	9,500	9,721	9,582
Cross-border commuters	110,404	116,400	123,600	132,700	143,700	147,400	148,541
TOTAL	280,206	288,300	299,500	311,700	328,800	336,064	339,557

Source: IGSS, 2010 © EMN NCP LU

In other words: ‘At night we [Luxembourgers] are in the majority and by day we are in the minority because of the cross-border commuters.’⁷⁰

The following graphs enable to follow the spectacular increase in cross-border work by looking at its evolution since 1975 and the countries of origin.

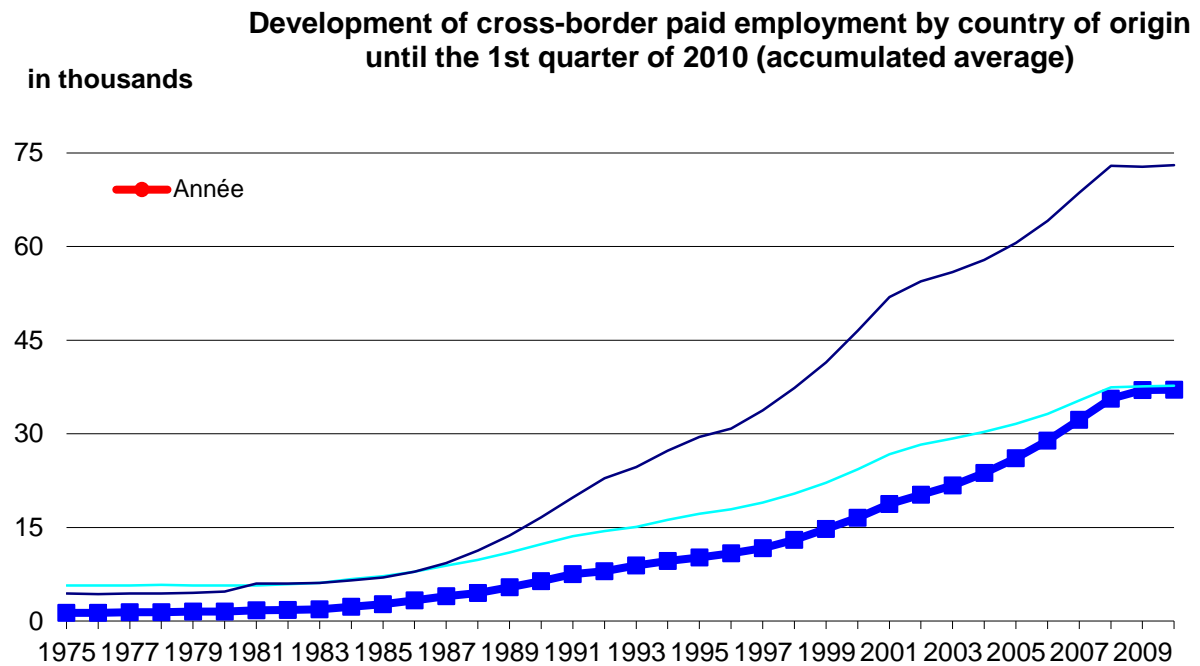
Graph 4:



SOURCE: STATEC, 2011

⁷⁰ Employers' point of view, interview 10, page 1, lines 35-36.

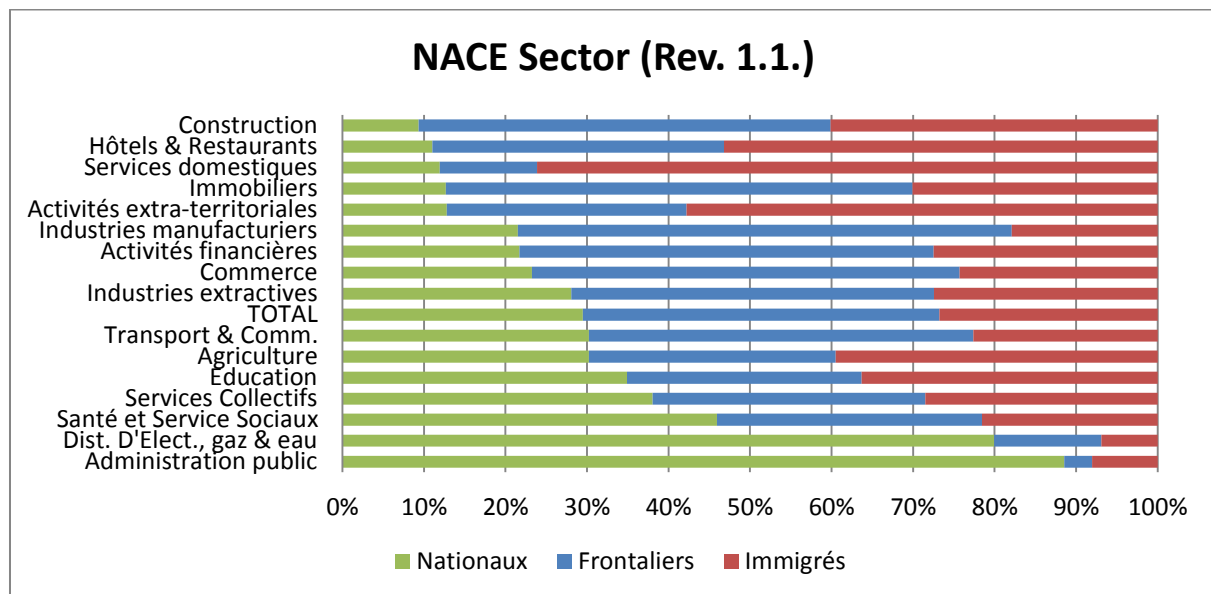
Graph 5:



SOURCE: STATEC, 2011

The following graph illustrates the importance of residents and foreign non-residents in the national economy, by business segment.

Graph 6: Proportion of cross-border employees, immigrants and nationals in the business segments (on 31 March 2010)



SOURCE: IGSS © Isabelle Pigeron-Piroth

The fundamental problem that the Grand Duchy faces is knowing if the labour requirements in the future can still be satisfied by the Greater Region or if, on the other hand, the Government has to put in place mechanisms to react to labour shortages situations by resorting to, if necessary, third-country nationals.

2.2. National vision and policy

2.2.1 ‘A case-by-case policy, based on the needs of the economy.’⁷¹

The economic and financial crisis has changed Luxembourg’s economic and migratory situation. Before the crisis, Luxembourg has experienced a period of high growth and as a corollary phenomenon, economic migration directed in the different economic sectors.

With the emergence of the crisis, ‘the Luxembourg state which was in an extremely comfortable situation was faced with a budget situation in deficit. Faced with a decrease in the State’s revenue, the social State will have to distribute less money and attract, in this situation, migrants working in jobs ‘with little added value’, which may worsen the situation. If the Luxembourg economy wants to continue to grow, it must not do so with jobs with low added value because life is too expensive and so we have to focus on brackets with high added value’⁷².

In the Government programme of 2009, legal immigration is described as ‘a positive contribution to Luxembourg’s society and economy.’ This programme indicates that implementation of the law of 29 August 2008 on the free movement of persons and immigration ‘must fall within the scope of a proactive and coherent immigration policy [...] The objective is to adapt immigration to the needs of the Luxembourg economy, fully respecting the European and international commitments which Luxembourg has undertaken.’⁷³

To do so, an interministerial group was set up, which met for the first time on 9 December 2009. This group was made responsible for drawing up the guidelines and recommendations for a proactive and coherent immigration policy taking into account the interests of the

⁷¹ Ministerial Point of View, interview 12, page 2, line 28.

⁷² Employers’ point of view. Interview 10, page 2, lines 41-46.

⁷³ Government programme, Ministry of Foreign Affairs, *chapter IV.1. Immigration*, <http://www.Gouvernement.lu/Gouvernement/programme-2009/programme-2009/02-mae/index.html>

Luxembourg economy and the current and future situation in the labour market.⁷⁴

The importance granted to economic immigration by the Luxembourg Government was reiterated during interviews: 'The growth of the economy [of Luxembourg] depends in part also on third-country businesses who come to set up in Luxembourg and which, by the circumstances, will lead part of the labour with [them]. ... This is clearly a very important subject for Luxembourg.'⁷⁵

Luxembourg does not appear to feel the threat of demographic change in Europe, since it is experiencing the highest demographic growth in Europe.⁷⁶ The situation in Luxembourg is marked by the highly particular structure of its active population⁷⁷. Consequently 'the Grand Duchy would not be affected as rapidly as its European neighbours by the problem of ageing of its active population.'⁷⁸ As a matter of fact, the cross-border workforce, and to a lesser extent the resident foreign workforce, have the particularity of being younger than the working Luxembourgish residents.⁷⁹ Nevertheless, it is obvious that during the crisis, cross-border workers were more affected than foreign residents and nationals, because they were working in more exposed/vulnerable sectors and occupying more sensitive posts.

Probably, due to this optimistic approach and the lack of a feeling of urgency, 'the Luxembourg policy in this respect is still not very proactive', as a representative of the employers stated.⁸⁰ The neighbouring countries mainly supply the Luxembourg labour market, it is not necessary, in the majority of cases, to resort to hiring workers from third-countries. When this is the case, the Government conducts a policy which aims to manage 'the companies' demands'.⁸¹ So, with the globalization and companies' technical and professional requirements, Luxembourg is faced with resolving shortages of qualified workers without an adequate strategy and without the ability to resolve the problem in the Greater Region because the supply there is increasingly reduced. However, managers think that this requirement 'has not materialized as such... as there may be a shortage ... but we can remedy it quite quickly,

⁷⁴ European migration network, "Political report on migration and asylum 2009", page 31.

⁷⁵ Ministerial Point of View, interview 4, page 1, lines 9-12.

⁷⁶ Ministerial Point of View, interview 12, page 3, lines 48-49.

⁷⁷ Genevois, Anne-Sophie and others CEPS/INSTEAD, Cahier PSELL n° 149, 2005, 'La problématique du maintien en activité des travailleurs âgés:: Bilan et perspectives', page 67.

⁷⁸ Genevois, Anne-Sophie and others CEPS/INSTEAD, Cahier PSELL n° 149, 2005, 'La problématique du maintien en activité des travailleurs âgés:: Bilan et perspectives', page 67.

⁷⁹ Genevois, Anne-Sophie et al, CEPS/INSTEAD, Cahier PSELL n° 149, 2005, 'La problématique du maintien en activité des travailleurs âgés:: Bilan et perspectives', page 67.

⁸⁰ Employees' Point of View, interview 3, page 1, lines 27-28.

⁸¹ Employees' Point of View, interview 3, page 1, lines 28-29.

because we are open.’⁸²

All of the needs are not automatically covered by the free movement of workers. There is actually a demand which goes beyond the European borders. So, neither the Luxembourg Government, nor the sectors of the economy, seems to be able to define the exact volume of the potential demand for workers outside of the EU.⁸³ It is therefore difficult to develop a specific policy for an economic sector or a specific region of origin. This is why the Government has not resorted, up until now, to the possibility of setting up a specific regime for the sectors with a labour shortage (article 42(3) of the law on the free movement of persons and immigration). The result of this is that the Government responds essentially to the demand of businesses without having developed an analysis beforehand. Lastly, the Government is developing a ‘case by case policy, based on the needs of the economy’⁸⁴

A clearly defined national vision regarding the role that economic migration outside of the EU may play to combat labour shortages remains therefore to be drawn up. It is very important in the case of Luxembourg which, ‘since its industrialization, has relied on immigration and foreign capital’⁸⁵

Within the framework of the interviews, ministerial representatives and employers believe that attention is mainly focused on highly qualified workers, namely the ‘rare pearls’ that have difficulty leaving the nest in Europe. From the employers’ point of view, if Luxembourg wants to continue to grow, it will have to do so in high added value brackets, as its workforce is too expensive to be able to grow in low added value professions.⁸⁶ With this in mind, the Government is planning to take several initiatives.⁸⁷ The keyword therefore appears to be: ‘The qualification, wherever it comes from’.⁸⁸ ‘Furthermore, according to the 2009 Government programme, ‘the Luxembourgish Government intends to develop human scientific capital in order to promote research in Luxembourg. To this end, it is attempting to

⁸² Ministerial Point of View, interview 12, page 2, lines 22-24.

⁸³ Ministerial Point of View, interview 12, page 1, lines 18.

⁸⁴ Ministerial Point of View, interview 12, 28-34. The person interviewed explained that "if it is obvious that the economy needs such qualifications, and we can't find them in Luxembourg nor in the surrounding areas, and a company has its own view about where it has to procure people... we'll say yes."

⁸⁵ Employers' point of view, interview 9, page 1, lines 22-24.

⁸⁶ Employers' point of view, interview 10, page 2, lines 42-45.

⁸⁷ 2009 Government Programme, page 86.

⁸⁸ Ministerial Point of View, interview 12, page 8, lines 25-50 and page 9, lines 1-6.

create an environment favourable to the expansion of scientific and technological employment promoting career and mobility prospects.’⁸⁹

Within this perspective, a number of initiatives have been taken by the Government attempting to converge the immigration policy with the economy’s requirements, like the one detailed below.

2.2.2 The vectors of diversification

The issue of economic migration is closely connected to Luxembourg’s vision on the development of its economy. Luxembourg envisages diversification of its economy in certain particular sectors and will require, to do so, specialised labour in these domains, namely, highly qualified workers.

This position is shared by the employers concerned ‘to have immigration from third-countries, who are people that do not pose an economic hazard to the country but by contrast help to resolve our economic difficulties... this is a condition for continuing to make this country work...’⁹⁰

The Government encourages diversification, whether it is multi-sector specialization with a view to creating new jobs and jobs with added value. The sectors focused on are the following: biomedicine, energy, the eco-technologies, logistics, and information and communication technologies. One of the general proposals made by the Minister of Economy and Foreign Trade for the improvement of national competitiveness aims to promote the necessary framework to develop Headquarters activity.⁹¹

However, according to some employers’ representatives, the Government fears that if it makes efforts to attract people to Luxembourg, ‘we risk finding them in unemployment and there the Government has some apprehensions fearing the volatility of the financial centre, which would cause it more problems in the medium term than it would resolve in the short term.’⁹²

⁸⁹ 2009 Government Programme, page 87.

⁹⁰ Employers’ point of view, interview 10, page 3, lines 28-30.

⁹¹ Ministry of the Economy and Foreign Trade Foreign Trade "Proposals of a general nature by the Minister of Economy and Foreign Trade Foreign Trade for the improvement of national competitiveness, in view of the Tripartite Coordination Committee", version of 30 June 2010, page 8-9.

⁹² Employers’ point of view, interview 10, page 3, lines 43-46.

Efforts of diversification of the media, communications and information technology sectors have been going on for several years now, since Luxembourg has become a preferred location for businesses active in data processing, electronic commerce and communication in general.⁹³ The development of information and communication technologies (ICT) goes through encouraging research and professions linked to this sector: 'It is essential for the success of diversification of the economy by the ICTs that research is focused specifically on this sector of activity. The Government intends therefore to promote research projects enabling key skills to be developed at the human resources level. It is promoting initiatives for collaborating with companies established in the ICT sector in Luxembourg. It is drawing up a programme for raising awareness in young people of the key skills in the ICT sector and ensuring implementation of training specifically focussed on these skills from secondary education onward.'⁹⁴

Lastly, tourism is also considered as an economic sector with promising prospects for the future capable of bringing a significant contribution to the diversification of the Luxembourgish economy and to the development of its labour market.⁹⁵

The Government, however, has two major tasks:

The first task consists of strengthening Luxembourg's brand: Even though the country is one of the most 'stable' in Europe, with a social system which works well and public administration which is not corrupt and has all of the advantages of a megalopolis in a city of human dimension, the truth remains that Luxembourg's image abroad is rather distorted in all these points of view.⁹⁶ The Government must conduct an international campaign to change the image of a fiscal paradise which weighs heavily on the country and explain that Luxembourg has a highly sophisticated financial centre, the cross-border expertise of which is more or less unique in Europe⁹⁷.

The second task consists of making the country attractive for highly qualified workers, because, up until now the people who come to Luxembourg rarely do so voluntarily, even though, once they are in the country, they do not want to leave⁹⁸. For this, the Government must promote the construction of accommodations which can hold all of these people, facilitating family reunification and administrative processes.

⁹³ 2009 Government Programme, page 11.

⁹⁴ 2009 Government Programme, page 12.

⁹⁵ 2009 Government Programme, page 30.

⁹⁶ Employers' point of view, interview 10, page 5, lines 34-35. Also, interview 9, page 9, line 20.

⁹⁷ Employers' point of view, interview 10, page 5, lines 45-49.

⁹⁸ Employers' point of view, interview 10, page 5, lines 14-16.

2.2.3 Attracting researchers

The Luxembourg Government wants to promote the research sector in Luxembourg, in particular by creating an environment favourable to attract researchers from abroad into the high added value sectors.

‘By departing from the principle that research constitutes one of the motors of a competitive economy based on knowledge and skills, the Government has made particular effects to develop scientific capacities within the University of Luxembourg and public Research Centres. Five establishments in Luxembourg are approved for hosting researchers from third-country nationals in accordance with the fast track procedure set by the law of 29 August 2008 on the free movement of persons and immigration.’⁹⁹

The law of 19 August 2008 relating to aids to training-research (ATR)¹⁰⁰ enables the Government to develop a framework and working conditions likely to attract more young researchers to Luxembourg. A new ATR system making provision for two modes of operation has been put in place: the student may be a scholarship *holder* with no social security cover or an employee with a research institute with ordinary social security cover. The rule to prove the existence of a work contract between the researcher and his/her work establishment with social security cover is a strong point of the reform of the social aid system.¹⁰¹ ‘The system of ATR scholarships, which was operated for the first time for one full year in 2009, has aroused keen interest from researchers.’¹⁰² The ATR tool has successfully encouraged work contracts to be drawn up: around 80% of PhDs and 95% of post-doctorates selected were able to obtain work contracts. 26% of the recipients are Luxembourgers, 57% are from another EU Member State and 17% from countries outside the EU.’¹⁰³ The five principal nationalities which benefit from the ATR system are European.¹⁰⁴

The political will of Luxembourg to attract researchers was expressed in the 2009

⁹⁹ 2010 political report from the European Migration Network, National point of contact of Luxembourg; published in April 2011

¹⁰⁰ Memorial A, Issue 136 of 8 September 2008, ‘Aides à la formation-recherche’ (Aids to training-research), <http://www.legilux.public.lu/leg/a/archives/2008/0136/a136.pdf#page=2>

¹⁰¹ 2009 Political report on migration and asylum, European Migration Network, Luxembourg national point of contact, pages 32-33.

¹⁰² 2009 Activity report of the Ministry of Higher Education and Research, page 75.

¹⁰³ 2009 Activity report of the Ministry of Higher Education and Research, page 79.

¹⁰⁴ Statistics obtained from the National Research Fund (NRF Luxembourg at the request of the European Migration Network, Luxembourg national point of contact, ‘AFR attribuées durant les années 2008 à 2010’ (ATR allocated during the years 2008 to 2010).

Government programme. The subject of the law of 5 June 2009 is the promotion of research, development and innovation.¹⁰⁵ ‘In 2009, the Ministry of Culture, Higher Education and Research announced an action plan aiming to attract and retain the human resources indispensable for research development in Luxembourg. Moreover, the Ministry has drawn up agreements (‘performance contracts’) between the State and the research establishments.’¹⁰⁶

To promote the expansion of scientific research in Luxembourg, the Government is supporting the projects which consist of attracting researchers from around the world. So, in July 2009, the national research fund initiated the structural programme *Pearl*, intended to attract high level researchers to Luxembourg.¹⁰⁷ The ATTRACT programme aims to attract young researchers in the domains of science and technology who are not yet established in Luxembourg.¹⁰⁸ Lastly, the AM2c programme aims to increase researchers’ mobility between Luxembourg and various countries (EU and third-countries).¹⁰⁹

The 2009 activity report of the Ministry of Higher Education and Research notes, with regards to the Centre de Recherche Public Gabriel Lippmann (*Gabriel Lippmann Public Research Centre*) that the Directorate of Immigration of the Ministry of Foreign Affairs has made genuine efforts to reduce the procedures with regards to the recruitment of PhD student-employees that are third-country nationals.¹¹⁰

Moreover, ‘In June 2009, the FNR and the Ministry of Foreign Affairs (Cooperation Division) signed a co-operation contract showing mutual interest in facilitating research activities in cooperation with third-world countries. At the end of 2009, a number of concrete projects were being drafted. For example: Red Cross Shelter Reference Centre, WHO Centre for Public Health.’¹¹¹

Lastly, in November 2010, the Government adopted Luxembourg’s national reform project within the framework of the Europe 2020 strategy. As regards to the ‘research and

¹⁰⁵ Memorial A, issue 150 of 2009 of 19 June 2009, ‘Promotion de la recherche, du développement et de l’innovation’ (Promotion of research, development and innovation), <http://www.legilux.public.lu/leg/a/archives/2009/0150/a150.pdf#page=2>

¹⁰⁶ 2010 political report from the European Migration Network, Luxembourg national point of contact; published in April 2011

¹⁰⁷ 2010 political report from the European Migration Network, Luxembourg national point of contact; published in April 2011

¹⁰⁸ Luxembourg National Research Fund, ‘ATTRACT Programme’ <http://www.fnr.lu/fr/content/view/full/445>

¹⁰⁹ Luxembourg National Research Fund, ‘AM2c - Mobility of Researchers’, <http://www.fnr.lu/en/Grants-Activities/Accompanying-Measures/AM2c-Mobility-of-Researchers>

¹¹⁰ 2009 activity report of the Ministry of Higher Education and Research, page 29. http://www.mcesr.public.lu/ministere/rapports/min_recher/rapport_2009.pdf

¹¹¹ 2009 activity report of the Ministry of Higher Education and Research, page 82.

development' (R&D) objective, 'the Government has set as a national objective an R&D average cost ratio of 2.6 % of the GDP. Among the measures proposed to achieve this objective, it is a matter of developing an area of expertise in personalized medicine but also to fall more globally within the Government's action within the framework of the 'knowledge triangle' concept aiming to strengthen the link between research, higher education and innovation. Supporting a policy of intellectual property within public research facilities as well as the creation of start-ups or spin-offs, attracting and retaining the human resources indispensable for the development of 'Research-development-innovation' in Luxembourg are at last among the priorities set in the national reform programme.'¹¹²

However, one aspect pointed out to employers is not taken into account by the Government: the cost of settling in. They think that, in the case of researchers 'Nothing is done for them. It is the same with the family welcome facilities, or when they have to come and spend 6 months here. ... There are not enough facilities put in place to help them... this is why... they have great difficulties attracting qualified researchers'¹¹³

2.2.4. Adapting the qualifications to the labour market demand

We note in the 2009 Government programme that 'the main cause of unemployment, other than the effects of the economic crisis, remains the inadequacy of qualifications in comparison with the requirements of the labour market. Unskilled people are those most affected by the risk of unemployment. The Government will encourage from now on active employment policies, highlighting above all an increase in the employability of job-seekers in comparison with purely passive policies.'¹¹⁴

STATEC draws attention to the fact that, among the residents who had a job in 2008, only 25.9% of Luxembourgers had a higher level of education, compared with 65.9% of Belgians, 53.7% of French people and 47.4% of Germans.¹¹⁵ A certain number of Luxembourgers with higher education left Luxembourg to find work abroad, especially after the decision-making centres of large companies were relocated abroad, or was this to escape the high cost of accommodation in Luxembourg? This may explain the fact that, in migratory movements, Luxembourgers present a trend inverse to that of other nationalities (see Graph 3). The people

¹¹² Europaforum.lu, <http://www.europaforum.public.lu/fr/actualites/2010/11/europe2020-projet-pnr/index.html>

¹¹³ Employers' point of view, interview 9, page 8, lines 30-38.

¹¹⁴ 2009 Government Programme, page 130.

¹¹⁵ STATEC Bulletin, issue 5-2010 'Projections socio-économiques 2010-2060' (2010-2060 socioeconomic forecasts), page 259. These figures are taken from LFS 2007/2008.

interviewed have pointed out the risk of sending the best national researchers abroad, 'because there is always the risk [that they] won't come back.'¹¹⁶

Serious problems, however, exist for implementing active employment policies as regards to foreign nationals, and more particularly with highly qualified third-country nationals. These problems fall within three categories:

- 1) Protectionism of certain professions: There are professions which are reserved for nationals. It was the case with the notary profession, where the determining factor to access this profession in Luxembourg is Luxembourgish nationality. This condition was considered contrary to article 43 of the Treaty establishing the European Community (EC). The European Commission supported by the United Kingdom lodged a complaint against Luxembourg on 12 February 2008 (C-51/08) before the European Union Court of Justice. In its judgement of 24 May 2011¹¹⁷, the Grand Chamber of the Court of Justice of the European Communities agreed with the European Commission while pointing out:

‘125 In those circumstances, it must be concluded that the activities of notaries as defined in the current state of the Luxembourg legal system are not connected with the exercise of official authority within the meaning of the first paragraph of Article 45 EC.

126 Consequently, the nationality condition required by Luxembourg legislation for access to the profession of notary constitutes discrimination on grounds of nationality prohibited by Article 43 EC.

127 In light of all the above considerations, the first claim is well-founded.’

The Court's decision is of immediate application. The reaction of the Chamber of Notaries goes in the direction of wanting to limit the effects of the decision. Based on point 97 of the decision the president of the Chamber of Notaries mentioned 'on this basis the possibility of introducing a numerus clausus, putting into play the recruitment rules or even rules on the establishment's liberty. So many subjects that it

¹¹⁶ Employers' point of view, interview 9, page 9, lines 49-50.

¹¹⁷<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=fr&alljur=alljur&jurcdj=jurcdj&jurtpi=jurtpi&jurtfp=jurtfp&numaff=c51/08&nomusuel=&docnodecision=docnodecision&allcommjo=allcommjo&affint=affint&affclose=affclose&alldocrec=alldocrec&docdecision=docdecision&docor=docor&docav=docav&docsom=docsom&docinf=docinf&alldocnorec=alldocnorec&docnoor=docnoor&docppoag=docppoag&radtypeord=on&newform=newform&docj=docj&docop=docop&docnoj=docnoj&typeord=ALL&domaine=&mots=&resmax=100&Submit=Rechercher>

says have already been discussed with the Minister of Justice. According to it, the legal modifications in this sense will be done as quickly as possible. With regards to the other rules concerning for example linguistic skills, examinations or ‘internal establishment limitations’ - ‘a backdoor introduced by the Court’, it will try with the Government’s help to overturn the decree to maintain the status-quo¹¹⁸. Strangely, linguistic skills had already been put forward by the Conseil de la concurrence et l’Inspection de la concurrence (*Council of Competition and Inspection of Competition*) in its report to the European Commission¹¹⁹.

- 2) Recognition of diplomas: Luxembourg remains one of the few countries in the European Union where degrees are recognized by the Ministry of Higher Education and Research and in certain professions by the Ministry of Justice (for example, in the domain of law); and not by a university, even though the University of Luxembourg has existed since 2003. In the domain of law, nationals from countries in the European Union which do not have a Napoleonic civil law system (for example the United Kingdom, Ireland, and even Germany) may encounter problems because the principles of law in their country do not correspond to the principles of French or Luxembourgish law¹²⁰.

Even though there are third-countries whose laws are inspired by French law, there are cases where the Ministry of Justice requests a certificate from a comparable Belgian or French law institute certifying that the fundamental principles of law of his/her country of origin are similar to the fundamental principles of French or Luxembourg law. And even if the certificate in question is obtained, it may be refused on the basis of non-academic considerations as stated by judgment number 27710C of 12 May

¹¹⁸ Lëtzebuurger Journal, 26 May 2011, <http://www.journal.lu>

¹¹⁹ Reports of 15 April 2005 from the Luxembourg competition authorities on self-employed business people (page 16) which spoke as follows on the subject: "Only people of Luxembourgish nationality may access notary positions. This restriction is related to the delegation of the public authority which notaries have, which would exclude these positions to be undertaken by people not fulfilling the nationality condition. Within this context, it still comes back to the particular linguistic situation of Luxembourg, which has three official languages, one of which is spoken in everyday life, and to the obligation of advice and explanation which is incumbent on the notary, which can be assumed in all circumstances only if the notary is in a position to handle the country’s three usual languages. This faculty would be best undertaken by way of the nationality condition. It should be noted that this condition is the subject of infringement proceedings under community law by the interior market to which Luxembourgers have replied with a detailed argument. Other countries being in the same situation, proceedings could soon be commenced before the European Communities Court of Justice.’

¹²⁰ http://www.mcesr.public.lu/enssup/dossiers/homologation_diplomes/brochure_homologation.pdf

2011¹²¹ of the Administrative Court illustrates:

‘As for the opinion of the commission of 5 March 2010, the Court does not share the analysis made by the aforesaid commission that the legal opinion of the Swiss Institute of comparative law would be imprecise *‘by omitting to provide a detailed analysis focused on these two systems of law’*. It would therefore be advisable to note in the first instance that this commission, in its letter of 20 February 2009, only required the production of an explanatory certificate stating that Brazilian law corresponds in its broad lines to the general principles of the Luxembourg legal system and not a detailed analysis of both legal systems involved. For the surplus, the Swiss report adequately demonstrates over 8 pages that the fundamental conceptions of Brazilian law correspond to Luxembourgish law, be it at the level of separation of powers, sources of law (Constitution, codes, laws, decrees), principles of law applicable at the penal level (principle of legality, presumption of innocence, non-retroactivity application of the criminal law, individualization of the punishment, *‘non bis in idem’*), of the development of criminal proceedings (preliminary inquiry, instruction phase, judgement phase), of commercial law or even of the content of the new Brazilian civil code.

Lastly, the Court still observes that the Luxembourg authorities still fail to specify at the present time, despite the abundant documentation given by the present respondent whereof Brazilian law does not correspond in its broad lines to the fundamental principles of the Luxembourg legal system, contenting itself with repeating that Mister... .. would not have provided the required proof, instead of analysing the recognition request in the spirit of procedural collaboration.

In light of the above, the court states to confirm that it has voided the decree of the Secretary of State of 21 July 2009 refusing recognition of the law degree of Mr... .., awarded on 16 February 1996 by the Federal University of... (Brazil), as well as the implicit decision of rejection by the Secretary of State resulting from the silence kept by the latter following the administrative review of 13 October 2009.’

In the cases of doctors, specialist doctors, dentists, veterinarians or pharmacists, recognition of diplomas is not necessary for an EU national holding a degree issued by a country of the European Union or not. It is likewise for a national of a third-country

¹²¹ <http://www.ja.etat.lu/27710C.doc>

who obtained his/her diploma or degree in a country in the European Union. Holders of diplomas or degrees may contact the Health Ministry with a view to requesting authorisation to practise¹²². If the third-country national holds a degree/diploma issued by a country that is not a member of the European Union, the degree must be recognised by the Ministry of Culture, Higher Education and Research¹²³. It is a prior condition that must be met before obtaining authorisation to practise.

