



CHANGES IN IMMIGRATION STATUS AND PURPOSE OF STAY: AN OVERVIEW OF EU MEMBER STATES APPROACHES

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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.



Preface

The opinions expressed in this report are those of the authors. They do not necessarily reflect the positions of the Luxembourg Ministry for Family, Integration and the Greater Region or of the Ministry of Foreign and European Affairs.

The present report was drafted by Fabienne Becker, Linda Dionisio and Lisa Li, staff members of the National Contact Point Luxembourg within the European Migration Network, under the overall responsibility of Prof. Dr. Birte Nienaber. Continuous support was provided by the members of the national network of the National Contact Point Luxembourg: Sylvain Besch (CEFIS), Marc Hayot (OLAI, Ministry for Family, Integration and the Greater Region), Catherine Stronck (Directorate of Immigration, Ministry of Foreign and European Affairs) and Germaine Thill (STATEC).

Methodology

National reports are produced by the respective National Contact Points (NCPs) on the legal and policy situation in their Member State according to common specifications. Subsequently, a comparative synthesis report is generated by the European Commission with its service provider giving the key findings from each national report, highlighting the most important aspects and placing them as much as possible within an EU perspective. The various national accounts and the summary report are made publicly available.

The EMN engages primarily in desk research, i.e. it collects and analyses data and information already available or published at the Member State or international level. As documentary sources legal texts, official documents (such as parliamentary documents), reports and press articles have been used for this study. Furthermore, semi-structured interviews were conducted with different stakeholders in the field of statuses of immigration: the Directorate of Immigration of the Ministry of Foreign and European Affairs, the Ministry of Economy, the Chamber of commerce. In addition to this, several actors that were identified as potentially being confronted to situations of changes of statuses of immigration were consulted by telephone on specific points: the Solidarity and Integration Service of Caritas Luxembourg, CLAE asbl, the University of Luxembourg.

Executive summary

Section 1 offers an overview of the Luxembourg immigration legislation which provides for the possibility to switch between categories of authorisations of stay in Article 39 of the amended Law of 29 August 2008 on the Free Movement of Persons and Immigration (hereafter referred to as Law on Immigration). Third-country nationals wishing to stay in Luxembourg for more than three months are required to apply for an authorisation of stay before arriving in Luxembourg.

The third-country national applying for a permit for more than three months has to submit to a medical examination before requesting the delivery of the permit. After the medical exam, a certificate is delivered detailing whether the third-country national fulfils the conditions of entry to the territory or not. This certificate has to be enclosed to the residence permit application. The third-country national must also fulfil conditions pertaining to his/her registration in the municipality of his/her future residence as well as appropriate accommodation.

In regards to changes of statuses, the third-country national with an authorisation of stay for more than three months has the possibility to apply for a different permit provided s/he fulfils the conditions for the category of permit s/he is aiming to change to. The Law on Immigration sets up this principle in its Article 39 (3) and excludes from its application the following categories: students, trainees, volunteers, au pairs and pupils. The rationale behind those exceptions is that those permits are considered temporary by definition, as they are linked to an activity which is limited in time.

A special provision, Article 59 of the Law on Immigration, allows young graduates after the expiry of their student permit to change into the category of salaried worker and have a first work experience in Luxembourg for the limited, non-renewable, duration of two years. After this period the third-country national has to return in his/her country of origin. This provision and its conditions were debated by stakeholders during the elaboration of the Law on Immigration, concerns surrounding the limit of two years' work experience or the limiting condition of having a contract linked to the diploma obtained in Luxembourg were mentioned.

Article 59 is however the result of a compromise between fostering a young graduate's capabilities with a first work experience and provide for a possibility to fill the gap in the Luxembourg workforce on one hand and on the other mitigate the risk of brain drain for the third-country national's country of origin.

Other considerations to allow for switches between categories of statuses were of humanitarian nature, such as Articles 76 (family member), 89 (1) (authorisation of stay for exceptional reasons), 98 (victim of human trafficking) and 131 (2) (medical reasons) of the Law on Immigration. These articles aim to increase the autonomy and legal security of vulnerable third-country nationals.

Section 2 details the different statuses taken into account for the purpose of the present study. The table under question 1 also contains categories that do not exist as such in Luxembourg legislation: the separate category of highly qualified worker was replaced by the European Blue Card with the implementation of the Law of 18 December 2011, the categories of business owner, seasonal workers, intra-corporate transferee and investor do not exist autonomously, but third-country nationals falling under these categories are nonetheless covered by other existing statuses. However, a modification of the current legal framework is under way in order to create the categories of intra-corporate transferees and seasonal workers.

Therefore the relevant categories of statuses for Luxembourg at this point in time are family member, education (student), researcher, European Blue Card, salaried worker, self-employed worker, international protection applicant, victim of trafficking in human beings, private reasons, athletes, au pairs and beneficiaries of medical treatment. The authorisation of stay for exceptional reasons was included in this study even if not considered a category of stay.

Section 3 delves more specifically into the subject matter of the present study and introduces more in detail the changes of statuses that are possible from within the country. The present study excluded from its scope the change into long-term resident, which is the most common change of status in Luxembourg. Several changes, while theoretically possible, are also unlikely to take place in practice as they would lead to a loss of rights for the concerned third-country national. This loss of rights applies to switches into the categories of students, pupils, volunteers, trainees, au pairs, seasonal workers, posted workers and international protection

applicants. As a consequence, the main changes of statuses in practice concern the categories of Family member, salaried worker, European Blue Card, Self-employed and Private reasons.

The special consideration given to third-country nationals in vulnerable situations, such as victims of trafficking in human beings or third-country nationals with an authorisation of stay for medical reasons, may obtain a permit for private reasons and, if they engage in a full-time salaried activity, may later switch to salaried worker without having to submit to the labour market test.

The study also presents the different actors on a national level that might be confronted with changes of statuses as well as the different channels of communication that are available to circulate the information to third-country nationals. The concerned actors may vary from one category of permit to the next, however the Directorate of Immigration will be involved in nearly every case. The Chamber of Commerce also has a part to play in changes into self-employed workers. The main channel of communication, aside from office hours of institutions dealing with migration, is the website www.guichet.lu which centralises all the relevant information.

Taking as a basis the different comments during the elaboration of the Law on Immigration as well as interviews conducted with different stakeholders for the purpose of this study, these changes of statuses are generally perceived in a positive light, with several actors, such as the Chamber of Commerce or Fondation Caritas, arguing in favour of lighter requirements to allow for such switches, especially where changes for humanitarian grounds are concerned.

The topic of changes of statuses of immigration has not as of yet attracted interest in Luxembourg. There is no data or study available on the topic and it has not triggered any large debate on the national level.

Nevertheless, Section 4 puts forward a number of good practices. In fact, whenever the Directorate of Immigration or another organisation providing advice on immigration, notices a possibility for a third-country national to obtain a permit that is more favourable, this will be brought to the attention of the concerned person. The Directorate of Immigration has also proven flexibility and understanding in situations including children. Alternative solutions are also provided by the Directorate of Immigration when a holder of the authorisation of stay for medical reasons falls into irregularity. A further notable good practice is the extensive support

provided to third-country nationals aiming to change into self-employed worker by the Chamber of Commerce.

Finally, the constant information sharing between the relevant actors consists a good practice with enormous potential as it draws the discussion into practical concerns faced with the implementation of the Law on Immigration.

Section 1 - Overview of the National migration system in place regarding changes of status

This section aims to provide a general overview of the (Member) State national migration system in relation to status changes for third-country nationals from within the territory of the Member State. It aims to provide a brief overview of the debates (being) held in the (Member) States on necessities and possibilities of migration status changes and what policy changes are considered. It also briefly aims to suggest the main drivers/reasons behind changes of status being promoted that can take place from within the territory of the (Member) State (without the third-country nationals being required to leave the (Member) State's territory).

1.1. General Overview of National migration system in relation to status changes

In Luxembourg, the general rule for changing a status is defined by Article 39 of the amended Law of 29 August 2008 on the Free Movement of Persons and Immigration (hereafter referred to as Law on Immigration).

In general, a third-country national who desires to stay in Luxembourg for more than three months has to apply for an authorisation of stay before entering the territory. Once the person has received the authorisation of stay from the Ministry of Foreign and European Affairs, s/he has to use it within 90 days.¹

¹ See Article 39 (1) of the amended Law of 29 August 2008 on the Free Movement of Persons and Immigration, Official Journal, Memorial A, No. 113, 03.07.2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf> [accessed: 26.08.2015].

- Third-country national legally residing in Luxembourg for less than three months:

There are exceptional cases, where a third-country national, who is legally staying on the territory for a period up to three months, can file an application for an authorisation of stay for more than three months in case s/he can prove that s/he fulfils the required conditions for the category s/he wishes to apply for and in case returning to his/her country of origin would lead to burdening/unfair costs.²

- Third-country national who has an authorisation of stay for more than three months:

A person who possesses an authorisation of stay for more than three months can apply for another permit before the expiration of his/her authorisation of stay in case s/he fulfils all the required conditions for the category s/he wishes to file an application for.³ However, the categories listed in Chapter 3, section 2, subsection 4 of the Law on Immigration are excluded from the possibility of changing their status. Indeed, students, trainees, volunteers, au pairs and pupils cannot change into another category of residence permit. Students are only allowed to change to an authorisation of stay as a salaried worker at the end of their studies, when their status as a student expires, but only for a period of two years and if the student fulfils specific conditions⁴. Apart from these exceptions, the general rule is that changes of status are possible provided the third-country national fulfils the conditions of the category s/he wishes to switch to.

As an example, it is formally foreseen that family members, who have a residence permit for family reunification can receive an independent residence permit for private reasons (*'vie privée'*) after five years of residence on the territory or in case of a break-up in the family life, such as the death of the person on whom the family depends, a divorce or marriage/partnership annulment, or in case of difficult situations including situations of domestic violence.⁵

Furthermore, certain categories of persons who hold a residence permit for private reasons can change their status and receive a residence permit for salaried workers in case they have a work contract offer or a full time job (40h/week) that is declared as vacant at the Employment Agency⁶

² See Article 39 (2) of the Law on Immigration. Please also see First instance administrative Court, n°31398 of 11 September 2012.

³ See Article 39 (3) of the Law on Immigration.

⁴ Article 59 of the Law on Immigration. For more detailed information please see section 3.1.

⁵ See Article 76 of the Law on Immigration.

⁶ Agence pour les développement de l'emploi – ADEM.

(ADEM) and possess the required qualifications for the respective job. These categories are: family members who change to a residence permit for private reasons for the reasons mentioned above⁷, third-country nationals who do not fulfil the conditions for family reunification but who received a residence permit for private reasons in order to avoid a disproportionate violation of the principle of respect of private and family life⁸, third-country nationals who hold a residence permit for private reasons due to humanitarian grounds.⁹ This is particularly the case for third-country nationals receiving an authorisation of stay as victims of trafficking in human beings¹⁰ and as victims of an infraction to the prohibition of employment of irregular migrants if committed in aggravating circumstances foreseen by the Labour Code¹¹. If the person was already working part time and their contract is extended to full time, there will be no need to declare the job vacant and provide the certificate of the ADEM¹², as it does not consist a new job and therefore there is no vacancy to declare. In that case, the worker will be able to change to the salaried worked status without providing those documents.¹³

In general, third-country nationals, who have stayed legally on the territory for at least five years are allowed to change to a long-term residence permit.¹⁴ There are certain conditions that the respective third-country national has to fulfil in order to be able to receive a long-term residence permit¹⁵. Furthermore, the Minister of Immigration can take into account the level of integration

⁷ Article 76 of the Law on Immigration.

⁸ Article 78 of the Law on Immigration.

⁹ According to articles 131 (2) and 132 (3) of the Law on Immigration, third-country nationals receiving an authorisation of stay for medical reasons receive an authorisation of stay for private reasons and a residence permit for private reasons. Article 89 of the same law establishes that third-country nationals receiving an authorisation of stay for exceptional reasons may receive either a residence permit for private reasons if they pursue studies or professional training, or a residence permit for salaried worker if they have signed a work contract for a job declared vacant to ADEM.

¹⁰ Article 98 of the Law on Immigration.

¹¹ Articles 98bis of the Law on Immigration. See also articles 95 and 98 of the Law on Immigration.

¹² Article L-622-4 (4) of the Labour Code establishes that if within three weeks starting from the declaration of the job vacancy, ADEM has not proposed to the employer any candidates with the required qualifications for the job declared vacant, the employer may request from the director of ADEM a certificate attesting the right of the employer to recruit for this opening the person of his/her choice.

¹³ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs, 10 September 2015.

¹⁴ There are some exceptions where third-country nationals are not eligible for a long-term residence, even after having stayed for five years on the territory: e.g. persons who have a specific legal status that is governed by the provisions of the Vienna conventions of 1961, 1963, 1969 and 1975, such as persons who hold a diplomat passport or a legitimation card; applicants for international protection who have not yet received an answer; persons who are residing on the territory under protection other than international protection, or under temporary protection, or who applied for protection other than international protection and did not yet receive an answer; persons who stay on the territory exclusively for temporary grounds such as seasonal workers, posted workers, transferred workers, students or persons who do a vocational training (their residence period for educational purposes counts half after having switched to a status that allows them to receive a long-term residence permit). See Article 80 (2) and (3) of the Law on Immigration.