- 3) Another problem encountered by foreigners is the linguistic skills required to integrate the labour market in all of the country's three official languages, at the private sector level as well as in the public sector level.

This problem stands out in particular with the response from the Chamber of Notaries Public to the judgement of the European Union Court of Justice (see above).

Access to the profession of lawyer is subject, on the one hand, to a condition of professional qualification (realization of certain study conditions in the domain of law, respectively of professional traineeship), and has been subject, on the other hand, to a linguistic condition, stipulated by the law of 13 November 2002 which stipulated expertise in the administrative and judiciary languages of Luxembourg, namely French, German and Luxembourgish¹²⁴ in the sense of the law of 24 February 1984 on the linguistic requirements¹²⁵. The question of compatibility of the linguistic condition with EC law as regards establishment was subject to assessment by the Court of Justice of the European Communities following a prejudicial question posed by a judgement of the Administrative Court of 7 December 2004 (case C-506/04 Graham Wilson v. Council of the Order of lawyers of the Bar of Luxembourg). In its judgement of 19 September 2006, the Court of Justice reiterates that "Article 3 of Directive 98/5 must be interpreted as meaning that the registration of a lawyer with the competent authority of a Member State other than the State where s/he obtained his/her qualification in order to practise there under his/her home country professional title cannot be made subject to

¹²² <http://www.sante.public.lu/fr/travailler-sante-social/autorisation-exercer/index.html>

¹²³ <http://www.sante.public.lu/fr/travailler-sante-social/homologation/index.html>

¹²⁴ Report by the Luxembourg competition authorities on the sector of self-employed professionals, 15 April 2005.

<http://www.concurrence.public.lu/publications/rapports/rapportprofessionsliberales.pdf>

¹²⁵ Thus specified in the law of 13 November 2002 which modified article 6 (1) of the law of 10 August 1991.

<http://www.legilux.public.lu/rgl/2002/A/3202/1.pdf>

http://www.mj.public.lu/professions/avocat/fonction_avocat/index.html

a prior examination of his/her proficiency in the languages of the host Member State¹²⁶.’ To take into account these developments, the law of 21 June 2007 modified the law of 13 November 2002 on the profession of lawyer.¹²⁷

It should also be noted that before being able to exercise the profession of lawyer, the person must have obtained registration with the Roll of the Bar association established in the Grand Duchy of Luxembourg, which requires the accomplishment of a professional traineeship.¹²⁸

2.3. Legislative and institutional framework

2.3.1. Institutional framework

In Luxembourg, major institutional changes occurred in 2009. The Government’s Commissariat for foreigners (CGE) was replaced by the *Office luxembourgeois de l’accueil et de l’intégration (OLAI)* (Luxembourg Reception and Integration Agency), whose missions were extended. The Labour and Employment Minister was allocated the responsibility on Immigration. However, the Directorate of Immigration remained nevertheless attached to the Ministry of Foreign Affairs.¹²⁹

The OLAI is an administrative body established within the Ministry of Family and Integration. Its ‘mission is to organise the reception of newly arrived foreigners, to facilitate the integration process of strangers by implementing and coordinating the reception and integration policy, of which the fight against discrimination constitutes an essential element.’¹³⁰ The OLAI is responsible for drawing up a national integration and anti-discrimination action plan in agreement with the interministerial integration committee.¹³¹

¹²⁶ <http://curia.europa.eu/jurisp/cgi-bin/gettext.pl?where=&lang=fr&num=79939080C19040506&doc=T&ouvert=T&seance=ARRET>

¹²⁷ Mémorial A Issue 101, of 26 June 2007.

¹²⁸ Grand Ducal regulation of 10 June 2009 arranging legal training courses and regulating access to the public notary profession, Memorial A, Issue 140, of 17 June 2009.

¹²⁹ European migration network, "Political report on migration and asylum 2009", page 10.

¹³⁰ Art. 3 of the law of 16 December 2008 regarding reception and integration of foreigners to the Grand Duchy of Luxembourg.

¹³¹ European migration network, "Political report on migration and asylum 2009", page 39.

2.3.2. The former law on immigration of 28 March 1972

The former law on immigration of 28 March 1972¹³² defined the national policy relating to the entry, stay and access to employment of European citizens and third-country nationals. It had been voted in during a time when a number of migrant workers arrived in Luxembourg, mainly coming from Portugal, but also Yugoslavia, two third-countries at the time, with which Luxembourg had signed a labour agreement in 1970. The law of 1972 also ensured the country was compliant with the Common Market directives and regulations. .

This law distinguished between four types of work permit:

- Permit A: for the first twelve months with a single employer
- Permit B: for the next four years in the same sector
- Permit C: for the entire labour market (permanent contract)
- Permit D: for an apprenticeship (three years).

Permits A and B were renewable. At the earliest, a third-country national could therefore access the entire labour market after five years.

The work permit should have been officially requested by the employer, while the worker should ask for a residence permit.

2.3.3. The law on the free movement of persons and immigration of 2008

In Luxembourg, entry, stay and access to work for economic migrants is presently regulated by the law of 29 August 2008 on the free movement of persons and immigration.

This law transposes several European directives into national law¹³³.

It reorganises the conditions which govern immigration by drawing up entry and stay rules

¹³² Law of 28 March 1972 and its corresponding Grand Ducal regulations
<http://www.legilux.public.lu/leg/a/archives/1972/0024/a024.pdf#page=2>

¹³³ a) Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification
b) Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents c) 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. In this context, it is important to point out the Decree of the Administrative Court, 2nd Chamber, No. 23254 of 17 December 2008 d) Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

according to diverse categories such as employees, highly qualified workers, researchers, students, independent workers and family members. Other categories are not anticipated by the European directives but were added into the national legislation for purely national reasons.¹³⁴

The law was preceded by a consultation of the Economic and Social Council and civil society. Certain provisions of the law fulfil a demand of associations and unions, particularly those relating to the creation of a new residence permit for workers which replaces the double system of residence permits/work permits.¹³⁵

The objective of the law in particular is to adapt the immigration policy to the needs of the Luxembourg economy. The analysis of the requirements in terms of the labour market and economic interest of the country remains to be done, in talks with other players involved (especially employers), including the competent Ministries for the Economy, the middle classes, work, research, higher education and social security¹³⁶, even though interministerial meetings have already taken place as we have seen above.

The right of access to the labour market differs depending on the person's status. Thus, a third-country national¹³⁷ who is member of a family of a citizen of the Union may work without prior authorisation and with no restrictions. Other third-country nationals must request a residence permit giving one of the reasons for migration stipulated by the law, before entry to the territory.

The application for a residence permit with a view to paid work must be lodged with the Minister of Labour, Employment, and Immigration. The law distinguishes between diverse categories of economic migrants.

e) 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

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

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

¹³⁴ Article 54 of the law of 29 August 2008 on the free movement of persons and immigration. See also: 2008 Political report on migration and asylum, European Migration Network, Luxembourg national point of contact, page 40.

¹³⁵ 2008 Political report on migration and asylum, European Migration Network, Luxembourg national point of contact, page 36.

¹³⁶ Government programme, Ministry of Foreign Affairs, *chapter IV.1. Immigration*, <http://www.gouvernement.lu/gouvernement/programme-2009/programme-2009/02-mae/index.html>

¹³⁷ Nationals of Bulgaria and Romania are still obliged to ask to obtain a residence permit for a paid worker which is required for the market test as stipulated by article 6, paragraph (3) of the law of 29 August 2008 on the free movement of persons and immigration.

The paid worker

With regards to obtaining a residence permit in Luxembourg as a salaried worker, a national from a third-country must fulfil the following five conditions¹³⁸:

1. the worker must fulfil like any other third-country national the general rules of article 34, paragraph (2) of the law of 29 August 2008 on the free movement of persons and immigration¹³⁹
2. s/he is not adversely affected by the priority of hiring which certain workers receive by virtue of community or national provisions;
3. exercise of the activity to be supplemented serves the economic interest of Luxembourg;
4. the applicant must have the professional qualifications required for the exercise of the activity to be supplemented;
5. the applicant is in possession of a work contract entered into for a position declared vacant with the Employment Administration (ADEM) in the forms and conditions stipulated by the related legislation in force. The conditions set out are verified respectively by ADEM and the Consultative Commission for Paid Employees (CCTS)¹⁴⁰ in accordance with the terms and conditions determined by the Grand Ducal regulations.¹⁴¹ The Minister responsible for immigration first of all requests via email a notification from ADEM, which is obliged to reply within three weeks, and then one from of the CCTS.

¹³⁸ Art. 42 of the law on immigration of 29 August 2008,
<http://www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf>

¹³⁹ Art. 34, paragraph (2) of the law of 29 August 2008 on the free movement of persons and immigration:

1. being in possession of a valid passport and a valid visa if the latter is required;
2. not being the object of an identification for non-admission purposes;
3. not being the object of a decision to prohibit entry to the territory;
4. not being considered as constituting a threat to public order, internal security, public health or international relations of the Grand Duchy of Luxembourg or of one of the States party to an international agreement relating to crossing of the external borders linking the Grand Duchy of Luxembourg;
5. justifying the objective and the conditions of the envisaged stay, and justify sufficient personal resources, for the duration of the envisaged stay as well as for the return to the country of origin or the transit to a third-country to which his/her admission is guaranteed, or justifying the possibility of legally acquiring these resources and having health insurance covering all risks on the territory. A Grand Ducal regulation defining the required resources and specifying the terms and conditions according to which proof can be brought.

¹⁴⁰ Under the terms of the Grand Ducal regulation of 5 September 2008 in application of the law of 29 August 2008 on the free movement of persons and immigration, three consultative bodies emerged which must assist the competent Minister for immigration when making his/her decision. For salaried workers, it is the Consultative Commission for Employees (CCTS). The principal task of the CCTS is to ensure general compliance with the legal conditions which govern renewal or granting of a residence permit for employed workers or a work permit for citizens of third-countries. The CCTS is comprised of ten members, seconded by the competent Ministries.

¹⁴¹ Art. 43 of the law of 29 August 2008 on the free movement of persons and immigration

The notice will contain information in particular on:

- declaration of the vacant position by the employer;
- the objective necessity of the criteria required by the employer in relation to execution of the work for the position declared vacant;
- verification of concrete availability of jobseekers who have a priority rite to be recruited;
- profiles of the candidates assigned and their employment histories;
- the following is reserved for summons;
- the number of workers subject to authorisation compared with the employer's total number of workers¹⁴².

Once the third-country national is authorised to remain as a paid employee, s/he must provide proof that s/he has suitable accommodation and a medical certificate. From then on s/he can be issued with a 'paid employee' residence permit. The first residence permit is valid for a maximum duration of one year, for a single sector and a single profession. At the first renewal, the residence permit is extended for two more years if the employee is in possession of a work contract entered into for a position declared vacant with ADEM. From the second renewal, the permit, with validity duration of three years, is valid for any profession and any sector.

Authorisation for temporary occupation

Article 14 (2) of the modified law of 5 May 2006 relating to the right to asylum and to additional forms of protection, stipulates that if the Minister has not made a decision on the request for international protection nine months after presentation of the latter and that this delay cannot be imputed to the applicant, the Minister can issue authorisation for temporary occupation for a period of six months, renewable. Temporary occupation authorisation is valid for a determined employer and for a single profession.

However, granting and renewal of temporary occupation authorisation may be refused for reasons relating to the situation, the evolution or organisation of the labour market, taking into account the priority for recruitment which citizens of the European Union or similar have, third-country nationals by virtue of specific agreements as well as third-country nationals staying legally who receive unemployment benefit.

Temporary occupation authorisation issued does not give the right to a residence permit. It loses its validity as soon as the request for international protection is definitively rejected¹⁴³.

¹⁴² ADEM Annual Report 2009, page 152.

Highly-qualified employees

The provisions of article 45 of the law of 29 August 2008 on the free movement of persons and immigration take into account the proposal of the Council directive establishing the entry and stay conditions for nationals of third-countries for the purposes of working in a highly qualified job (European blue card).¹⁴⁴ In this way, the Government expresses its interest in facilitating the recruitment of highly qualified workers. Complete transposition into national law of Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment is in preparation:

The highly-qualified employee may have access to the labour market under more favourable conditions and by virtue of simplified procedures.¹⁴⁵ Therefore, conversely to other employees, the highly-qualified employee only needs to justify the legal entry conditions onto the territory, a work contract corresponding to the qualifications required and remuneration at least equal to an equivalent amount three times the amount of the statutory minimum wage for an unskilled worker. On 1 January 2011 the amount of the statutory minimum wage for an unskilled worker (index 719.84) amounted to €1,757.56 gross per month.¹⁴⁶ These provisions apply to third-country nationals who have a higher education degree or who have specialised professional experience of at least five years and for jobs necessitating particular professional knowledge or abilities. There are no market tests to check the recruitment priority for Community nationals. Notice from ADEM and from the CCTS are therefore not required. Moreover, these people can be granted a residence permit of a maximum of three years, renewable on request.

¹⁴³ ADEM Annual Report, 2009, page 152.

¹⁴⁴ The directive proposal (COM(2007) 637) has been adopted in the meantime: Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0050:FR:NOT>

¹⁴⁵ Art. 45 of the law of 29 August 2008 on the free movement of persons and immigration

¹⁴⁶ Art. 1 of the Grand Ducal regulation of 26 September 2008 determining the minimum level of remuneration for a highly qualified worker in execution of the law of 29 August 2008 on the free movement of persons and immigration, in: *Mémorial A*, Issue 145 of 29 September 2008.

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

According to article 45 of the law of 29 August 2008 on the free movement of persons and immigration a change of employer or of sector is possible if s/he still fulfils the conditions described above.¹⁴⁷

Researchers

The law of 29 August 2008 establishes residence permits for the purposes of undertaking a research project. The latter may be granted by the Minister to the third-country national holding a higher education degree giving access to doctoral programmes, if s/he presents a welcome agreement signed by an approved research body, as well as confirmation of payment. The ‘researcher’ residence permit is valid for the duration of one year or for the duration of the research project, if it is less than one year. It is renewable.¹⁴⁸

Athletes

The residence permit for an athlete is granted by the Minister for exercising, exclusively, a sports or coach activity. The athlete or trainer must fulfil the conditions for entry to the territory and must have entered into a contract with an approved federation or an affiliated club. Remuneration must not be less than the statutory minimum wage set for a full-time job and the person concerned must be covered by health insurance. The ‘athlete’ residence permit is valid for a maximum duration of one year. This permit is renewable, on request, for the same validity period, as long as the conditions for obtaining it are still fulfilled.¹⁴⁹

Transferred employees

A residence permit may be issued, on request from the host company, to the third-country national employee transferred temporarily to the Grand Duchy of Luxembourg, within the context of a transfer between companies belonging to an economic and social entity. To do so, the host company must send the request for the Minister and the worker must be linked in exchange for an open-ended work contract with his/her company undertaking the transfer. The ‘transferred employee’ residence permit is valid for a maximum duration of one year.

¹⁴⁷ Art. 45 of the law of 29 August 2008 on the free movement of persons and immigration.

¹⁴⁸ Art. 63 of the law of 29 August 2008 on the free movement of persons and immigration.

¹⁴⁹ Art. 54 of the law of 29 August 2008 on the free movement of persons and immigration

This permit is renewable, on request, for the same validity period, as long as the conditions for obtaining it are still fulfilled.¹⁵⁰

Freelance/independent workers

A residence permit for an independent activity can be issued to a third-country national if s/he can justify being in possession of the qualities required to exercise the activity to be supplemented, if s/he provides proof that s/he has adequate resources for exercise of the activity and the activity to be supplemented serves the country's interests. Notice from the Consultative Commission for Independent Workers (CCTI) is required in this case.¹⁵¹ The residence permit is issued for three years, renewable on request for the same durations, as long as the conditions continue to be fulfilled.¹⁵² This procedure is also applied to any applicant of authorisation for establishment or ministerial approval on behalf of an operator who proposes to set up an independent skilled trade, industrial, commercial or agricultural type activity on the territory of the Grand Duchy of Luxembourg and of which s/he is the representative¹⁵³.

Specific regime for the sectors and professions characterised by recruitment difficulties

The law of 29 August 2008 on the free movement of persons and immigration does not make provision for a mechanism of identification of shortage of labour. However, the law stipulates¹⁵⁴ by way of derogation from the general rules of access to work as a third-country national a reduced procedure for sectors or professions characterised by recruitment difficulties.

Thus, under the terms of article 42, paragraph (3) 'the Minister may grant a residence permit to the third-country national who proposes to work in a sector or a profession characterised by recruitment difficulties, as determined by Grand Ducal regulations...' To do so, the third-country national only needs to have the professional qualifications required for the exercise of the activity to be supplemented and be in possession of a work contract entered into for a

¹⁵⁰ Art. 47 of the law of 29 August 2008 on the free movement of persons and immigration.

¹⁵¹ Art. 51 of the law of 29 August 2008 on the free movement of persons and immigration.

¹⁵² Art. 52 of the law of 29 August 2008 on the free movement of persons and immigration.

¹⁵³ Art. 51 (2) of the law of 29 August 2008 on the free movement of persons and immigration.

¹⁵⁴ Art. 42 (3) of the law of 29 August 2008 on the free movement of persons and immigration.

position declared vacant to ADEM. Notice from the CCTS is not required.¹⁵⁵ To date, the Grand Ducal regulation identifying a sector or a profession characterised by recruitment difficulties has not yet been adopted.¹⁵⁶

Access to the labour market in Luxembourg for nationals of new Member States

The Luxembourg Government, in its desire to adapt immigration to the needs of the economy, has gradually opened up the labour market to the new Member States. Several employer representatives have highlighted their commitment in favour of opening the borders to workers from these new Member States.¹⁵⁷ Initially, there were procedural relaxations for access to work in certain sectors before lifting the transitory measures. The Government then decided to *prematurely lift the restrictions relating to free movement stipulated in the membership Treaties of eight States which joined the European Union on 1 May 2004 (with the exception of Malta and Cyprus, which had free movement as soon as they became members)*. This decision became effective on 1 November 2007.¹⁵⁸ Moreover, the Minister appointed to immigration outlined that, although few nationals from these countries were working in Luxembourg in 2007, there was a certain demand for them, particularly on the part of the financial institutes, who were then in the process of discovering these markets and who needed labour these countries.¹⁵⁹

Nationals of Bulgaria and Romania are, however, still obliged to request an employee residence permit which is liable to the market test,^{160 161} as stipulated by article 6, paragraph

¹⁵⁵ Art.42 of the law of 29 August 2008 on the free movement of persons and immigration.

¹⁵⁶ Political report on migration and asylum, 2008, European Migration Network, Luxembourg national point of contact, pages 37-38.

¹⁵⁷ Employers' point of view, interview 7, page 1, lines 5-6.

¹⁵⁸ Mitteilung der Landwirtschaftskammer, 'Betrifft Einstellung von osteuropäischen Arbeitskräften in der Landwirtschaft und im Weinbau', page 1,

http://www.lwk.lu/lwk/publikationen/mitteilungen/salaries_occasionnels.pdf

¹⁵⁹ Information and news from the Luxembourgish government, 'Ouverture du marché du travail du Luxembourg aux travailleurs de 8 nouveaux États membres de l'UE' (Opening of Luxembourg's labour market to workers from 8 new EU Member States), 20.09.2007,

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

¹⁶⁰ OECD, SOPEMI Country Notes 2009, Luxembourg.

¹⁶¹ Decision of the Government in council on 4 September 2008 regarding access of Bulgarian and Romanian nationals to the Luxembourgish job market.

<http://www.legilux.public.lu/leg/a/archives/2008/0168/a168.pdf#page=2>

By a decision made during its meeting in council on 4 September 2008, the Government decided to extend for a new period of three years, starting on 1 January 2009, its decision made on 6 October 2006 aiming to impose on Bulgarian and Romanian nationals the obligation to have a work permit to access the Luxembourgish job market. This waiver of the principles of free access to the labour market for citizens of the Union and the European Community preference is set out in the Bulgaria and Romania membership Treaty.

There are however two exceptions to this general rule:

(3) of the law of 29 August 2008.¹⁶²

Seasonal workers

Contrary to other Member States, the law of 29 August 2008 on the free movement of persons and immigration does not stipulate a particular status for seasonal workers, whether they are EU citizens or third-country nationals. However, work contracts of a seasonal nature exist. A distinction must be made between seasonal workers employed for less than three months in the Grand Duchy of Luxembourg and those employed for over three months per calendar year.

Article 35 of the law of 29 August 2008 stipulates that a third-country national has the right to exercise a paid or independent activity without having to have a work permit as long as the occupation on Luxembourg territory is less than three months per calendar year and s/he belongs to the following categories of people: a) personnel from fairground attractions, circuses and other travelling establishments; b) theatre and revue artists; c) athletes; d) lecturers and university readers; e) people undertaking business trips; f) people intending to stay on the territory to undertake services provision with the same group of companies, with the exclusion of any provision undertaken within the scope of subcontracting.¹⁶³

The third-country national, however, must, within three working days from his/her entry on the territory make a declaration of arrival with the municipal authorities.¹⁶⁴ According to articles 4 and 179 of the Social Security Code, the paid worker who exercises his/her professional activity only occasionally and not habitually, and for a duration determined in advance, which must not exceed three months per calendar year, is exempt from having to have health and pension insurance.¹⁶⁵ Nevertheless, s/he is obliged to be affiliated to accident insurance. The person recruited in the agricultural sector or for grape harvesting activities is automatically subject to accident insurance without a declaration to the Social Security Office

1. Bulgarian and Romanian employees who are family members of an EU citizen who him/herself is not subject to this authorisation, have the right to access the labour market without being subject to authorisation.

2. Bulgarian and Romanian students who go to Luxembourg into an approved public or private educational establishment principally for their studies, are authorised to exercise, part-time, a paid activity without being subject to the obligation of a work permit.

¹⁶² Art. 35 (3) of the law of 29 August 2008 on the free movement of persons and immigration: "During the time of validity measures taken in application of the transitory dispositions in the treaties of membership of the European Union and the Agreement on the European Economic Area, employees nationals of these States remain subject to granting of a work permit."

¹⁶³ Art. 35 (2) of the law of 29 August 2008 on the free movement of persons and immigration.

¹⁶⁴ Art. 36 of the law of 29 August 2008 on the free movement of persons and immigration.

¹⁶⁵ <http://www.ccss.lu/salaries/assurance-obligatoire/dispense-pour-activite-occasionnelle/>

being necessary.¹⁶⁶

Beyond a duration of stay of three months, any third-country national who wishes to exercise an activity of a seasonal nature must go through the same procedures as all of the other migrant workers and must satisfy the conditions set out above regarding access of employees to the labour market.

The seasonal work contract constitutes a particular type of fixed-term work contract subject to specific rules: The company which must assume certain works of a repetitive nature, every year, at the same time, in accordance with the rhythm of the seasons or collective lifestyles (i.e. viticulture, tourism, etc.), may resort to seasonal work contracts. These contracts are not intended to fulfil a periodic increase in the company's normal activity, but to execute specific work which is not undertaken throughout the entire year.¹⁶⁷ These types of contract may only be used for the following activities: Harvesting, grape picking, leisure and holiday sports instructor and facilitator, travel guide and touristic visits guide, monitoring and maintenance of open-air or campsite swimming pools, jobs in retail stores, hotels and restaurants whose businesses experiences regular and foreseeable growth during the season, as well as jobs in aviation companies and the transport of people whose business experiences a regular and foreseeable increase during the season.¹⁶⁸ In a period of 12 successive months, the seasonal work contract cannot be entered into for a period longer than 10 months, renewal included.¹⁶⁹

Family reunification and access to the labour market by family members

The issue of family reunification was often mentioned in the interviews, as it may represent either a factor of attraction or an obstacle for migrant workers inclined to come to Luxembourg.

The law of 29 August 2008 also regulates family reunification. Article 69 sets out the conditions required for family reunification of third-country nationals: 'The third-country

¹⁶⁶ Mitteilung der Landwirtschaftskammer, 'Betrifft Einstellung von osteuropäischen Arbeitskräften in der Landwirtschaft und im Weinbau', page 1, http://www.lwk.lu/lwk/publikationen/mitteilungen/salaries_occasionnels.pdf

¹⁶⁷ Government of Luxembourg, *of Guichet*, 'Conclure un contrat de travail à caractère saisonnier' (Entering into a seasonal work contract), <http://www.guichet.public.lu/fr/entreprises/ressources-humaines/contrat-travail/elaboration-contrat/saisonnier/index.html>

¹⁶⁸ Grand Ducal regulation of 11 July 1989 implementing the provisions of articles 5, 8, 34 and 41 of the law of 24 May 1989 on work contracts <http://www.legilux.public.lu/leg/a/archives/1989/0050/a050.pdf>

¹⁶⁹ Government of Luxembourg, *of Guichet*, 'Conclure un contrat de travail à caractère saisonnier' (Entering into a seasonal work contract), <http://www.guichet.public.lu/fr/entreprises/ressources-humain-es/contrat-travail/elaboration-contrat/saisonnier/index.html>

national holding a residence permit with a validity duration of at least one year and who has a prospect based on obtaining a long-term residence right and who stays for at least twelve months on Luxembourg territory, may request family reunification of the members of his/her family [(spouse, partner, unmarried children under 18 years of age)], if s/he fulfils the following conditions: 1) s/he provides proof that s/he has stable, regular and sufficient resources to provide for his/her own needs and those of the members of his/her family for whom s/he is responsible, without resorting to the social welfare system [...]; 2) s/he has appropriate accommodation to receive the member(s) of his/her family; 3) s/he has health insurance cover for him/herself and for the members of his/her family.¹⁷⁰

The waiting time of one year is not however valid for all categories of employees. According to article 71, highly qualified workers, transferred workers, researchers, and those who alone look after one or more children under the age of 18 are authorised to be accompanied by members of their family on entry to the territory.

Family members, themselves third-country nationals, EU citizens, including family members of people of Luxembourgish nationality, have the right to practise a paid activity without having to request a work permit.¹⁷¹

Now we must also take into consideration the consequences of the *Zambrano vs. Belgium* judgement (C-34/09) of 8 March 2011¹⁷². According to this judgement, the parents, third-country citizens, with children who are EU citizens, have access to the labour market without being subject to the market test and a waiting period of one year for family reunification¹⁷³.

On the other hand, the third-country national coming to Luxembourg as the family member of a third-country national is subject to the obligation of a work permit. The market test of the job is applied to the third-country national arriving in Luxembourg within the context of

¹⁷⁰ Art. 69 of the law of 29 August 2008 on the free movement of persons and immigration, <http://www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf>

¹⁷¹ Art. 22 of the law of 29 August 2008 on the free movement of persons and immigration.

¹⁷² <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&alljur=alljur&jurcdj=jurcdj&jurtpi=jurtpi&jurtfp=jurtfp&numaff=&nomusuel=Zambrano&docnodecision=docnodecision&allcommjo=allcommjo&affint=affint&affclose=affclose&alldocrec=alldocrec&docdecision=docdecision&docor=docor&docav=docav&docsom=docsom&docinf=docinf&alldocnorec=alldocnorec&docnoor=docnoor&docppoag=docppoag&radtypeord=on&newform=newform&docj=docj&docop=docop&docnoj=docnoj&typeord=ALL&domaine=&mots=&resmax=100&Submit=Rechercher>

¹⁷³ On this point the Court says: ‘45 Accordingly, the answer to the questions referred is that Article 20 TFEU is to be interpreted as meaning that it precludes a Member State from refusing a third country national upon whom his minor children, who are European Union citizens, are dependent, a right of residence in the Member State of residence and nationality of those children, and from refusing to grant a work permit to that third country national, in so far as such decisions deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen.’

family reunification only for his/her first year of stay. After a stay of one year, the market test will no longer be undertaken.

We also note that people receiving a work permit for private reasons focused on in article 78 (1) b, c, and d of the law of 29 August 2008 may receive an employee residence permit if they have the professional qualifications required for the exercise of the activity to be supplemented and are in possession of a work contract entered into for a position declared vacant to ADEM.

2.3.4. Future developments

Highly qualified workers

As we saw above, the law of 29 August 2008 includes an article which takes into account the directive proposal of the Council drawing up the entry and residence conditions for third-country nationals for the purposes of working in a highly qualified job, the proposition was adopted in the meantime¹⁷⁴. This article corresponds to the Government's desire to attract highly qualified workers. Other points of the directive remain to be transposed. On the other hand, the recent judgements of the European Court of Justice and the Luxembourg Administrative Court as well as the position taken by several self-employed professionals, demonstrate the obstacles which may exist especially for a third-country national, in order for him/her to be able to practise as a self-employed professional.

Getting the immigration policy to converge with the needs of the national economy

In order to overcome the consequence of the economic and financial crisis, the Minister of Economy and Foreign Trade formulated proposals of a general nature in April 2010 to increase national competitiveness. Some of these proposals encourage convergence of the Luxembourg immigration policy with the needs of the national economy. These proposals concern in particular the facilitation of the recruitment of workers from third-countries, the promotion of Luxembourg as a place for general European quarters and the adoption of more

¹⁷⁴ Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0050:EN:NOT>

flexible legislation as regards immigration for exercising an independent activity.¹⁷⁵ ‘An interministerial consideration group is in the process of drawing up recommendations to implement these proposals, attempting to conciliate the requirement of a proactive policy as regards economic immigration with other considerations, like those linked to security and the country’s obligations to its European partners.’¹⁷⁶

Reform of the Administration de l’Emploi (ADEM)

All of the people interviewed within the scope of this study expressed strong criticism as regards the working of the ADEM. In general, the respondents denounced its bureaucratic sluggishness, slowness, inefficacy and the loss of confidence of employers in this institution. All these criticisms may explain the low rate of declaration of positions vacant to ADEM, even though employers are legally required to do so.¹⁷⁷

Following this strong criticism and the evolution of the labour market situation, which is expressed in particular by an ongoing rise in the number of unemployed people, a bill was deposited with a view to reforming ADEM.¹⁷⁸ This reform is based on ADEM’s new philosophy, which over and above the change of its name to ‘Agence pour le développement de l’emploi (*Agency for employment development*)’, aims at a fundamental modification of its procedures which must henceforth be more orientated towards the customer.¹⁷⁹

Certain changes suggested by the project deal with the recruitment procedure of migrant workers and the role that ADEM plays in it. At the present time, a request to obtain a residence permit as regards a paid activity can be introduced to the Minister of Labour, Employment and Immigration, without the hiring priority for a position declared vacant

¹⁷⁵ Ministry of the Economy and Foreign Trade, ‘Propositions d’ordre général du Ministry of the Economy and Foreign Trade pour l’amélioration de la compétitivité nationale, en vue du Comité de coordination tripartite’ (Proposals of a general nature from the Ministry of Economy and Foreign Trade to improve national competitiveness, with a view to the tripartite coordination committee), 10 April 2010, pages 1 and 3-4. However the government’s wish is in contrast to the actual position of the Government in facilitating access of third-country nationals (even citizens from member countries or similar) to the liberal professions (see 2.2.4).

¹⁷⁶ Luxembourg national point of contact for the European Migration Network, ‘Rapport politique sur les migrations et l’asile 2010’, (2010 Political report on migration and asylum).

¹⁷⁷ Anne-Sophie Genevois, CEPS/INSTEAD, *Population & emploi*, n°45 (*Population & work, issue 45*), November 2009, ‘The position of ADEM in recruitments for companies installed in the Grand Duchy’.

¹⁷⁸ Chambre des Députés (Chamber of Deputies), Bill no.6232 establishing the Employment Development Agency on 22.12.2010, page 2, http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/055/997/095946.pdf

¹⁷⁹ Chambre des Députés (Chamber of Deputies), Bill no.6232 establishing the Employment Development Agency on 22.12.2010, page 5-6, http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/055/997/095946.pdf

having been examined in advance. It is up to ADEM and the Consultative Commission for Employees (CCPW) to check that the position in question has been declared vacant with the ADEM and that it is not detrimental to the hiring priority.

The reforms suggest that ADEM from now on acts as a 'filtering office'. The employer must declare its position vacant to ADEM which is responsible for 'establishing concrete availability in the labour market of seekers of priority jobs likely to occupy the position in question by proposing, if necessary, to the employer in question people with recruitment priority, likely to fulfil in concrete terms the jobs declared vacant.'¹⁸⁰ In the case where ADEM did not continue its obligation to offer within a three month period for candidates matching the profile required for the declared position, the employer in question may request certification confirming the right to recruit, for this position, the person of its choosing. This certificate confirming that the market test has been undertaken and that the European priority has been respected, the mandatory resort to the CCTS is not systematically imposed in such a way that the hiring procedure of the paid worker from a third-country will be lightened.¹⁸¹

The third-country national must be in possession of this attestation when making the request for a residence permit in Luxembourg for a paid activity and shall not risk seeing his/her request refused due to non-declaration of the position vacant to ADEM.¹⁸²

The other criticism formulated within the context of the immigration policy and which has also been tackled in this bill, deals with the registration of third-country nationals as jobseekers with ADEM. According to the bill establishing the Employment Development Agency, nationals of third-countries with a valid residence permit giving them the prospect of

¹⁸⁰ Chambre des Députés (Chamber of Deputies), Bill no.6232 establishing the Employment Development Agency on 22.12.2010, *Recruiting abroad*, page 14, http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/055/997/095946.pdf

¹⁸¹ Chambre des Députés (Chamber of Deputies), Bill no.6232 establishing the Employment Development Agency on 22.12.2010, *ad article 9* page 39, http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/055/997/095946.pdf

¹⁸² Chambre des Députés (Chamber of Deputies), Bill no.6232 establishing the Employment Development Agency on 22.12.2010, *Recruiting abroad*, page 15 http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/055/997/095946.pdf

a long stay may register with ADEM.¹⁸³ However, the right to register with ADEM does not automatically lead to the right to a residence permit to exercise a paid activity.¹⁸⁴

Finally, according to the bill, ADEM should ‘play a central role in the Employment Observatory which is being set up. The latter will organise and facilitate a job with a network of producers, analysts and users of studies on the labour market, employment and immigration in the Grand Duchy and more broadly within Luxembourg’s job pool.’¹⁸⁵

Fiscal management of expenditure and charges in relation to employment of highly qualified and specialised workers on the international market

In order to encourage highly qualified employees to settle in Luxembourg, employers must pay a large proportion of the costs incurred by the employee. A circular of 31 December 2010 published by the Inland Revenue¹⁸⁶ makes provision for new fiscal management of the expenditure and charges in relation to employment on the international market of highly qualified and specialised employees. It addresses the necessity of large companies to complete their personnel with highly competent people having in-depth skills in certain specific sectors in order to remain ahead of their competitors and develop innovative products and technologies. The circular understands by the term ‘highly qualified employee’ in point 2 ‘the employee who, habitually working abroad, is seconded from a company located outside of Luxembourg and being part of an international group, to temporarily exercise a paid activity in a native company belonging to the same international group; as well as the employee directly recruited abroad by a native company, to temporarily carry out a paid role in the company, as long as s/he fulfils the following conditions:

- 1) s/he must bring a significant economic contribution or contribute to the creation of new economic activities with high added value in Luxembourg;

¹⁸³ Chambre des Députés (Chamber of Deputies), Bill no.6232 establishing the Employment Development Agency on 22.12.2010, Art. L.622-5, page 21, http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletImpl/?path=/export/exped/sexdpata/Mag/055/997/095946.pdf

¹⁸⁴ Chambre des Députés (Chamber of Deputies), Bill no.6232 establishing the Employment Development Agency on 22.12.2010, page 34, http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletImpl/?path=/export/exped/sexdpata/Mag/055/997/095946.pdf

¹⁸⁵ Chambre des Députés (Chamber of Deputies), Bill no.6232 establishing the Employment Development Agency on 22.12.2010, *Recruiting abroad*, page 13 http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletImpl/?path=/export/exped/sexdpata/Mag/055/997/095946.pdf

¹⁸⁶ http://www.impotsdirects.public.lu/legislation/legi10/Circulaire_L_I_R_n_95_2_du_31_d_cembre_2010.pdf

- 2) s/he must fulfil the conditions of a tax-paying resident;
- 3) s/he must not be and must not have been fiscally domiciled in Luxembourg, nor have been liable to individual income by the Inland Revenue over the 5 years of assessment preceding that of his/her entry into service in Luxembourg;
- 4) s/he must hold a higher education degree and have in-depth technical skills, or have acquired at least 5 years of specialised professional experience in the sector concerned which the domestic enterprise requires or which the domestic enterprise is looking to develop in Luxembourg.

The benefits stipulated for companies and highly qualified workers are the following:

1) The surplus of the costs linked to the employee moving house over the costs which s/he would have had to pay if s/he had stayed in his/her country of origin. The following costs and expenses are considered as moving costs paid for by the employer in so far as the amounts set out do not exceed a reasonable sum¹⁸⁷.

2) Costs of children's schooling.

3) Lump sum allowance for certain other repeated expenses, namely, the difference in cost of living between the host State and the State of origin, as well as other miscellaneous costs linked to moving home.

The employer may pay a specific allowance which covers the costs of the difference in the cost of living between the host State and the State of origin. The monthly amount of the allowance is set at a fixed rate of 8% of the fixed monthly remuneration of the highly qualified salary without exceeding the monthly amount of 1,500 Euros. If s/he shares an address or common residence with his/her spouse or partner the amount is 3,000 Euros, except if the partner exercises his/her own professional activity. For businesses, these costs constitute operating expenses by the undertaking and payment of the costs and lump sum allowance by the employer does not result in an income in the sense of article 95 L.I.R.¹⁸⁸ and they are not considered from the

¹⁸⁷ Point 3 of the circular. The recurring costs in this section may not exceed 50,000 Euros per year, nor 30% of the annual total of the remunerations set for the highly qualified employee. When the highly qualified employee shares an address or a common residence with his/her spouse or partner, the 50,000 Euro limit goes up to 80,000 Euros.

¹⁸⁸ Point 4 of the circular.

point of view of the employee as a non-cash benefit in compliance with the circular relating to article 104 L.I.R¹⁸⁹.

These provisions benefit the companies and employees concerned for the duration of the assignment of the employee in question without exceeding the duration of five years. Beyond that, the employee's assignment in Luxembourg is no longer considered to be temporary. The provisions also end when the basic conditions disappear¹⁹⁰.

The circular is applicable to highly qualified employees who settle in Luxembourg after 31 December 2010.

2.4. Challenges and claims

2.4.1 Employers' point of view

The importance of economic migration for employers

Generally, we retain from the interviews that economic migration of EU citizens and third-country nationals is considered by employers as a central subject for Luxembourg's development and is particularly important for the years to come. There is talk about the necessity of 'resorting to immigrant workers on a huge scale'¹⁹¹ and it is said that 'the whole of Europe will have a major labour requirement if it wishes to continue to maintain this economy at the same level as it is at present.'¹⁹² This analysis gains even more importance in connection with the recent economic crisis. The European policy regarding migration is perceived as a central tool for rising above this crisis; a tool without which 'this will lead straight to disaster.'¹⁹³

Having an immigration policy adapted to the country's needs, 'is even more relevant for a country like Luxembourg which, since its industrialisation, has relied on immigration and foreign capital, therefore people who invest in [its] territory. [...] Lastly, [Luxembourg] has passed from an agrarian model to an industrial model thanks to the contribution from

¹⁸⁹ However, the other payments in kind allocated to the highly qualified employee are processed complying with article 104 L.I.R.

¹⁹⁰ Point 5 of the circular.

¹⁹¹ Employers' point of view, interview 3, page 14, line 21.

¹⁹² Employers' point of view, interview 3, page 14, lines 17-19.

¹⁹³ Employers' point of view, interview 3, page 14, lines 40-45.

abroad.¹⁹⁴ Luxembourg has a major economy which cannot survive without the contribution of non-resident labour. The resort to third-country labour is especially important for the numerous companies in Luxembourg of international origin, as well as for Luxembourgish companies working within an international context and which either export their products beyond European borders, or enter into agreements at the institutional, economic, scientific or other level throughout the world.¹⁹⁵

Criticisms of employers

Generally, it can be noted that employers denounce ‘fortress Europe’¹⁹⁶ and fear that ‘Europe is becoming isolated and will withdraw into itself completely’ in the near future.¹⁹⁷ The problem is increasingly obvious with the rise in power of the populist parties. It is regrettable that ‘nobody seems to grasp’¹⁹⁸ the demographic problem and it is disappointing that they are ‘putting their heads in the sand.’¹⁹⁹ In Luxembourg, the demographic problem appears to be taken into account even less so than at the European level, because this phenomenon is very relative due to high intra-European mobility.²⁰⁰ However, ‘with the financial and economic crisis and the new world order which will succeed it, Luxembourg’s competitive disadvantages and its companies risk adversely affecting any voluntary strategy to maintain economic growth qualitatively and quantitatively higher than in neighbouring countries.’²⁰¹

Employers generally welcome very positively the latest reforms in 2008 regarding immigration. According to them, the Government appears open to the needs of labour and to the arguments of the private sector.²⁰² Furthermore, the Ministry of the Economy and Foreign Trade also commends the convergence of the Luxembourg immigration policy with the needs of the national economy.²⁰³ Yet certain players criticize that ‘the Administration is still not following’, and confirm that many companies are still complaining that it is difficult to obtain

¹⁹⁴ Employers’ point of view, interview 9, page 1, lines 22-27.

¹⁹⁵ Employers’ point of view, interview 3, page 1, lines 9-21.

¹⁹⁶ Employers’ point of view, interview 2, page 1, line 10.

¹⁹⁷ Employers’ point of view, interview 2, page 1, lines 29-30.

¹⁹⁸ Employers’ point of view, interview 2, page 1, lines 31.

¹⁹⁹ Employers’ point of view, interview 2, page 6, lines 22-25.

²⁰⁰ Employers’ point of view, interview 2, page 1, lines 32-33.

²⁰¹ Economic bulletin of the Chamber of Commerce issue 7, June 2009, ‘Actualités et tendances’ (News and Trends), p22.

²⁰² Employers’ point of view, interview 10, page 4, lines 9-10.

²⁰³ Ministry of the Economy and Foreign Trade/Foreign Trade, ‘Propositions d’ordre général du Ministre de l’Économie et du Commerce extérieur pour l’amélioration de la compétitivité nationale, en vue du Comité de coordination tripartite’ (Proposals of a general nature by the Minister of the Economy and Foreign Trade/Foreign Trade for the improvement of national competitiveness, in view of the Tripartite Coordination Committee), version of 10 April 2010, page 3.

the necessary and required authorisations, particularly when migrant workers wish to be accompanied by their families.²⁰⁴ More particularly, employers contribute to the problems at the ‘practical’ and ‘administrative’ level in the sense where the administrative procedures do not appear to respond sufficiently to the ‘urgency’ which businesses must face up to at times.²⁰⁵ In short, it can be deduced that employers would like to have administrative procedures which respond more to the reality of the private sector and to the dynamics of the labour market. In other words, eliminate the existing bureaucracy. A major challenge of an immigration policy adapted to the national economy’s needs consists of facilitating the administrative processes for recruiting the necessary labour if required. In the meantime, employers therefore continue to support a much more liberal and flexible approach emphasizing the positive contribution of migrant workers: ‘In general, I think migrants are very often the best elements in a company, because they try, they are interested, they are dynamic, and they want to do something. They are not just sitting there waiting.’²⁰⁶

The Chamber of Commerce (CCL) welcomes, in its notice on the bill focusing on the free movement of persons and immigration, the simplification of the formalities which European citizens have for residence in Luxembourg and the merger between work permits and residence permits for employees who are third-country nationals. It also criticizes however the overly rigid residence permit system for employees and the system of access to work, which is too restrictive for students.²⁰⁷

The *Chambre des Métiers (Chamber of Skilled Trades)* emphasizes in its notice on the aforementioned bill that the resort to foreign labour cannot constitute the long-term panacea to fulfil Luxembourg’s labour requirement. ‘It is therefore in agreement with the observation of the Economic and Social Council: ‘Immigration alone cannot however sustainably respond to the structural deficit of the offer of work. It must be accompanied by a range of actions aiming to mobilize the internal labour potential: better training, educational orientation and information, widening and improved targeting of ongoing training programmes, re-orientation of unemployed people, promotion of work for women and work for the elderly and other people.’²⁰⁸

²⁰⁴ Employers’ point of view, interview 10, page 4, lines 10-15.

²⁰⁵ Employers’ point of view, interview 3, page 1, lines 45-47 and page 2, line 1.

²⁰⁶ Employers’ point of view, interview 2, page 6, lines 15-17.

²⁰⁷ *Chambre des Députés (Chamber of Deputies)*, Parliamentary document no.5802/05, Bill focusing on the free movement of persons and immigration, ‘Notice from the Chamber of Commerce’, 27.02.2008, page 2.

²⁰⁸ *Chambre des Députés (Chamber of Deputies)*, Parliamentary document no.5802/08, Bill focusing on the free movement of persons and immigration, ‘Notice from the Chamber of Skilled Trades’, 28.03.2008, page 2.

The search for rare pearls

From all of the interviews conducted, we can conclude that the emphasis is very highly placed, by employers and by the Government, on highly qualified workers.

As a matter of fact, as expressed by an employers' representative, if Luxembourg wants to continue to grow, it must do so within the high added value brackets, as its manpower is too expensive to be able to grow in low added value professions.²⁰⁹

The CCL formulated it in the following way in its economic bulletin of 2009: 'If the required expertise is not available, the Government must import specialised skills and have expertise come from abroad. Such an approach, costly to begin with, certainly, enables to rapidly establish renown and recognition at the international level, two indispensable conditions for succeeding in launching new attractive businesses in the Grand Duchy, to rapidly generate endogenous development and obtain spin-off benefits as regards job creation, investments and tax revenue.'²¹⁰

With regards to research, the CCL commends the same opening: 'attracting the best researchers in their discipline at the European and international level to guarantee to the Grand Duchy a high retention of skills, is a condition necessary for excellence as regards competitiveness in the leading sectors, which are the biotechnologies and health technologies.'²¹¹

2.4.2 Viewpoint of civil society and the unions

The union questioned seems to share the employers' criticisms regarding the immigration restrictions, but puts the emphasis on the well-being of the people who immigrate to Luxembourg and on social justice.

In its notice on the bill focusing on the free movement of persons and immigration, the Conseil National pour Etrangers (CNE) (*National Council for Foreigners*) encourages 'equal treatments between nationals and other citizens of the European Union.' It believes 'that granting a status conferring rights similar to those of third-country nationals who are long-term residents imposes and constitutes the basis of any coherent immigration policy worthy of

²⁰⁹ Employers' point of view, interview 10, page 2, lines 42-45.

²¹⁰ Economic bulletin of the Chamber of Commerce issue 7, June 2009, 'Actualités et tendances' (News and Trends), page 36.

²¹¹ Economic bulletin of the Chamber of Commerce issue 7, June 2009, 'Actualités et tendances' (News and Trends), page 45.

this name.²¹² The Plate-forme Migration et Integration (*Migration and Integration Platform*) goes even further: ‘Any political and legislative approach [must] be based on the principle of equal treatment of all citizens, natives of Luxembourg, EU nationals and third-country nationals.’²¹³ The union interviewed argues the case for ‘equality of duty among all citizens.’²¹⁴ The union raises the issue of third-country nationals who fall into unemployment and in particular that of non-payment of unemployment benefit in the case of expiry of the residence permit. ‘Keeping human beings in a situation of uncertainty is terrible at the physical and psychological level.’²¹⁵ The union representative proposes that after one year of residence, the third-country national can have the same rights as the EC national, with regards to unemployment benefit and any other assistance which may exist, as well as benefitting from family reunification.²¹⁶ According to the Directorate of Immigration, in principle, the residence permit for a paid worker is issued for a maximum duration of one year and then from the first renewal for a duration of 2 years, and then at the second renewal for a duration of 3 years. In other words if the person has, on initial issue of the permit, a contract for a period of under one year, s/he shall obtain a residence permit of a duration equivalent to that of his/her contract. If s/he becomes unemployed after the end of his/her contract, s/he may in principle renew his/her residence permit up to expiry of the unemployment benefits. The fact that a person receives unemployment benefit does not automatically lead to withdrawal of their residence permit. The union representative fears that with the rise in unemployment, the number of immigrants deprived of their residence permits following the loss of their jobs risks increasing. The result of this would be a rise in illegal immigration.²¹⁷

Citizen-based associations criticize the inequalities of treatment between highly qualified workers and other categories of workers. It claims ‘granting residence permits with a minimum duration of three years’ and proposes to ‘put an end to the discriminatory principle of European Community preference; to authorise a change of employer as soon as the residence permit is obtained; to remove the constraints to professional mobility of all of the

²¹² Chambre des Députés (Chamber of Deputies), Parliamentary document no.5802/09, Bill focusing on the free movement of persons and immigration, ‘Avis du Conseil National pour Etrangers’ (Notice of the National Board for Foreigners) , 20.03.2008, page 6.

²¹³ Chambre des Députés (Chamber of Deputies), Parliamentary document no.5802/04, Bill focusing on the free movement of persons and immigration, ‘Common notice of ASTI, CCPL, FAEL, FNCTTFEL, the Caritas Foundation Luxembourg, LCGB, the OGB-L, Rosa Lëtzebuerg, SeSoPi-Cl, and SYPROLUX with occasional support from CEAL, LUS and UNEL’, 27.02.2008, page 2.

²¹⁴ Unions’ point of view, interview 1, page 15, line 7.

²¹⁵ Unions’ point of view, interview 1, page 4, line 29.

²¹⁶ Unions’ point of view, interview 1, page 4, lines 31-33.

²¹⁷ OGBL, Résolution of the 6th / 31st Ordinary Congress of the OGBL, ‘Résolution programmatique 2009’, page 60.

workers and as a result grant access to every profession and business segment from the second year of obtaining a residence permit.’ Lastly, it argues in favour of creation of a front office and other simple procedures so that those seeking a residence permit for independent work can obtain information in a single place, as well as for relaxation of the conditions for obtaining an independent worker residence permit.²¹⁸

Contrarily to employers, the CNE ‘urges the authorities to introduce foreign labour with moderation’²¹⁹ and asks itself the question ‘if it wouldn’t be better to develop the potential manpower already in the country before wanting to welcome workers from other countries.’²²⁰ The Migration Platform is of the view that ‘it is indispensable to envisage labour agreements especially with Cape Verde and the Balkan States to give a legal framework to migrants who come from these countries’²²¹

2.4.3 Suggestions from the different societal and political players

Even if the consensus regarding the necessity of a reform of the residence permit system is nearly unanimous, the new law raises more than a few criticisms for its criteria of access to the labour market that are deemed too severe. The Chamber of Commerce commends ‘the image of a company and of a Luxembourg economy wishing to attract foreign businesses and/or foreign labour’.²²²

Although opinions are diverging, here is a compilation of the main criticisms and recommendations formulated by the different players (mentioned in brackets in the following listing) in comparison with the bill focusing on the free movement of persons and immigration or in the course of interviews, criticisms classified into various categories of migrants:

²¹⁸ CLAE, Equal Citizenship Forum, Points no. 12 and 14 to 19, 06/11/2010, Luxembourg.

²¹⁹ Chambre des Députés (Chamber of Deputies), Parliamentary document no.5802/09, Bill focusing on the free movement of persons and immigration, ‘Avis du Conseil National pour Étrangers’, 20.03.2008, page 2.

²²⁰ Chambre des Députés (Chamber of Deputies), Parliamentary document no.5802/09, Bill focusing on the free movement of persons and immigration, ‘Avis du Conseil National pour Étrangers’, 20.03.2008, page 3.

²²¹ Chambre des Députés (Chamber of Deputies), Parliamentary document no.5802/04, Bill focusing on the free movement of persons and immigration, ‘Common notice of ASTI, CCPL, FAEL, FNCTTFEL, the Caritas Foundation Luxembourg, LCGB, the OGB-L, Rosa Lëtzebuerg, SeSoPi-Cl, and SYPROLUX with ponctuel support from CEAL, LUS and UNEL’, 27.02.2008, page 3

²²² Parliamentary document no.5802/00,

http://www.chd.lu/wps/PA_1_084AIVIMRA06I432DO10000000/FTSShowAttachment?mime=application%2fdf&id=972938&fn=972938.pdf

Paid workers

- abandonment of the idea according to which the professional activity or job must serve Luxembourg's economic interests (Chamber of Commerce, Chamber of Skilled Trades²²³ Council of State). This is a legally undefined term. In the case where this condition was to be maintained, the notion of economic interest is so vague that it would risk giving rise to a discretionary, even arbitrary application (Chamber of Commerce)²²⁴
- the complexity of the administrative procedures linked to the double consultation of ADEM and the CCTS (Chamber of Commerce). This bureaucracy renders the company's economic planning very difficult when it requires specific labour
- the request to remove the notice of the CCTS during renewal of work permits (Chamber of Commerce, Chamber of Private Employees).
- the absence of definition of the concept of 'sector' (Chamber of Commerce,²²⁵ Chamber of Skilled Trades²²⁶)
- the request for less restrictive work permits for employee secondments (Chamber of Commerce, Chamber of Skilled Trades)
- the reduction of the period of three years of restriction for work in a single economic sector (Migration Platform, Chamber of Skilled Trades). This is explained in view of fluctuation of the economic situation, a situation which is in favour of greater flexibility of the workforce
- the reduction in the waiting time for obtaining a work permit for a paid worker which is at present from 2-3 months (evoked by the participants at the National Conference for Integration 'S'écouter et agir: haut a muer (aujourd'hui et demain)' (Listen and act, today and tomorrow) of OLAI on 20 November)
- the fact that the applicant must justify a work contract and not only a promise of recruitment.²²⁷ The Chamber of Commerce mentions that the inclusion of these

²²³ Chambre des Députés (Chamber of Deputies), Parliamentary document no.5802/08, Bill focusing on the free movement of persons and immigration, 'Notice from the Chamber of Skilled Trades', 28.03.2008, page 6.

²²⁴ Chambre des Députés (Chamber of Deputies), Parliamentary document no.5802/05, Bill focusing on the free movement of persons and immigration, 'Notice from the Chamber of Commerce', 27.02.2008, page 7.

²²⁵ Chambre des Députés (Chamber of Deputies), Parliamentary document no.5802/05, Bill focusing on the free movement of persons and immigration, 'Notice from the Chamber of Commerce', 27.02.2008, page 8.

²²⁶ Chambre des Députés (Chamber of Deputies), Parliamentary document no.5802/08, Bill focusing on the free movement of persons and immigration, 'Notice from the Chamber of Skilled Trades', 28.03.2008, page 6.

promises which are common in practice would increase people's legal security. Abuses are not to be feared, given that the employer who has entered into a promise of recruitment is obliged to recruit the person receiving the aforesaid promise. The lack of conclusion is equal to unfair dismissal²²⁸ (Chamber of Commerce, Migration Platform²²⁹, Chamber of Skilled Trades²³⁰). At present work contracts are subject to a suspensive condition, i.e. their validity depends on the residence permit

- the regret that the notion of the provisional recruitment plan to be drawn up in discussion between the Government administration and the economic environments concerned is not part of the bill. Such plans would have enabled companies to draw up in advance, together with the authorities, annual quotas of foreigners. For effective recruitments which would come under the context of these provisional plans, the companies would benefit from an accelerated, even relaxed procedure for obtaining residence permits for workers (Chamber of Commerce)²³¹
- the criticism is that the person must introduce his/her residence permit request for employees before entering Luxembourg territory. So, for a good number of people, looking for work remotely is difficult, discouraging, even far-fetched (evoked by the participants at the National Conference for Integration 'Listen and Act: haut a muer (today and tomorrow) of the OLAI on 20 November)
- a shorter waiting time than for family reunification²³²

²²⁷ Chambre des Députés (Chamber of Deputies), Parliamentary document no.5802/05, Bill focusing on the free movement of persons and immigration, 'Notice from the Chamber of Commerce', 27.02.2008, page 2.

²²⁸ Chambre des Députés (Chamber of Deputies), Parliamentary document no.5802/05, Bill focusing on the free movement of persons and immigration, 'Notice from the Chamber of Commerce', 27.02.2008, page 7.

²²⁹ Chambre des Députés (Chamber of Deputies), Parliamentary document no.5802/04, Bill focusing on the free movement of persons and immigration, 'Common notice of ASTI, CCPL, FAEL, FNCTTFEL, the Caritas Foundation Luxembourg, LCGB, the OGB-L, Rosa Lëtzebuerg, SeSoPi-CI, and SYPROLUX with ponctuel support from CEAL, LUS and UNEL', 27.02.2008, page 15.

²³⁰ Chambre des Députés (Chamber of Deputies), Parliamentary document no.5802/08, Bill focusing on the free movement of persons and immigration, 'Notice from the Chamber of Skilled Trades', 28.03.2008, page 6.

²³¹ Chambre des Députés (Chamber of Deputies), Parliamentary document no.5802/05, Bill focusing on the free movement of persons and immigration, 'Notice from the Chamber of Commerce', 27.02.2008, page 2.

²³² Unions' point of view, interview 1, page 1, lines 42-45.

Highly qualified workers

- the overly restrictive definition of the notion of 'highly qualified worker' (Chamber of Commerce, Chamber of Skilled Trades, Council of State)²³³
- improvement of the reception conditions for highly qualified foreigners and entering into agreements with third-States on the secondment and expatriation of workers (Chamber of Commerce)²³⁴
- extension of the diplomatic network in, for example, the Middle East²³⁵ (interview with a private employees' representative)
- the fact of 'being able to issue visas directly by the Luxembourgish authorities. in countries targeted by Luxembourg. This remission by the Luxembourgish authorities constitutes a competitive advantage and enables an attractive policy to be implemented for investors from third-countries'²³⁶
- the request to 'facilitate the mobility of third-country employees settled in Luxembourg in order to promote Luxembourg as a location for European headquarters. Companies that wish to establish a headquarters and who transfer within this context third-country employees to Luxembourg must be able to ensure mobility for these employees to work in the countries covered by their activity. [...] The strict checks used by Luxembourg in the past must be reconsidered. The majority of executive directors or employers active at the international level will have difficulty respecting the minimum residence condition of 6 months' stay in Luxembourg, given their business trips'²³⁷.

²³³ Point de contact national du Luxembourg du Réseau européen des migrations, 'Rapport politique sur les migrations et l'asile', 2008, page 38.

²³⁴ Economic bulletin of the Chamber of Commerce issue 7, June 2009, 'Actualités et tendances' (News and Trends), page 57.

²³⁵ Employers' point of view, interview 9, page 24, lines 20-21.

²³⁶ Ministry of the Economy and Foreign Trade, 'Propositions d'ordre général du Ministre de l'Économie et du Commerce extérieur pour l'amélioration de la compétitive nationale, en vue du Comité de coordination tripartite' (Proposals of a general nature by the Minister of Economy and Foreign Trade for the improvement of national competitiveness, in view of the Tripartite Coordination Committee), version of 10 April 2010, page 3.

²³⁷ Ministry of the Economy and Foreign Trade, 'Propositions d'ordre général du Ministre de l'Économie et du Commerce extérieur pour l'amélioration de la compétitive nationale, en vue du Comité de coordination tripartite' (Proposals of a general nature by the Minister of Economy and Foreign Trade for the improvement of national competitiveness, in view of the Tripartite Coordination Committee), version of 10 April 2010, pages 3-4.

Independent workers

- the adoption of "more flexible legislation regarding immigration to the exercise of an independent activity. At present, the independent worker does not have the right to be accompanied by his/her family in the first year."²³⁸ (Ministry of the Economy and Foreign Trade)

Students

- extension of the duration of the residence permit for the paid worker from two to three years for a student who has obtained his/her university degree in Luxembourg, which would enable young people to perfect their professional experience (Chamber of Commerce).²³⁹

2.4.4 Political challenges

The numerous criticisms formulated as regards the law of 29 August 2008 on the free movement of persons and immigration is not preventing the players from declaring that it is also necessary to take into account the position and interest of the Government.

First and foremost, one of the respondents draws attention to the fact that the Government 'fears that the financial community is only importing manpower with specialised qualifications to Luxembourg and, once these people come to lose their specialised jobs, there will be no opportunities for them to find work in Luxembourg.' These apprehensions are also based on the volatility of the financial community.²⁴⁰ The most damaging result is the burden for unemployment insurance in the case where a recession affects the financial sector and many of its highly qualified personnel are unable to find work elsewhere. The social cost would be very high to bear, not losing sight of the political cost that it could generate for the nation's population.

Moreover, the respondents draw attention to the fact that public opinion may have difficulty understanding and accepting that when we open the door to highly qualified workers and

²³⁸ Ministry of the Economy and Foreign Trade, 'Propositions d'ordre général du Ministre de l'Économie et du Commerce extérieur pour l'amélioration de la compétitive nationale, en vue du Comité de coordination tripartite' (Proposals of a general nature by the Minister of Economy and Foreign Trade for the improvement of national competitiveness, in view of the Tripartite Coordination Committee), version of 10 April 2010, page 4.

²³⁹ Chambre des Députés (Chamber of Deputies), Parliamentary document no.5802/05, Bill focusing on the free movement of persons and immigration, 'Notice from the Chamber of Commerce', 27.02.2008, page 13.

²⁴⁰ Employers' point of view, interview 10, page 3, lines 39-46.

researchers then the rate of unemployment increases in Luxembourg²⁴¹ and that poverty also exists in Luxembourg. In Luxembourg, the rate of the risk of poverty went up from 13.5 % in 2008 to 14.9 % in 2009, according to a study by STATEC²⁴² focusing on the economic difficulties of households²⁴³.