¹⁵ To be eligible for the long-term residence permit, the third-country national must have legally and continuously resided in Luxembourg for at least five years, have a valid passport, have stable, regular and sufficient resources to take care of his/her own needs and his/her family's needs without having to resort to the social security system, own appropriate accommodation, be covered by health insurance for himself/herself and his/her own family and not constitute a threat to public order and national security. See Guichet.lu, *Demandeur le statut de résident longue durée du ressortissant de pays*

of the applicant into the society. The integration level of the third-country national is checked on a case by case basis, the Ministry trying to perceive the situation in a global manner, taking into account the family situation, for example children that are born in Luxembourg, that went to school in Luxembourg or whether they finished successfully the Welcome and Integration Contract¹⁶. Another strong indicator of integration would be if the third-country national has worked for a long time at the same place.¹⁷ Furthermore, when a third-country national applies for a renewal of his/her resident permit or for a change of status and in case s/he has resided on the territory for at least five years, the Directorate of Immigration of the Ministry of Foreign and European Affairs informs the person of his/her possibility to receive a long-term residence permit, as this permit is the most beneficial one for the person.¹⁸ In order to inform concerned persons about this option, the Directorate of Immigration published a flyer on: to whom this permit can or cannot be granted, what the benefits of this residence permit are and on how the five years of legal and continuous residence are calculated.¹⁹ Third-country nationals who desire to change their status to a long-term residence permit can also receive information on the required administrative procedures on www.guichet.lu in English, French and German.²⁰

1.2. Brief Overview of the national debate in the Member State

There was no public debate in regards to changes of status in general.

In the Ministry of Economy, one topic of discussion is how to facilitate the access to the labour market for third-country nationals with the status of family member. A recurring case is the partners of highly qualified workers who have to fulfil the conditions required to access the labour market as if they would enter the country for the first time. In such cases, there are often difficulties for them to find a job corresponding to their qualifications or their language

tiers, <http://www.guichet.public.lu/citoyens/fr/immigration/plus-3-mois/ressortissant-tiers/sejour-5-ans/statut-resident-longue-duree-ressortissant-pays-tiers/index.html> [accessed 12.11.2015].

¹⁶ Interview with the Directorate of Immigration, 10 September 2015.

¹⁷ Interview with the Directorate of Immigration, 10 September 2015.

¹⁸ Interview with the Directorate of Immigration, 10 September 2015.

¹⁹ See flyer (available in English and in French): *Status of long-term resident. Articles 80 to 88 of the amended law of 29 August 2008 on the free movement of persons and immigration*. Ministry of Foreign and European Affairs, Directorate of Immigration, 2015, <https://www.gouvernement.lu/4708761/depliant-statut-resident-longue-duree.pdf> [accessed: 19.01.2016].

²⁰ See Guichet.lu, *Long-term resident status for third-country nationals*, <http://www.guichet.public.lu/entreprises/en/ressources-humaines/recrutement/ressortissant-pays-tiers/resident-longue-duree/index.html> [accessed: 27.08.2015].

proficiencies and the obstacle is not the procedure itself but the finding a job in order to qualify for the status of salaried worker or for the European Blue Card.²¹

The Chamber of Commerce is part of the Consultative Commission for Self-employed Workers (*Commission consultative pour travailleurs indépendants*)²² and in this framework it communicates and reports grievances to the attention of the Ministry of Foreign and European Affairs. The Chamber of Commerce has notably emphasised the situation of third-country national students who met in Luxembourg and wanted to set up a business, which was a huge problem. The Chamber of Commerce continues to lobby in such cases and in their opinion, the University of Luxembourg has a part to play if they wish to attract students from all over the world and train people who will be active in the economy.²³ On the other hand, for the University of Luxembourg, this is a political and legal issue. The University does not engage into lobbying in this case, because according to its interpretation of Article 39 of the Law on Immigration, it is up to the potential employer of the young graduate to lobby for a permit after the expiration of two years²⁴.

During the elaboration of the Law on Immigration, the Chamber of Private Employees in their legal opinion welcomed the introduction of a measure allowing students a first work experience after their graduation²⁵ but wondered at the terminology chosen to do so. Whereas the Students Directive²⁶ talks about salaried and self-employed activities being open to the student²⁷, the Luxembourgish legislator decided to limit such an option exclusively to the salaried activity.²⁸ The Chamber of Trades and Crafts also called into question the limitation of two years of the Article 59 residence permit on the grounds of discrimination. They argued that a huge majority of students at the University of Luxembourg are EU citizens who are not subject to any labour

²¹ Interview with the Ministry of Economy, 14 September 2015.

²² Article 4 (1) of Grand-Ducal Regulation of 5 September 2008 on the composition and the functioning of the consultative commission of foreigners, the consultative commission for salaried workers and the consultative commission for self-employed workers details the composition of said commission. It includes two representatives of the minister in charge of immigration, one representative of the minister in charge of economy, one representative of the minister in charge of middle classes and one representative of the minister in charge of labour and employment. If need be the commission can include the expertise of representatives of the ministers in charge of finances, research, health, higher education, culture, media and communication, as well as representatives from interested professional chambers. It is in this latter capacity that the Chamber of Commerce takes part in the commission.

²³ Phone interview with the Chamber of Commerce, 9 October 2015.

²⁴ Email exchange University of Luxembourg, Rectorate, 6 November 2015: 'La question du lobbying ne peut relever de l'Université, car elle n'est pas l'employeur potentiel de la personne après deux années de séjour post-études : c'est l'application de l'art. 39 de la loi'.

²⁵ Article 59 of the Law on Immigration.

²⁶ 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.

²⁷ Article 17 of Directive 2004/114.

²⁸ Parliamentary document 5802/06, p. 11, point h).

market restrictions and therefore limiting the professional experience of third-country nationals to two years would only increase the divide between the two groups and emphasize social selection.²⁹ On this topic, the Chamber of Commerce also deplored the limitation of two years for this opportunity for students to continue their education on the field. Indeed, in their opinion two years are not sufficient to contribute to their qualifications. For this reason, they proposed the duration of the work experience to be limited to three years. They also suggested expanding the criteria for this provision to include students who obtained a binding offer for work. Finally, they proposed to set up an accelerated procedure for a permit of one year for students having finished their studies in Luxembourg, but who do not fall under the scope of article 59 because the job obtained is not in relation with their studies.³⁰ In the commentaries and opinion provided in relation to the adoption of that legislation of reference, the debate did not centre as much on the possibilities to switch from one status of immigration to another, as it did on which rights should be granted for which status. Most parties involved welcomed the disposition of Article 59 of the Law on Immigration allowing students to stay after their graduation provided they introduce an application before the expiry of their student status. After the expiry of his/her student status, the third-country national is no longer authorised to reside in Luxembourg and will have to leave the country. Any application introduced from Luxembourg may be deemed inadmissible.³¹ In fact, the third-country national wishing to work in Luxembourg will have to introduce an application for an authorisation of stay as a salaried worker from abroad.³² The comments relating to article 59 concerned the modalities of this provision. In the legal opinions of civil society actors active in the field of immigration, after agreeing on the extension of the duration of the first work experience from one to two years, they advised for the bill not to apply the preference given to EU citizens on the labour market in such situations.³³ In regards to salaried workers, many actors welcomed the enhanced professional mobility of salaried

²⁹ Parliamentary document 5802/07, p. 17.

³⁰ Parliamentary document 5802/05, p.13.

³¹ Article 39 of the Law on Immigration.

³² In this case article 42 of the Law on Immigration applies, and not article 59, as it is considered a new application and not a first professional experience for a young graduate. As a consequence, the duration of stay may not be limited to two years, depending on the situation at hand.

³³ Parliamentary document 5802/04, p.9, point 43.

workers with the transposition of the Single Permit Directive³⁴, since the Law on Immigration reduced the limitation to one sector and one profession to one year (previously three years).³⁵

1.3. Main drivers / reasons behind changes of status promoted by legislators

One of the main arguments against the possibility of a change of status is that certain resident permits are by definition of temporary nature, for instance for students, volunteers, trainees, pupils and au pairs: they are granted a residence permit linked to an activity which is limited in time.³⁶

On the other hand, in cases where there is a legal possibility to change status, one driver was to simplify the procedure. Another driver concerned the terminology used in the directives and its consequence: as certain residence permits are not considered to be temporary, it follows that switching from one category to another should be possible. If for example a person is working in a firm and decides to start his/her own business, if s/he fulfils the conditions to obtain a residence permit as a self-employed worker, the switch is smooth and there is no valid reason for him/her to be sent back home in order to introduce a new application.³⁷

Another important consideration is that of ‘economic pragmatism’. One example would be a third-country national who wants to switch to self-employed worker because s/he no longer has an employer. In this case it is advantageous for all concerned parties to allow him/her to do so, if s/he fulfils the relevant conditions.³⁸

The provision of Article 59 allowing a third-country national who has finished his/her studies in Luxembourg to engage in a first professional experience was motivated on the one hand by the desire to allow the student to build on his/her qualifications with a first professional experience or fill the gaps in the workforce in Luxembourg and on the other hand, avoid contributing to the possibility of draining the country of origin of educated people. Therefore,

³⁴ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a member State and on a common set of rights for third-country workers legally residing in a member State.

³⁵ See for example the Legal Opinion of the Consultative Commission on Human Rights, 09.04.2013, http://chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/118/231/121370.pdf [accessed 12.11.2015].

³⁶ Interview with the Directorate of Immigration, 10 September 2015.

³⁷ Interview with the Directorate of Immigration, 10 September 2015.

³⁸ Interview with the Directorate of Immigration, 10 September 2015.

Article 59 tries to balance these two goals, furthering the education of third-country nationals and the wish of countries of origin to not lose educated people and mitigate the so-called “brain drain”. To reinforce this goal, the government has expressed the intention to foster the creation of cooperation programmes to help young graduates adapt to the labour market in their country of origin.³⁹ Civil society actors interpreted this provision as being a compromise between the interests of the host country, the country of origin and the migrant.⁴⁰ This concern of brain drain was already put forth by the European Commission during the elaboration of the Students Directive.

The student who wishes to stay on after the two years of work experience allowed by article 59, falls under the purview of article 39 which sets up the general rule in matters of changes of status.⁴¹ However, in practice a young graduate may obtain a European Blue Card without leaving the country, provided that s/he meets the conditions to obtain that permit.

Article 76 of the Law on Immigration provides for the possibility to change from a family member status to a private reasons status in cases of a change in family situation. This is based on a logic of increasing autonomy for the third-country national and also on concerns of legal security. These rules were set up to protect especially vulnerable people who find themselves in particularly difficult situations, such as for example victims of domestic violence. In this respect, the provision of article 76 opens up a possibility for victims to walk away from their abuser without being penalized by losing their status. Article 76 can also be applied for third-country nationals who would be confronted to distressing situations, if they had had to return to their country of origin.⁴²

Concerning highly qualified workers and their family members, the Chamber of Commerce indicates that for the change of status from family member to self-employed, the application is relatively easy⁴³ because the category of family member is not a temporary category. Furthermore, it stated that should there be any financial difficulties, the partner who holds a job

³⁹ Parliamentary document 5802/00, p.72.

⁴⁰ Parliamentary document 5802/04, p.9, point 43.

⁴¹ Parliamentary document 5802/00, p. 72.

⁴² Parliamentary document 5802/00, p. 76

⁴³ Provided they meet the conditions for the Self-employed permit.

could be relied upon and therefore there are very minimal risks when the Directorate of Immigration grants the switch.⁴⁴

Section 2 - Overview of Admissions criteria

This section aims to provide an overview of the initial admission criteria or the criteria for issuing a particular authorisation to stay/residence permit applied by Member States in order to admit all categories covered by the scope of the study. It also investigates the rights attached to each status as well as the requirements incumbent on the applicant.

Q1. How does the national legislation of your (Member) State define the categories of third-country nationals covered by this study?

In order for a third-country national to be granted a residence permit of more than three months, the concerned person needs an authorisation of stay first. The third-country national applying for a permit for more than three months has to submit to a medical examination before requesting the delivery of the permit.⁴⁵ After the medical exam, a certificate is delivered detailing whether the third-country national fulfils the conditions of entry to the territory or not.⁴⁶ This certificate has to be enclosed to the residence permit application.⁴⁷ According to Article 40 (2) of Law on Immigration, the third-country national has to provide a copy of his/her authorisation of stay, the receipt of his/her declaration of arrival of his/her municipality, the medical certificate and the evidence of appropriate accommodation, where applicable, to apply for a residence permit for the following categories.

⁴⁴ Phone interview with the Chamber of Commerce, 9 October 2015.

⁴⁵ Article 41 (1) of the Law on Immigration.

⁴⁶ Article 41 (3) of the Law on Immigration.

⁴⁷ Article 41 (3) of the Law on Immigration.