Lastly, the Government could ‘fear that a too high increase of the resident population will lead to an unacceptable reduction in green space. Likewise [it may] consider that very high investments at the level of community facilities which a major demographic growth would not lack in arousing would be more than annihilated any advantages that the latter could bring about. And then, it isn’t necessary to hide that the continuation of immigration would lead, in the long-term, to a situation where nationals would be ethnic minorities. For some, such a development could, then, constitute a threat to social cohesion or to national identity, even though the concept of the latter is vague.’²⁴⁴

2.5. Political and societal debate

The objective of this section is to give a glimpse of the principal political and societal debates conducted in Luxembourg on the topic of economic migration. It is mainly based on the interviews conducted within the scope of this study.

2.5.1. A subject insufficiently discussed

Before the new law of 29 August 2008 on the free movement of persons and immigration, discussion in the last few years focused on the reform of the legislation on nationality which brought about the law of 23 October 2008 on the Luxembourgish nationality²⁴⁵.

²⁴¹ Employers’ point of view, interview 9, page 13, lines 28-38.

²⁴² STATEC, 2010 work and social cohesion social report. <http://www.statistiques.public.lu/catalogue-publications/cahiers-economiques/2010/PDF-Cahier-111-2010.pdf>

²⁴³ STATNEWS, Issue 45/2010 of 15 October 2010,

<http://www.statistiques.public.lu/fr/actualites/population/population/2010/10/20101015/20101015.pdf> ‘On the increase, the poverty level was 14.9 % in 2009’ Luxembourgish Wort, 17 May 2011. <http://www.wort.lu/wort/web/fr/luxembourg/articles/2011/05/150473/index.php>

²⁴⁴ Observatoire interrégional du marché du travail (OIE) (Inter-regional observatory of the job market), Atelier-débat ‘L’évolution démographique – Défis et chances pour le marché du travail dans la Grande Région’ (Discussion workshop ‘Demographic evolution – Challenges and opportunities for the labour market in the Greater Region’, presentation by Jean Langers (STATEC) ‘Le marché du travail de la Grande Région et les défis du changement démographique’ (The labour market of the Greater Region and the challenges of demographic change), page 41

²⁴⁵ Mémorial A no. 58 of 27 October 2008, <http://www.legilux.public.lu/leg/a/archives/2008/0158/a158.pdf>

This law introduced to Luxembourg the principle of plurinationality. It also established the possibility of recovery of nationality for those who are descendants in the paternal or maternal direct line, even those born abroad, of a Luxembourgish ancestor on first January nineteen hundred, may recover Luxembourgish nationality (art. 29).

Although the reform of the law of 2008 on immigration extended the debate on the immigration policy, certain players lament the fact that, since then, this subject is no longer really discussed.²⁴⁶ The subject of migration, and in particular economic migration, does not appear to be openly discussed at the political level,²⁴⁷ nor in the media.²⁴⁸ As a matter of fact, more recently, attention is more focused on the integration of migrants, whereas by virtue of the law of 16 December 2008 on the reception and integration of foreigners, the OLAI was put in place, the National Action plan on Integration and Against Discrimination has been adopted and the Welcome and Integration Contract is being drawn up. Certain employers maintain that, even if the political world is aware of the implications of migration for the country, the society as a whole does not yet seem to have understood the enormous repercussions of migration at the economic and social level today and in the years to come.²⁴⁹ As a result, there is not really any discussion of it within society.²⁵⁰ Certain people will go even further by talking of a ‘gap between the economic reality and the perception of the Luxembourgish people of what Luxembourg is, and of what Luxembourg’s economy is.’²⁵¹ To remedy this, and in the hope that Luxembourgish people properly understand the situation, it is necessary to explain the importance of foreigners to Luxembourg: foreigners represent ‘...43% of the population, 71% of paid work, direct foreign investments represent 180% of the GDP.’²⁵² The ratio of exports/GDP to Luxembourg (180%) is much higher than the ratio in Germany (40%), while the latter is the world champion of exports. Lastly, three out of four companies in Luxembourg are created by foreigners.

²⁴⁶ Employers’ point of view, interview 2, page 5, lines 4-7.

²⁴⁷ Employers’ point of view, interview 10, page 1, line 25.

²⁴⁸ Ministerial Point of View, interview 4, page 3, lines 3-4.

²⁴⁹ Employers’ point of view, interview 10, page 1, lines 21-24.

²⁵⁰ Employers’ point of view, interview 9, page 19, lines 35-36.

²⁵¹ Employers’ point of view, interview 9, page 13, lines 46-47.

²⁵² Employers’ point of view, interview 9, page 19, lines 36-43.

2.5.2. A sensitive subject

As regards the recent economic crisis and the rise in unemployment, it seems that the subject of immigration and the free movement of persons is becoming increasingly sensitive. We can also take note of the following declaration: ‘I don’t think that migration used to be a sensitive subject in Luxembourg, but that it risks becoming one. This did not pose any problems, as there was work for everyone.’²⁵³ Today, however, the idea that foreigners/cross-border commuters are taking the jobs of Luxembourgers is increasingly recurrent.

Although Luxembourgers and foreigners/cross-border commuters rub shoulders every day at work, there appears to be a potential for conflict: ‘Although there are no longer borders, culturally, they exist.’²⁵⁴ We often hear people criticizing the lack of commitment of cross-border workers in Luxembourg. They come to work in Luxembourg and leave in the evening. Moreover, ‘there are no reasons to say why they have to be residents.’²⁵⁵ The Economic and Social Council expressed this concern in 2006: ‘Traditionally, in Luxembourgers’ way of thinking, Luxembourg society is an open and tolerant society which welcomes migrants from other countries. However, in the last few years, the positive image of the migrant as guarantor of the country’s economic prosperity has gradually become tarnished due to a number of factors: the presence of illegal immigrants, the awareness that the present population ratios are being overturned in favour of immigrants, the progressive decline of Luxembourgish to the benefit of French and the increase in the level of unemployment. This change of attitude has given rise to the question of knowing if sustained immigration continues to receive the support of the population and if there is not a level of foreigners of which an overflow would be deemed problematic, even unacceptable by the native population. [...] In order to allay these fears and prevent the appearance of any xenophobic phenomena in the Luxembourg population, it is important to accompany the immigration policy of vast information and communication campaigns on the necessity and the economic, social and cultural benefits of migration and an active, supported integration policy.’²⁵⁶

²⁵³ Employers’ point of view, interview 9, page 19, lines 48-50.

²⁵⁴ Employers’ point of view, interview 9, page 7, line 4.

²⁵⁵ Employers’ point of view, interview 9, page 7, lines 22-23.

²⁵⁶ Economic and Social Council/Immigration (October 2006), Notice Conseil Économique et Social/Immigration (octobre 2006), Avis ‘Pour une politique d’immigration et d’intégration active’ (For a policy of immigration and active integration), page 22.

2.5.3. The Greater Region: an eternal source of manpower for Luxembourg?

One of the central issues in the debate on economic migration and the shortage of labour for Luxembourg is that of the sustainability of the economic system based on the contribution of foreign manpower and especially the very large cross-border workforce which comes to work in Luxembourg every day. In Luxembourg, there has always been a lack of qualified personnel within the native population, and this situation has not improved over the years.

Luxembourg is a highly attractive labour market for many people living in the Greater Region. However, with regards to the recent economic crisis and demographic evolution, the challenge for Luxembourg is to remain sufficiently attractive for a workforce coming from abroad. To this is added the issue of durability: will the labour market be able to continue to grow from 10,000 to 20,000 jobs per year (as it did from 2004 to 2008), if we take into consideration factors such as the need for additional infrastructures, CO2 emissions, the problem of land development, the necessity of developing road and rail networks, etc.²⁵⁷

Already in 2006, the Economic and Social Council had expressed the following fear: 'It is therefore illusory to think that the national labour market could be resourced forever solely within the border regions of Luxembourg or by manpower from the countries of Southern and Eastern Europe, which themselves are experiencing a deficient demography and a sizeable lack of manpower. In the face of employment programmes and jobs aiming to keep the workers in their countries, faced with the expansion of their economies and ageing of their own populations, the migratory flows coming from countries of European emigration will end up being reduced, even disappearing.'²⁵⁸

This fear was reiterated during several interviews, although the majority of people questioned do not seem to challenge the idea of an incessant flow of cross-border commuters always coming to supply the Luxembourg labour market.

Some people evoke thus the geographical limits of the Greater Region, considering that the people are coming from further and further away to work in Luxembourg.²⁵⁹ As a matter of fact, Luxembourg is becoming increasingly less attractive gradually that people are moving farther away from it because the time lost to travel to their workplace is becoming greater and the remuneration regarding the travel costs is less worthwhile. Another phenomenon raised is

²⁵⁷ Employers' point of view, interview 9, page 21, lines 42-44.

²⁵⁸ Economic and Social Council/Immigration (October 2006), Notice Conseil Économique et Social/Immigration (octobre 2006), Avis 'Pour une politique d'immigration et d'intégration active' (For a policy of immigration and active integration), page 16.

²⁵⁹ Employers' point of view, interview 7, page 2, lines 19-20 and interview 5, page 4, lines 31-35.

a possible economic regain in the regions neighbouring Luxembourg which, accumulated by problems due to major circulation on the motorways, could encourage people to work closer to their homes.²⁶⁰ Lastly, some respondents have mentioned the demographic problems of the Greater Region, with regard to the fact that Europe will lose 50 million inhabitants in the long term,²⁶¹ and that many workers which Luxembourg needs ‘are already there’.²⁶² Beside this gradual depletion of human resources, it is also necessary to take into account that, with the development of the financial sector in Luxembourg, the latter will need very highly qualified people, who will have to be recruited beyond the borders of the Greater Region.²⁶³

Employers’ representatives emphasize the necessity of being prepared for this situation²⁶⁴ and fear the consequences of a possible refusal of freezing of public sector salaries. They refer to a wake-up call which could be quite painful.²⁶⁵

2.5.4. Lack of reception facilities

Faced with the major cross-border mobility in Luxembourg and the growing demand for migrant workers, the country is confronted with major challenges as regards accommodation, schools, nurseries and road and rail networks, etc.²⁶⁶ Accommodation, as pointed out by STATEC, constituted the principal cost for Luxembourg households. This is due to the fact that there is a lack of accommodation.

The accommodation problem affects all of Luxembourg’s residents, including economic migrants.²⁶⁷ In the face of the high price of housing in Luxembourg and faced with wage differentials with the country of origin, it is difficult to ask the person to pay all at once an amount equivalent to four months’ rent, including agency fees and a deposit (for a single studio, this can be 4,000 Euros). The union representative proposed building temporary accommodation, while a permanent solution is found. This accommodation is to be distinguished from ‘hostels for migrant workers’, built in the past, which were temporary solutions.²⁶⁸

²⁶⁰ Employers’ point of view, interview 7, page 2, lines 14-16.

²⁶¹ Employers’ point of view, interview 7, page 2, line 9.

²⁶² Employers’ point of view, interview 10, page 6, lines 31.

²⁶³ Employers’ point of view, interview 10, page 6, lines 32-36.

²⁶⁴ Employers’ point of view, interview 7, page 2, lines 24-25.

²⁶⁵ Employers’ point of view, interview 9, page 21, lines 48-50 and page 22, lines 1-4.

²⁶⁶ Employers’ point of view, interview 9, page 12, lines 23-29.

²⁶⁷ Unions’ point of view, interview 1, page 15, line 40.

²⁶⁸ Unions’ point of view, interview 1, page 15, lines 46-50 and page 16, lines 1-2.

Beyond the linguistic problems that cross-border manpower may lead to for small to medium enterprises,²⁶⁹ the lack of reception facilities may greatly reduce the attraction of the country especially for highly qualified migrants. According to an employers' representative, it is already very difficult to attract researchers from abroad, in particular with short-term contracts, due to the lack of welcome facilities, among other things.²⁷⁰

2.5.5. Luxembourg's brand image

The welcome facilities seem all the more important for a country like Luxembourg whose 'brand image is not excellent'²⁷¹ and which cannot, for example, be compensated by its 'wonderful' social climate.²⁷² As a small country, Luxembourg is not yet perceived as a centre of excellence.²⁷³ Yet Luxembourg is an extremely sophisticated financial centre, whose cross-border expertise is virtually unique in Europe.²⁷⁴ Some people say: 'The people who have to come here rarely come voluntarily. They don't want to come to Luxembourg and all those who have come to Luxembourg once don't want to leave again. That is absolutely typical.'²⁷⁵ It is clear, however, that the crisis has greatly affected Luxembourg as a financial hub. The decision-making centres have moved to abroad and the financial institutions operate merely as subsidiaries. This situation makes it more difficult to attract highly qualified people who wish to make a career in Luxembourg.

2.5.6. Political participation of foreign workers in Luxembourg

Electoral turnout is gradually increasing in Luxembourg. Up until the 1990s with the implementation of European citizenship including access to the right to vote in the local elections, foreigners were completely excluded from Luxembourg national politics. Today this remains true at the national level. In other words, even though they are the principal economic drivers, the overall decisions were made by the nationals who generally work in the public sector. Presently, for the political parties,²⁷⁶ as well as for the employers'

²⁶⁹ Employers' point of view, interview 2, page 3, lines 49-50 and page 4, line 9.

²⁷⁰ Employers' point of view, interview 9, page 8, lines 47-48.

²⁷¹ Employers' point of view, interview 9, page 9, lines 25-26.

²⁷² Employers' point of view, interview 9, page 8, line 40.

²⁷³ Employers' point of view, interview 9, page 8, lines 47-48.

²⁷⁴ Employers' point of view, interview 10, page 5, lines 19-48.

²⁷⁵ Employers' point of view, interview 10, page 5, lines 14-16.

²⁷⁶ CEFIS, RED (Recherche, Etude, Documentation) (Research, Study, Documentation) Issue 14, « Integration in Luxembourg: Indicators and dynamics», November 2010, presents the opinions of the different political parties:

Dei Greng (DGL): Residence citizenship including the right of foreign residents to vote

Dei Lenk (DL): Residence citizenship including the right of foreign residents to vote

DP, LSAP: Opening discussion on electoral participation at the national level, after evaluation of the measures or the impact of the new law on nationality

representatives and public authorities, the political participation of foreigners is an increasingly important topic.

OLAI's national conference on integration on 20 November 2010 tackled this issue. A study by CEFIS showed low participation of foreigners in the political parties²⁷⁷ and a low rate of registration of foreigners on the local electoral rolls.²⁷⁸

'OLAI was authorised by the Government to implement an information and awareness-raising campaign for foreigners to encourage them to register on the elector rolls'²⁷⁹, and 'the political participation of foreigners in Luxembourg society as a whole appears to be one of the priorities of the National Action Plan on Integration and Against Discrimination.'²⁸⁰

In the recommendations formulated with the Government resulting from the legislative elections of 7 June 2009 the Chamber of Commerce states: 'The Government should take into account the new sociological and demographic changes linked to immigration and to the inflow of foreign manpower and foreign capital. Luxembourg has always been and will remain dependant on these contributions from abroad. So it must be done in such a way that the related production factors continue to inflow into the country and that they find here development and self-fulfilment conditions. Within this context, there is every reason to acknowledge the important role played by companies with foreign capital and with the numerous cross-border and foreign employees. With regards to foreign residents, it must be ensured that they can actively participate in decision-making and collective choices.'²⁸¹

Besides work, political participation is another factor regularly taken into account for assessment of the migrants' degree of integration. In Luxembourg, the issue of political

ADR: Full and entire citizenship goes through the acquisition of Luxembourgish nationality - single nationality.
CSV: Full and entire citizenship goes through the acquisition of Luxembourgish nationality - plural nationalities.
KPL: Full and entire citizenship goes through the acquisition of Luxembourgish nationality - facilitate the acquisition of Luxembourgish nationality.

²⁷⁷ OLAI national conference on integration of 20 November 2010, a few results from the study 'Political parties and foreigners in Luxembourg' by CEFIS, http://www.olai.public.lu/fr/publications/programmes-planactions-campagnes/CNI/CNI_Table_ronde.pdf

²⁷⁸ OLAI national conference on integration of 20 November 2010, CEFIS presentation on 'Intermediate assessment of registrations on the electoral rolls in the municipal elections of 2011', http://www.olai.public.lu/fr/publications/programmes-planactions-campagnes/CNI/presentation_cefis.pdf

²⁷⁹ OLAI, 'Appel à projets - Inscription des étrangers sur les listes electorales' (Calls for Projects – Registering Foreigners on electoral lists), http://www.olai.public.lu/fr/actualites/2011/1/Appel_a_projets-Elections/index.html (Last update of the page on: 14.01.2011, last consultation on 15.01.2011)

²⁸⁰ OLAI, Appel à projets 2011 (Calls for project 2011) 'Campagne d'information et de sensibilisation à l'attention des étrangers en vue de leur inscription sur les listes électorales' (Calls for Projects: Information and Awareness Campaigning for the foreigners' registering on electoral lists), http://www.olai.public.lu/fr/publications/programmes-planactions-campagnes/Campagne_-_Elections_communes/Appel_projet_2011.pdf

²⁸¹ Economic bulletin of the Chamber of Commerce issue 7, June 2009, 'Actualités et tendances' (News and Trends), p 22.

participation of foreigners has reappeared in the last few years with the reform of the law of 23 October 2008 on Luxembourgish nationality.²⁸² This law is perceived as an innovation and a chance to widen the Luxembourgish electorate in particular for the national elections. It enables foreigners who wish to acquire Luxembourgish nationality to do so without having to renounce their nationality of origin.²⁸³

The legal framework has evolved to facilitate electoral turnout of people of foreign nationality to the local and European elections. Thus, the electoral law of 18 February 2003²⁸⁴ widens the right of active vote for the municipal elections to nationals of third-countries if they fulfil the condition of residence duration of 5 years in the country, while excluding them from the right to stand for election (the possibility of being a candidate). The law of 19 December 2008 amending the modified electoral law of 18 February 2003²⁸⁵ reduces the residence duration of EU citizens to be able to participate in the European Parliament elections from 5 years to 2. Lastly, the law of 13 February 2011 amending the municipal law and the electoral law²⁸⁶ widens the right of eligibility for the municipal elections to third-country nationals. Moreover, the new electoral law enables a person of foreign nationality, whether s/he is an EU citizen or a third-country national, to access the position of mayor or deputy mayor.²⁸⁷

If the associations have been battling for a long time for the right to vote for foreigners,²⁸⁸ employers' representatives have also expressed the wish for all their personnel to be represented politically.²⁸⁹ During an interview an 'apartheid situation' was referred to with regard to the fact that ten years from now the majority of the population resident in Luxembourg will not have the right to vote²⁹⁰, if the current situation does not change.

This lack of political integration is all the more striking in Luxembourg where the proportion of foreigners and their involvement in the national economy is very high in comparison with

²⁸² Mémorial A Issue 158 of 27 October 2008, <http://www.legilux.public.lu/leg/a/archives/2008/0158/a158.pdf>

²⁸³ Economic bulletin of the Chamber of Commerce issue 7, June 2009, 'Actualités et tendances' (News and Trends), p 22.

²⁸⁴ Mémorial A Issue 30 of 21 February 2003, <http://www.legilux.public.lu/leg/a/archives/2003/0030/a030.pdf>

²⁸⁵ Mémorial A Issue 210 of 24 December 2008, <http://www.legilux.public.lu/leg/a/archives/2008/0100/a100.pdf#page=2>

²⁸⁶ Mémorial A Issue 29 of 16 February 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0029/a029.pdf#page=2#page=2>

²⁸⁷ Luxembourg.lu, 'Réforme de la loi électorale' (Reform of the electoral law), <http://www.luxembourg.public.lu/fr/actualites/2011/01/27-elections/index.html> (last update on 17.02.2011, last consultation on 14.03.2011)

²⁸⁸ Le Quotidien, interview with Laura Zuccoli 'Nous sommes clairement un lobby' (We are clearly a lobby) one 30.11.2009, website: <http://lequotidien.editpress.lu/interview-du-lundi/6666.html> (last consultation le 11.01.2011)

²⁸⁹ Employers' point of view, interview 7, page 9, lines 22-24.

²⁹⁰ Unions' point of view, interview 1, page 14, line 16.

the other Member States. Some people therefore talk of a ‘problem of democracy’²⁹¹ with regard to the fact that foreign residents cannot participate in the national elections and that the some 150,000 cross-border commuters who come to Luxembourg every day to work, are also excluded from them. So, nearly 43.7%²⁹² of the manpower (cross-border commuters) is not represented politically in Luxembourg (cross-border workers may however elect their representatives for the *Chambre des Salariés* (Chamber of Employees)²⁹³ and around 26.77% of the resident foreign manpower does not exercise the right to vote. So, 70.51% of Luxembourg’s manpower cannot participate in the country’s political life. In other words, ‘only one inhabitant out of two, one employee in of three and one entrepreneur in four has the right to vote.’²⁹⁴, that is to say, the political decisions are made by representatives of 29.49% of the country’s manpower. In addition, given that the majority of non-Luxembourgers and non-residents work in the private sector, and that Luxembourg residents, especially Luxembourgers, work in the public sector, we can conclude that the private sector is not represented in the democratic procedures governing Luxembourgish society.²⁹⁵ The Chamber of Commerce phrases it as follows: ‘The Luxembourgish electorate is concentrated in the public and semi-public sectors. This may result in collective choices which do not take enough account of the concerns and requirements of an open economy subject to international competition. Presently, the Luxembourgish electorate represents a limited proportion of the people who contribute to the prosperity of the Luxembourgish economy.’²⁹⁶ With regard to the fact that increasing numbers of people in Europe will end up working in an EU Member State other than their own, the union representative suggests a reform of Europe’s democratic system.²⁹⁷

2.5.7. Problem of social cohesion in Luxembourg

The participation of foreigners in political life is accompanied by a lack of participation of Luxembourgers in the country’s economy. From this duality emerge problems of social cohesion which were often mentioned in the interviews. There is therefore talk of a ‘loss of

²⁹¹ Unions’ point of view, interview 1, page 13, line 15.

²⁹² Government of the Grand Duchy of Luxembourg, ‘Rapport d’activité 2008’ (2008 Activity Report), March 2009.

²⁹³ Unions’ point of view, interview 1, page 15, lines 15-16.

²⁹⁴ Economic bulletin of the Chamber of Commerce issue 7, June 2009, ‘Actualités et tendances’ (News and Trends), page 22.

²⁹⁵ Employers’ point of view, interview 3, page 3, lines 30-39.

²⁹⁶ Economic bulletin of the Chamber of Commerce issue 7, June 2009, ‘Actualités et tendances’ (News and Trends), page 22.

²⁹⁷ Unions’ point of view, interview 1, page 14, lines 21-24.

contact with reality'²⁹⁸ of Luxembourgers, even an 'identity withdrawal',²⁹⁹ which would originate, among other things, in the job security experienced by the latter by working in the public sector, a sector protected from the unpredictability of the economy and from unemployment. Moreover, in their workplace, they rarely encounter foreign work colleagues, while 89% of the manpower in the public administration is formed of Luxembourgers, and only 8% of them are foreign residents and 3% are cross-border commuters³⁰⁰, while specifying that in the group of cross-border commuters, we find Luxembourgers who live on the other side of the border. In addition, as the public sector remains a protected sector, there is a risk that situation will not change in the near future. Employers conclude that the country is administered by Luxembourgers, but run economically by foreigners. There is therefore a duality between the administrators and the constituents, and a policy which governs the work and life of those who cannot vote.³⁰¹

2.5.8. The Luxembourgish school system

According to the people interviewed, the lack of status seeking poses a genuine problem in Luxembourgish society.³⁰² This situation is generally attributed to the Luxembourgish school system. Actually, according to a study by OECD, social exclusion is inherited³⁰³ and successive PISA studies (2000,³⁰⁴ 2003,³⁰⁵ 2006,³⁰⁶ 2009³⁰⁷) have shown that the gap between pupils from immigration and native pupils is relatively pronounced.³⁰⁸ According to an employers' representative' ...between these different strata, status seeking is not effective at

²⁹⁸ Employers' point of view, interview 9, page 5, line 8.

²⁹⁹ Carlo Thelen, 'L'économie luxembourgeoise et les étrangers, aujourd'hui et demain' (The Luxembourgish economy and foreigners, today and tomorrow), in ASTI 30+, Luxembourg 2010, page 228.

³⁰⁰ CEFIS, Key figures on the population of Luxembourg, Presented during the National Conference for Integration on 20 November 2010, Organised by the Ministry of Family and Integration, OLAI, in collaboration with the CNE, graph 'Luxembourgeois, résidents étrangers et frontaliers selon les secteurs économiques au 31 mars 2010' (Luxembourgers, foreign residents and cross-border commuters according to economic sectors on 31 March 2010), page 16.

³⁰¹ Employers' point of view, interview 10, page 1, lines 42-50.

³⁰² Employers' point of view, interview 10, page 2, lines 11-15.

³⁰³ Employers' point of view, interview 9, page 14, lines 25-26.

³⁰⁴ Results of PISA 2000,

http://www.oecd.org/document/21/0,3746,en_32252351_32236159_33688661_1_1_1_1,00.html

³⁰⁵ Results of PISA 2003,

http://www.oecd.org/document/55/0,3746,en_32252351_32236173_33917303_1_1_1_1,00.html

³⁰⁶ Results of PISA 2006,

http://www.oecd.org/document/2/0,3746,en_32252351_32236191_39718850_1_1_1_1,00.html

³⁰⁷ Results of PISA 2009,

http://www.oecd.org/document/61/0,3746,en_32252351_32235731_46567613_1_1_1_1,00.html

³⁰⁸ Economic and Social Council/Immigration, Notice 'Pour une politique d'immigration et d'intégration active' (For a policy of immigration and active integration), October 2006, page 134.

all, so I think that there is a problem of social cohesion. There is much discussion in Luxembourg on social cohesion between those who would be under the poverty threshold risk, which is 14% in Luxembourg...³⁰⁹ Up until now this issue of social cohesion was managed because the country was becoming increasingly richer³¹⁰ and there was more prosperity.

Luxembourgish schools have a huge challenge, to train their pupils in the country's three languages, that is, Luxembourgish (the national language), German and French (all three are considered to be administrative languages). This situation is difficult for Luxembourgish schoolchildren and in particular for the children of newly-arrived immigrants. According to employers' representatives, it generates involuntary discrimination³¹¹ over the long term in the sense that nationals undertake more academic training whereas foreigners do technical training.

Assuming that being able to speak three or four languages can be considered as an asset, the truth is that this does not enable specialisation in other domains³¹². However, languages play a filtering role which means foreigners will be unable to access academic training.

The theory most generally defended during the interviews is that learning three languages is detrimental to specialisation in another domain. As a result, the qualifications acquired by pupils in Luxembourg do not correspond to the needs of the Luxembourgish economy and school education is 'quite far removed from the economic realities.'³¹³ One person interviewed even spoke of a 'huge waste of human capital'.³¹⁴

The last Pisa 2009 study in Luxembourg focused on 4.622 pupils from 39 state, private and international schools.

'In the three domains evaluated (reading comprehension, mathematical and scientific knowledge), Luxembourg is situated below the average of the OECD.

The results are almost stable compared with the results of the preceding studies. Between the studies of 2003, 2006 and 2009, statistically significant variations are not observed. They confirm the gaps in performance between certain categories of pupil. The gaps between native and foreign pupils, between pupils from different socioeconomic backgrounds, and between boys and girls, remain worrying, all the more so since they are more pronounced in

³⁰⁹ Employers' point of view, interview 10, page 2 lignes 10-15.

³¹⁰ Employers' point of view, interview 9, page 5, lines 44-45

³¹¹ Employers' point of view, interview 9, page 15, lines 2-3.

³¹² Employers' point of view, interview 9, page 15, lines 4-10.

³¹³ Employers' point of view, interview 9, page 14, lines 32-33.

³¹⁴ Employers' point of view, interview 9, page 14, line 18.

Luxembourg than in the average country of the OECD. Socioeconomic status continues to be the factor which has the greatest influence on performances.³¹⁵

The percentage of under-performing pupils is higher than the average of the OECD. These pupils do not have the basic skills deemed necessary for taking apprenticeships or for coping with varied situations in everyday life.

- reading comprehension:

- 26% of pupils are under-performing (OECD average: 19%),

- 23% of pupils are performing very well (OECD average: 28%),

- mathematical knowledge:

- 24% of pupils are under-performing (OECD average: 22%),

- 30 % of pupils are performing very well (OECD average: 32%),

- scientific knowledge:

- 24% of pupils are under-performing (OECD average: 18%),

- 25 % of pupils are performing very well (OECD average: 29%)³¹⁶.

The gap is, however, greater between nationals and foreigners: ‘In Luxembourg, the gaps in performances between native pupils and foreign pupils (independently of socioeconomic status and the language spoken at home) are more pronounced than in the OECD average. In the 3 subjects assessed, native pupils clearly outstrip their foreign counterparts:

- by 25 points in reading comprehension,

- by 25 points in mathematical knowledge,

- by 30 points in scientific knowledge.

These differences correspond to an educational delay of just over one school half-year.³¹⁷

Due to these difficulties, Luxembourg is trying to reform the school system. According to the Government programme of 2009, the Luxembourgish authorities have anticipated to combat

³¹⁵PISA and PIRLS: the Luxembourgish school system in the international studies trial, http://www.gouvernement.lu/dossiers/education_jeunesse/pisa-pirls/index.html

³¹⁶ Results of the Pisa 2009 study, page 5, http://www.gouvernement.lu/salle_presse/actualite/2010/12-decembre/07-delvaux-pisa/doss_101207_pisa.pdf

³¹⁷ Results of the Pisa 2009 study, page 6.

school failure and leaving formal education early.³¹⁸ This desire was expressed by numerous reforms in 2009, namely:

- The organisation of primary schools into learning cycles organised into core skills,³¹⁹
- A reform of technical teaching,³²⁰
- Alternative educational facilities to post-primary facilities,³²¹
- Establishment of the ‘school of second chances’ enabling those who leave formal education early to have supervision and individual monitoring.³²²

For the children of migrants who have just arrived in Luxembourg, several specific initiatives have been developed.