Category	National definition	Admission criteria
<p style="text-align: center;">Family</p>	<p>There is no definition of ‘family’ in national law. The Law on immigration only defines the notion of sponsor and family reunification.⁴⁸</p> <p>Article 68 b) of the Law on Immigration defines sponsor (‘<i>regroupant</i>’) as a third-country national who is residing legally on the territory and who applies for family reunification or whose family members apply to join him/her.</p> <p>Article 68 c) of the Law on Immigration defines family reunification (‘<i>regroupement familial</i>’) as the entry into and residence in a Member State by family members of a third-country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident's entry.</p>	<p>The application has to be made before entering Luxembourg. In exceptional cases with due reason the minister may agree that the application can be made when the family members are already in the country.⁴⁹</p> <p>The sponsor must:</p> <ul style="list-style-type: none"> • hold a residence permit valid for at least one year and must have been living in Luxembourg for at least twelve months; • provide proof of stable, regular and sufficient resources to cover his/her own needs and those of dependent family members without using the social security system; • provide proof of adequate housing for the family member(s) and health insurance cover for himself/herself and his/her family members.⁵⁰

⁴⁸ See LU EMN NCP, *Marriages of Convenience and false declarations of parenthood*, Luxembourg 2012, p. 3.

⁴⁹ See LU EMN NCP, *Visa Policy as Migration Channel*. Luxembourg 2011, p. 60 and Article 73 (4) and (5) of the Law on Immigration.

⁵⁰ See LU EMN NCP, *Visa Policy as Migration Channel*. Luxembourg 2011, p. 60 and Article 69 (1) of the Law on Immigration.

<p style="text-align: center;">Education⁵¹</p>	<p>There is no definition in the national context. Neither the Law on Immigration nor case law provides a definition of international students. However, article 56 (1) of the Law on Immigration includes the definition of student when establishing admission criteria (see other column)⁵².</p> <p>Nevertheless, the Law defines which institutions are considered as higher education institutions:</p> <ul style="list-style-type: none"> • The University of Luxembourg; • Educational institutions offering studies leading to an higher technical certificate (<i>Brevet de technicien supérieur</i>), according to the Law of 4 September 1990 reforming secondary vocational education and vocational training. • Higher education institutions authorised under the Law of 14 August 1976 determining the conditions of institution of private schools for higher education.⁵³ 	<p>This resident permit is only issued to third-country nationals whose only objective is to study (full-time). The following conditions must be fulfilled:</p> <ul style="list-style-type: none"> • the applicant has been accepted in a higher education institution as defined by the law (see definition in the left column) for obtaining a diploma of higher education; • the applicant has a parental authorisation to pursue the studies if s/he is under 18 years old; • the applicant proves that s/he has financial resources to sustain himself /herself and to return to his/her country of origin⁵⁴; • the applicant has health insurance.⁵⁵
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⁵¹ In the case of trainees the situation is slightly different. The following criteria must be fulfilled:

- the applicant presents the proof that the internship is compulsory and foreseen in the programme s/he is in;
- the applicant proves that s/he has the parental authorisation in case s/he is a minor;
- the applicant proves that s/he has the financial resources to support himself/herself during the internship and to return to the country of origin;
- The applicant has health insurance.

See LU EMN NCP, *Visa Policy as Migration Channel*. Luxembourg 2011, p. 58 and Article 61 of the Law on Immigration

⁵² Parliamentary document n°5802/00, p.71.

⁵³ See LU EMN NCP, *Immigration of International Students to the EU*. Luxembourg 2012, p. 13-14 and Article 56 (2) of the Law on Immigration.

⁵⁴ Resources must be 80% of the actual guaranteed minimum income in Luxembourg. The guaranteed minimum income is 1.348, 18EUR according to the current scale since 1st January 2015. 80% of the guaranteed social minimum is then 1.078,54 EUR as of 1st January 2015. The amount of the guaranteed minimum income is however adapted regularly. Article 4 of the Grand-Ducal regulation of 5 September 2008 defining the criteria of resources and accommodation foreseen by the Law on Immigration. See also Guichet.lu, *Authorisation to stay for a third-country national for purposes of study («student»)*, <http://www.guichet.public.lu/citoyens/catalogue-formulaires/immigration/tiers-etudiant/autorisation-sejour-note/note-explicative-etudiant-EN.pdf> [accessed 04.11.2015].

⁵⁵ See LU EMN NCP, *Visa Policy as Migration Channel*. Luxembourg 2011, p. 57 and Article 56 (1) of the Law on Immigration.

<p>Research</p>	<p>Article 65 (3) of the Law on Immigration defines research as creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and the use of this stock of knowledge to devise new applications.</p> <p>There is no definition of a researcher in the Law on Immigration. The Law only provides the criteria which must be fulfilled in order to be granted an authorisation of stay and a residence permit as a researcher.</p>	<p>The purpose of this residence permit is to pursue a research project. It may be granted to a third-country national who has a higher education degree which gives him/her access to doctoral programmes, if s/he can present a convention signed by an accredited research organisation, as well as a certificate proving that s/he will be taken care of⁵⁶. Furthermore, the research organisation has to be approved by the ministries in charge of research and in charge of economy respectively and it has to fulfil all the requirements of Article 65 of the Law on Immigration.⁵⁷</p>
<p>Blue card</p>	<p>There is no definition in the Law of Immigration. Highly qualified workers receive a European Blue Card residence permit. There are no separate residence permits for highly qualified workers and blue card holders since the implementation of the European Directive 2009/50/EC into national law with the Law of 18 December 2011.⁵⁸</p> <p>See definition of highly qualified employment below.</p>	<p>Article 45 of the Law on Immigration defines the criteria the applicant has to fulfil:</p> <ul style="list-style-type: none"> • the applicant has to present a valid work contract for a highly qualified work, such as defined in Article 45 (2) a) (see underneath) for a duration of at least a year; • the applicant has to present a document, which certifies that the person has the required professional qualifications or fulfils the criteria for the job for which s/he has a work contract; • the applicant has to receive a salary, which fits a salary threshold that is defined by a Grand-Ducal Regulation. <p>The Grand-Ducal Regulation of 26 September 2008 defines the salary thresholds for highly qualified workers, which are updated every year by ministerial regulation.⁵⁹</p>

⁵⁶ Article 66 (2) of the Law on Immigration establishes that once the convention has been signed, the research organisation provides a nominative financial statement of support concerning the charges of residence and return of the researcher. The financial responsibility of the research organisation lasts until two months after the end of the hosting convention.

⁵⁷ See LU EMN NCP, *Visa Policy as Migration Channel*. Luxembourg 2011, p. 55 and Article 63 of the Law on Immigration.

⁵⁸ See Article 45-1 of the Law on Immigration.

⁵⁹ See amended Grand-Ducal Regulation of 26 September 2008 establishing the minimum salary threshold for a highly qualified worker pursuant to the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Official

Blue card		<ul style="list-style-type: none"> • at least 1.5 times the average gross salary for Luxembourg (47.964 x 1.5 = 71.946 Euros in 2015⁶⁰) or; • at least equivalent to 1.2 times the average gross annual salary Luxembourg (47.964 x 1.2 = 57.556,80 Euros in 2015⁶¹) for jobs in occupations belonging to groups 1 and 2 of the ‘International Standard Classification of Occupations’ (ISCO) for which a particular need for workers from third countries is recognised by the government. <p>The first list of these occupations was published by Government Council Decree of 22 May 2015⁶². The list establishes the following professions in which the government considers there is a shortage of qualified workforce of certain professions in the telecommunications and information sectors such as:</p> <ul style="list-style-type: none"> • Mathematicians, actuaries and statisticians (2120) • Systems analysts (2511) • Software developers (2512) • Web and multimedia developers (2513) • Applications programmers (2514) • Software and applications developers and analysts not elsewhere classified (2519)
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Journal, Memorial A, No. 19, 03.02.2012, <http://www.legilux.public.lu/leg/a/archives/2012/0019/a019.pdf> [accessed: 01.10.2015].

⁶⁰ Ministerial Regulation of 13 May 2015 establishing the annual gross average salary as foreseen in the amended Grand-Ducal Regulation of 26 September 2008 establishing the minimum salary requirements for a highly qualified worker in application of the Law of 29 August 2008 on Free movement of persons and Immigration, published in the Memorial A, No. 94, 02.06.2015 and see Guichet.lu, *Conditions of residence and work for highly qualified workers from third countries ('EU Blue Card')*, <http://www.guichet.public.lu/entreprises/en/ressources-humaines/recrutement/ressortissant-pays-tiers/salarie-hautement-qualifie/index.html> [accessed 01.10.2015].

⁶¹ Ministerial Regulation of 13 May 2015 establishing the annual gross average salary as foreseen in the amended Grand-Ducal Regulation of 26 September 2008 establishing the minimum salary requirements for a highly qualified worker in application of the Law of 29 August 2008 on Free movement of persons and Immigration, published in the Memorial A, No. 94, 02.06.2015, and see Guichet.lu, *Conditions of residence and work for highly qualified workers from third countries ('EU Blue Card')*, <http://www.guichet.public.lu/entreprises/en/ressources-humaines/recrutement/ressortissant-pays-tiers/salarie-hautement-qualifie/index.html> [accessed 01.10.2015].

⁶² Government Council Decree of 22 May 2015 establishing the minimum salary threshold for the granting of the European Blue Card for certain professions according to the CITP08 classification, published in Memorial A, No. 94, 02.06.2015.

		<p>In general, the applicant must have a higher education diploma. In case a person does not have a higher education diploma s/he can apply if s/he proves that s/he has a professional experience of minimum 5 years equivalent to a higher education diploma, which is pertinent for the profession or the economic sector indicated in the work contract.⁶³</p>
<p>Highly qualified workers</p>	<p>Article 45 (2) a) of the Law on Immigration defines highly qualified employment (<i>‘emploi hautement qualifié’</i>) as the employment of a worker carrying out a salaried activity for which s/he possesses the appropriate and specific skills required, such skills being attested by higher professional qualifications which are either evidenced by a higher-education diploma or backed up by at least five years' professional experience at a level comparable to a higher-education diploma, and which are relevant in the profession or sector specified in the work contract.</p>	<p>In Luxembourg, the introduction of the ‘Blue Card’ replaced the status of ‘highly qualified workers’ with the implementation of the Law of 18 December 2011.</p> <p>The transition from the old status of ‘highly qualified workers’ to the status of ‘Blue Card’ has not caused any administrative difficulties. Persons who fulfilled the criteria for obtaining a ‘Blue Card’ switched their status automatically and received a ‘Blue Card’ residence permit, whereas persons who did not fulfil the required criteria, e.g. because their salaries were lower than required, switched automatically to a ‘salaried worker’ status. The Directorate of Immigration confirmed that these switches happened smoothly and that there have not been any complaints by the concerned persons.⁶⁴</p>

⁶³ Article 45 (2) a) of the Law on Immigration. See also LU EMN NCP, *Attracting highly qualified and qualified third-country nationals*, Luxembourg 2013, p. 8.

⁶⁴ Interview with the Directorate of Immigration, 10 September 2015.

Salaried worker	<p>Article 3 d) of the Law on Immigration defines a worker (<i>'travailleur'</i>) as any person pursuing real and genuine salaried or self-employed activities, to the exclusion of activities on such a small scale as to be regarded as purely marginal and secondary; paid apprentices and trainees shall be treated as workers.</p> <p>Article 3 e) of the Law on Immigration defines a salaried activity (<i>'activité salariée'</i>) as any remunerated economic activity pursued for the account of, and under the direction of, another person.</p>	<p>Article 42 of the Law on Immigration defines the criteria the applicant has to fulfil⁶⁵:</p> <ul style="list-style-type: none"> • the applicant must meet with the general conditions of Article 34 (2) of the Law on Immigration⁶⁶; • the applicant must not prejudice the community employment preference from which certain workers benefit in virtue of the community or national dispositions; • the practice of the intended activity serves the economic interests of Luxembourg; • the applicant disposes of the required professional qualifications for the practice of the intended activity; • the applicant possesses a work contract for a job opening declared vacant to the ADEM in the forms and conditions foreseen by the afferent current legislation. <p>Before considering the employment of a third-country national, the employer must declare the post vacancy at the Luxembourg Employment Agency (ADEM) in order to allow the labour market test to be carried out. This test consists in verifying if the post vacancy can be filled with a person available on the local or European labour market. If the ADEM cannot find candidates with the required profile within three weeks, the employer can ask the</p>
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⁶⁵ See LU EMN NCP, *Visa Policy as Migration Channel*. Luxembourg 2011, p. 51 and Article 42 of the Law on Immigration.