The leaflet ‘Bienvenue à l’école luxembourgeoise ! (‘Welcome to School in Luxembourg!’)³²³ by the School Welcome Group for newly-arrived pupils (CASNA) and the website of MENFP³²⁴ inform parents of pupils about specific offers intended for children of migrants, such as support and welcome courses, “*allet*” (German as a foreign language) classes, the international baccalaureate and classes with specific linguistic skills, etc.³²⁵ There is an intercultural mediation service for parents, children and teachers who can use this service

³¹⁸ 2009 Government Programme, page 68, <http://www.gouvernement.lu/gouvernement/programme-2009/programme-2009/programme-gouvernemental-2009.pdf>

³¹⁹ Government of the Grand Duchy of Luxembourg, MENFP, ‘L’enseignement fondamental en détails’ (Basic education in detail)
http://www.men.public.lu/sys_edu/enseignement_fondamental/101025_enseignement_fondamental_en_details.pdf

³²⁰ Ministry for National Education and Vocational Training, ‘Loi et règlements grand-ducaux relatifs à la nouvelle formation professionnelle’ (Grand Ducal law and regulations relating to the new vocational training), http://www.men.public.lu/priorites/formation_professionnelle/100216_loi_rgd_sfp/index.html

³²¹ De Guichet, ‘Inscrire un jeune dans une structure pédagogique alternative du post primaire’ (Enrolling a young person into an education facility alternative to post-primary)
(<http://www.guichet.public.lu/fr/citoyens/enseignement-formation/enseignement-postprimaire/inscription-public/structure-alternative/index.html>) (last update on 14.03.2011, last consultation on 15.03.2011)

³²² Government of the Grand Duchy of Luxembourg, MENFP, ‘L’École de la 2e chance’ (The School of 2nd chance), http://www.men.public.lu/priorites/090430_ecole_2_chance/index.html (Last update of this page on 20.10.2010, last consultation le 15.01.2011)

³²³ Government of the Grand Duchy of Luxembourg, MENFP and CASNA, Leaflet ‘Bienvenue à l’école luxembourgeoise ! Information pour parents et élèves étrangers’ (Welcome to school in Luxembourg! Information for foreign parents and pupils),
http://www.men.public.lu/publications/enfants_etrangers/pub_francais/080908_casna_informations_parents/081015_casna_fr.pdf

³²⁴ Government of the Grand Duchy of Luxembourg, MENFP, ‘Scolarisation des enfants étrangers’ (Schooling for foreign children), www.men.public.lu/sys_edu/scol_enfants_etrangers/

³²⁵ Government of the Grand Duchy of Luxembourg, MENFP, ‘Quelles sont les mesures spécifiques pour les élèves étrangers ?’ (What are the specific measures for foreign pupils?),
http://www.men.public.lu/sys_edu/scol_enfants_etrangers/mesures_specifiques/index.html (last update of the page on 21.12.2010, last consultation on 15.01.2011)

during school welcome courses or in class.³²⁶ Short guides focusing on welcoming children of migrants newly settled in the country are regularly sent to the teaching staff.³²⁷

The Grand Ducal regulation of 16 June 2009³²⁸ regulates the running of the welcome courses and welcome classes for children newly arrived in the country. The pupil who is integrated into basic education while attending school and who lacks proficiency in the Luxembourgish language (first cycle), the German language or the French language (second, third or fourth cycles), to be able to maintain their rate of basic education, and attend one or more weekly welcome courses outside of his/her registration periods to intensively learn the languages in which s/he has knowledge gaps.³²⁹

One of the Government representatives mentioned that the availability of international schools in Luxembourg was a very important factor (in addition to the work opportunities for spouses) in attracting highly qualified migrants.³³⁰ Besides the European school, there are currently several international schools in Luxembourg: the International School of Luxembourg and St. George's International School Luxembourg with English methods of teaching.³³¹ The International School of Luxembourg offers a Baccalaureate recognized by universities worldwide.³³² Lycée Vauban is a French secondary school. At the level of private schools, there are also the Ecole Maternelle et Primaire Française du Luxembourg (E.F.L.) (Luxembourg French Nursery and Primary School), the private Japanese school and the Scuola Materna Italiana (Italian Nursery School).

³²⁶ Government of the Grand Duchy of Luxembourg, MENFP and CASNA, Leaflet 'Bienvenue à l'école luxembourgeoise ! Information pour parents et élèves étrangers' (Welcome to school in Luxembourg! Information for foreign parents and pupils), page 3, http://www.men.public.lu/publications/enfants_etrangers/pub_francais/080908_casna_informations_parents/081015_casna_fr.pdf

³²⁷ European Migration Network, Luxembourg national point of contact, 'Rapport politique sur l'asile et les migrations 2010' (2008 Political report on migration and asylum 2010).

³²⁸ Mémorial A Issue 144 of 19 June 2009, <http://www.legilux.public.lu/leg/a/archives/2009/0144/a144.pdf>

³²⁹ Mémorial A Issue 144 of 19 June 2009, article 1, <http://www.legilux.public.lu/leg/a/archives/2009/0144/a144.pdf>

³³⁰ Ministerial Point of View, interview 4, page 8, lines 14-16.

³³¹ Guichet, 'Ecoles privées de l'enseignement secondaire général' (General secondary education private schools), <http://www.guichet.public.lu/fr/citoyens/organismes/enseignement-formation/ecoles-privées-enseignement-secondaire-general/index.html> (last update on 17.11.2008, last consultation on 15.03.2011)

³³² International School of Luxembourg, <http://www.islux.lu/about/about-isl/>

3. IMPLEMENTATION OF THE ECONOMIC MIGRATORY POLICY AND LEGISLATION

3.1 Identification tools for the shortage of manpower

There are no mechanisms in Luxembourg for identifying and quantifying the shortage of manpower as such.

The people interviewed think that it would be extremely difficult to forecast the long term labour requirements in the industries, due to the fact that Luxembourg is a small-sized economy with an open market.

On the other hand, for the financial sector, which is more homogenous, the situation is different, because there is a very uniform training policy to meet the challenges and needs of the sector over the long term as well. One example is *Luxembourg School of Finance* which has put together appropriate substantial training as regards the needs analysed for the financial sector including the local labour market.³³³

At present, issue of a resident permit to a third-country national with a view to him/her exercising a paid activity in the sector is done after verification of the principle of preference of hiring EU nationals. Residence permits for highly qualified workers are issued on a case-by-case basis, but in the case of self-employed professionals we have seen the practical problems which can arise.

We shall reiterate in detail the recruitment procedure for manpower from third-countries with realization of the market test³³⁴. We shall then mention the surveys, studies and concrete actions undertaken in Luxembourg and in the Greater Region by economic players on the subject of the shortage of labour, as well as the training necessary to overcome these challenges.

3.1.1. Specific regime for the sectors and professions characterised by recruitment difficulties

See chapter 2.3.3.

³³³ Employers' point of view, interview 3, page 9, lines 2-34.

³³⁴ Ministerial Point of View, interview 6, page 13, lines 4-7.

3.1.2. Market test

A market test must be done within the scope of a residence permit application for a paid worker in order to demonstrate that the position declared vacant cannot be occupied by an EC national and therefore a third-country national may be recruited for this position. The procedure is as follows:

- The position must be declared vacant for the employer.
- ADEM must publish the position vacant or refer jobseekers to the boss.
- The third-country national submits a 'paid worker' residence permit application with the Directorate of Immigration.
- The management sends a copy of the request to ADEM.
- ADEM has to send, 'within three weeks, a detailed notice relating to the opportunity to grant a residence permit for a paid worker'³³⁵ after having checked that the working conditions are fulfilled. So beforehand, ADEM is responsible for undertaking a market test to ensure that no Luxembourgish person or foreigner resident in Luxembourg can fill the position vacant in question and that 'European' recruitment priority is therefore respected.
- After having received the detailed notice from ADEM, the Directorate of Immigration can ask the employer for additional information before referring the matter to the CCTS. The Directorate of Immigration sends the CCTS the file along with all of the information obtained.
- The CCTS sends its notification relating to the request to the Ministry so that the latter can make a decision regarding the 'paid worker' residence permit application.³³⁶
- The Ministry makes the decision, either approving the application or not.

In the case of refusal the third-country national has the right to complain to the Administrative Tribunal within three months following the decision³³⁷. If the decision is negative, s/he has the right to lodge an appeal before the Administrative Court within the month following the decision.

³³⁵ Activity Report of the Ministry of Labour page 210. http://www.mte.public.lu/ministere/rapports-activite/rapport_act_2009.pdf

³³⁶ National conference for integration 'S'écouter et agir: haut a muer' of the OLAI on 20 November 2010, workshop 1, presentation 'Autorisations de séjour liées à une activité salariée' (Residence permits linked to a paid activity), http://www.olai.public.lu/fr/publications/programmes-planactions-campagnes/CNI/loi_travail_sal_conf-int_ gration.pdf

³³⁷ It is important to point out that in the case of refusal on the part of the Administrative Tribunal, the third-country national can appeal before the Administrative Court.

The market test is, however, not required for certain categories of residence permit (highly qualified workers; transferred workers and researchers).

It is therefore not possible to obtain an overview of the manpower shortage.

Within the context of the reform of ADEM (see 2.3.), certain changes are provided for in the *job-matching* process. ADEM was heavily criticized, specifying the lack of follow-up and of proposal of candidates meeting the criteria of the vacant positions. This problem is mentioned in the bill which aims to reform ADEM in the sense of basing the work of ADEM on ‘a logic of genuine customer service’³³⁸. This will enable ADEM to undertake more personalized follow-up of jobseekers³³⁹ and to maintain better relationships with employers.³⁴⁰ This therefore contributes to better functioning of ADEM to resolve the problems of manpower shortage. As regards third-country nationals this project gives ADEM a time-limit of three weeks to propose candidates to the employer. If, despite this new *job-matching* process, no suitable candidate has been found, ADEM can send the employer confirmation certifying that the recruitment priority has been respected and the employer may therefore recruit a third-country national

3.1.3. Surveys on the qualifications of tomorrow in Luxembourg

In Luxembourg, the only publications available on manpower training requirements are the surveys conducted by industrial, financial and commercial enterprises. They have been conducted since 2004 by the organisations Business Federation Luxembourg (Fedil), Association des Banques et Banquiers de Luxembourg (ABBL) (*The Luxembourg Bankers' Association*) and the Luxembourg Chamber of Commerce (CLC), in partnership with the Chamber of Commerce, ADEM, the National Education and Vocational Training Ministry and by EURES. These surveys are limited to the domains of industry and the information and communication technologies (ICT). The principal objectives of these surveys conducted yearly, are to 1) guide young people and their parents in professional orientation corresponding to the requirements of the market in the domain studied; and 2) provide

³³⁸ Bill no.6232 establishing the Employment Development Agency on 22.12.2010, page 11
http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletImpl/?path=/export/exped/sexdpata/Mag/055/997/095946.pdf

³³⁹ Bill no.6232 establishing the Employment Development Agency on 22.12.2010, page 7,
http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletImpl/?path=/export/exped/sexdpata/Mag/055/997/095946.pdf

³⁴⁰ Bill no.6232 establishing the Employment Development Agency on 22.12.2010, page 10,
http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletImpl/?path=/export/exped/sexdpata/Mag/055/997/095946.pdf

information to the public authorities and training professionals to ensure matching between the needs of companies and the training courses to be given.³⁴¹

3.1.4. Studies and actions conducted on the workplace in the Greater Region

At the regional level, certain actions are also conducted to study the labour market of the Greater Region and cross-border work, by the bodies *Observatoire interrégional du marché du travail* (OIE) (Inter-regional labour market observatory), EURES, EURES-Transfrontalier and the statistical portal of the Greater Region. ‘The measures taken in the domain of information and advice are very developed where the contribution from the EURES network is decisive. Practical guides and information leaflets answering questions and specific problems in the domain of systems of social security cover exist in practically all of the fields studied and can be consulted by the general public. This information, which is subject to constant change due to the permanent efforts made to harmonize the national regulations, can be increasingly consulted on the internet. [...] In parallel to this anonymous form of advice and information, individual consultations are available, either with Euro-advisers or private service providers’.

The individual consultations take place in the border regions in different forms (for example, within the framework of consultation or cross-border activity days.)³⁴²

EURES:

ADEM contributes to the EURES network, ‘a European network of public services for employment, the aim of which is to facilitate the free movement of workers in the EU and within the European Economic Area (EEA), contributing in this way to the development of a genuine European labour market.’³⁴³

³⁴¹ Fedil, *Les qualifications de demain dans le domaine des technologies, de l’information et de la communication* (The qualifications of tomorrow in the domain of information and communication technologies), 2009-2010, page 7.

³⁴² Christian Wille and Sabine Ohnesorg ‘Frontaliers et marché du travail transfrontalier dans la Grande Région’ (Cross-border commuters and the cross-border market in the Greater Region), *Observatoire interrégional du marché du travail* (OIE), Cahier thématique dans le cadre du projet général (Thematic cahier within the framework of the general project) ‘Etat d’avancement, perspectives et exigences d’action du marché du travail dans la Grande Région d’ici l’année 2020’, Saarbrücken 2005, page 156.

³⁴³ Government of the Grand Duchy of Luxembourg, Work and Employment Ministry, *Rapport d’activité 2008* (2008 Activity Report), March 2009, page 228.

EURES' missions consist in particular of 1) facilitating access to information relating to job offers and requests in the countries of the EEA; and 2) assisting businesses in recruiting at the European level.³⁴⁴

'EURES offers three types of service: information, advice and work placements. [...] Its objective is to inform, orientate and advise people who wish to undertake training or find a job in Europe. EURES also supplies information to employers looking for staff and who wish to broaden the field of recruitment beyond their national territory. [...]

The EURES facilities are also characterised by activity focused on the determined regions which are experiencing major cross-border flows and form transnational job pools, or which are experiencing interpenetration of the regional economies. These cross-border facilities, called *EURES Transfrontaliers (EURES T.)* rely on a voluntary partnership set up locally. Their tasks consist of broadcasting Euro-vacancies and job requests, to inform on working conditions, exchange information on vocational training and encourage discussion about the problems of the labour market, thanks to the links formed between the different partners on either side of the border.³⁴⁵

'ADEM makes available to the network certain job offers of an international nature sent by companies who do not find certain qualifications within the local or regional labour market. [...] [EURES advisers] assist businesses in their search for people with qualifications not available in the national market. In addition to union and employers' advisers, they help cross-border workers and foreign residents resolve the problems linked to the movement of migrant workers in the EU.³⁴⁶

The interregional Labour Market Observatory (OIE)

The OIE is a network comprised of six institutes specialised in the Greater Region, to which ADEM and EURES in particular belong. 'The objective of the OIE is to bring together information relating to the labour market in the Greater Region, to compare it and interpret it in order to deduce from it structural conclusions and an employment policy for the Greater Region.

³⁴⁴ Government of the Grand Duchy of Luxembourg, Work and Employment Ministry, *Rapport d'activité 2008 (2008 Activity Report)*, March 2009, page 229.

³⁴⁵ Government of the Grand Duchy of Luxembourg, Work and Employment Ministry, *Rapport d'activité 2008 (2008 Activity Report)*, March 2009, pages 228-229.

³⁴⁶ Government of the Grand Duchy of Luxembourg, Work and Employment Ministry, *Rapport d'activité 2008 (2008 Activity Report)*, March 2009, page 230.

From a content point of view, the tasks of the OIE are divided into two joint sections: labour market statistics and analysis of the labour market.

The precise definition of the work entrusted to OIE is left to the political managers of the Greater Region, the presidency of the Summit undertaking for its part a role of coordination by means of a specific work group carrying out the role of Observatory Steering Committee.

Concerning the labour market analysis, a network of institutes specialised in the Greater Region was put in place to undertake from the beginning the interregional aspect of the work. This network is comprised of the following players:

- Saarland and Rhineland-Palatinate: INFO-Institut
- Lorraine: CRD (*Research and Documentation Centre*) of the EURES Transfrontaliers of Lorraine and OREFQ
- Luxembourg: ADEM/EURES
- Wallonia: Walloon Employment Observatory
- German-speaking community in Belgium: Abeo Ostbelgien

The Saarbrücken INFO-Institut was made responsible for coordination of the labour market analysis.

The aim of the project is to put together comparative, differentiated and current data on the labour market situation in the Greater Region.

The activity of the year 2008 consisted of updating the existing statistical material and conducting structural analyses of the labour market.³⁴⁷

‘The OIE is presently working on the project ‘OPTI-MATCH - Cooperation and assistance in the Greater Region – optimization of the process of compatibility of supply and demand in the labour market of the Greater Region’ within the framework of *Interreg IV A* Greater Region.’³⁴⁸

³⁴⁷ Government of the Grand Duchy of Luxembourg, Work and Employment Ministry, *Rapport d’activité 2008 (2008 Activity Report)*, March 2009, page 231-232.

³⁴⁸ Observatoire interrégional du marché du travail (Inter-regional observatory of the job market), http://www.granderegion.net/fr/COOPERATION_POLITIQUE_INTERREGIONALE/OBSERVATOIRE_INTERRÉGIONAL_EMPLOI/index.html (last update on 30.04.2010; last consultation on 10.12.2010)

The Greater Region statistical portal

‘This statistical portal makes available for users from the political, administrative, economic and scientific worlds as well as the relevant citizens, an entire range of statistical information drawn up and put together by the statistical offices of the Greater Region by using regional as well as national and European sources.’³⁴⁹ It gives access to the economic and social data harmonized over the cross-border region: maps, graphs, definitions, glossaries, useful addresses, bibliographical references, official statements and links. So this portal uses surveys on the labour force to make an inventory of the active population instead of the residence survey, which we wish to avoid using within the context of this study.

3.2. Mechanism for evaluation of skills and recognition of migrants’ qualifications

This section gives information on the mechanisms of evaluating skills and on the process of recognition of qualifications in Luxembourg. While the skills assessments enable certification of professional and extraprofessional experience, recognition of qualifications enables qualifications obtained abroad to be checked and validated and possibly a national equivalent to be offered.

3.2.1. Skills assessment mechanism

In Luxembourg, there is no mechanism for assessing specific skills for migrant workers who are third-country nationals. However, once established in Luxembourg, the latter have access to the mechanisms which are open to the public in general, namely Recognition of Prior Learning (RPL) and skills assessments.

Recognition of Prior Learning (RPL)

On 17 January 2010 the Grand Ducal regulation of 11 January 2010 was published³⁵⁰ on Recognition of Prior Learning (RPL). Recognition of Prior Learning enables any individual to have his/her knowledge and expertise developed throughout his/her professional and extra-professional life officially recognised. As the Minister for National Education, Mady Delvaux-Stehres pointed out; ‘RPL is a new procedure which enables professional and extra-professional experience to be recognised. The certification obtained thanks to RPL can help

³⁴⁹ Statistical portal of the Greater Region, <http://www.grande-region.lu/eportal/pages/HomeTemplate.aspx> (last update, on 30.03.2010, last consultation on 10.12.2010)

³⁵⁰ <http://www.legilux.public.lu/leg/a/archives/2010/0006/a006.pdf>

people find a new job, change role, advance in their career or reduce the duration of a training project. RPL is open to everyone, whatever their age, level of study or professional situation. The sole condition is to have at least three years' of paid or voluntary work, continuous or otherwise. This activity must be directly linked to the requested certification. If the candidate fulfils the conditions, s/he can obtain a certificate or a diploma in secondary technical education: CITP [*certificat d'initiation technique et professionnelle*] (Certificate of Technical and Vocational Initiation); CCM [*certificat de capacité manuelle*] (Certificate of Manual Proficiency); CATP [*certificat d'aptitude technique et professionnelle*] (Certificate of Technical and Vocational Proficiency), *diplôme de technicien* (Technician Diploma) or *diplôme de fin d'études secondaires techniques* (School-Leaving Certificate), or a *brevet de maîtrise de l'artisanat* (Trade Proficiency Certificate)³⁵¹

The RPL procedure is as follows:

The candidate draws up a request for eligibility with the RPL unit of the Ministry of National Education and Vocational Training.

The candidate must provide evidence that s/he possesses the required experience and give details of the corresponding vocational skills certificate, diploma or certificate. Work certificates, voluntary work certificates and signed declarations are to be provided.

Once his/her request for eligibility is accepted, the candidate must complete a validation file on the content describing in detail the knowledge, aptitudes and skills directly related to the requested diploma.

The validation commission, comprised of employer, monetary and educational representatives, examines this file.

If the skills are deemed incomplete, it will only award a part of the diploma. The candidate then has three years to acquire the skills lacking, through training or additional experience.

The commission may then submit the candidate to an interview or a professional, actual or simulated situation.

The validation commission meets twice a year.

³⁵¹ Government of the Grand Duchy of Luxembourg, MENFP, press conference 'Mady Delvaux-Stehres presents the Recognition of Prior Learning procedure of 16/03/2010, http://www.men.public.lu/actualites/2010/03/100316_vae/index.html (page last updated on 16/03/2010, last consultation on 14/01/2011).

Skills assessment

The job-seeker can undertake a skills assessment in order to take stock of his/her profile and manage his/her career. 'The aim of the skills assessment is to specify and broaden the job-seeker's aptitudes so as to be more able to pinpoint them in comparison with the skills required in the labour market.' The factors taken into account here are: theoretical knowledge, know-how in practice and soft skills.³⁵² These skills assessments are offered to job-seekers by ADEM. ADEM does not conduct these skills assessments itself; they are done by companies external to the administration.

3.2.2. Recognition of qualifications

Procedures for recognition of diplomas and qualifications rely on both the applicant's citizenship and the country in which s/he obtained his/her diploma.

a) Recognition of school-leaving certificates and vocational training

The application for the equivalence school-leaving certificates and technical (baccalaureate) or professional (Vocational and Technical Training, Masters) certificates, likewise with the request for recognition of professional qualifications of the health professions (nursing assistant, nurse, specialist nurse, social worker, physiotherapist, ...) and the socioeducational professions (educator diploma, home health aide), must be submitted to the Department for the Recognition of Diplomas of the Ministry for Education and Professional Training.

Recognition or equivalent of secondary school-leaving certificates and secondary technical certificates (baccalaureate) may only be granted on the basis of a complete file.

1) For third-country nationals of the countries that are signatories of the Paris and/or Lisbon³⁵³ Convention on mutual recognition of diplomas, recognition may only be granted for

³⁵²Guichet (Front office), 'Bilan de compétences'(Skills assessment), <http://www.guichet.public.lu/fr/citoyens/travail-emploi/chomage/assistance-chomeurs-inscrits/participation-ateliers-recherche-emploi/bilan-competences/index.html> The problem is that ADEM must involve private enterprises in undertaking skills assessments, so there is a significant waiting list which does not enable all of these job-seekers to be placed.

³⁵³ <http://www.guichet.public.lu/fr/citoyens/enseignement-formation/enseignement-postprimaire/jeune-recemment-arrive-pays/reconnaissance-niveau-etudes/index.html>

certificates/school-leaving certificates after processing of the application by the competent departments and the following criteria in particular suffice:

- the diploma must represent a school career of at least 12 years of primary and post-primary education successfully completed;
- the certificate/diploma must give access to higher education or university study in the country of origin;
- a supporting document is required for certificates/diplomas not expressly specifying this access.

Application procedure:

1) The application must include the following documents:

- written request which mentions the reason for introduction of the file;
- Curriculum Vitae mentioning among other things, the school curriculum;
- certified true copy of an ID card;
- certified true copies of diplomas;
- for documents not written in French, German, English or Luxembourgish, a translation certified by a sworn translator with the Public Prosecutor's Department of Luxembourg (of the country issuer of the diploma) is required;
- police clearance (for educators only).

All copies of diplomas, certificates and forms as well as the ID card must be certified true copies from an authority authorised to this effect (municipal administration, embassy or consulate).

2) For third-country nationals of countries signatories of the Paris and/or Lisbon Conventions³⁵⁴ on mutual recognition of diplomas, the equivalent to the Luxembourgish secondary school-leaving certificate of secondary technical school-leaving certificate or technician certificate will only be recognised in the following 2 cases:

1. if the applicant holds a diploma issued by a recognised higher education institute and located in a Member State of the European Union, representing a study cycle with a duration of at least 3 years;

³⁵⁴ <http://www.guichet.public.lu/fr/citoyens/enseignement-formation/enseignement-postprimaire/jeune-recemment-arrive-pays/reconnaissance-niveau-etudes/index.html>

2. if the applicant can benefit from registration for higher education in a European Union Member State and if the diploma meets the following criteria:
 - evidence of the diploma examinations must focus on 2 languages including French or German, as well as on the sectors belonging to at least 3 of the following domains: human and social sciences; natural sciences; maths; technology; fine art and music;
 - the diploma must have been obtained during schooling extending over at least 12 years of progressive primary and secondary education.

The request³⁵⁵ must include the following documents:

- written request which mentions the reason for presentation of the file
- Curriculum Vitae mentioning among other things, the school curriculum;
- certified true copy of an ID card (certified by an official authority);
- certified true copies of diplomas (certified by an official authority),
- for documents not written in French, German, English or Luxembourgish, a translation certified by a sworn translator with the Public Prosecutor's Department of Luxembourg (or of the country that issued the diploma) is required;
- police clearance (for educators only).
- In addition, a diploma/certificate confirming at least 3 years of successful higher education or university studies in a European Union Member country or enrolment with a higher education institute or university in a European Union Member State and a list of the subjects examined in the baccalaureate.
- The documents must be written either in one of the 3 official languages of the Grand Duchy of Luxembourg (French, Luxembourgish or German), or in English, or translated into one of these languages by a sworn translator in Luxembourg (a list of sworn translators can be requested at the Superior Court of Justice).

The Grand Ducal regulation of 27 October 2006³⁵⁶ drew up the criteria³⁵⁷ of recognition of secondary school-leaving diplomas when the person has completed his/her baccalaureate in a

³⁵⁵<http://www.guichet.public.lu/fr/citoyens/enseignement-formation/enseignement-postprimaire/jeune-reccemment-arrive-pays/reconnaissance-niveau-etudes/index.html>

³⁵⁶ Grand Ducal regulation of 27 October 2006 made operational by article 4 of the modified law of 18 June 1969 on higher education and the accreditation of higher education foreign qualifications and grades, in: Memorial A, Issue 195 of 15 November 2006.

<http://www.legilux.public.lu/leg/a/archives/2006/0195/2006A3383A.html>

³⁵⁷ Art. 4: The equivalent to the Luxembourgish school-leaving diploma or school-leaving technical diploma or

third-country.³⁵⁸ Before then, there was the problem in Luxembourg that higher education studies were not recognised if the baccalaureate was obtained in a third-country. This regulation enables recognition of the baccalaureate and therefore accreditation of higher education studies if they took place in an EU member country. Since the start of 2010, some 1,729 people have requested recognition of foreign diplomas in comparison with the Luxembourgish secondary school-leaving examination, 210 requests regarding the equivalent of a baccalaureate from a third-country not having signed the Paris and/or Lisbon Conventions.³⁵⁹ Nevertheless, the problem remains for third-country nationals who did not undertake their university studies in the EU.

b) Recognition of higher education diplomas (see also 2.2.4.)

Recognition of a third-country national's higher education professional qualifications is done in accordance with two distinct procedures:

- 1) Registration of foreign certificates with the Register of Higher Education Qualifications. This Register confirms the duration of the studies and the value of the diploma. Once the diploma is registered there, this enables the recipient to publicly hold the qualification of a higher education grade.

The file for the enrolment procedure in the Register of Qualifications must include:

A duly completed enrolment application form;

A final diploma in the form of a certified true copy.

- 2) Accreditation of certificates: This procedure is used to access certain regulated professions, namely:

technician certificate will only be recognised for the certificates stipulated in article 1 in the following two cases:

1. if the applicant is holder of a diploma issued by a recognised higher education institute and located in a Member State of the European Union, representing a study cycle with a duration of at least 3 years,
2. if the applicant can rely on enrolment in higher education in a European Union Member State and if the diploma meets the following criteria:

- evidence of the diploma examinations must focus on 2 languages including French or German, as well as on the subjects belonging to at least 3 of the following domains: human and social sciences, natural sciences, maths, technology, fine art and music.

- the diploma must be located in terms of schooling extending over at least 12 years of progressive primary and secondary education..

³⁵⁸ Third-countries, meaning countries which are outside the EU and which have not signed the Paris and/or Lisbon Conventions.

³⁵⁹ Ministry for Education and Professional Training, Department for the recognition of diplomas.

Disciplinary Level	Regulated Profession
philosophy, linguistic and literary disciplines (French, English, German, Italian, Spanish, Latin), history, geography	Professor of Letters in higher education
physics, maths, chemistry, biology	Professor of Science in higher education
law	lawyer
medicine	doctor
dental medicine	dentist
veterinary medicine	veterinarian
pharmacy	chemist

Procedure:

1. In the case where a foreign certificate is obtained in one of the following specialisations,
 - philosophy, linguistic and literary disciplines (French, German, English, Italian, Spanish, Latin), history, geography;
 - biology, chemistry, physics, maths;
 - law;

The applicant must adhere to the accreditation procedure in force, whatever his/her nationality.

2. In the case where a third-country certificate (outside of the EU) is obtained in one of the following specialisations,
 - medicine;
 - dental medicine;
 - veterinary medicine;
 - pharmacy;

The applicant must adhere to the accreditation procedure in force, whatever his/her

nationality.

If the certificate was issued by an EU member country, the applicant may contact the Health Ministry directly with a view to requesting authorisation to practise in the following specialisations: medicine, dental medicine, veterinary medicine, pharmacy.

To have his/her study qualification or his/her higher education diploma accredited, the applicant must attach to the file to be presented to the Accreditation Commission of the Ministry for Higher Education and Research:

- a written request;
- a Curriculum Vitae;
- a copy of their birth certificate or ID card (EU nationals) / passport (third-country nationals);
- a school-leaving certificate, i.e. either:
 - a Luxembourgish school-leaving certificate or school-leaving technical certificate or Luxembourgish technician certificate corresponding to the speciality studied;
 - a foreign school-leaving certificate, recognised as equivalent to the Luxembourg certificate, in accordance with the Luxembourgish regulations in force;
- a higher education diploma, with a minimum duration defined depending on the disciplinary domain.

The documents must be written either in one of the 3 official languages of the Grand Duchy of Luxembourg (French, Luxembourgish or German), or in English, or translated into one of these languages by a sworn translator³⁶⁰.

The certification commission has three months to make a decision. After this period, the applicant can refer the matter to the administrative court. This period runs from the moment the file is complete.

We again note that Luxembourg does not have bilateral agreements with third-countries for

³⁶⁰ See <http://www.guichet.public.lu/fr/citoyens/enseignement-formation/etudes-superieures/reconnaissance-diplomes/homologation-diplome/index.html>

accreditation of qualifications³⁶¹.

c) Adaptation stage and aptitude test

The European Union citizen has the right to set up and practise his/her profession in another European Union country. S/he benefits from the Community rules which ensure mutual recognition of the professional qualifications regulated between the Member States of the European Union.

S/he can depend on the sectorial system based on the automatic recognition of professional qualifications granted for certain professions, notably doctors, general nurses, midwives, dentists, veterinarians, chemists and architects.

S/he can also refer to the general system based on mutual recognition of professional qualifications. This system was created for qualified professionals in a European Union country to practise a regulated profession there and who wishes to practise the same profession in another European country. Within the framework of this system, mutual recognition is declared after comparison of the individual file with the training conditions required in Luxembourg.

In case of substantial differences or a shorter training duration, recognition may be declared in return for a measure of compensation which is either an aptitude test or an adaptation period³⁶².

In compliance with article 9 of the law of 19 June 2009 on the recognition of qualifications, the competent authority³⁶³ may require the applicant to complete an adaptation period for

³⁶¹ Ad-hoc request on the accreditation of professional qualifications obtained outside of the European Union made by the European Commission on 3 November 2010.