⁶⁶ The conditions of Article 34 (2) of the Law on Immigration are that the person: 1. must possess a valid passport and a valid visa if this is required; 2. must not be the object of a notification for non-admission on the basis of article 96 of the Convention implementing the Schengen Agreement of 14 June 1985 and be notified for this purpose in the Schengen Information System (SIS); 3. must not be subject to an entry ban on the territory; 4. must not be considered as a threat for public order, national security, public health or international relations of the Grand Duchy of Luxembourg or of one of the States members of an international convention relating to the crossing of exterior borders, linking the Grand Duchy of Luxembourg; 5. must justify the object and the conditions of the foreseen stay, and justify having sufficient personal resources, as much for the planned length of stay as for the return trip to the country of origin, or justify the possibility of legally acquiring these means, and have health insurance coverage which covers all risks within the territory. A Grand Ducal Regulation defines the required resources and indicates the conditions and modalities according to which this proof may be brought. The Grand Ducal Regulation of 5 September 2008 defining the criteria of the required resources and

Salaried worker		<p>ADEM for a certificate to attest that s/he may employ a person of their choice for the post. The employer signs a work contract with the worker they plan to employ.⁶⁷ The start date on the contract may mention "as soon as the authorisation of stay for salaried workers is obtained". The employer gives the original of the certificate to the third-country national who will enclose it in the application for the authorisation of stay in Luxembourg.⁶⁸</p> <p>If the Minister in charge of Immigration deems that the conditions set out in article 42 (1) of the Law on Immigration are not met, he may request the Consultative Commission for Workers (CCTS)⁶⁹ to decide whether or not an authorisation of stay for salaried worker should be granted.⁷⁰</p>
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accommodation foreseen by the Law of 29 August 2008 on free movement of people and immigration provides the details for implementation of Article 34 (2) of the Law on Immigration.

⁶⁷ Article L-622-4 (4) of the Labour Code.

⁶⁸ See Guichet.lu, *Authorisation to stay for a third-country national in view of salaried activity («salaried worker»)*, <http://www.guichet.public.lu/citoyens/catalogue-formulaires/immigration/tiers-salarie/autorisation-sejour-note/note-explicative-salarie-EN.pdf>, [last accessed on 04.11.2015] and Article L-622-4 of the Law of 18 January 2012 creating the Luxembourg Employment Agency, published in Memorial A, No. 11, 26.01.2012.

⁶⁹ Within the terms of the Grand Ducal Regulation of 5 September 2008 and in application of the Law on Immigration the three consultative bodies have been created to support the ministry in charge of immigration during the decision-making process, among which the CCTS. The principal mission of the CCTS is to ensure the general conformity with the legal conditions for the renewal of the permit, to check the conformity of the residence document of salaried workers or of the work permit of third-country nationals. The CCTS is composed of 10 members, seconded by the competent ministries.

⁷⁰ Article 42 (2) of the Law on Immigration.

<p style="text-align: center;">Self-employed</p>	<p>Article 3 d) of the Law on Immigration defines a worker (<i>‘travailleur’</i>) as any person pursuing real and genuine salaried or self-employed activities, to the exclusion of activities on such a small scale as to be regarded as purely marginal and secondary.</p> <p>Article 3 f) of the Law on Immigration defines a self-employed activity (<i>‘activité indépendante’</i>) as any remunerated economic activity which is not pursued for the account of, and under the direction of, another person.</p>	<p>Art. 51 of the Law on Immigration sets up several admission criteria:</p> <ul style="list-style-type: none"> • s/he has to justify possessing the necessary qualities for the performance of the targeted activity, including where relevant the registration to the professional association’s roll and professional registries and s/he fulfils the conditions established by the amended Law of 28 December 1988 regulating the access to the professions of craftsman, merchant, manufacturer and to certain liberal professions; • s/he has to provide the evidence that s/he has sufficient resources for the exercise of the activity s/he intends to practice in Luxembourg;⁷¹ • the exercise of his/her activity has to serve the interests of the country in terms of economic utility, meaning it has to answer to an economic need, to be integrated in the national and local economic context, the business project has to be viable and sustainable, it has to create jobs and investments in regards to research and development, it has to be an innovative or specialized activity, or it has to serve social or cultural interest.⁷²
<p style="text-align: center;">Business owner</p>	<p>The Law on Immigration does not have a definition for immigrant business owners. In Luxembourg, a third-country national business owner can obtain a self-employed worker residence permit.⁷³</p>	<p>N/A</p>

⁷¹ Article 51 (1) of the Law on Immigration.

⁷² Article 51 (1) of the Law on Immigration.

⁷³ See LU EMN NCP, *Admitting third-country nationals for business purposes*, Luxembourg 2014, p. 8.

<p style="text-align: center;">Seasonal worker</p>	<p>There is not yet a definition of seasonal worker in the Law on Immigration. The government is working on a draft bill to transpose the Directive 2014/36/EU⁷⁴.</p> <p>According to the Labour Code seasonal contracts concern:</p> <ul style="list-style-type: none"> • the performance of activities related to harvest; • the performance of activities related to the conditioning of harvest products; • the performance as an instructor or animator of leisure or holiday activities; • the performance of activities as a tourist guide; • the performance of activities monitoring and maintaining beaches, open-air pools and camping; • the performance of activities in retail outlets, hotels and restaurants who are only open for a part of the year; • the performance of activities in retail outlets, hotels and restaurants whose activity increases in a regular and predictable manner due to the season; • the performance of activities in aviation companies and in transport of people whose activity increases in a regular and predictable manner due to the season.⁷⁵ 	
<p style="text-align: center;">ICT</p>	<p>The government is working on a draft bill to transpose the Directive 2014/66/EU.⁷⁶</p>	<p>For now, Article 47 (1) of the Law on Immigration defines the possibility of granting an authorisation of stay to an intra-corporate transferee. The article</p>

⁷⁴ Directive 2014/36/EU of the European Parliament and of the Council 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.

⁷⁵ Articles L-122-1 (2) 2 of the Labour Code and Article 1 of Grand Ducal Regulation of the 11 July 1989 on the application of articles 5, 8, 34 and 41 of the Law of 24 May 1989 on the labour contract.

⁷⁶ Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

		states that an authorisation of stay may be issued, upon application by the host undertaking, to a third-country national worker who is transferred on a temporary basis to the Grand-Duchy of Luxembourg in the context of a transfer between companies who belong to an economic and social entity as defined by the Labour Code. This definition is close to the one in Article 3 (b) and (c) of the Directive 2014/66/EU. ⁷⁷
Investor	The Law on Immigration does not have a definition of immigrant investors. In Luxembourg a third-country national investor can receive a residence permit as: 1) a self-employed worker or 2) for private reasons. The decision will depend on whether the investor would like to actively work in the company s/he invests in or if s/he desires to be a passive investor. ⁷⁸	
D-type visa holder	The D-visa or long stay visa entitles its holder to stay for more than 90 days in the territory of the country that issued it. It also entitles its holder to travel in the Schengen area for up to 3 months. It is important to notice that the D visa has integrated the ancient D+C visa that disappeared on 5 April 2010 with the entrance into force of the Visa Code. ⁷⁹	The D visa is a prerequisite for obtaining a resident permit. Article 39 of the Law on Immigration states that the application for the authorisation of stay and for the visa has to be done from the country of origin. ⁸⁰ The D-visa has to be requested in three cases if the third-country national is subject to the visa obligation and: <ul style="list-style-type: none"> • wishes to stay for more than three months; or

⁷⁷ See LU EMN NCP, *Admitting third-country nationals for business purposes*, Luxembourg 2014, p. 29.

⁷⁸ See LU EMN NCP, *Admitting third-country nationals for business purposes*, Luxembourg 2014, p. 3.

⁷⁹ See LU EMN NCP, *Visa Policy as Migration Channel*. Luxembourg 2011, p. 50.

⁸⁰ In this case the diplomatic representation that represents Luxembourg does not have any discretion in issuing the visa and it is compelled to send the application directly to the Ministry of Foreign and European Affairs in Luxembourg, which is the only competent authority that will take the decision related to the residence permit and the D-visa. However, the diplomatic representation will help in the examination procedure of the application. See LU EMN NCP, *Visa Policy as Migration Channel*. Luxembourg 2011, p. 50.

		<ul style="list-style-type: none"> • wishes to stay less than three months but wants to work in Luxembourg; or • is joining a family member who is an EU citizen⁸¹. <p>The first step of this procedure has to be performed in the country of origin: the third-country national has to request a temporary authorisation of stay to the Directorate of Immigration. The following steps of the procedure will depend on the type of authorisation requested. Within 90 days after the issuance of the authorisation of stay, the applicant must introduce in person a request for a D-visa in two exemplars to the Consulate or the diplomatic mission of Luxembourg in his/her country of origin or to the embassy or the consulate of the Schengen country representing Luxembourg for matters relating to the issuance of long stay visa.</p> <p>The application must include two recent and identical ID pictures; a valid passport or a travel document recognised by the countries of the Schengen area (the validity of the passport must extend at least three months the end of the duration of validity of the requested visa) and the temporary authorisation of stay. The D-visa has a duration of 90 days to maximum one year.⁸²</p>
<p>International protection applicant</p>	<p>Article 2 c) of the Law of 18 December 2015 on international protection and temporary protection⁸³ (hereafter referred to as the Law on International Protection) defines the international protection applicant as any third-country national or stateless person who has</p>	<p>Article 5 of the Law on International Protection states that any adult with legal capacity has the right to introduce an application for international protection for himself/herself.⁸⁴</p> <p>An application may be introduced by an applicant on behalf of his/her dependants. In this case adult dependants have to consent to the application being</p>

⁸¹ In this context, a C-Visa should be enough but for practical reasons a D-Visa is often more convenient for the applicant.

⁸² Guichet.lu, *Demander un visa pour l'entrée au Luxembourg en tant que ressortissant de pays tiers*, <http://www.guichet.public.lu/citoyens/fr/immigration/plus-3-mois/ressortissant-tiers/demarches-communes/entree-visa/index.html>, [accessed 13.11.2015].

⁸³ The law of 18 December 2015 on International protection and temporary protection was published in Memorial A, No. 255, 28.12.2015, and entered into force on 31 December 2015.

⁸⁴ Article 5 (1) of the Law on International Protection.

	introduced an application for international protection and where a decision is still pending.	introduced on their behalf. The consent is required at the moment of application or, by the latest at the moment of the personal interview with the adult dependant. ⁸⁵ The non-emancipated unaccompanied minor has the right to introduce an international protection application through his/her parents or any other adult family member, or through an adult exercising parental authority on him/her, or through an ad hoc administrator. ⁸⁶ The unaccompanied minor has the right to introduce an application of international protection, either in his/her name or through an ad hoc administrator. ⁸⁷
Victim of trafficking	<p>The Criminal Code provides a definition of the offences related to trafficking in human beings. According to Article 382-1 of the Criminal Code:</p> <p>(1) Constitutes the offence of trafficking in human beings the fact to recruit, transport, transfer or accommodate a person, to pass or transfer the control over her, with the aim:</p> <ol style="list-style-type: none"> 1. to commit against this person offences of procuring, aggression or sexual exploitation; 2. of labour exploitation, services that the person provides under the form of forced labour, servitude, slavery or analogous practices and in general in conditions contrary to human dignity; 3. to engage the person in begging, to exploit the begging or to make a person available to a beggar for the purpose of arousing public commiseration; 4. of removal of organs or tissue in violation of the relevant legislation; 5. to force a person to commit a crime or offence against his/her will.⁸⁸ 	<p>Articles 92 to 98 of the Law on Immigration lay down the conditions for obtaining a permit as a victim of trafficking in human beings.</p> <p>Article 92 explicitly states that the police will inform the presumed victim of the possibility to obtain a reflection period according to Article 93 as well as a residence permit according to Article 95. The issue of the residence permit is conditional upon his/her cooperation with the authorities in charge of the investigation or the prosecution of the case.</p> <p>According to Article 95 after the expiration of the reflection period the minister delivers a residence permit, which is valid for 6 months, to the person concerned if the following conditions are fulfilled:</p> <ol style="list-style-type: none"> 1. s/he has filed a complaint or made declarations against the persons or the networks presumed of having committed the offence, or 2. his/her presence on the territory is necessary for the investigation or the procedure or because of his/her personal situation;

⁸⁵ Article 5 (2) of the Law on International Protection.

⁸⁶ Article 5 (3) of the Law on International Protection.

⁸⁷ Article 5 (4) of the Law on International Protection.

⁸⁸ Article 381-1 of the Criminal Code, http://www.legilux.public.lu/leg/textescoordonnes/codes/code_penal/codepenal.pdf

		<p>3. s/he has severed all links with the presumed authors of the offence;</p> <p>4. s/he is not considered to be a danger to the public order or to the internal security.</p> <p>This permit is renewable for another period of six months if the conditions remain fulfilled. After the expiration of the residence permit the minister can grant the person in question an authorisation of stay for private reasons (see next category)⁸⁹.</p>
Other		<p><u>Authorisation of stay for private reasons:</u></p> <p>This authorisation of stay may be granted to:</p> <ul style="list-style-type: none"> • a third country national providing the proof that s/he can live on their own financial resources⁹⁰; • family members falling under the scope of Article 76 of the amended Law of 29 August 2008; • a third country national who does not fulfil the conditions for family reunification, but where the personal and family attachments are so intense, old and stable, that the refusal of this authorisation would violate the right to private and family life.⁹¹ <p>However, this authorisation can also be issued in cases of humanitarian grounds that are extremely serious.⁹²</p> <p>In all cases, with the exception of humanitarian reasons⁹³, the applicant must prove that⁹⁴:</p>

⁸⁹ Article 98 of the Law on Immigration.

⁹⁰ These resources are evaluated by considering their nature and their regularity but also by reference to the monthly amount of the social minimum salary for a non-qualified worker. The social minimum salary is 1.922,96 Euros according to the current scale since 1st January 2015. The amount of the social minimum salary is regularly adapted, for more information please see: http://www.mss.public.lu/publications/parametres_sociaux/index.html, [accessed 12.11.2015].

⁹¹ Article 78 (1) of the Law on Immigration.

⁹² Article 78 (3) of the Law on Immigration.

⁹³ Article 78 (3) of the Law on Immigration provides only one condition for the authorisation of stay for humanitarian reasons: their presence in the country should not constitute a threat to public order, public health or national security.

⁹⁴ Article 78 (1), (2) and (3) of the Law on Immigration. See also LU EMN NCP, *Visa Policy as Migration Channel*, Luxembourg 2011, p. 62 and Article 78 of the Law on Immigration.

	<ul style="list-style-type: none"> • s/he has health insurance⁹⁵; • s/he disposes of housing facilities⁹⁶; • s/he has sufficient financial resources to subsist⁹⁷ • s/he should not constitute a threat to public order, public health or national security⁹⁸. <p>In application of Article 78 (1) a) stipulating that this authorisation of stay may be granted to the third-country national living on his/her own financial resources, investors may be granted an authorisation of stay for private reasons.⁹⁹</p> <p><u>Authorisation of stay for athletes:</u></p> <p>According to Article 54 of Law on Immigration, the authorisation of stay for athletes is granted to practice exclusively an athletic or coaching activity. The following conditions have to be fulfilled¹⁰⁰:</p> <ul style="list-style-type: none"> • the applicant must have concluded a contract with an accredited federation or with an affiliated club; • the foreseen salary must not be inferior to the social minimum wage set for a full-time job; • the applicant must be covered by health insurance. <p><u>Authorisation of stay for volunteers :</u></p> <p>An authorisation of stay can be granted by the Ministry in charge of immigration to a third-country national who asks to take part in a volunteering programme, if the following conditions are met:</p>
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⁹⁵ Article 78 (1) of the Law on Immigration.

⁹⁶ Article 78 (1) of the Law on Immigration.

⁹⁷ Article 78 (2) of the Law on Immigration.

⁹⁸ Article 78 (1) of the Law on Immigration.

⁹⁹ See under Investor.

¹⁰⁰ See LU EMN NCP, *Visa Policy as Migration Channel*. Luxembourg 2011, p. 55-56 and Article 54 of the Law on Immigration.

		<ul style="list-style-type: none"> • s/he fulfils the conditions set forth by the Law of 31 October 2007 on the Youth Volunteer Service; • s/he provides the evidence that the organisation in charge of the volunteering programme s/he is taking part in is responsible for her/him during the whole duration of his/her stay, in particular for his/her residence and return fees.¹⁰¹ <p><u>Authorisation of stay for au pairs :</u></p> <p>An au pair residence permit may be granted to a third-country country national if s/he fulfils the conditions established by Article 34 (1) and (2) of the Law on Immigration¹⁰² and if s/he delivers a written approval of the Minister in charge of youth as foreseen by Article 3 of the Law of 19 February 2013 on au pairs.¹⁰³</p> <p><u>Authorisation of stay for exceptional reasons:</u></p> <p>According to Article 89 of the Law on Immigration an authorisation of stay for exceptional reasons can be granted to a third-country national who:</p> <ul style="list-style-type: none"> • exercises parental authority over a minor who lives with him/her in his/her household and who attends school in a continuous manner in an educational
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¹⁰¹ Article 62 (1) of the Law on Immigration.

¹⁰² Article 34 (1) of the Law on Immigration establishes that in order to be allowed in the territory and to be allowed to leave, the third-country national must have a valid travel document and the required visa, as foreseen by international conventions and European regulations. Article 34 (2) indicates that the person: 1. must possess a valid passport and a valid visa if this is required; 2. must not be the object of a notification for non-admission notification for non-admission on the basis of article 96 of the Convention implementing the Schengen Agreement of 14 June 1985 and be notified for this purpose in the Schengen Information System (SIS); 3. must not be the subject to an entry ban on the territory; 4. must not be considered as a threat for public order, national security, public health or international relations of the Grand Duchy of Luxembourg or of one of the states members of an international convention relating to the crossing of exterior borders, linking the Grand Duchy of Luxembourg; 5. must justify the object and the conditions of the foreseen stay, and justify having sufficient personal resources, as much for the planned length of stay as for the return trip to the country of origin, or justify the possibility of legally acquiring these means, and have health insurance coverage which covers all risks within the territory. A Grand Ducal Regulation defines the required resources and indicates the conditions and modalities according to which this proof may be brought. The Grand Ducal Regulation of 5 September 2008 defining the criteria of the required resources and accommodation foreseen by the Law of 29 August 2008 on free movement of people and immigration provides the details for implementation of Article 34 (2) of the Law on Immigration.

¹⁰³ Article 62bis (1) of the Law on Immigration.

		<p>institution in Luxembourg for at least four years and who provides evidence of being able to meet his/her needs and the needs of his/her family; or</p> <ul style="list-style-type: none"> • who provides evidence that s/he successfully attended school in a continuous manner in an educational institution in Luxembourg for at least four years under the condition that his/her application is introduced before the age of 21 and providing the evidence that s/he has sufficient resources to meet his/her needs. <p>Both cases are subject to the condition that the third-country national does not constitute a threat to public order, national security or public health and that s/he did not use false or deceptive information regarding his/her identity and to show a real wish of integration.¹⁰⁴</p> <p>In case s/he pursues studies or professional training, Article 79 will apply granting them a residence permit for private reasons. If they fulfil the conditions of Article 42 (1), points 3 and 4¹⁰⁵, they will obtain a salaried worker residence permit.¹⁰⁶</p> <p><u>Authorisation of stay for beneficiaries of a medical treatment:</u></p> <p>The third-country national who wishes to reside on the territory for a period up to three months, to</p>
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¹⁰⁴ Article 89 (1) of the Law on Immigration as amended by the Law of 18 December 2015 on International protection and temporary protection, published in Memorial A, No. 255, 28.12.2015, and entered into force on 31 December 2015. The modification extended the benefit of Article 89 (1) to third-country nationals exercising parental authority over minors attending school in a continuous manner in an educational institution in Luxembourg; it reduced the requirement from six years in school to four, it extended the possibility for third-country nationals attending school to apply for an authorisation for exceptional reasons until the age of 21 (previously 18) and it introduced a stricter requirement in attending school as the text now mentions the condition of successfully attending school in a continuous manner. However, it also introduced the condition to provide evidence that third-country nationals dispose of sufficient resources to meet their needs and the needs of their families for both categories of applicants.

¹⁰⁵ Article 42 (1), point 3 of the Law on Immigration establishes that the concerned person has to have the professional qualifications for the performance of the targeted salaried activity; point 4 stipulates that s/he has to be in possession of a work contract for a job vacancy declared to ADEM.

¹⁰⁶ Article 89 (2) of the Law on Immigration.

	<p>undergo a medical treatment, has to present the following documents¹⁰⁷:</p> <ul style="list-style-type: none"> • Medical certificates certifying the necessity of undergoing the medical treatment specifying the type of treatment and indicating its predictable duration; • A certificate from medical authorities of his/her country of departure indicating that the patient cannot receive the appropriate treatment for his/her condition on site, in particular the prescribed medical treatment; • A written agreement from the health institution for admitting the patient at a certain date, signed by the chief of service who has to receive the patient; • A provisional estimate of the fees of the medical treatment established by the receiving institution and the evidence that the financing of the medical treatment and the residence fees are guaranteed.¹⁰⁸ <p>In application of Article 38 of the Law on Immigration, the Minister in charge of immigration upon reasoned advice of the delegated doctor¹⁰⁹ may grant an authorisation of stay for medical reasons to a third-country national who fulfils the above-mentioned conditions.¹¹⁰</p> <p>The third-country national who establishes through medical certificates that his/her health condition requires medical treatment that, if denied, would lead to exceptionally serious consequences and who provides the evidence that s/he cannot in fact benefit from an appropriate treatment in the country where s/he may be removed to, cannot be removed from</p>
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¹⁰⁷ This authorisation of stay is subject to the conditions of Article 34 (1) and (2) of the Law on Immigration. See previous references for details.

¹⁰⁸ Article 90 of the Law on Immigration.

¹⁰⁹ Article 28 (3) of the Law on Immigration establishes that the medical exam will be carried out by a doctor from the Directorate of Health, delegated for this purpose by the Minister in charge of health.

¹¹⁰ Article 91 of the Law on Immigration.

	<p>the territory.¹¹¹ In this case, s/he will be granted a suspension of the enforcement of the removal order for a maximum period of six months, renewable for a maximum of two years.¹¹² If s/he provides the evidence that his/her health condition persists, the minister may deliver an authorisation of stay, for the duration of the medical treatment, for a maximum of one year. This authorisation is renewable after reassessment of the situation.¹¹³</p>
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Section 3 - National legal framework on change of status whilst remaining on the territory of the (Member) State

Section 3.1 aims to understand the changes of status permitted by the national legislation from one immigration category to another in cases where the migrant is not compelled to return to their country of origin. It will focus on the conditions to apply for such changes, while providing information on how the “switch” works in practice. This section will also aim to understand whether and what facilitations are in place to ease changes of status (in comparison with first time applicants) and examine how a change of status impacts on the rights of a third-country nationals and how (Member) States address the change in / loss of rights.

Section 3.2 will highlight whether such measures are driven by specific policy goals and understand to what extent they have been based on needs assessment, have been evaluated and the results are achieved.

¹¹¹ Article 130 of the Law on Immigration.

¹¹² Article 131 (1) of the Law on Immigration.

¹¹³ Article 131 (2) of the Law on Immigration.

3.1. Legal possibilities to change status from within the Member State

Q2a. Does your (Member) State allow third-country nationals holding any of the immigration status within the scope of this study to change into any of the other ones whilst remaining on the territory of the (Member) State?

As already mentioned in the previous sections, there are a very limited number of legal provisions dealing specifically with changes of statuses. First of all, it should be noted that a third-country national who desires to stay in Luxembourg for more than three months has to apply for an authorisation of stay before entering the territory.¹¹⁴ In exceptional cases, a third-country national who is legally staying on the territory for a period up to three months, can file an application for an authorisation of stay for more than three months in case s/he can prove that s/he fulfils the required conditions for the category s/he wishes to apply for and in case returning to his/her country of origin would lead to burdening/unfair costs.¹¹⁵ Article 39 (3) of the Law on Immigration establishes the general rule on changes of status by making the switch dependent on fulfilling the conditions of the category of stay the third-country national wishes to obtain. This general rule concerns switches to and from permits for a salaried activity, for self-employed worker, researcher, third-country national family member and private reasons. This provision also applies to transferred workers who may switch to salaried worker or European Blue Card if they fulfil the conditions pertaining to those permits¹¹⁶.

However, certain categories are excluded from this possibility: students, pupils, volunteers, trainees and au pairs. Nonetheless, concerning students, Article 59 of the Law on Immigration provides for an exception in the case of students having finished their studies in Luxembourg since it provides the possibility of a first work experience which is limited to a period of two years. The job has to relate directly to his/her academic education, which has to be completed successfully in Luxembourg by receiving a final higher education degree. The student cannot simply stay in the country after finishing his/her degree and search for a job, but s/he has to possess a work contract before the expiration of his/her authorisation of stay as a student in order to be able to change his/her status to the one of a salaried worker.¹¹⁷ This authorisation of stay cannot be renewed and the motivation behind this limitation is to avoid a 'brain drain' in

¹¹⁴ Article 39 (1) of the Law on Immigration.

¹¹⁵ Article 39 (2) of the Law on Immigration.

¹¹⁶ Information provided by the Directorate of Immigration, 13 January 2016.

¹¹⁷ See Article 59 of the Law on Immigration. See also LU EMN NCP, *Immigration of International students to the EU*, Luxembourg 2012, p.33. For more details on the procedure in cases where a young graduate produces a work contract after the expiry of his student status, see Section 1.

the country of origin of the student.¹¹⁸ The aim of the student should be to return to his/her country of origin after receiving a first professional experience, which contributes to the economic interests of Luxembourg as well as to those of his/her country of origin¹¹⁹. If the student does not have a work contract, the special provision of Article 59 of the Law on Immigration will not apply and the third-country national will fall under the general principle of Article 39 of the Law on Immigration and will accordingly have to leave the country to apply for a new status.¹²⁰

Article 76 of the Law on Immigration establishes the principle of an autonomous residence permit under certain conditions by foreseeing special rules for third-country nationals with a family member residence permit. In certain situations (after five years of residence or in case of a break-up of their common life), family members are eligible to be granted a separate residence permit for private reasons.¹²¹

Victims of trafficking in human beings, after expiration of their permit¹²² and persons who benefit from an authorisation of stay for medical reasons¹²³ may be granted a residence permit for private reasons. Afterwards, they may also obtain a salaried worker permit if they engage in a full-time salaried activity and if they fulfil the condition of signing a work contract for a job declared vacant to the ADEM. It is important to add here that these persons do not have to submit to the labour market test.¹²⁴

Concerning the table below, it should be noted that the categories of business owner, seasonal worker, ICT and investor do not currently exist in national law. The categories of investor and business owner may fall under the category of self-employed worker or of private reasons depending on the circumstances of the particular cases. For intra-corporate transferees and seasonal workers, the directives are in the process of being implemented into national law. According to the Directorate of Immigration, under the current legal framework, seasonal workers fall under a temporary residence (*séjour temporaire*), which means that it is not

¹¹⁸ Parliamentary document 5802/00, p.71.