³⁶² http://www.men.public.lu/reco_diplomes/090812_reconnaissance_professionnelle_eu/090812_systeme_general/index.html

³⁶³ Before making this decision, the authority must verify if the skills acquired by the applicant during his/her relevant professional period in a Member State or in a third-country, are of the type to cover, in full or in part, these substantial differences. The substantial difference is observed by the competent authority of the Grand Duchy of Luxembourg by notification from the ad-hoc commissions appointed by Ministerial decree and the candidate is notified of it.

The choice between the aptitude test and the adaptation period is up to the candidate. Notwithstanding this principle of free choice, the aptitude test is required for the practise of professions of which an essential and ongoing element is giving advice and/or assistance regarding national law.

The aptitude test and the adaptation period are arranged on request from the competent authority by the educational establishments or in within the context of the existing vocational training structures.

three years at the most or to undergo an aptitude test in one of the following cases:

1° when the training duration is one year less than that required in the Grand Duchy of Luxembourg;

2° when the training s/he has received focuses on subjects substantially different from those covered by the training titre required in the Grand Duchy of Luxembourg (in the case of law);

3° when the profession regulated in the Grand Duchy of Luxembourg comprises one or more regulated professional activities which do not exist in the corresponding profession in the Member State of origin, and that this difference is characterised by specific training which is required in the Grand Duchy of Luxembourg and which focuses on subjects substantially different from those covered by the skills certificate or the training qualification which the applicant has demonstrated.

3.3. Integration measures

In Luxembourg, the existing integration measures are aimed at all the migrant workers and members of their families, whatever their country of origin. Besides the reforms intended to facilitate the political participation of foreigners (see 2.5.6) and the educational integration of the children of migrants (see 2.5.8), the three major legislative reforms adopted in 2008 as regards migratory policy, must be reiterated: the law of 29 August 2008 on the free movement of persons and immigration, the law of 23 October 2008 on Luxembourgish nationality and the law of 16 December 2008 regarding welcome and integration of foreigners to the Grand Duchy of Luxembourg.

This law saw the creation of the Luxembourg Reception and integration Agency (OLAI).

The provisions of the new law regarding the welcome and integration of foreigners came into force on 1 June 2009. The implementation of this new administration finds its source in the Government declaration of 4 August 2004 in which the Government expressed the desire to integrate non-Luxembourgers into Luxembourgish society and to avoid the creation of parallel societies.³⁶⁴

³⁶⁴ OLAI, History, <http://www.olai.public.lu/fr/olai/historique/index.html> (last update on 21.06.2010; last consultation on 12.01.2011)

3.3.1. The National Action Plan on Integration and Against Discrimination

‘Integration and combating discrimination are the subject of shared responsibility between the different ministries, the municipalities and civil society as well as all of the stakeholders having interests in the issues of integration and anti-discrimination. The national multi-annual action plan is the instrument of strategic and operational coordination of transversal integration policies.’³⁶⁵ The plan was adopted on 26 November 2010.³⁶⁶

3.3.2. The Welcome and Integration Contract

One of the principal public integration tools is the Welcome and Integration Contract. (CAI).³⁶⁷ On 12 November 2010, the Council of Government adopted the Grand Ducal draft by-law stipulating the terms of the CAI and sent it for notification of the Council of State.³⁶⁸

‘The OLAI offers to any foreigner legally residing in the Grand Duchy of Luxembourg and wishing to continue to do so in the long-term the opportunity to sign a CAI. [...] As regards the conditions to fulfil, the contract signatories must be of foreign nationality, must reside legally on Grand Duchy of Luxembourg territory and must wish to continue to do so over the long-term. The contract duration is set at 2 years, period throughout which the signatory is bound to undertake a Luxembourgish, German or French language course, to attend citizenship training courses and to be present at an orientation day. Each language course will be offered at a reduced tariff of 5 EUR.’³⁶⁹

Signing of such a contract is not mandatory. It cannot be imposed on the majority of foreign nationals in Luxembourg who are Community nationals. The legislator has therefore retained the voluntary nature of signing of the contract for all foreign nationals.³⁷⁰

However, article 81 of the law on the free movement of persons and immigration of September 2008 stipulates that the ministry takes into account the applicant’s degree of

³⁶⁵ OLAI, ‘Plan d’action national d’intégration et de lutte contre les discriminations’ (National Action Plan on Integration and Against Discrimination), <http://www.olai.public.lu/fr/accueil-integration/mesures/plan-action-national/index.html?highlight=plan> (Last update on 21.06.2010, last consultation on 15.01.2011)

³⁶⁶ Information and news from the Luxembourgish government, Council of Government, Summary of works on 26 November 2010, http://www.gouvernement.lu/salle_presse/conseils_de_gouvernement/2010/11-novembre/26-consgov/index.html#9 (Last update of the page on 10.12.2010, last consultation on 15.01.2011)

³⁶⁷ OLAI, Missions, <http://www.olai.public.lu/fr/olai/missions/index.html> (last update on 15.11.2010; last consultation on 12.01.2011)

³⁶⁸ Government of the Grand Duchy of Luxembourg, ‘Projet de règlement Grand Ducal fixant les conditions d’application et modalités d’exécution relatives au CAI (Grand Ducal draft projet setting the conditions of application and terms of execution relating to the WIC)’, <http://www.cc.lu/docdownload.php?id=3798>

³⁶⁹ OLAI, Welcome and Integration Contract, <http://www.olai.public.lu/fr/accueil-integration/mesures/contrat-accueil/index.html>, (last consultation on 13 August 2010).

³⁷⁰ Second conference of the LU EMN NCP on 18 June 2010, Abbey of Neumünster, questions-answers section following the presentation by Marc Hayot of the 2008 political report of the LU EMN NCP.

integration, when studying the request to obtain the status of long-term resident. To verify the degree of integration, the Minister takes into account in particular ‘ signing and respect of the provisions contained in the Welcome and Integration Contract, likewise involvement in the measures and actions prescribed by the legislation as regards welcome and integration of foreigners to the Grand Duchy of Luxembourg’.³⁷¹

3.3.3. The integration pact

With the integration pact, the *Association de Soutien aux Travailleurs Immigrés* (Support Association for Immigrant Workers or ASTI) wants to encourage the municipalities to assume greater responsibility in the reception and integration of foreigners and newcomers. The objective is the implementation of a planned local integration policy.³⁷² This covenant is entered into for a duration of three years between the municipalities, the ASTI and the Ministry of Family and Integration.

3.3.4. Learning the Luxembourgish language

Since 2003, with the perspective of facilitation integration through employment and within the framework of the European Strategy in favour of employment, the Luxembourgish Government has financially supported the efforts regarding integration of foreigners through learning the Luxembourgish language. The amount of these subsidies adds up to €100,000. The public appeal for projects experienced relatively modest success in the first few years. However, due to increased demand, only 75% of the amounts requested have been repaid in the last few years. The enterprises concerned mainly come from the following business segments: hospital, social and care, legal activity, IT, commerce, industrial, banking and insurance, communication and advertising. The objective is the increased success of integration within Luxembourgish society through learning the Luxembourgish language. On completion of the course, a certificate of completion of training is given to each attendee.³⁷³

³⁷¹ Art. 11 of the Grand Ducal regulation of 5 September 2008, executing certain clauses relating to the administrative formalities prescribed by the law of 29 August 2008 on the free movement of persons and immigration.

³⁷² Asti, ‘Pacte d’intégration communale’ (Municipal integration pact), http://www.olai.public.lu/fr/publications/programmes-planactions-campagnes/CNI/Présentation_ASTI_Mme_Zuccoli.pdf

³⁷³ Government of the Grand Duchy of Luxembourg, Work and Employment Ministry, “2008 Activity report, March 2009, page 20.

In addition, the law of 21 January 2009 introduced linguistic leave.³⁷⁴ By virtue of this law, employees can take, in coordination with their employer, and subject to having six months' of service in the company, 200 hours of linguistic leave to learn Luxembourgish. This also applies for self-employed professionals.³⁷⁵

³⁷⁴ Mémorial A Issue 33 of 26 February 2009, <http://www.legilux.public.lu/leg/a/archives/2009/0033/a033.pdf>

³⁷⁵ Guichet, 'Demander un congé linguistique' (Requesting linguistic leave), <http://www.guichet.public.lu/fr/citoyens/travail-emploi/conges/conges-speciaux/conge-linguistique/index.html> (last update on 01.02.2011, last consultation on 14.03.2011)

4. Statistics and trends in the Luxembourg labour market

4.1. Statistics on the Luxembourg labour market

As mentioned in the methodological section, it has been difficult to find in Luxembourg statistical data which precisely meets the criteria issued within the context of this study.

In this section, we shall present the structure of the labour market in Luxembourg by analysing for each year, between 2004 and 2009, the reserve of employees depending on the level of qualification of the position occupied, the business segment, the country of origin and the gender. We will then analyse for the abovementioned years the structure of the input and output flows on the Luxembourgish labour market.

4.1.1 Analysis of the reserve of labour force wage-earners

Since the middle of the 1980s, paid employment has not ceased to increase. That of cross-border workers in particular has increased, and to a lesser extent that of EU residents³⁷⁶ (graph 2). The number of labour force wage-earners from third-countries has also increased over the last two decades.

By restricting ourselves to the most recent period, 2004-2009, we observe that in 2004, 261,500 labour force wage-earners had a paid job in Luxembourg, including 100,000 women, namely 38%. Four years later, in 2008, 328,800 people³⁷⁷ occupied a paid job in Luxembourg and in 2009, the number of labour force wage-earners was 336,064³⁷⁸ (table 1). This increase corresponds to an employment growth of 25.8% over this 5-year period. It is due to the huge arrival of foreigners which has fashioned the structure of the Luxembourgish labour market. We note that over this period, the proportion of women employees has remained stable: they represent 39% of the employees in 2009.

Between 2004 and 2009, the employment of national residents, foreign residents and cross-border commuters rose in absolute figures.

³⁷⁶ Pauly Michel, 'Le phénomène migratoire:: une constante de l'histoire luxembourgeoise' (The migratory phenomenon: a constant of Luxembourgish history), in ASTI 30+, Luxembourg 2010, page 70.

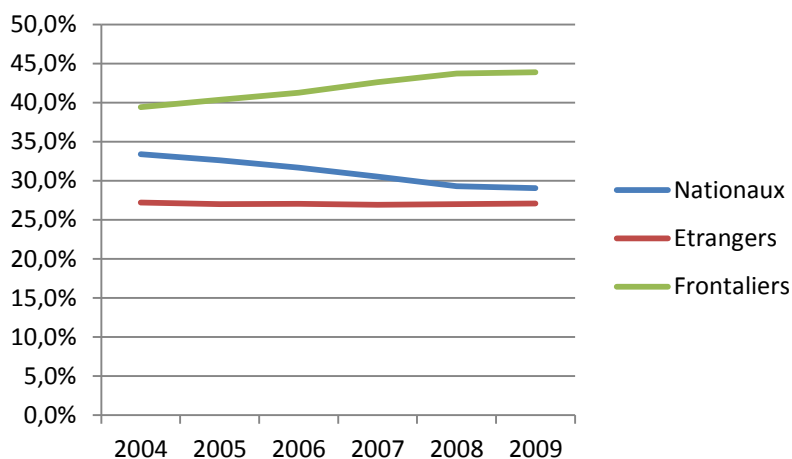
³⁷⁷ IGSS, 2008.

³⁷⁸ IGSS, 2009.

The proportion of Luxembourgish reduced over the period going from 33.4% of the total employees in 2004 to 29.1% in 2009.

The proportion of foreign residents has stagnated going from 27.2% in 2004 to 27.1% in 2009, whereas for cross-border workers, we have recorded a major rise going from 39.4% in 2004 to 43.9% in 2009.

Graph 7: Variation in the composition of domestic employment 2000 - 2009

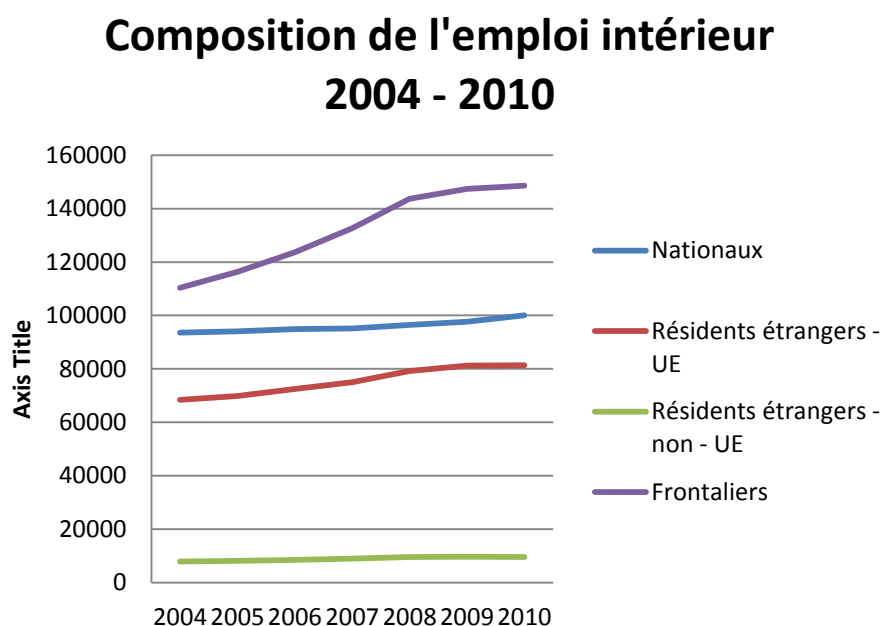


Source: IGSS, 2011 © EMN NCP LU

For each of these years, EU-15 nationals (excluding nationals), resident and non-resident, are the most numerous with 64.1% of the total of employees in 2004 and 68.8% in 2009. Their proportion has remained near-constant during the entire period. We also observe a slight increase of immigrants from third-countries between 2004 and 2009. Whereas they represented 3.3% of the total workers in 2004, their share went to 4.1 % in 2009. Immigrants from the 10 new Member States and Bulgarian and Romanian nationals have seen their share increase very little: EU-10 0.7% and EU-2 0.1% in 2004, and EU-10 1.2% and EU-2 0.3% in 2009.

Graph 8:

Composition of domestic employment 2004 - 2010



Source: IGSS, 2011 © EMN NCP LU

Analysis of the reserve of migrant workers by business segment

The most representative sectors of the Luxembourgish economy are run by foreigners (tables 2 and 3)³⁷⁹. The property sector, rental and services in businesses employing the most people with 13.9% of employees in Luxembourg in 2004 (38,886) and 16.1% in 2009 (54,074). This represents an increase of 39.1% in five years.

In 2009, the 54,074 workers in this sector were distributed into 31,138 cross-border commuters (57.6%), 16,255 foreign residents (30.1%) and only 6,681 Luxembourgish employees (12.4%). The same phenomenon is observed for the other sectors:

- 1) Financial intermediation sector³⁸⁰: 21,288 cross-border workers (50.8%), 11,724 foreign residents (28.0%) and 8,868 Luxembourgish workers (21.2%).
- 2) Commerce sector³⁸¹: 21,006 cross-border workers (51.6%), 10,159 foreign residents (25.0%) and 9,513 Luxembourgish workers (23.4%).

³⁷⁹ All of these data are based on the NACE classification.

³⁸⁰ 41,880 people which represents 12.5% of the workforce.

³⁸¹ Commerce, car repairs and household items: 40,678 people which represents 12.1% of the workforce.

- 3) Construction ³⁸² : 18,432 cross-border workers (50.3%), 14,845 foreign residents (40.5%) and 3,398 Luxembourgish workers (9.3%).
- 4) Manufacturing industry ³⁸³ : 20,592 cross-border workers (60.1%), 6,205 foreign residents (18.1%) and 7,474 Luxembourgish workers (21.8%).
- 5) Transport and communications ³⁸⁴: 14,916 cross-border workers (47.4%), 7,276 foreign residents (23.1%) and 9,257 Luxembourgish workers (29.4%).

This situation is totally different for the public administration sector³⁸⁵. Of the 97,670 Luxembourgish workers employed in the Grand Duchy of Luxembourg in 2009, 33,333 worked in this sector, namely 34.1%.

The labour force wage-earners in this sector were distributed into 33,333 Luxembourgish employees (88.3%), 3,065 foreign residents (8.1%) and only 1,335 cross-border workers (3.5%) (Table 2).

In 2004, out of the 93,561 Luxembourgish employees 30,937 worked in public administration (33.1%). If, in 2004 nationals represented 89.5 % of employees in administration³⁸⁶ this proportion decreased to 88.4% in 2009 (table 2). This reduction in nationals was compensated for by an increase in cross-border workers which went from 1.9% in 2004 to 3.5% of employees in administration in 2009.

In the sector of agriculture, the proportion of Luxembourgish employers went from 26.8% in 2004 to 30.8% in 2009 (table 2).

³⁸² 36,675 people which represented 10.9% of the manpower.

³⁸³ 34,271 people which represented 10.2% of the manpower.

³⁸⁴ 31,449 people which represented 9.4% of the manpower.

³⁸⁵ 37,733 people which represents 11.2% of the domestic employment.

³⁸⁶ We exclude the education sector which is an independent NACE sector. In this sector, however, Luxembourgers represented 49.1% of the total manpower. In 2009 this percentage reduced to 36.5%.

Table 2: Comparison of internal employment by nationality and residence 2004 - 2009

NACE CODE	2004				2009			
	Residents		Crossborderers	TOTAL	Residents		Crossborderers	TOTAL
	Nationals	Foreigners			Nationals	Foreigners		
A	Agriculture, sylviculture							
Total	344	561	378	1'283	562	717	546	1'825
B	Fishing, Aquaculture							
Total	1	1		2	1	1	1	3
C	Extractive industries							
Total	90	98	137	325	85	93	150	328
D	Manufacturing industries							
Total	9'487	6'343	18'275	34'105	7'474	6'205	20'592	34'271
E	Production and distribution of electricity, gas and water							
Total	889	68	67	1'024	979	92	121	1'192
F	Construction							
Total	3'249	13'149	13'999	30'397	3'398	14'845	18'432	36'675
G	Commerce, automobile repairs and domestique articles							
Total	10'200	9'583	16'903	36'686	9'513	10'159	21'006	40'678
H	Hotels and restaurants							
Total	1'224	6'646	4'368	12'238	1'469	7'337	4'858	13'664
I	Transports and communications							
Total	9'315	5'354	10'529	25'198	9'257	7'276	14'916	31'449
J	Financial services							
Total	9'139	9'362	14'771	33'272	8'868	11'724	21'288	41'880
K	Real Estate and services							
Total	6'172	11'186	21'528	38'886	6'681	16'255	31'138	54'074
L	Public administration							
Total	30'937	2'945	669	34'551	33'333	3'065	1'335	37'733
M	Education							
Total	734	467	293	1'494	892	847	706	2'445
N	Health and social action							
Total	7'651	3'790	5'120	16'561	11'052	5'448	7'907	24'407
O	Collective services							
Total	3'388	2'565	2'122	8'075	3'156	2'471	2'884	8'511
P	Domestique services							
Total	487	2'878	362	3'727	589	3'637	555	4'781
Q	Extra-territorial activities							
Total	84	864	384	1'332	74	346	165	585
	Non-determined							
Total	170	381	499	1'050	287	476	800	1'563
TOTAL	93'561	76'241	110'404	280'206	97'670	90'994	147'400	336'064

Source: IGSS, 2011 © EMN NCP LU

EU-15 nationals work mainly in the property sector. Their number in this sector has more than doubled since 2004 to 2009. 22.7% of EU-15 nationals worked in property in 2004 compared to 39.2% in 2009.

In this sector, they represent 84.9% of the workforce in 2004 and 87.8% of the workforce in 2009 (table 3).

The construction, commerce and banking sectors also employ many EU-15 nationals. EU-15 nationals constitute the majority of workers in all of the other sectors, except for the agriculture and administration sectors.

EU-10 nationals represented 0.7% of paid work in 2004 and 1.2% of employment in 2009. 32.7% of EU-10 employees in 2004 worked in the transport and communication sector and 29.9% in 2009.

Their number has nearly doubled in five years, but they only represented 3.2% of the employees in this sector in 2004 and 5.4% in 2009.

Their number has also tripled in the property and business services sector (increasing from 274 in 2004 to 864 in 2009), but their share remains very low (0.6% in 2004 and 0.9% in 2009).

The evolution of EU-2 nationals is significant in the property sector: 19% of EU-2 workers were in this sector in 2004 and 28.1% in 2009. Yet this proportion is still very low in Luxembourg with only 0.1% in 2004 and 0.3% in 2009 out of all employees. Their share in the different sectors never exceeds 0.5%, except in the transport sector where they represented 0.6% of employees in 2009 and in the accommodation sector where they represent 1.1% of employees.

The proportion of employees that are third-country nationals is greater than that of EU-10 and EU-2 nationals combined, and although it increased slightly from 2004 to 2009, it remains relatively small with 4.1% of the entire workers in Luxembourg in 2009. As with the other employees, the number of third-country nationals has increased in the property sector: from 3.8% in 2004 to 4.1% in 2009 (table 3).

19.3% of third-country nationals worked in the property sector in 2004 and 31% in 2009.

In the accommodation/catering sector, the reduction in the proportion of Luxembourgish has significantly benefitted third-country nationals the level of presence of which went from 9.3% in 2004 to 12.1% in 2009. It is not only in this sector that the proportion of third-country nationals exceeds the 10% mark (table 3).

Table 3: Distribution of employees by nationality and sector of activity. Comparison between the years 2004 -2009³⁸⁷

Sector	Nationals		EU-15		EU-10		EU-2		RPT	
	2004	2009	2004	2009	2004	2009	2004	2009	2004	2009
Agriculture	74.6%	69.2%	22.1%	23.1%	0.8%	4.9%	0.1%	0.2%	2.4%	2.7%
Industry	28.3%	25.2%	69.3%	72.2%	0.4%	0.3%	0.1%	0.1%	1.9%	2.2%
Construction	10.9%	9.4%	84.2%	85.4%	0.4%	0.7%	0.1%	0.1%	4.4%	4.4%
Trade	25.9%	21.9%	70.2%	73.4%	0.4%	0.8%	0.1%	0.1%	3.4%	3.9%
Transport/communication	31.9%	25.9%	61.4%	64.5%	3.2%	5.4%	0.2%	0.6%	3.4%	3.5%
Hotels/restauration	12.0%	11.4%	77.1%	73.2%	1.3%	2.2%	0.4%	1.1%	9.3%	12.1%
Banking	25.2%	20.5%	71.8%	75.3%	0.4%	1.1%	0.1%	0.2%	2.5%	3.0%
Property	10.6%	7.0%	84.9%	87.8%	0.6%	0.9%	0.1%	0.2%	3.8%	4.1%
Administration	81.0%	75.2%	17.4%	22.1%	0.2%	0.3%	0.1%	0.1%	1.3%	2.3%
Education and health	46.9%	44.2%	50.1%	51.1%	0.4%	0.6%	0.1%	0.2%	2.6%	3.9%
Public and private services	29.2%	27.2%	64.3%	64.8%	1.3%	1.4%	0.2%	0.3%	5.0%	6.2%
Other	37.2%	33.5%	58.6%	61.2%	0.7%	0.9%	0.1%	0.4%	3.5%	4.0%

Source: IGSS, 2010

This table clearly shows that nationals have lost ground in every sector of the economy in comparison to nationals from EU-15, EU-10 and EU-2 countries and third-countries. The sector most affected is transport/communication which records a 6% reduction of nationals. This decrease has been accompanied by an increase of 3.1% of EU-15 and 2.2% of EU-10 nationals. Other sectors have also been affected by the relative decline in national agriculture (-5.4%), banks (-4.7%), administration (-5.8%). These losses have been compensated for by increases in EU-15 nationals: banks (+3.5%) and administration (+ 4.7%) and EU-10 nationals: agriculture (+4.1%).

Analysis of the reserve of workers by level of qualification and country of origin (including non-residents)

We reiterate that for many jobs, we do not have the ISCO code and we have brought together these observations into the ‘unknown’ category. For the year 2004, there was no ISCO code for 91% of workers, which greatly limits the scope of our analyses and conclusions for this year, as well as the comparisons with the other years. In 2005, this percentage was 76.3%, in 2006 58.4%, in 2007 46.6%, 38.1% in 2008 and 33% in 2009.

Qualified and highly qualified employees

We observe a constant presence of EU-15 immigrants in qualified and highly qualified jobs. Their number went from 1,193 to 6,373 between 2004 and 2005, which corresponds to an

³⁸⁷ Tables 2 and 3 show the different levels regarding the presence of nationals in administration. According to table 2, the number of nationals increased between 2004 and 2009 and their share went down from 89.5% to 88.4%. In table 3, we see that the proportion of nationals reduced from 81% to 75.2%. We note that table 2 includes in the nationals cross-border commuters of Luxembourgish nationality, which is not the case of the table which identifies cross-border commuters as a separate category.

increase of 434.2%. This ‘statistical’ increase is doubtless due to the decrease of 12.8% of the ‘unknown’ category, i.e. the category for which we had no ISCO codes.

Among the immigrants from third-countries, the proportion in qualified and highly qualified jobs has increased, far ahead that of other European countries (EU-10 and EU-2).

Qualified and highly qualified employees by country of origin

Employees from the ten largest countries in the labour market in Luxembourg are for the most part third-country nationals coming from the countries that comprised the former Yugoslavia³⁸⁸, Bosnia, Serbia, Cape Verde. These four countries represent on their own half of the workforce from the ten third-countries most represented in the Luxembourgish labour market. Brazilian, Moroccan, Russian and Chinese nationals are most highly represented.

Highly qualified employees

Of the developed countries which could provide highly qualified people, only Switzerland and the United States are represented in this list of ten countries. Both countries are at the top of the third-countries if we restrict ourselves to highly qualified employees. Actually, by way of example, in 2005, 6% of Swiss people and 5.6% of Americans occupied highly qualified positions³⁸⁹, compared to 1% of Bosnians, 1.6% of Cape Verdeans, 1.8% of nationals from the former Yugoslavia and 2.4% of Serbs. In 2006, the Swiss represented 11.5% occupying a highly qualified job of a third-country highly qualified national and Americans 32.5%.

The figures then evolved as follows: in 2007: Swiss 7.2% and Americans 27.2%, in 2008: Swiss 6.7% and Americans 23.5%, and in 2009: Swiss 10.5% and Americans 8.8%. The percentages of other nationalities of third-country nationals occupying a highly qualified job, in 2007 and in 2008, are lower: this is the case for 2.1% and 2.5% of Bosnians, 5.6% and 5.5% of Serbs, 0.5% and 2.7% of Cape Verdeans as well as 4.6% and 7.1% of former Yugoslavians. Whereas nationals of these countries represented 56.3% in 2007 and 54.0% in 2008 of all employees from these 10 countries.

In 2009, the trends are identical with another increase of Swiss and Americans in the group of highly qualified employees whereas their number compared to the total of employees from the 10 third-countries is around 10% (9.7%). Nationals from the other four aforementioned countries are always the most represented in the labour market out of the ten third-countries, but their share in the group of highly qualified workers remains low.

³⁸⁸ The Former Yugoslavia category brings together in particular Serbian, Montenegrin and Kosovo nationals, who are not declared according to their nationality.

³⁸⁹ This is explained by the fact that Luxembourg is a financial centre.

It is necessary to once more note the presence of Russians in highly qualified jobs (10.5% in 2006, 9.7% in 2007, 8% in 2008 and 3.5% in 2009), even though the numbers of this labour compared with all of the employees from the 10 third-countries, remain low (3.4%).

Qualified employees

The number of Russian employees has increased in particular in qualified jobs, as is also the case with nationals from emerging countries like Brazil, Morocco and China, whose numbers in the Luxembourgish labour market increase year on year. These four countries represented 27.1% in 2006, 29.6% in 2007, and 32.4% in 2008 of employees from the ten third-countries most represented in the labour market. In 2009, they represented 27.1% of the total numbers from these 10 countries.

The increase in the number of Chinese employees at the level of qualified jobs is due in particular to the establishment of Chinese banks in the Luxembourgish community. In 2006, in decreasing order; 47.5% of Chinese, 43.1% of Moroccans, 31.9% of Brazilians and 28.4% of Russians occupied a qualified job in Luxembourg compared with 36.3% of Swiss and 18.6% of Americans. In 2007, 54.6% of Chinese, 34.6% of Moroccans, 34.5% of Brazilians and 31.7% of Russians were in this group. In 2008, 54.1% of Chinese, 42.8% of Russians, 38.7% of Moroccans and 34.5% of Brazilians were in this group.

Comparison of the levels of qualifications between EU-15 nationals and nationals (resident and non-resident)

The following four graphs display the differences between the level of qualification for jobs occupied by EU-15 nationals and by nationals. They give information on the evolution of the qualifications of employees belonging to these two groups. They show:

- Ongoing reduction in the number of employees with no ISCO code.

By leaving aside this 'unknown' category, we observe:

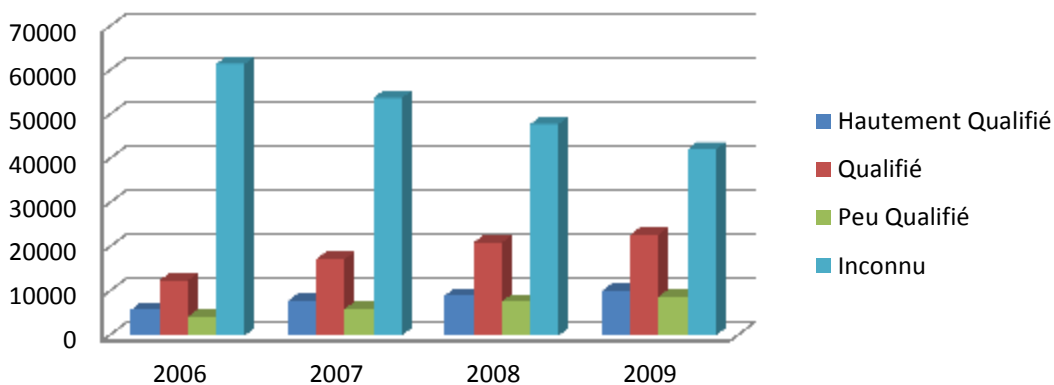
- A predominance of qualified jobs in both groups. In second position, we observe highly qualified jobs in the nationals section and low-skilled jobs in the EU-15 nationals section.
- A significant increase in the number of qualified employees in the nationals section as well as the EU-15 nationals section.

- An increase in the number of low-skilled employees, in the nationals section as well as in the EU-15 section; low-skilled employees remain nevertheless much more highly represented among EU-15 nationals than among nationals.