¹¹⁹ Article 59 (2) of the Law on Immigration.

¹²⁰ Articles 59 and 100 of the Law on Immigration. See also Guichet.lu, *Holder of a residence permit as a «student»: Work, training and stay after diploma has been awarded*, <http://www.guichet.public.lu/citoyens/catalogue-formulaires/immigration/tiers-etudiant/travail/etudiant-travail-EN.pdf>, [accessed 13.11.2015].

¹²¹ The conditions of this permit and the rights it grants are detailed in Article 79 of the Law on Immigration.

¹²² Article 98 of the Law on Immigration.

¹²³ Articles 131 (2) and 132 (3) of the Law on Immigration.

¹²⁴ Article 79 (3) of the Law on Immigration.

possible for them to change status.¹²⁵ With the introduction of the EU Blue Card the national category of highly qualified worker also no longer exists.

Finally, it should be mentioned that, even though this falls outside the scope of this study, the most common changes are from the various existing categories to the long-term resident's category.

There are also a number of change of statuses that are legally possible in theory but seem extremely unlikely due to the loss of rights that the change would entail. This concerns switches from statuses that can lead to the long term resident permit when the residence requirement is met to categories of permits that are considered as 'temporary'¹²⁶. Therefore, switches into the categories covered in Sub-Section 4 of Section 2 of Chapter 3 of the Law on Immigration (students, pupils, volunteers, trainees and au pairs) are also deemed unrealistic. Under the same logic this also applies to switches into the categories of seasonal workers¹²⁷, posted workers¹²⁸, international protection applicants¹²⁹.

While the study also takes into account the possibility for a third-country national in an irregular situation to be granted an authorisation of stay for exceptional reasons, this change of situation is not regarded as a 'change of status of immigration', as a third-country national in an irregular situation is not considered a status of immigration¹³⁰.

Another important distinction to make in this section relating to the legal possibilities to switch status from within the Member State are switches before the expiry of the current category of stay and switches after expiration of the previous category of stay (succession of residence permits).

Article 39 (3) establishes the possibilities to switch from one category to another during the validity of the current residence permit. In this situation the rule is that the third-country national must fulfil the conditions for the category of stay s/he wishes to switch into and therefore the change of status does not alter the requirements necessary for the category s/he wishes to switch into from a first time applicant.

Article 76 relating to the possible switch from third-country national family member to authorisation of stay for private reasons allows for a switch before expiration of the family member permit. This can either lead to an authorisation of stay for private reasons or a residence

¹²⁵ Interview with the Directorate of Immigration, 10 September 2015.

¹²⁶ Interview with the Directorate of Immigration, 10 September 2015.

¹²⁷ Interview with the Directorate of Immigration, 10 September 2015.

¹²⁸ Parliamentary document 5802/00, p.78.

¹²⁹ Parliamentary document 5802/00, p.78.

¹³⁰ Interview with the Directorate of Immigration, 10 September 2015.

permit for salaried worker if Article 79 (3) applies. Indeed Article 79 (3) establishes the possibility to change from the authorisation of stay for private reasons into the permit of salaried worker in three situations: a third-country national falling under Article 76 of the Law on Immigration¹³¹; a third country national who does not fulfil the conditions for family reunification, but where the personal and family attachments are so intense, old and stable, that the refusal of this authorisation would violate the right to private and family life¹³² and a third-country national with an authorisation of stay for exceptionally serious humanitarian grounds¹³³.

On the other hand, the provision of Article 59, allowing for a young graduate to switch into the category of salaried worker for a limited period of two years, applies after expiration of the student permit. As a consequence, it is a succession of permits, from student to salaried worker. The same applies to changes of status foreseen in Articles 98 and 131 (2), the former setting up the possibility to change from an authorisation of stay for a victim of human trafficking into an authorisation of stay for extremely serious humanitarian reasons and the latter dealing with the switch from an authorisation of stay for medical reasons into an authorisation of stay for private reasons¹³⁴.

¹³¹ Article 78 (1) b) of the Law on Immigration.

¹³² Article 78 (1) c) of the Law on Immigration.

¹³³ Article 78 (3) of the Law on Immigration. See Section 2 for more details on these authorisations of stay.

¹³⁴ See Section 2 for more details on the conditions.

Into From	Family	Education	Research	Blue cards	Highly qualified worker N/A	Employee	Self-employed	Business owner N/A	Seasonal worker N/A	ICT	Investor N/A	D-type visa holder	Asylum	Victim of trafficking	Other: private reasons
Family		Yes	Yes	Yes	N/A	Yes	Yes	N/A	N/A	No	N/A	No	Yes	Yes	Yes
Education	No		No	No	N/A	Yes	No	N/A	N/A	No	N/A	No	Yes	Yes	No
Research	Yes	Yes		Yes	N/A	Yes	Yes	N/A	N/A	No	N/A	No	Yes	Yes	Yes
Blue card	Yes	Yes	Yes		N/A	Yes	Yes	N/A	N/A	No	N/A	No	Yes	Yes	Yes
Highly qualified worker N/A	N/A	N/A	N/A	N/A		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Employee	Yes	Yes	Yes	Yes	N/A		Yes	N/A	N/A	No	N/A	No	Yes	Yes	Yes
Self-employed	Yes	Yes	Yes	Yes	N/A	Yes		N/A	N/A	No	N/A	No	Yes	Yes	Yes
Business owner N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A		N/A	N/A	N/A	N/A	N/A	N/A	N/A
Seasonal worker N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A		N/A	N/A	N/A	N/A	N/A	N/A
ICT	No	No	No	No	N/A	No	No	N/A	N/A		N/A	No	No	No	No
Investor N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A		N/A	N/A	N/A	N/A
D-type visa holder	Yes	Yes	Yes	Yes	N/A	Yes	Yes	N/A	N/A	No	N/A		Yes	Yes	Yes
Asylum	No	No	No	No	N/A	No	No	N/A	N/A	No	N/A	No		Yes	No
Victim of trafficking	No	No	No	No	N/A	No	No	N/A	N/A	No	N/A	No	Yes		Yes
Other: private reasons¹³⁵	Yes	Yes	Yes	Yes	N/A	Yes	Yes	N/A	N/A	No	N/A	No	Yes	Yes	

¹³⁵ For more details on other categories see table in section 2. The table includes the authorisation of stay for private reasons, for athletes, volunteers, au pairs, for exceptional reasons and for beneficiaries of medical treatment.

Q2b. If changes of status without leaving the territory of the (Member) State are allowed (Q2a), on which basis are they implemented?

In order to make the following tables more relevant and readable, only the changes of status taking place in practice and where the criteria to switch may differ from a first time applicant will be included. It is also important to note that the Minister in charge of immigration has a discretionary power to grant an authorisation of stay¹³⁶ in certain circumstances and that not being able to change status does not exclude the possibility of benefitting from certain social rights (work, education, social security).

The procedure for a third-country national to be granted a residence permit of more than three months entails in a first phase to obtain an authorisation of stay. The third-country national applying for a permit for more than three months has to submit to a medical examination¹³⁷ after which a certificate is delivered¹³⁸ to be enclosed to the residence permit application.¹³⁹ Following Article 40 (1), the authorised third-country national has to present his/her authorisation of stay to the municipality of his/her future residence within three working days starting from the date of his/her entering the territory. Within three months, the third-country national has to provide a copy of his/her authorisation of stay, the receipt of his/her declaration of arrival of his/her municipality, the medical certificate and the evidence of appropriate accommodation to request his/her residence permit¹⁴⁰.

After which, the third-country national has to fulfil the conditions of the residence permit s/he has requested. The conditions of the different categories of stay are detailed in Section 2 of the study.

¹³⁶ Article 39 (2) and (3) of the Law on Immigration.

¹³⁷ Article 41 (1) of the Law on Immigration.

¹³⁸ Article 41 (3) of the Law on Immigration.

¹³⁹ Article 41 (3) of the Law on Immigration.

¹⁴⁰ Article 40 (2) of the Law on Immigration.

From	Into	Legal basis	Policy / practice if no legal basis	Do criteria to switch differ from first time applicant?	Criteria for switch (if different from first time applicant)	Quota limitations
Family	Employee	<i>Article 39 of the Law on Immigration sets up the general rule for the switch: the applicant must fulfil the conditions for the category of residence permit s/he wants to switch into.</i>	<i>If the family member resides in Luxembourg for at least one year when introducing his/her application, s/he does not have to submit to the labour market test.</i>	<i>Yes (after one year)</i>		<i>No</i>
Education	Employee	<i>Article 39 of the Law on Immigration</i>		<i>Yes¹⁴¹</i>		<i>No</i>
Private reasons¹⁴²	Employee	<i>Article 39 of the Law on Immigration.</i>		<i>Yes, Article 79 (3) states that there is no need for the person to pass the labour market test</i>		<i>No</i>

¹⁴¹ Please see Section 3.1. for more details on the conditions of the change from student to salaried worker.

¹⁴² The authorisation of stay for private reasons may be granted to third-country nationals' family members in application of articles 76 (1) and 78 of the Law on Immigration. According to Article 98 of the Law on Immigration, this authorisation of stay may also be granted to victims of human trafficking after the expiry of the authorisation of stay foreseen in Article 90 of the Law on Immigration.

Q2c. Does the change of status provided in the tables above alter the level of rights of the third-country national concerned (enhanced or reduced), in how far?

The following table includes details on the changes of status when switching from one status to another and the implications it brings on the third-country nationals' level of rights.

Employment and Social Security rights vary between categories depending on whether or not the category of stay allows the third country national to work.

The access to education does not depend on the category of residence permit. There are also no restrictions in regards to mobility for people with an authorisation of stay. In regards to political rights, only third-country nationals having resided in Luxembourg for a minimum of five years may participate as a voter and candidate to municipal elections.¹⁴³ These rights do not depend upon the category of stay of third-country nationals at the moment of registration on voter's lists. However, they must have been in possession of an authorisation of stay and a Visa if required for their entire period of residence. As there are no D-Visas for such an extended period of time, it follows that D-visa holders do not have access to political rights or education.

¹⁴³ Article 2 (5) of the Coordinated Text of the Electoral Law of 13 February 2003, Official Journal, Memorial A, No. 31, 17.02.2011, <http://www.legilux.public.lu/leg/a/archives/2011/0031/a031.pdf> [accessed: 20.01.2016].

From	Into	Employment	Social security	Education	Duration of stay	Legal assistance	Mobility	Family reunification	Political rights
Family	Research	<i>Enhanced rights: access to labour market as researcher, but bound by research project¹⁴⁴</i>	<i>Enhanced rights: Through work benefits from social security Switch from status of co-beneficiary of the insurance to main beneficiary of the insurance. No difference in social security rights, except for pension rights.</i>	<i>No change</i>	<i>It depends on the situation: on the duration of family member permit (1 year) and on the duration of the researcher permit (1 year or for the duration of the research project). As a family member the permit will be renewed along with the sponsor's permit. The permit of the researcher can also be renewed (art. 64 (2)).</i>	<i>No change</i>	<i>No change</i>	<i>Enhanced rights: If the TCN becomes a sponsor : immediate family reunification possible¹⁴⁵</i>	<i>No change</i>
Family	Blue Card	<i>Enhanced rights: access to labour market,</i>	<i>Enhanced rights: Through work benefits from social security</i>	<i>No change</i>	<i>Enhanced rights: longer stay (2 years), or depending on duration of</i>	<i>No change</i>	<i>No change</i>	<i>Enhanced rights: immediate family reunification possible¹⁴⁸ if the</i>	<i>No change</i>

¹⁴⁴ Article 64 of the Law on Immigration.

¹⁴⁵ Article 71 b) of the Law on Immigration.

¹⁴⁸ Article 71 b) of the Law on Immigration.

		<i>but restricted access¹⁴⁶</i>	<p>Switch from status of co-beneficiary of the insurance to main beneficiary of the insurance.</p> <p>No difference in social security rights, except for pension rights.</p>		<i>contract¹⁴⁷ plus three months, the duration for family member for first issuance is of 1 year.</i>			<i>person becomes a sponsor</i>	
Family	Employee	<p><u>Enhanced rights:</u> <i>car part-time salaried activity for family member et full-time for salaried worker</i></p> <p>To access the labour market during the first year for both categories, they have to pass the labour market test ¹⁴⁹</p>	<p><u>Enhanced rights:</u> <i>Through work benefits from social security</i></p> <p>Switch from status of co-beneficiary of the insurance to main beneficiary of the insurance.</p> <p>No difference in social security rights, except for pension rights.</p>	<u>No change</u>	<p><u>Almost no change :</u> <i>maximum one year duration for salaried worker, one year duration for family member for the first issuance</i></p> <p>Difference in renewal: <i>salaried worker renewed for a maximum of three years¹⁵⁰</i></p>	<u>No change</u>	<u>No change</u>	<p><u>Enhanced rights:</u> <i>Employee can be a sponsor based on his/her sufficient resources and if s/he fulfils the conditions of Article 69, whereas a family member does not have sufficient resources to become a sponsor</i></p>	<u>No change</u>

¹⁴⁶ Article 45-1 (3) of the Law on Immigration establishes that the European Blue Card holder has a limited access to the labour market in that it is limited to the performance of the salaried activities for which he has been admitted under Article 45.

¹⁴⁷ Article 45-1 (2) of the Law on Immigration provides that the European Blue Card is valid for two years, or for the duration of the contract plus three months.

¹⁴⁹ Article 43 (2) of the Law on Immigration.

¹⁵⁰ Article 43 (4) of the Law on Immigration.

		After a year, the labour market test is no longer required.							
Family	Self-employed	<p><u>Enhanced rights</u>: access to labour market as self-employed, but restricted access due to business project¹⁵¹</p> <p>Access to the labour market as a family member is restricted to a part-time salaried activity.</p>	<p><u>Enhanced rights</u>: through work benefits from social security</p> <p>The self-employed worker must register himself/herself directly to social security.</p> <p>For family members: co-affiliation of social security.</p>	<u>No change</u>	<u>Enhanced rights</u> : duration of stay of 3 years instead of 1 for the first issuance ¹⁵²	<u>No change</u>	<u>No change</u>	<u>Enhanced rights</u> : Self-Employed can be a sponsor based on his/her sufficient resources and if s/he fulfils the conditions of Article 69, whereas a family member does not have sufficient resources to become a sponsor	<u>No change</u>
Education	Employee	<p><u>Enhanced rights</u>: can work more than 10h/week, better salary, but restricted access to labour market for the first year. But no labour</p>	<p><u>Enhanced rights</u>: through work benefits from social security</p> <p>(see other cell)</p>	<u>No change</u>	In application of Article 59, the residence permit for salaried worker granted to a young graduate has a new duration of two years, non-renewable. The third-country	<u>No change</u>	<u>No change</u>	<u>No change</u> : in application of Article 59 the salaried worker has a maximum duration of two years, non-renewable. Therefore no prospect for long	<u>No change</u>

¹⁵¹ Article 51 of the Law on Immigration.

¹⁵² Article 52 of the Law on Immigration.

		market test for the student			national will then have to leave the country and apply for salaried worker from abroad.			term resident as foreseen in Article 69, so no family reunification possible.	
Research	Family	<u>Restricted rights</u> : no direct access to labour market for the first year (see above) and only part-time salaried activity	<u>Restricted rights</u> : no independent social security(see above)	No change	Research : min. 1 year, depends on duration of research project Family: 1 an renewable	<u>No change</u>	<u>No change</u>	<u>Restricted rights</u> : no immediate family reunification possible as sponsor	<u>No change</u>
Research	Blue Card	<u>Enhanced rights</u> For the researcher, the salaried activity is tied to the research project. For Blue Card holder: after two years equal treatment as for nationals to access to all highly qualified jobs	<u>No change</u>	No change	<u>Enhanced rights</u> : duration of 2 years renewable instead of 1, but it depends on duration of research project	<u>No change</u>	<u>No change</u>	<u>Enhanced rights</u> : Family members of a Blue Card holder are granted a residence permit with the same validity as their sponsor's permit	<u>No change</u>
Research	Employee	For the researcher: limited activity	<u>No change</u>	<u>No change</u>	<u>Similar rights</u> : for the researcher: min. 1 year, depends on	<u>No change</u>	<u>No change</u>	<u>Restricted rights</u> : no immediate family reunification	<u>No change</u>

Research	Employee	<p><i> tied to the research project</i></p> <p><i> For the salaried worker: progressive open access to the Labour market (the first year: limited access to the Labour market: one branch and one profession)</i></p>			<p><i> duration of research project: renewal possibility</i></p> <p><i> For the salaried worker: for the first issuance maximum 1 year, renewal possibility of maximum three years.</i></p>				
Research	Self-employed	<p><u><i>Not comparable</i></u></p> <p><i> In both cases, there is access to a professional activity.</i></p>	<u><i>No change</i></u>	<u><i>No change</i></u> <i> Same social contributions</i>	<u><i>Enhanced rights:</i></u> <i> duration of maximum 3 years instead of 1, but depends on duration of research project and business project</i>	<u><i>No change</i></u>	<u><i>No change</i></u>	<u><i>Restricted rights: no immediate family reunification</i></u>	<u><i>No change</i></u>
Blue Card	Family	<u><i>Restricted rights: no direct access to labour market for the first year and only access to a part-time salaried activity</i></u>	<u><i>Restricted rights: no independent social security (see above)</i></u>	<u><i>No change</i></u>	<u><i>Restricted rights, 1 year</i></u> <i> For Blue Card holder: two years or duration of contract plus three months</i>	<u><i>No change</i></u>	<u><i>No change</i></u>	<u><i>Restricted rights: no immediate family reunification</i></u> <i> For family member: they have to fulfil the conditions for family reunification</i>	<u><i>No change</i></u>

<p>Blue Card</p>	<p>Research</p>	<p><u>Restricted rights:</u> For the Blue Card holder, limited for two years to the salaried activities for which he obtained the permit. After two years, access to all highly qualified jobs, with the exception of the public sector. For the researcher: tied to the research project.</p>	<p><u>No change</u></p>	<p><u>No change</u></p>	<p><u>Restricted rights:</u> min. 1 year instead of 2, but depends on duration of research project Renewal possible for both categories.</p>	<p><u>No change</u></p>	<p><u>No change</u></p>	<p><u>Restricted rights :</u> family members of the researcher are issued permits for the duration of one year, family members of Blue Card holders are issued a permit with the same validity as their sponsor's permit</p>	<p><u>No change</u></p>
<p>Blue Card</p>	<p>Employee</p>	<p><u>Restricted rights:</u> labour market test during the first year</p>	<p><u>No change</u></p>	<p><u>No change</u></p>	<p><u>Restricted rights for the first issuance:</u> max. 1 year as employee instead of 2 as Blue Card holder In case of renewal for the salaried worker permit: maximum three years.</p>	<p><u>No change</u></p>	<p><u>No change</u></p>	<p><u>Restricted rights:</u> no immediate family reunification and duration of the family member permit less favourable for family members of employee then for family members of Blue Card holders</p>	<p><u>No change</u></p>

<p>Blue Card</p>	<p>Self-employed</p>	<p><u>No change</u> In both cases: access to professional activities for which the permit has been granted.</p>	<p><u>No change</u></p>	<p><u>No change</u></p>	<p><u>Enhanced rights</u>, maximum 3 years instead of 2, but depends on duration of contract and business project</p>	<p><u>No change</u></p>	<p><u>No change</u></p>	<p><u>Restricted rights: no immediate family reunification</u></p>	<p><u>No change</u></p>
<p>Employee</p>	<p>Family</p>	<p><u>Restricted rights:</u> For family member: only part-time salaried activity possible. Both categories have to pass the labour market test to work for the first year. However, in the case of a salaried worker having already passed the labour market test who wishes to switch to family member, he would have to go through the labour market test again for the</p>	<p><u>Restricted rights:</u> no independent social security</p>	<p><u>No change</u></p>	<p><u>No change</u></p>	<p><u>No change</u></p>	<p><u>No change</u></p>	<p><u>Restricted rights:</u> Employee can be a sponsor based on his/her sufficient resources and if s/he fulfils the conditions of Article 69, whereas a family member does not have sufficient resources to become a sponsor.</p>	<p><u>No change</u></p>

Employee	Family	<i>access to a part-time salaried activity.</i>							
Employee	Education	<i><u>Restricted rights:</u> possible to work full-time as employee, but has to go through labour market test</i>	<i><u>Restricted rights:</u> for the student only social contributions for health insurance</i>	<i><u>No change</u></i>	<i><u>Enhanced or restricted rights (depends on the situation):</u> min. 1 year for student, but depends on duration of studies; for the first issuance of the permit as employee, max. 1 year. For renewal: max. Duration of one year.</i>	<i><u>No change</u></i>	<i><u>No change</u></i>	<i><u>Restricted rights:</u> no family reunification</i>	<i><u>No change</u></i>
Employee	Research	<i><u>Depends on the time of the switch:</u> <i>For the first issuance of the salaried worker access to one branch and one profession for a maximum of 1 year. For the renewal of the permit of one year: salaried activity possible in every branch</i></i>	<i><u>No change</u></i>	<i><u>No change</u></i>	<i><u>Depends on the situation:</u> <i>Min. 1 year but depends on duration of research project and on when the switch occurs. If the salaried worker permit is already renewed, the duration will be of maximum three years.</i></i>	<i><u>No change</u></i>	<i><u>No change</u></i>	<i><u>Enhanced rights:</u> immediate family reunification possible</i>	<i><u>No change</u></i>

Employee	Research	and every profession For the researcher: professional activity tied to the research project.							
Employee	Blue Card	<u>Enhanced rights:</u> direct access to Labour market for the professional activities for which the Blue Card was granted	<u>No change</u>	<u>No change</u>	<u>Enhanced rights:</u> min 2 years but depends on duration of contract and on when the switch occurs (see above)	<u>No change</u>	<u>No change</u>	<u>Enhanced rights:</u> immediate family reunification possible and duration of the permit as family member of a Blue Card holder more favourable	<u>No change</u>
Employee	Self-employed	<u>Not comparable</u>	<u>No change</u>	<u>No change</u>	<u>Enhanced rights:</u> duration of stay of maximum 3 years or depending on duration of business project and on when the switch occurs (see above)	<u>No change</u>	<u>No change</u>	<u>No change</u>	<u>No change</u>
Self-employed	Family	<u>Restricted rights:</u> no direct access to labour market for the first year and only part-time	<u>Restricted rights:</u> no independent social security (see above)	<u>No change</u>	<u>Restricted rights:</u> from 3 years maximum to 1, but depends on duration of the business project	<u>No change</u>	<u>No change</u>	Self-employed permit holders may be sponsors if they fulfil the conditions of article 69 of the	<u>No change</u>

Self-employed	Family	<i>salaried activity possible</i>						<i>Law on Immigration.</i>	
Self-employed	Education	<i>Difficult comparison, the student can only engage in a part-time salaried activity</i>	<i>Restricted rights: the student is only covered by health insurance</i>	<i>No change</i>	<i>Restricted rights: from 3 years maximum to 1, but depends on duration of the business project and duration of the studies</i>	<i>No change</i>	<i>No change</i>	<i>Restricted rights: no family reunification</i>	<i>No change</i>
Self-employed	Research	<i>Difficult comparison, they both have access to a professional activity.</i>	<i>No change</i>	<i>No change</i>	<i>Restricted rights: from 3 years maximum to 1, but depends on duration of the business project and duration of research project</i>	<i>No change</i>	<i>No change</i>	<i>Enhanced rights: immediate family reunification possible</i>	<i>No change</i>
Self-employed	Blue Card	<i>No change (see above)</i>	<i>No change</i>	<i>No change</i>	<i>Restricted rights: from 3 years maximum to 2, but depends on duration of the business project and duration of the contract</i>	<i>No change</i>	<i>No change</i>	<i>Enhanced rights: immediate family reunification possible and duration of the family member permit more favourable</i>	<i>No change</i>

Self-employed	Employee	<u>No change</u> They both have access to a professional activity.	<u>No change</u>	<u>No change</u>	<u>Restricted rights:</u> from 3 years maximum to 1 year maximum, but depends on duration of the business project	<u>No change</u>	<u>No change</u>	<u>No change</u>	<u>No change</u>
D-type visa holder	Education	<u>Enhanced rights</u>	Affiliation to social security (health insurance)	<u>No change</u>	<u>Enhanced rights</u>	<u>No change</u>	<u>No change</u>	<u>No change</u>	<u>No change</u>
D-type visa holder	Asylum seeker	Theoretical possibility to work after six months of procedure	Coverage of social security contributions	<u>No change</u>	Duration depends on the duration of the procedure of examination of international protection request	<u>No change</u>	<u>No change</u>	<u>No change</u>	<u>No change</u>
D-type visa holder	Every other category	<u>Enhanced rights</u>	Affiliation to social security	<u>No change</u>	<u>Enhanced rights</u>	<u>No change</u>	<u>No change</u>	<u>Enhanced rights</u>	<u>No change</u>
Private reasons	Family	<u>Restricted rights</u> if art. 79 (3) applies If article 79 (3) applies, the private reasons permit holder can switch to salaried worker without having to pass the	Both categories have to be covered by social security (health insurance)	<u>No change</u>	<u>No change</u>	<u>No change</u>	<u>Depends on the situation</u> For private reasons : family reunification possible if sufficient resources (art	<u>No change</u>	<u>No change</u>