Graph 9:

Qualification of employees who are Luxembourg nationals 2006 - 2009

**Qualification des salariés nationaux
2006 - 2009**

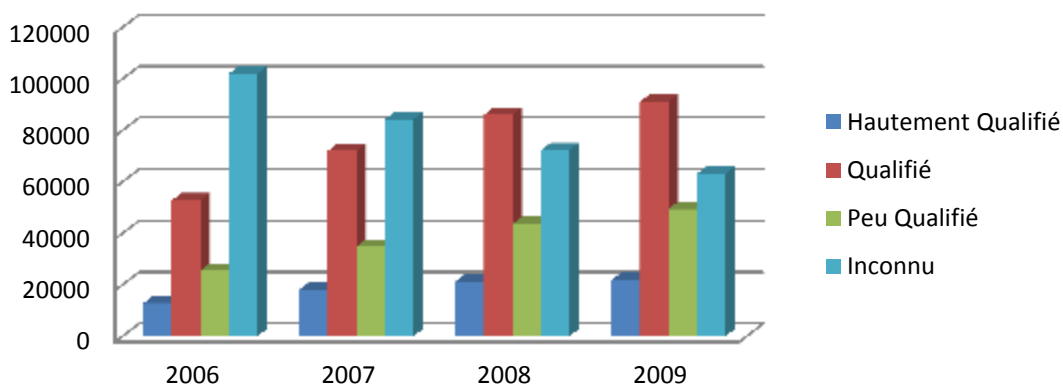


Source: IGSS 2010 © EMN NCP LU

Graph 10:

Qualification of EU-15 employees 2006 – 2009

**Qualification des salariés UE-15
2006 - 2009**



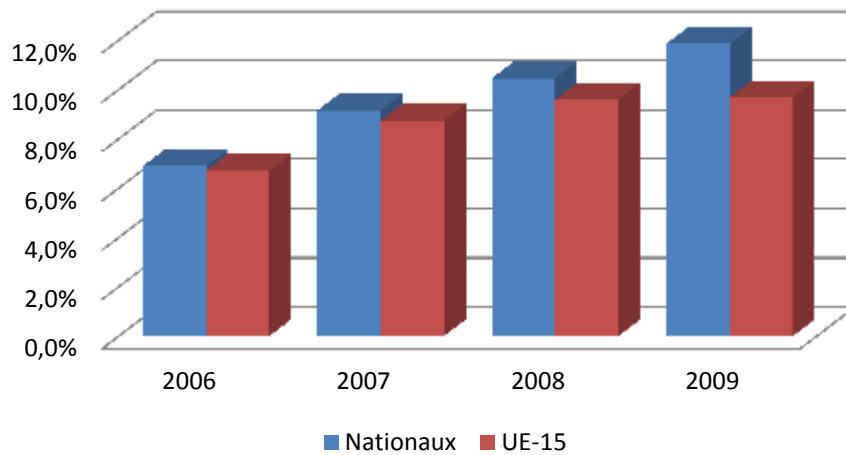
Note: EU-15 excluding nationals

Source: IGSS 2010 © EMN NCP LU

Graph 11:

Comparison between highly qualified employees by nationality 2006 – 2009

**Comparaison entre salariés
hautement qualifiés par nationalité -
2006 - 2009**

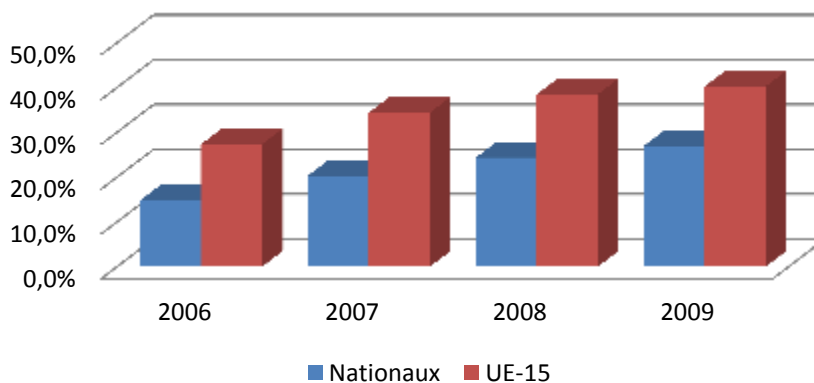


Source: IGSS 2010 © EMN NCP L

Graph 12:

Comparison between qualified employees by nationality 2006 – 2009

**Comparaison entre salariés qualifiés
par nationalité - 2006 - 2009**



Source: IGSS 2010 © EMN NCP LU

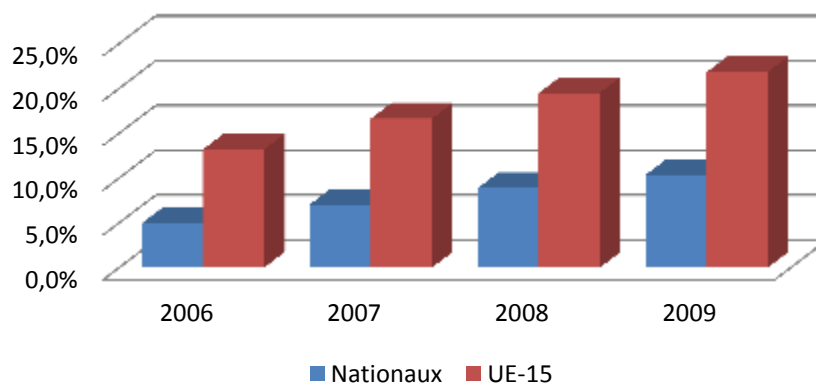
The results illustrated by graphs 11 to 13 must be interpreted with caution, due to the extent of the unknown ISCO codes. We observe:

- A higher proportion of highly qualified employees among nationals than among EU-15 nationals.
- A much higher proportion of qualified employees among Community nationals than in nationals.
- A far greater presence of low-skilled employees among Community nationals than among nationals. This proportion is more than double among EU-15 nationals than in nationals.

Graph 13:

Comparison between low-skilled employees by nationality 2006 – 2009

Comparaison entre salariés peu qualifiés par nationalité - 2006 - 2009



Source: IGSS 2010 © EMN NCP LU

Comparison of labour force wage-earners by level of qualification and by gender

Let us now compare employees by the level of qualification (ISCO codes) of nationals and of EU-15 nationals by gender.

In 2004, 56.1% of men occupying low-skilled jobs were from EU-15 countries. One year later, this level dropped by nearly 7 points for the benefit of nationals: It was 49.3% for EU-15 nationals and 39.5% for nationals. This trend remained identical up until 2006 with proportions of 39.6% for Luxembourgish men and 50.4% for EU-15 nationals.

In 2007, the proportion of EU-15 men rose, to reach 55.5% whereas the proportion of male nationals declined to 37.8%.

The year 2007 saw an increase in women nationals of EU-15 countries in highly qualified jobs with a level which went from 33.5% to 38.2%. This situation remained invariable up until 2008.

During the period from 2004 to 2008, EU-15 women saw their proportion maintained at around an average of 28.5% in qualified jobs and an average of 66.9% in low-skilled jobs.

The proportion of male nationals from EU-15 countries occupying low-skilled positions reduced considerably, from 56.1% in 2004 to 42.2% in 2008. Conversely, the proportion of male nationals went from 32.9% in 2004 to 52.8 in 2009.

Even though immigration in Luxembourg remains profoundly European and Luxembourg is one of the European countries with the lowest percentage of third-country nationals (Thill-Ditsch, 2010)³⁹⁰, the latter are starting to force their way to Luxembourg.

This may initially be surprising while, to attract these immigrants, Luxembourg had up until the present a policy based somewhat on the responses on a case by case basis, to the needs of the economy expressed by businesses. Yet it must not be forgotten that third-country migration does not reduce economic immigration intended to meet an economically-driven need, as since the 1990s Luxembourg has welcomed several waves of immigrants from the Balkan countries (having fled the different wars in the Balkans) who, with their families settled in Luxembourg, today constitute a high quantity of third-country labour.

³⁹⁰ Thill-Ditsch, Germaine 'Regards sur la population par nationalités' (Observations on the population by nationalities), STATEC, July 2010, page 1.

4.1.2 Analysis of the flows of resident and non-resident paid employees

Input by nationality

How many third-country nationals have access to the Luxembourgish labour market? To determine the access of third-country nationals to the labour market, we used data from IGSS on the input and output as defined in the methodological section. It must be specified that seasonal workers are not taken into account as they are not all registered.

We note an ongoing increase in the number of foreigners newly entering the Luxembourgish labour market between 2004 and 2008. In 2004, this number was 27,227; it was 36,930 in 2005, 43,315 in 2006, 49,108 in 2007, 49,893 in 2008 and 39,961 in 2009.

In other words, between 2004 and 2008, there was a rise of 35% and, during the crisis (2008 and 2009), the input figures dropped by 19.9%. Over this entire period, the great majority of newcomers were nationals from EU-15 countries. They went from 24,677 to 33,637 in 2005, to 39,004 in 2006, to 43,951 in 2007, 43,694 in 2008 and 34,647 in 2009. Between 2004 and 2007, the increase in newcomers was 78.1%.

In 2008, there was stagnation (-0.6%), followed in 2009 by a slowdown of 20.6% due to the crisis.

This situation contrasts with that of third-country nationals who have seen the number of their arrivals going from 1,627 in 2004, 2,551 in 2005, 3,034 in 2006, 3,654 in 2007, 3,997 in 2008 and to 3,665 in 2009. The input flows of third-country employees thus experienced an increase of 145.7% between 2004 and 2008. In 2009, the decline of their input flow by 8.3% was much lower than that observed for EU-15 nationals³⁹¹.

The number of new arrivals from EU-10 also increased over the years going from 851 in 2004 to nearly 1,766 in 2008, to fall in 2009, after the crisis, to 1,305.

10 principal national groups from third-countries, Serbs, nationals from the former Yugoslavia, Cape Verdeans, Brazilians and Bosnians entered the Luxembourgish labour market more than the other national groups. The number of Cape Verdean arrivals went from

³⁹¹ In the case of EU-10 nationals there was an increase of 107.5% between 2004 and 2008, but following the crisis, there was a reduction of 26.1%. In the case of UE-2 nationals, there was a 505.6% increase between 2004 and 2008 but a decline in input numbers of 23.4% between 2008 and 2009.

101 in 2004 to 312 in 2009³⁹², Serbs went from 106 in 2004 to 470 in 2009, which is an increase of 364 people. Nationals from the former Yugoslavia went from 140 to 413, which is a rise of 273, Bosnians from 52 in 2004 to 225 in 2009, namely an increase of 173 and Brazilians from 78 in 2004 to 214 in 2009, which is an increase of 136. We recall that these entrants on the labour market may correspond either to people already living in Luxembourg and who found a job or to migrant newcomers directly coming from their country of origin.

Entrants by level of qualification

Taking into account the fact that 50% of employers had no ISCO code in 2004 and 2005, we can only comment on the figures from 2006 to 2009. In 2006, out of 43,315 new migrant workers³⁹³, nearly 9,115 (21.0%) were not allocated an ISCO code, 5,113 occupied a highly qualified job³⁹⁴, 19,772 a qualified job³⁹⁵ and 9,291 a low-skilled job³⁹⁶.

In 2007, 6,102 highly qualified employees were registered, 22,384 qualified employees and 11,642 low-skilled workers.

In 2008, there were 6,044 highly qualified employees, 22,004 qualified employees and 12,851 low-skilled workers.

Finally, in 2009, there were 4,209 highly qualified employees, 16,097 qualified employees and 11,390 low-skilled workers. These figures demonstrate the impact of the crisis on the input flows which reduced greatly in 2009.

³⁹² There was an increase of 91 in the number of employees in 2005, 18 in 2006 and 16 in 2007. In 2008 the number was reduced by 5 but followed by an increase of 91 in 2009.

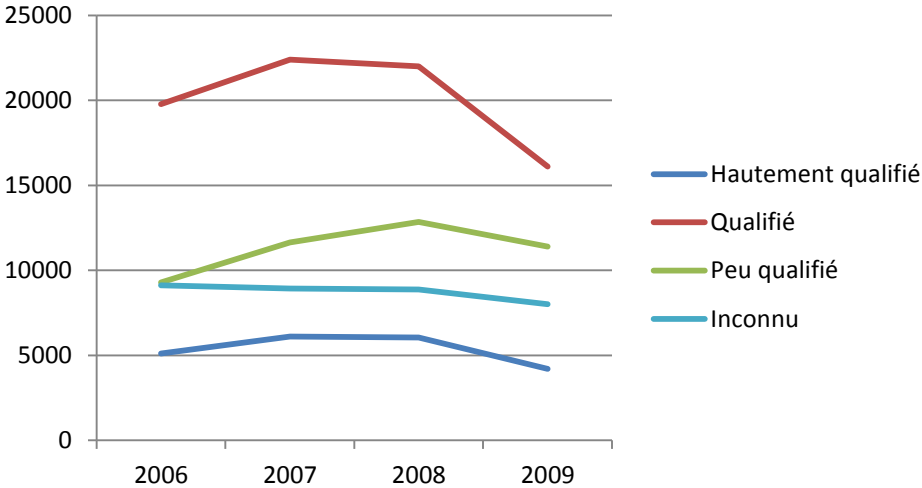
³⁹³ These figures do not include nationals.

³⁹⁴ 4,587 of them were EU-15 citizens, ie 89.7% of foreign migrants (Luxembourgish people are not included here).

³⁹⁵ 91.4% were UE-15 citizens.

³⁹⁶ 90.1% were UE-15 citizens.

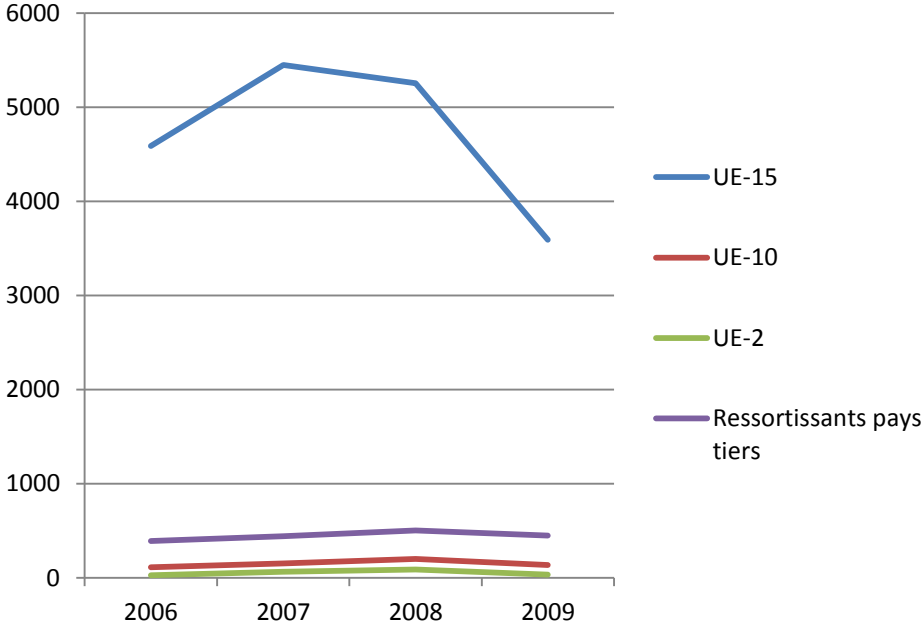
Graph 14: Evolution of entries of migrant workers by qualification 2006 – 2009



Note: These data do not include nationals.
 Source: IGSS, 2011 © EMN NCP LU

Foreign newcomers occupying highly qualified positions come for the most part from EU-15, then from third-countries and, lastly, from the new European EU-10 and EU-2 countries. This trend has remained the same over the entire period. We observe, however, an ongoing decline since 2007 of new EU-15 workers in highly qualified jobs. In 2009, the number of foreign newcomers entering the Luxembourg labour market reduced drastically, principally among highly qualified and qualified nationals from the EU-15 countries (graph 15).

Graph 15: Evolution of highly qualified workers by nationality 2006-2009



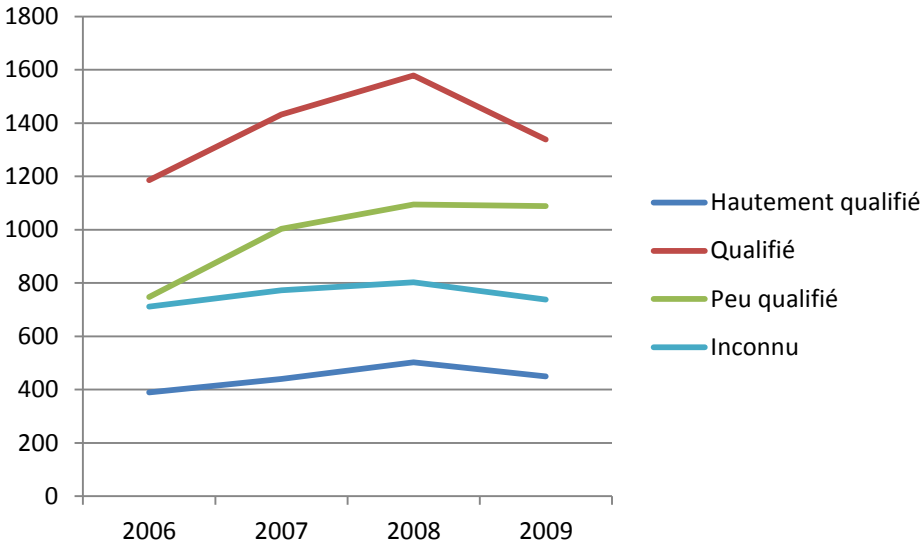
Source: IGSS, 2011 © EMN NCP LU

By looking more closely at the figures on entrants into Luxembourg, including cross-border commuters, we observe a reduction in the arrival of EU-15 country nationals. Their proportion in the input flows fell from 90.0% in 2006 to 86.7% in 2009.

The crisis has had a certain degree of impact on the evolution of new EU-15 entrants. This can be explained by the fact that, during the previous years, EU-15 nationals were the most numerous occupying qualified and highly qualified positions in the labour market, and the offer of these jobs greatly reduced in 2009. Thus, the proportion of nationals from the 15 EU countries (excluding Luxembourgish employees) qualified or highly qualified in the input flows has not ceased to reduce, going from 86.7% in 2006 to 85.3% in 2009 for highly qualified jobs, and 91.4% in 2006 to 87.5% in 2009 for qualified jobs.

On the other hand, we observe more and more new arrivals from third-countries and this is the case for all jobs: Overall, these arrivals went from 7.0% in 2006 to 9.2% in 2009, even though between 2008 and 2009, we also observe a decline in the input flows of non-EC qualified and highly qualified workers.

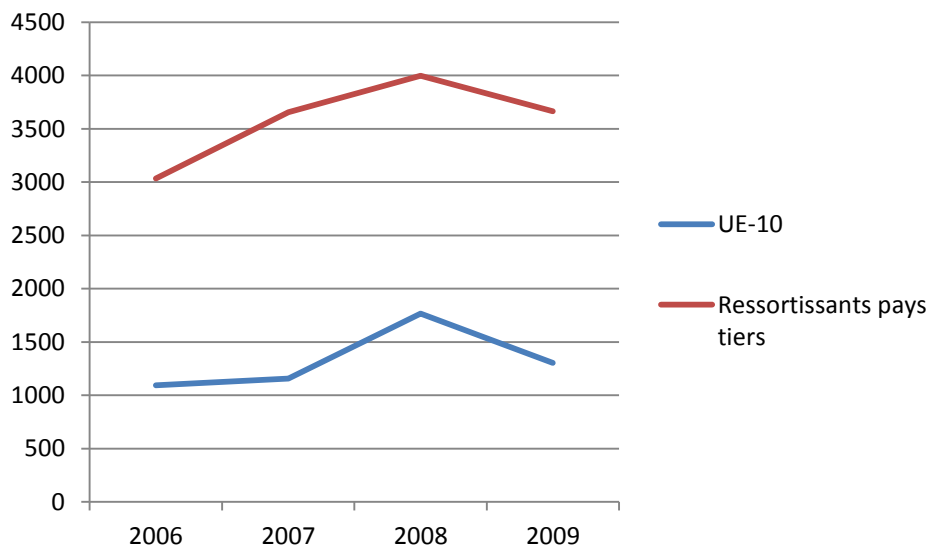
Graph 16: Evolution of arrivals of third-country nationals by year and by qualification 2006 – 2010



Source: IGSS, 2011 © EMN NCP LU

Arrivals of third-county nationals are three times greater than newcomers from EU-10 countries (graph 17).

Graph 17: Evolution of arrivals from EU-10 countries and of third-country nationals



Source: IGSS, 2011 © EMN NCP LU

The number of third-country nationals qualified or highly qualified who enter the Luxembourgish labour market multiplied by 2.6 between 2006 and 2009. In 2006, they represented 3.6% of the total 2006 entries and in 2009, 4.5%³⁹⁷. The number of low-skilled newcomers from third-countries rose by 45.8% during the same period.

Third-country nationals who occupy qualified or highly qualified jobs are in particular Americans, Swiss and Russians. Since 2006, we also observe that these jobs are increasingly occupied by Serbs, Brazilians, nationals from the former Yugoslavia and Chinese. On the other hand, Cape Verdeans, Brazilians, Bosnians and Serbs still comprise, among third-country nationals, the main suppliers of low-skilled or unskilled labour throughout the entire period (table 4).

³⁹⁷ We used absolute figures due to the extent of unknown ISCO codes.

Table 4: Distribution of the input flows of the principal third-country nationalities according to qualification (absolute figures) 2006 - 2009

Pays	2006			2007			2008			2009		
	H.Q.	Q.	P.Q.	H.Q.	Q.	P.Q.	H.Q.	Q.	P.Q.	H.Q.	Q.	P.Q.
Bosnie	4	47	46	11	76	47	6	75	47	3	46	62
Brésil	7	44	58	12	34	71	22	81	90	12	27	76
Suisse	23	29	9	14	38	6	16	33	7	6	14	8
Cap Vert	5	67	99	1	62	127	6	62	115	2	44	149
Maroc	8	47	30	13	45	48	22	53	42	1	39	48
Russie	21	21	8	19	26	15	19	48	18	2	22	18
Serbie	15	115	71	11	123	93	13	138	101	3	79	146
Chine	10	38	6	24	65	8	24	73	13	6	33	12
USA	65	32	13	53	48	27	56	61	28	5	18	11
Ex-Yougoslavie	14	102	82	9	126	96	17	162	114	2	76	96

Source: IGSS, 2011 © EMN NCP LU

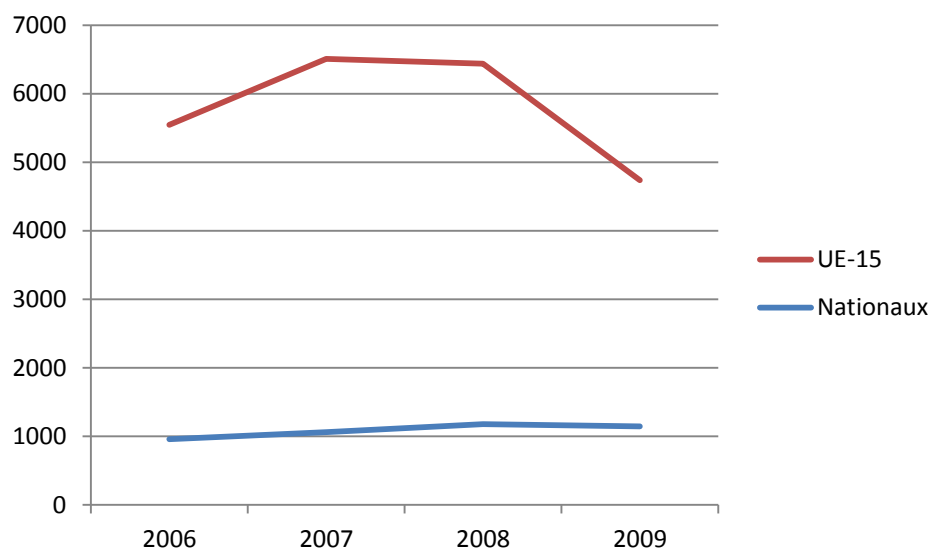
The table below shows the considerable decline between 2008 and 2009 of input flows of highly qualified and qualified workers, and this is for all of the principal third-country nationalities. We see the input flows of highly qualified workers fall considerably. For example, highly qualified American newcomers went from 65 in 2006 to only 5 in 2009. The same situation is the case with the Swiss, who went from 23 in 2006 to just 6 in 2009 and with the Russians, from 21 in 2006 to only 2 in 2009. Likewise, highly qualified Serb entrants went from 15 in 2006 to just 3 in 2009. On the other hand, the input flows of low-skilled or unskilled workers remained at a somewhat stable level, even increasing for some nationalities. A phenomenon corollary to the ongoing decline of new EU-15 entrants is the increase, between 2006 and 2008, of the proportion of Luxembourgish (especially qualified ones) who entered the labour market, only to reduce once more in 2009, which does not mean that their numbers increased substantially over the period 2006 -2008 (table 5).

Table 5: Distribution of the input flows by nationality according to qualification (absolute figures) 2006 - 2009

	2006			2007			2008			2009		
	H.Q.	Q.	P.Q.	H.Q.	Q.	P.Q.	H.Q.	Q.	P.Q.	H.Q.	Q.	P.Q.
Nationaux	957	2507	1181	1062	2790	1562	1180	3077	1739	1146	2641	1759
UE-15	4587	18080	8368	5447	20285	10360	5255	19459	11370	3591	14087	10014
UE-10	111	425	153	151	507	237	200	793	311	136	545	224
UE-2	25	81	23	64	160	42	87	173	76	33	127	63
RPT	390	1186	747	440	1432	1003	502	1579	1094	449	1338	1089

Source: IGSS, 2011 © EMN NCP LU

Graph 18: Evolution of the input of nationals and highly qualified EU-15 nationals (2006-2009)



Source: IGSS, 2011 © EMN NCP LU

Output

Parallel to the increase in input flows, output flows also increased between 2004 and 2009 with an increase between 2008 and 2009. Since 2006, there has been more input than output but this trend reversed in 2009. This situation is essentially observed among EU-15 countries and is a consequence of the financial and economic crisis. The principal type of employees concerned is cross-border commuters, the number of which has fallen considerably since 2008. Besides a reduction of the input flows, an increase in non-renewed or broken contracts is observed. This increase in output flows has also affected third-country nationals especially for the less qualified jobs.

In 2006, the EU-15 group lost 900 highly qualified worker, 8,038 qualified workers, 6,162 low-skilled workers and 19,928 people whose level of qualifications are unknown.

In 2008, the figures are as follows: 1,063 highly qualified workers, 10,300 qualified workers, 10,279 low-skilled workers and 18,722 workers whose qualifications are unknown.

Between 2008 and 2009, the entire output flows of nationals from EU-15 countries, highly qualified, qualified or low-skilled, increased respectively by 46.1%, 44.7% and 50.6%.

4.2. Analysis of the trends

4.2.1 Labour shortage in Luxembourg

A structural and qualitative shortage of labour

Since 1985, labour for the internal labour market has more than doubled. Two-thirds of the jobs created since 1985 are occupied by cross-border commuters,³⁹⁸ which brings back a major quantitative and structural labour shortage at the national level.

Between 1990 and 2010 the number of cross-border commuters increased by 350.1%, and that of foreign non-EU workers by 166.2%. Active employees from third-countries only represent however 2.2% of the workforce of the internal labour market. They are followed by foreign EU resident workers the number of which has risen to 98.9%. Nationals form the tail of the peloton with growth over the period of 10.7%.

Tableau 6: Composition of the internal workforce 1990 – 2000 – 2010

Specification	1990	2000	2010
Nationals	90,400	90,600	100,104
Foreign residents - EU	40,900	60,000	81,330
Foreign residents - non-EU	3,600	6,900	9,582
Cross-border commuters	33,000	84,400	148,541
TOTAL	167,900	241,900	339,557

Source: IGSS, 2011 © EMN NCP LU

In other words, ‘our ‘national’ resources, in the course of the last 5 years, have been barely adequate to occupy one position out of ten created.³⁹⁹ So this quantitative shortage is not really dealt with, since it is fulfilled by cross-border commuters and other nationals from EU-15 countries; although some people wonder if this will always be the case (see 2.5.3). Over and above a quantitative shortage, in the sense where residents of Luxembourg have not been able for a long time to meet the demand of the labour market, there is a shortage of talents, as we have already seen. One of the big problems in Luxembourg has always been the decision of the people to enter the labour market at a very young age. The vast majority do not have the professional qualifications to cope with the changes of a labour market as volatile and

³⁹⁸ Annual report by ADEM 2009, page 8.

³⁹⁹ Thelen, Carlo ‘L’économie luxembourgeoise et les étrangers, aujourd’hui et demain’ (The Luxembourg economy and foreigners, today and tomorrow), in ASTI 30+, Luxembourg 2010, page 228.

specialised as that of the Grand Duchy. Today, approximately one third of long-term unemployed people are nationals (30.1%, see 1.2). An employers' representative points out, that in twenty years, unemployment has risen, whereas, at the same time, the number of active workers has doubled.⁴⁰⁰ In other words, the rise in unemployment is not the result of a lack of job offers, but a lack of appropriate qualifications to respond to the supply. The Chamber of Commerce states: 'The workforce of a State is its prime economic wealth. Brainpower remains practically the only raw material that the Grand Duchy has, but in insufficient quantities.'⁴⁰¹

The respondents have never really reacted with regards to the issue of labour shortage except as regards highly qualified workers which Luxembourg increasingly requires. Thus, a Ministry representative asserts: 'I don't think that there was a genuine shortage but there are requirements for certain very precise and highly specialised qualifications, for which there is always a requirement in order to be able to resort, if need be, to people from third-countries.'⁴⁰² In June 2009, the Chamber of Commerce confirmed and reinforced this ideas in its economic bulletin: 'Luxembourg is on a permanent quest for qualified labour, even highly specialised executives of an international scope, with a view to increasing dynamism in research and innovation, a condition for increasing the productivity and competitiveness of local businesses and, consequently, of national economic growth.'⁴⁰³ Generally, the Union of Luxembourgish Businesses (UEL) has already observed in 2005 that industry, the financial sectors and other services in general require, outside of the qualified labour recruited in the Greater Region, highly specialised personnel from all over the world.⁴⁰⁴

Over and above this shortage of highly qualified labour of an international scope, there seems to be a shortage of qualified labour in nearly every sector, as we will see below. The ULB observed for example in 2005 an 'a persistent structural deficit in terms of people having the qualifications required' in the sectors of skilled trade, road transport and HORECA (*Hotels,*

⁴⁰⁰ Employers' point of view, interview 9, page 13, lines 13-26 The rate of unemployment in April 2011 is 5.9%. See press release 2011/05/DG1/DPE of 26 May 2011.

<http://www.statistiques.public.lu/fr/actualites/population/travail/2011/05/20110526/20110526.pdf>

⁴⁰¹ Economic bulletin of the Chamber of Commerce issue 7, June 2009, 'Actualités et tendances' (News and Trends), page 37.

⁴⁰² Ministerial Point of View, interview 4, page 2, lines 5-7.

⁴⁰³ Economic bulletin of the Chamber of Commerce issue 7, June 2009, 'Actualités et tendances' (News and Trends), page 37.

⁴⁰⁴ Union of Luxembourg Businesses, 'La politique d'immigration' (Immigration policy), 23 September 2005, page 1, <http://www.uel.lu/fr/upload/doc345/09-Immigration.pdf>

restaurants and catering).⁴⁰⁵

Besides this statement, we do not appear to talk about labour shortage in cyclical and structural terms. Faced with the importance of non-Luxembourgish workers in the private sector we can conclude that the latter serve to fulfil as many structural labour requirements as they do cyclical requirements. This may explain in part why the Government does not have a different approach between short-term and long-term shortages.

Business segments affected by the shortage of manpower

Although Luxembourgers work mainly in the public sector, in every other sector migrant workers are very highly over-represented. With regards to the ULB, the lack of qualified personnel, namely highly specialised personnel, affects every sector and economic segment.⁴⁰⁶

The shortage of manpower in the financial sectors seems to have been exacerbated by the financial crisis. Actually, the firm *Euro London Appointments* notes in its report on ‘recruitment trends in Europe’ in winter 2010:

‘Luxembourg manpower is reliant for the most part on foreign workers and cross-border commuters, with the return to their countries of origin of a large number of temporary workers during the financial crisis; there is a desperate shortage of essential talent within the financial services sector.

The new European Union directives and legislations regarding levels of cash assets have generated an increase in the demand for professionals in the domains of statutory reporting, compliance and risk, possessing linguistic skills in French, German and English. Furthermore, companies are also consolidating their legal services.

With the promulgation of the AIFM European Directive on alternative fund managers on the horizon, an increasing number of funds are established within jurisdictions like Luxembourg, which should be expressed by an increase in the need for fund accounting specialists.

So despite the difficulties in finding the right combination of technical know-how, experience and linguistic competence, we are still observing prolonged decision-making processes, which

⁴⁰⁵ Union of Luxembourg Businesses, ‘La politique d’immigration’ (Immigration policy), 23 September 2005, page 1, <http://www.uel.lu/fr/upload/doc345/09-Immigration.pdf>

⁴⁰⁶ Union of Luxembourg Businesses, ‘La politique d’immigration’ (Immigration policy), 23 September 2005, page 1, <http://www.uel.lu/fr/upload/doc345/09-Immigration.pdf>

prevent companies from recruiting effectively.’⁴⁰⁷

According to employers’ representatives there is also a shortage of qualified labour in the skilled trade sector,⁴⁰⁸ of road transport, HORECA, but also in agriculture and viticulture (although the latter resorts more or less to seasonal work).⁴⁰⁹ In its 2009 annual report, ADEM confirms that the HORECA sector has experienced a shortage of qualified personnel for several years now.⁴¹⁰ More particularly, ADEM observes that the rate of job-seekers in the skilled trade sector is particularly high, despite the shortage of labour in this sector and measures implemented by ADEM. ADEM attributes this phenomenon to the lack of qualifications of applicants.⁴¹¹ One of the respondents actually pointed out the fact that skilled trade businesses would willingly take on or replace their staff with workers that are more qualified in their professions. While for some professions training is done on-the-job, some employers fulfil their staff needs completely with workers trained abroad.⁴¹² This respondent gave the following explanation: ‘There is a lack of interest of the part of young people to invest in this training. And cross-border workers come to Luxembourg because they earn more in Luxembourg. That is to say, thanks to the tax system, even with equal remuneration, their net earnings are higher than on the other side of the border.’⁴¹³

4.2.2 Forecasts on the evolution of the labour market

Many of the people interviewed lamented not knowing how the labour market will evolve: ‘We have no general studies on the needs of businesses on the horizon in 5, 10 or 15 years.’⁴¹⁴ Employers’ representatives generally mentioned that they expect job creation to be lower in the future than it was previously due to a growth rate which will be low and will border on probably 2-3%.⁴¹⁵

⁴⁰⁷ Euro London Appointments, ‘Tendances du recrutement en Europe, hiver 2010’ (Recrutement trends in Europe, Winter 2010), page 10, http://www.eurolondon.com/document_uploaded/hiring%20trends%20french.pdf

⁴⁰⁸ Employers’ point of view, interview 5, page 6, lines 39 and Christiane Reichert, ‘Les structures sociales dans les PME luxembourgeoises sont-elles un frein ou un moteur de l’employabilité ?’ (Are the social structures in the Luxembourg SMEs a disincentive or a driver of employability), page 4, <http://www.lux-ias.lu/PDF/Reichert.pdf>

⁴⁰⁹ Employers’ point of view, interviews 7, page 3, lines 21-37.

⁴¹⁰ ADEM Annual Report, 2009, page 96.

⁴¹¹ ADEM Annual Report, 2009, page 82.

⁴¹² Employers’ point of view, interview 5, page 4, lines 2-12.

⁴¹³ Employers’ point of view, interview 5, page 4, lines 22-25.

⁴¹⁴ Ministerial Point of View, interview 4, page 2, lines 37-38.

⁴¹⁵ Employers’ point of view, interview 3, page 14, lines 6-8.

STATEC has developed interesting socioeconomic forecasts for 2010-2060. In this way, in the baseline scenario favoured by STATEC and widely inspired by experts from EUROSTAT who estimate that there will be convergence between the European countries in the domain of migration,⁴¹⁶ STATEC predicts an increase in the total population of 54.3% between now and 2060, to reach a total of 774,782 residents.⁴¹⁷

With regards to the labour market, STATEC predicts an imbalance between the demand and the supply of work for residents in Luxembourg. This labour shortage will of course depend on the country's economic growth and the productivity of work of employed people. Still within the baseline scenario, STATEC anticipate a return to long-term growth slightly higher than 2%. As for the annual productivity growth, it should be established at 1.7%.⁴¹⁸

As with the demographic forecasts, the supply of work for residents, and therefore the residents/cross-border workers division in the supply of work depends largely on the net migration. 'The higher the net immigration, the less need there is to resort to cross-border workers.' By intersecting the baseline scenarios of the demand for work with that of the net migration, STATEC does not predict major evolution in the number of cross-border commuters compared with the situation at present.⁴¹⁹

In its conclusions, STATEC formulates the following question, particularly relevant within the scope of management of the labour shortage in Luxembourg: 'Will we rely more on immigrants coming to settle in the country, or will we encourage, on the contrary, cross-border workers residing in the bordering countries? And can society and politics genuinely choose or will future evolution will dictated by market forces?'⁴²⁰

⁴¹⁶ STATEC Bulletin Issue 5-10, 'Projections socio-économiques 2010-2060' (2010-2060 socioeconomic forecasts), page 283.

⁴¹⁷ STATEC Bulletin Issue 5-10, 'Projections socio-économiques 2010-2060' (2010-2060 socioeconomic forecasts), page 268.

⁴¹⁸ STATEC Bulletin Issue 5-10, 'Projections socio-économiques 2010-2060' (2010-2060 socioeconomic forecasts), page 284. The 2011 draft budget is based on the following hypotheses: economic growth in Luxembourg of 3-3.5% in 2010 and 3% in 2011 (STATEC forecasts), inflation of 1.9% and unemployment rate stabilized at 6%. See http://www.mf.public.lu/finances_publicques/budget/index.html

⁴¹⁹ STATEC Bulletin Issue 5-10, 'Projections socio-économiques 2010-2060' (2010-2060 socioeconomic forecasts), page 284.

⁴²⁰ STATEC Bulletin Issue 5-10, 'Projections socio-économiques 2010-2060' (2010-2060 socioeconomic forecasts), page 284.

4.2.3. The return of economic migrants

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

There is however no policy of ‘specific’ return for economic migrants in Luxembourg, like for example in the case in Germany with the *Returning Experts Programme* or the assisted return programme of the Czech Republic for third-country nationals who have lost their jobs.

A ministerial representative explained in an interview that Luxembourg could in theory be able to control the return of migrants after expiry of their residence permits, but does not do so.⁴²¹ It is statistically impossible in Luxembourg to check if a migrant worker has effectively returned or not to his/her country of origin at the end of his/her contract.

The return of economic migrants is broached indirectly by article 59 of the law of 29 August 2008 on the free movement of persons and immigration and the return assistance and reintegration programme of the IOM.

First and foremost, article 59 of the law of 29 August 2008 on the free movement of persons and immigration,⁴²² stipulates a specific regime for third-country nationals who have completed their studies in Luxembourg. More with a view to avoiding the brain drain, this article stipulates that a residence permit for a paid worker limited to two years maximum can be allocated to the student who has completed his/her studies with a view to enabling him/her to acquire initial professional experience as regards his/her acquired qualification. This residence permit is however not renewable, in this way encouraging the people concerned to return to their country of origin.

Moreover, the successive agreements which have been signed between Luxembourg and the IOM in 2009 and 2010 make provision for the option for third-country nationals living and/or working without authorisation in Luxembourg (and not just those seeking international protection), so also for migrants working illegally in Luxembourg, to obtain assistance for the return and reintegration into their country of origin.⁴²³

⁴²¹ Ministerial Point of View, interview 6, page 11, lines 3-11.

⁴²² Ministerial Point of View, interview 6, page 14, lines 3-9.

⁴²³ European Migration Network, Luxembourg national point of contact, ‘Rapport politique sur les migrations et l’asile 2009’ (2009 Political report on migration and asylum), page 54 et ‘Rapport politique sur les migrations et l’asile 2010’ (2010 Political report on migration and asylum).

4.2.4. Illegal work

In Luxembourg, the Cellule inter administrative de lutte contre le travail illegal (CIALTI - *Interadministrative unit for combating illegal work*) was set up in 2000. This informal unit which has the objective of coordinating unannounced inspections called *spot checks* in different economic sectors. In agreement with article 137 of the law of 29 August 2008 on the free movement of persons and immigration,⁴²⁴ *Inspection du Travail et des Mines* (ITM) (Labour and Mines Inspectorate) whose mission is to check the well-being of workers, is responsible for the coordination of this unit and is the player principally responsible for combating illegal work in Luxembourg. To do so, ITM cooperates with the customs and excise administration and the Grand Ducal police.⁴²⁵ There was a significant reform of the ITM in December 2007 which had major repercussions on combating illegal work, multiplying in particular *spot checks* at weekends, bank holidays and in the evening.⁴²⁶

It is not however possible to confirm with certitude which groups of people and economic sectors are most affected by illegal work. For information, the second collective regulation which took place in Luxembourg in 2001 and which in particular is done through work; we can obtain information on the economic sectors that were the most affected by illegal work at the time. This regularisation via work was conducted in cooperation with the Federation des Artisans (*Skilled Trades Federation*), the Chamber of Agriculture and the HORECA sector, because at the time the latter had been identified as the sectors most affected by the shortage of labour.⁴²⁷ As a result, work permits were issued in different economic sectors, and mainly in that of HORECA (458 work permits were issued), construction (405 work permits), followed by the business services sector (252 work permits), retail commerce (102 permits) and domestic services (86 work permits). The great majority of people to which work permits

⁴²⁴ Article 137 of the law of 29 August 2008 on the free movement of persons and immigration specifies: 'The Labour and Mines Inspectorate is responsible for monitoring observation of the provisions regarding residence permits with a view to a paid job or work permits for foreigners, and undertakes checks complying with the instructions of the Minister.'

⁴²⁵ Eurofound, 'Interadministrative unit for combating illegal work, Luxembourg', <http://www.eurofound.europa.eu/areas/labourmarket/tackling/cases/lu002.htm> (last update on 29.10.2009, last consultation on 17.03.2011)

⁴²⁶ Inspection du Travail et des Mines, 'Nouvelles bases légales: Réforme de l'Inspection du travail et des mines', http://www.itm.lu/actualites/loi_itm/ (last consultation on 17.03.2011)

⁴²⁷ Information and news from the Luxembourg government, 'Marie-Josée Jacobs, François Biltgen and Luc Frieden find out about the regularisation of undocumented persons', http://www.gouvernement.lu/salle_presse/actualite/2001/05/09_biltgen/index.html (last update on 11.01.2006, last consultation on 17.03.2011)

were issued came from the former Yugoslavia.⁴²⁸

In 2007, within the scope of a study conducted by Franz Clement and Roland Mass (CEPS/INSTEAD), the ITM announced new forms of illegal work: Businesses are increasingly resorting to temporary loans of illegal labour and ‘illegal subcontracting’. It is the tertiary sector which seems to resort the most to ‘illegal subcontracting’, especially in the domains of IT, consulting and financial services. Moreover, the ITM has observed a new phenomenon: combining different trades, namely the fact that people in the labour force are undertaking work which does not correspond to their core professions. Lastly the ITM is increasingly faced with companies coming from countries far away from Luxembourg and employing manpower from third-countries.⁴²⁹

4.2.5 The impact of intra-European mobility on the labour market

The impact of intra-EU mobility is very high in Luxembourg, since 68.7% of employees from Luxembourg coming from EU-15 in 2009 and their number has considerably increased in the past few years going from 167,511 in 2004 to 226,774 in 2009.

Moreover, the phenomenon of cross-border workers has also had a large impact on the Luxembourg labour market. Thus, in 2009, 47.2% of employees in Luxembourg were living in an adjacent country. The number of cross-border commuters has multiplied by six over the last twenty years,⁴³⁰ as can be seen in table 1 below. Their number has exceeded for the first time that of foreigners resident in Luxembourg in 1995 and that of workers of Luxembourgish nationality in 2001.⁴³¹

The statistical data on the distribution of workers according to the place of residence and the level of qualification (data from IGSS), enable to observe that the proportion of cross-border workers continued to increase between 2004 and 2009, going from 42% to 47% of the internal labour market. An analysis by level of qualification remains difficult due to the large number

⁴²⁸ Information and news from the Luxembourg government, ‘La régularisation des sans-papiers (2001) (Regularisation of undocumented persons)’, <http://www.gouvernement.lu/dossiers/justice/sanspapiers/index.html> (last update on 14.08.2008, last consultation on 17.03.2011)

⁴²⁹ Franz Clément and Roland Mass, CEPS/INSTEAD, ‘Le travail non déclaré au Luxembourg’ (Undeclared work in Luxembourg), in *Gouvernance et Emploi (Governance and Employment) Issue 1*, November 2007, page 8.

⁴³⁰ Observatoire interrégional du marché du travail (OIE) (Interregional observatory of the job market), ‘Sixième rapport de l’OIE pour le onzième Sommet des Exécutifs de la Grande Région’ (Sixth report by the OIE for the eleventh Summit of Executives of the Greater Region), April 2009, page 70.

⁴³¹ Belkacem, Rachid, and others. ‘Les travailleurs frontaliers lorrains’ (Lorraine cross-border workers), Taken from: *travail et Emploi (Work and Employment)*. Issue 106, 2006, pages 65-77, page 69.

of missing ISCO codes. By being based on the year 2009 for which around two-thirds of employees were registered with IGSS with an ISCO code, we can see that cross-border workers represented around half of the highly qualified, qualified and low-skilled employees, apart from the fact that they are slightly under-represented among the highly qualified employees (47%).

The new Member States joining the EU have not really had an impact on intra-EU mobility. EU-10 represented 0.75% of the internal labour market in 2004 and 1.17% in 2009 and EU-nationals 0.13% and 0.26% respectively.

The rise in the proportion of EU-15 workers in the internal labour market has not had an impact on the part of third-country nationals which represented 3/4% of the domestic labour market in 2004 and 4.1% in 2009.

Cross-border workers are highly present in every sector with rates of 55% in the manufacturing industries, 55% in transport and communication and 52% in the property-business services sector. As for Luxembourg residents, they are present in particular in the health and social welfare sector with a rate of 46%. Lastly, foreign residents form 55% of the labour force wage-earners of the HORECA and 43% of employees in construction.⁴³²

4.2.6 The impact of the crisis on the Luxembourg labour market

5 The financial crisis does not appear to have caused any changes in Luxembourg's immigration policy, even though the latter has clearly had an impact on the labour market. As we saw above, the number of workers entering the country constantly increased between 2004 and 2008, to fall abruptly in 2009. As regards workers leaving the Luxembourg labour market, their number rose in 2009 and exceeded that of entrants, contrarily to the previous years.

6 Before the crisis, Luxembourg enjoyed employment growth of nearly 5% per year. Today, the latter oscillates between 1 and 1.5%. Uncertainties exist in some sectors which are in redeployment or reconstruction due to changes which have been made in the legal and fiscal environments.⁴³³ This is the case of the financial sector, a very large

⁴³² Zanardelli, Mireille and Jacques Brosius, CEPS/INSTEAD, Population & emploi Issue 41, July 2009, 'Les recrutements au Luxembourg' (Recruitment in Luxembourg), page 6.

⁴³³ Ministerial Point of View, interview 12, page 6, lines 2-6. Jacques Brosius also makes a connection between low mobility and few dismissals at the level of the national market during the crisis. Temporary staff was, however, the first victims.

sector in Luxembourg.

According to STATEC's economics report, the majority of sectors record a slowdown, except in the non-market services. The employment slowdown in services to businesses is due to a spectacular reduction in temporary employment.⁴³⁴ Cross-border workers seem to be those who have been most affected by the economic crisis, since they represent nearly 77% of the total number of temporary staff in 2009⁴³⁵ and also constitute a high proportion of workers in the industry and finance sectors which are sectors strongly affected by the crisis.⁴³⁶

The rate of unemployment is maintained at 5.9% in April 2011, although it does not include non-resident labour.⁴³⁷ The economic variables make labour shortage predictions even more difficult.

5. COOPERATION WITH THIRD-COUNTRIES FOR ECONOMIC MIGRATION

5.1. Cooperation agreements with third-countries

Luxembourg is one of the European countries which invests the highest percentage of its Gross Domestic Product in cooperation.⁴³⁸ At present, however, no cooperation agreements are put in place with a third-country which specifically tackles economic migration. No labour agreement exists at present. According to an employers' representative it would be very difficult for a small country like Luxembourg to put in place quotas of immigrant workers. Beyond this, the Government is trying to react rapidly to the demands of workers in businesses.⁴³⁹ The same respondent mentions that the Government has the intention of developing an immigration policy with regards to India, concerning the immigration of highly qualified people.⁴⁴⁰

The only agreements which exist with third-countries in the domain of migration are 'Partnership for mobility between the European Union and Cape Verde' and the programme 'Migrating with eyes open' (MYO), which draws attention to the drawbacks of immigration

⁴³⁴ STATEC, Economics Report issue 2-2009, 'La situation économique au Luxembourg:: Évolution récente et perspectives' (The economic situation in Luxembourg:: Recent evolution and perspectives), page 56.

⁴³⁵ Central Bank of Luxembourg Bulletin 2010, 2, page 45.

⁴³⁶ STATEC, Economics Report issue 2-2009, 'La situation économique au Luxembourg:: Évolution récente et perspectives' (The economic situation in Luxembourg:: Recent evolution and perspectives), page 58.

⁴³⁷ Zanardelli, Mireille and Jacques Brosius - CEPS/INSTEAD, Population & emploi issue 41, July 2009, 'Les recrutements au Luxembourg' (Recruitments in Luxembourg), page 8.

⁴³⁸ Unions' Point of View, interview 1, page 13, lines 4-6.

⁴³⁹ Ministerial Point of View, interview 12, page 2, lines 1-7.

⁴⁴⁰ Ministerial Point of View, interview 12, page 1, lines 35-37.

to Luxembourg. Cape Verde was chosen although it is a target country of the policy of cooperation with development due to the fact that it has a large Cape Verdean community living in Luxembourg. There are no criteria which identify other countries with which to put in place similar agreements. In fact, given the lack of information on the labour shortage in Luxembourg, it is hard to identifier target countries or target sectors.

The Partnership for mobility was signed by Spain, France, Luxembourg and Portugal on 5 June 2008.⁴⁴¹ Luxembourg is committed to studying the option of putting in place mechanisms for circular migration with Cape Verde.⁴⁴² At the present time, negotiations have not yet been commenced; we cannot yet make any comments on the precise content of such an agreement.⁴⁴³

Within the scope of this partnership, Luxembourg also committed to strengthen the ‘Migrate with Your Eyes Open’ programme which was started in Cape Verde by the Luxembourg cooperation and which ‘aims among other things at familiarization for future Cape Verdean migrants regarding family reunification, with the social, linguistic and other realities of life in Luxembourg.’⁴⁴⁴ This programme came to completion at the end of 2010 and the MYO office therefore had to be closed. According to the Ministry of Foreign Affairs, a similar project should be started and a new shared office should be opened.⁴⁴⁵

5.2. The brain drain and waste of skills

The brain drain

⁴⁴¹ Information and news from the Luxembourg Government, Press release of 5 June 2008 ‘Signature du Partenariat pour la mobilité entre l’Union européenne et le Cap-Vert’ (Signing the Partnership for mobility between the European Union and Cape Verde), http://www.gouvernement.lu/salle_presse/communiqués/2008/06-juin/05-UE-Cap-vert/index.html (last update of the page on 05.05.2008, last consultation on 15.01.2011)

⁴⁴² 2009 Political report 2009, page 35.

⁴⁴³ Response from the Minister of Labour, Employment and Immigration to Parliamentary Question no. 955 on the partnership for mobility with Cape Verde asked by the Honourable Député Mr Eugène Berger, 13 October 2010, http://www.dp.lu/docs/political_actions/qp_doc_20101013_0955_r.pdf

⁴⁴⁴ Response from the Minister of Labour, Employment and Immigration to Parliamentary Question no. 955 on the partnership for mobility with Cape Verde asked by the Honourable Député Mr Eugène Berger, 13 October 2010, http://www.dp.lu/docs/political_actions/qp_doc_20101013_0955_r.pdf

⁴⁴⁵ Press release from the Ministry of Foreign Affairs and Immigration, Signing of the Partnership for mobility between the European Union and Cape Verde (05.06.2008) http://www.gouvernement.lu/salle_presse/communiqués/2008/06-juin/05-UE-Cap-vert/index.html

The subject of the brain drain has not been discussed at length in Luxembourg⁴⁴⁶. The explanation of the employers' representatives, the Government and the unions consists of stating that the percentage of third-country nationals is relatively low in Luxembourg and that due to its small size, Luxembourg can only play a minimal role in combating the brain drain. The brain drain is not discussed in Luxembourg because there is no deliberate policy which aims to recruit third-party nationals in the future.⁴⁴⁷ Moreover, the majority of people interviewed associated the brain drain with the Luxembourgish who leave for abroad. This demonstrates well that this debate is not known about or conducted in Luxembourg.

The subject is only tackled through article 59 of the law of 29 August 2008 on the free movement of persons and immigration,⁴⁴⁸ which stipulates a specific regime for third-country nationals who have completed their studies in Luxembourg. As explained in the commentary of the articles of the bill focusing on the free movement of persons and immigration: 'If it is admissible that on completion of their higher education studies, third-country nationals can be employed so as to develop professionally or possibly to fulfil the deficit of labour which the host country is suffering from, this faculty must be limited in time to avoid contributing to the loss of skills in the country of origin.'⁴⁴⁹ The article stipulates that only one residence permit for a paid worker valid for a maximum duration of two years not renewable for the third-country national who has completed his/her studies in Luxembourg, (1) if s/he successfully completed in the Grand Duchy of Luxembourg a training cycle having resulted in a diploma of completion of higher education; (2) if s/he wishes, with a view to his/her return to the country of origin, to complete his/her academic training by initial professional experience serving the economic interests of the Grand Duchy of Luxembourg and of his/her country of origin; (3) the paid activity that s/he intends to practise is in direct relation to his/her academic training; (4) that s/he is in possession of a work contract.⁴⁵⁰

⁴⁴⁶ Government's Point of View, interview 11, page 6, line 30.

⁴⁴⁷ Employers' point of view, interview 3, page 12, lines 20-23.

⁴⁴⁸ Ministerial Point of View, interview 6, page 14, lines 3-9.

⁴⁴⁹ Mémorial A Issue 5802, 'Projet de loi portant sur la libre circulation des personnes et de l'immigration' (Bill focusing on the free movement of persons and immigration), 20.11.2007,

⁴⁵⁰ Article 59 of the Law of 29 August on free circulation and immigration, <http://www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf#page=2>

The waste of skills

The waste of skills, for its part, appears to be less understood and discussed less often in Luxembourg.⁴⁵¹ Moreover, as mentioned by OECD, the proportion of immigrant workers in Luxembourg has declined in favour of immigration of highly qualified workers; and contrarily to its neighbouring countries, the deskilling of third-country nationals there is a marginal phenomenon.⁴⁵²

However, several respondents have lamented the lack of recognition of qualifications of the spouses who accompany employees having obtained a residence permit in Luxembourg. Nowadays, ‘careers are organised as a couple’.⁴⁵³ The fact that the spouse cannot formally receive a work permit (but must take the market test during the first year) seems for some a waste of skills, and a disincentive to immigration for the principal applicant who would be highly qualified. Furthermore, the recognition of qualifications seems to take a great deal of time, at least for some professions, such as lawyers in particular.⁴⁵⁴

⁴⁵¹ Government’s Point of View, interview 11, page 6, lines 39.

⁴⁵² OECD, Migration paper 2009, note 30, p. 13.; BOLZMAN, 2007, *Travailleurs étrangers (Foreign workers)*, note 26; NOHL, Arnd-Michael, SCHITTENHELM, Karin SCHMIDTKE, Oliver, WEISS, Anja, *Kulturelles Kapital in der Migration*, 2010, Wiesbaden: Verlag für Sozialwissenschaften.

⁴⁵³ Government’s Point of View, interview 4, page 8, line 11.

⁴⁵⁴ National conference for integration ‘S’écouter et agir: haut a muer’ of the OLAI on 20 November 2010, discussions in the workshop 1.

6. CONCLUSIONS

1. Economic migrants came to Luxembourg with the development of the iron and steel industry. This activity transformed the country's economy which was up until then mainly focused on the agricultural sector, the large-scale development of this industrial sector required a great deal of labour, labour which was lacking given the small size of the country and of its population. The solution was found by resorting to economic migration.
2. Since then, the country's economic development has been dependent on migration. There are two types of economic migrants: 1) the cross-border workers who reside in the regions bordering Luxembourg who work in Luxembourg during the day and then return to their country of residence and 2) the economic migrants who have left their country of origin to settle more or less permanently on Luxembourg territory to occupy a job.
3. This last group is particularly comprised of Italian and Portuguese workers. The first came during the development of the coal and steel industry and then integrated into the construction sector. The second have an equally major role in the construction sector.
4. With the coal and steel industry crisis, Luxembourg has had to diversify its economy and has developed a financial centre. Globalization and the growth of the financial sector in Luxembourg have therefore played an increasingly important role in the country's economy.
5. This development could only have been done thanks to the contribution of a qualified workforce, coming once more from abroad; the internal resources of human capital were insufficient to fulfil the demand. The labour was first supplied for the most part by the Greater Region. The number of cross-border workers has significantly increased in the last few decades in Luxembourg, due to the high supply of jobs and more competitive salaries paid by companies domiciled in the Grand Duchy.
6. The need for highly qualified personnel has continued to increase significantly, in order to enable the financial sector to remain competitive and efficient and to retain its volume of business. Highly qualified workers fulfilled this demand and mainly came from the bordering regions.
7. Besides internationalization of the financial hub, the installation of European institutions on Luxembourg soil has also increased the number of non-nationals in Luxembourg. We have observed significant migration of European civil servants, but also other highly qualified personnel to meet the needs of the European institutions.

8. All of these phenomena have attracted a mainly European migrant population to Luxembourg. Luxembourg is the European Union country with the lowest population of third-country nationals.
9. Economic migrants have mainly invested in the private sector, where the proportion of nationals is only 25%. In the primary sector only, economic migrants represent 72% of the workforce, not considering the seasonal workers who come from other EU countries. The national workforce is mainly invested in the civil service (75.2%).
10. Globalization has also had as a result off-shoring of the decision-making centres of large Luxembourg companies. Directors of the large banks and companies in Luxembourg are more and more often foreigners, whereas the political power is mainly held by nationals.
11. In a globalized economy, to be able to maintain its status quo as one of the most flourishing economies in the EU, Luxembourg has an increasing requirement from very skilled and efficient personnel. Given the quantitative and qualitative lack of national labour, employers are obliged to recruit these personnel outside of the Grand Duchy's borders.
12. Different socioeconomic players believe that it is becoming harder to find this type of personnel in the Greater Region. The situation is confirmed by the fact that cross-border workers tend to come from regions further and further away from Luxembourg.
13. Insofar as where the Greater Region has always managed to meet the demand of the labour market, there is no longer a feeling of urgency in this respect. The political authorities have not yet developed an action plan, accompanied by mechanisms of identification to systematically react to a possible shortage of labour in the national labour market.
14. As regards economic migration especially regarding third-country nationals, the Government conducts a 'case by case' policy meeting the demand of businesses. We can ask ourselves if this type of policy is appropriate in a globalized world to cope with competition and with the structural and unpredictable changes in the global marketplace.

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7. Annexes

List of abbreviations

ADEM – Administration de l’emploi (Management of Immigration and Employment Administration)

ADR - Alternativ Demokratesch Reformparte

ALEBA - Association luxembourgeoise des employés de banque et assurance Luxembourgish association of employees of the banking and insurance sector)

AOT - Autorisation d'occupation temporaire (temporary occupation permit)

ASP - Autorisation de séjour provisoires pour raisons humanitaires (residence permit on humanitarian grounds)

ASTI - Association de soutien aux travailleurs immigrés (Support Association for Immigrant Workers)

CAI - Contrat d’accueil et d’intégration (welcome and integration contract)

CASNA - Cellule d’accueil scolaire pour élèves nouveaux arrivants (school Welcome Group for pupils newly arriving)

CCDH - Commission consultative des droits de l’Homme (Consultative Commission on Human Rights)

CCTS - Commission consultative pour travailleurs salariés (Consultative Commission for Employees)

CES - Conseil économique et social (Economic and Social Council)

CET - Centre pour l’égalité de traitement (Centre for Equal Treatment)

CGE - Commissariat du Gouvernement aux étrangers (Commissariat of the Government for foreigners)

CGFP - Confédération générale de la fonction publique (General Confederation for public service)

CLAE - Comité de liaison et d'action des étrangers (Liaison and action committee for non-nationals)

CSV - Parti chrétien social (Christian social party)

DP - Parti démocratique (Democratic party)

DPI – Demandeurs de protection international (persons seeking international protection)

FER – Fonds européen pour les réfugiés (European Refugee Fund)

FGFC – Fédération générale de la fonction communale (general federation for district services)

LCGB - Lëtzebuerger Chrëschtliche Gewerkschaftsbond

LSAP - Parti ouvrier socialiste luxembourgeois (socialist workers party in Luxembourg)

IOM – International Organization for Migration

OLAI - Office luxembourgeois de l'accueil et de l'intégration (OLAI) (Luxembourg Reception and Integration Agency)

NGO – Non-Governmental Organisation

ORK – Luxembourg's Children's Rights Ombudscommittee, '*Ombudskomitee fir d'Rechter vun Kand*'

UE – Union européenne (EU: European Union)



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