<p>Private reasons</p>	<p>Family</p>	<p>labour market test</p> <p>The family member has to pass the labour market test for the first year of residence to be able to engage in a part-time salaried activity</p>					<p>78(1a)) and if conditions of article 69 of the Law on Immigration are fulfilled</p>		
<p>Private reasons</p>	<p>Education</p>	<p><u>It depends on the situation</u></p> <p>A private reasons permit holder may apply for a salaried worker permit without having to submit to the labour market test.</p> <p>The student has limited access to professional activities except 10h/week and after studies in case article 59 applies.</p>	<p><u>No change</u></p> <p>For both categories, the applicants must provide proof of being covered by health insurance</p>	<p>By definition the student has already access to education</p>	<p><u>Restricted rights but depends on the situation:</u> private reasons max. 3 years, student 1 year but depends on the duration of the studies.</p> <p>Renewal is possible for both.</p>	<p><u>No change</u></p>	<p><u>Depends on the situation</u></p> <p>For private reasons : family reunification possible if sufficient resources (art 78(1a)) and if conditions of article 69 of the Law on Immigration are fulfilled</p> <p>For the student: no</p>	<p><u>No change</u></p>	<p><u>No change</u></p>

Private reasons	Education						family reunification		
Private reasons	Research	<p><u>Enhanced rights</u> The researcher has direct access to a professional activity</p> <p>The private reasons permit holder has to request a salaried worker residence permit.</p>	<p><u>Enhanced rights</u>: direct affiliation to social security through work</p> <p>The private reasons permit holder may be affiliated through voluntary or private insurance</p>	<u>No change</u>	<u>Restricted rights</u> , but depends on the situation: private reasons max. 3 years. for the researcher the duration of stay is of 1 year or depends on the duration of the research project	<u>No change</u>	<u>No change</u>	<u>Enhanced rights</u> : immediate family reunification possible	<u>No change</u>
Private reasons	Blue Card	<u>Enhanced rights</u>	<u>Restricted rights</u> : private reasons max. 3 years, but depends on the duration of the contract	<u>No change</u>	<u>Restricted rights</u> : private reasons max. 3 years, but depends on the duration of the contract	<u>No change</u>	<u>No change</u>	<u>Enhanced rights</u> : immediate family reunification possible	<u>No change</u>
Private reasons	Employee	<p><u>Enhanced rights</u> The salaried worker permit may be granted if the person engages in a</p>	<u>Enhanced rights</u>	<u>No change</u>	<u>Restricted rights</u> but depends on the situation: private reasons max. 3 years, and depends	<u>No change</u>	<u>No change</u>	<u>Depends on the situation</u> and if the conditions of article 69 are fulfilled	<u>No change</u>

		<i>full-time salaried activity.</i>			<i>on the duration of the contract</i>				
Private reasons	Self-employed	<u>Enhanced rights</u>	<u>Enhanced rights</u>	<u>No change</u>	<u>No change</u> but depends on the situation.; 3 years maximum, and depends on the duration of the business project	<u>No change</u>	<u>No change</u>	<u>No change</u>	<u>No change</u>
Private reasons	Asylum seeker	<u>Restricted rights</u> No direct access for either category The private reasons permit holder may request a salaried worker permit without having to submit to the labour market test The asylum seeker may work after six months starting from the submission of the international protection application but	<u>Restricted rights</u> Both are/must be covered by health insurance	<u>No change</u> Asylum seekers have access to training	<u>Restricted rights</u> Asylum seekers are waiting for a decision on their international protection application	<u>No change</u>	<u>No change</u>	<u>Restricted rights: no family reunification (see above)</u>	<u>No change</u>

		<i>is conditioned to the community preference</i>							
Family	Private reasons¹⁵³	<p><u>Enhanced rights:</u> The family member has access to a part-time salaried activity but has to pass the labour market test in the first year</p> <p>Private reasons: may request a salaried worker permit to engage in a full-time salaried activity without being subjected to the labour market test.</p>	<p>Family : co-affiliation</p> <p>Private reasons : has to be covered by health insurance</p>	<u>No change</u>	<p><u>Enhanced rights but depends on the situation:</u></p> <p>Maximum duration of three years for private reasons.¹⁵⁴</p>	<u>No change</u>	<u>No change</u>	<p><u>Depends on the situation</u></p> <p>For private reasons : family reunification possible if sufficient resources (art 78(1a))</p>	<u>No change</u>
Research	Private reasons	<p><u>Restricted rights</u></p> <p>A private reasons permit holder has to request a salaried worker</p>	<p><u>Restricted rights:</u> private reasons: only social contributions to health insurance</p>	<u>No change</u>	<p><u>Enhanced rights but depends on the situation:</u> private reason max. 3 years (but could also be 1 year) and depends</p>	<u>No change</u>	<u>No change</u>	<p><u>Restricted rights no immediate family reunification possible</u></p>	<u>No change</u>

¹⁵³ The permit for private reasons can be granted when the conditions for family reunification are not met or to give people an autonomous residence permit under certain conditions (Article 76 of the Law on Immigration).

¹⁵⁴ The duration of the private reasons permit is decided on a case by case basis.

Research	Private reasons ¹⁵⁵	permit to engage in a full-time salaried activity.			also on the situation of the researcher (1 year or the duration of the research project)				
Blue Card	Private reasons	<u>Restricted rights</u> Private reasons : has to apply for salaried worker permit to have access to a full-time salaried activity	<u>Restricted rights</u> : Has to be covered by health insurance, but no longer insurance to overall social security regimes (blue card does)	<u>No change</u>	<u>Enhanced rights</u> , but depends on the situation: private reason max. 3 years (or less) and depends on the situation of the person with the BC (2 years or duration of the contract + 3 months)(see above)	<u>No change</u>	<u>No change</u>	<u>Restricted rights no immediate family reunification possible</u>	<u>No change</u>
Employee	Private reasons	<u>Restricted rights</u> Private reasons : has to apply for salaried worker permit to have access to a full-time salaried activity	<u>Restricted rights</u> : see above	<u>No change</u>	<u>Enhanced rights</u> , but depends on the situation: private reason max. 3 years (or less) and depends on the moment of the switch of the employee (1 st , or 2 nd residence permit after one year)	<u>No change</u>	<u>No change</u>	<u>No change</u> Both have to fulfil the conditions as sponsor Depends on the situation of the employee (1 st , or 2 nd residence permit) For private reasons : family reunification	<u>No change</u>

¹⁵⁵ The duration of the private reasons permit is decided on a case by case basis.

Employee	Private reasons							possible if sufficient resources (art 78(1a)) which is also a condition of family reunification	
Self-employed	Private reasons	<u>Restricted rights</u> Private reasons : has to apply for salaried worker permit to have access to a full-time salaried activity	<u>Restricted rights</u> : see above	<u>No change</u>	<u>No change but depends on the situation</u> : maximum 3 years for both. Depends on the duration of the business project	<u>No change</u>	<u>No change</u>	<u>No change</u> For both : have to fulfil the conditions as sponsor Private reasons under art 78(1a)) family member permit is granted based on sufficient resources which is a condition for family reunification	<u>No change</u>
Asylum seeker	Private reasons¹⁵⁶	<u>Enhanced rights</u>	Other health care mechanisms	<u>No change</u>	No duration of stay for asylum seekers, depends on the procedure of their application for international protection	<u>No change</u>	<u>No change</u>	<u>Enhanced rights</u> Private reasons under art 78(1a)) family member permit is granted based on sufficient resources which is a condition for family reunification	<u>No change</u>
Victim of trafficking	Private reasons	<u>Enhanced rights</u>	Victims of trafficking are supported by	<u>No change</u>	<u>Enhanced rights</u>	<u>No change</u>	<u>No change</u>	<u>Enhanced rights</u>	<u>No change</u>

¹⁵⁶ A rejected asylum seeker may be granted an authorisation for medical reasons if he meets the conditions. This change would occur immediately.

Victim of trafficking	Private reasons¹⁵⁷	<i>Private reasons : has to apply for salaried worker permit to have access to a full-time salaried activity</i>	<i>social and medical assistance if needed¹⁵⁸</i>						
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¹⁵⁷ This change of status is foreseen by Article 98 of the Law of Immigration.

¹⁵⁸ Article 2 of the Law of 8 May 2009 on the assistance, protection and security of victims trafficking in Human Beings, Memorial A, No. 129, 09.06.2009.

Q3. If the criteria to change status from within the territory of the (Member) State allowed by your national system differ from those of first time applicants, please list the procedural facilitations in place (in comparison with criteria for first time applicants listed in Section 1).

In general terms, there are no procedural facilitations as such. There are no reduced fees, nor is there a possibility to apply online. Nonetheless, considering that third-country nationals have already provided certain documents to obtain their first residence permit, there are certain documents that will not be required again as they are not in need of updating from the previous application. This is the case for example for birth certificates or marriage certificates. However, the Directorate of Immigration will always ask for a copy of the criminal record and a certified true copy of the passport.¹⁵⁹

The documents required for the change of status will depend on the category the third-country national wishes to switch to. For instance if a person loses his/her job and no longer qualifies for the residence permit of salaried worker, s/he will be able to switch to the permit of private reasons as long as s/he is able to prove that s/he has sufficient resources, which is one of the conditions to be granted the residence permit for private reasons.¹⁶⁰

Concerning a change to the permit of self-employed worker one should note that there may be some facilitations in practice. As the person is already in Luxembourg, they already have a bank account and it will be easier for him/her to access information or to benefit from tools offered by the Chamber of Commerce to foster entrepreneurship.¹⁶¹ The Ministry of Economy has also indicated that a change from salaried worker to the status of self-employed worker is easier than for first time applicants.

Applications for a Self-employed worker permit from refugees do not have to be submitted to the Directorate of Immigration. Indeed, their residence permit as refugee is enough from an immigration point of view.¹⁶²

Article 101 (3) of the Law on Immigration stipulates that an application to renew a residence permit consists an obstacle to a return decision. Following the Directorate of Immigration's interpretation of the aforementioned article, this applies to changes of statuses as well, as they are treated as renewals of statuses because the third-country national is seeking to extend his/her residence permit. Nonetheless, in principle, if the concerned person fails to bring any new

¹⁵⁹ Interview with the Directorate of Immigration, 10 September 2015.

¹⁶⁰ Interview with the Directorate of Immigration, 10 September 2015.

¹⁶¹ Interview with the Ministry of Economy, 14 September 2015.

¹⁶² Phone interview with the Chamber of Commerce, 9 October 2015 and Directorate of Immigration, 25 November 2015.

documents for 6 months, then it can no longer be considered as a renewal and the procedure starts afresh.¹⁶³

From	Into	Procedural facilitations when compares with first time applicants from the country of origin
Education	Employee	<i>Reduced documentary requirements: only a work contract is required but the job has to be related to the field of study.¹⁶⁴</i>
Private reasons	Employee	<i>Reduced documentary requirements: there is no need for the certificate of the ADEM attesting that no other job seeker fulfils the qualification of the relevant job vacancy.¹⁶⁵</i>

Q4. What is/are the main actor(s) and institution(s) involved in the development of such measures? If multiple authorities are involved, how are they coordinated?

In practice, several actors are confronted with changes of status, their experience of the phenomenon varies depending on their functions and which public seeks their advice.

The main actor is the Directorate of Immigration, more precisely all the cells of the service for third-country nationals: the salaried worker, self-employed worker, researcher and sportsman cell; the family reunification, private life, student, non-paid trainee, volunteer, au pair and long-term resident cell; the family reunification EU-citizen with third-country national cell; the postponement of removal, suspension of removal, authorisation of stay for medical reasons, travel document for foreigners and stateless persons cell and the administrative support cell.¹⁶⁶

Other actors can be involved for specific categories of stay. If for example a salaried worker wants to change into the category of self-employed worker, the Consultative Commission for Self-employed Workers¹⁶⁷ formed by representatives from various ministries and experts from the professional chambers provides for input. This commission will give its opinion on the feasibility of the business proposal but nevertheless the Directorate of Immigration is not legally bound by this opinion and can decide on the merits of the application.¹⁶⁸

¹⁶³ Interview with the Directorate of Immigration, 10 September 2015

¹⁶⁴ Article 59 of the Law on Immigration.

¹⁶⁵ Article 79 (3) of the Law on Immigration.

¹⁶⁶ For more information please see: <http://www.etat.lu/annuaire/?idMin=5817>, [accessed 13.11.2015].

¹⁶⁷ Article 4 (1) of Grand-Ducal Regulation of 5 September 2008 on the composition and the functioning of the consultative commission of foreigners, the consultative commission for salaried workers and the consultative commission for self-employed workers. For more information please also see section 1.

¹⁶⁸ Interview with the Directorate of Immigration, 10 September 2015.

In regards to the Consultative Commission for Salaried workers, the commission's input is only requested for decisions of refusals of a salaried worker permit¹⁶⁹.

The Ministry of Economy is also included in the development of changes of status. The Ministry forms part of the discussion and provides input, whether at the stage of proposing new legislation or on a regular basis. The rationale behind this is that salaried workers and businesses are concerned.¹⁷⁰

Another important actor is the Chamber of Commerce in regards to changes into the category of self-employed worker. The Chamber of Commerce's main contribution as an actor is during the process of legislative modifications. Indeed, the Chamber of Commerce is under obligation to provide a legal opinion for projects of legislative amendments. This legal opinion is the Chamber of Commerce's main tool to express their position on issues relating to the status of the self-employed worker. There is also a regular exchange between the Chamber of Commerce and the Directorate of Information on an informal basis. This is due to the fact that the Chamber of Commerce carries out a number of economic missions to attract businesses from outside of the EU and to provide support for Luxembourg businesses to export. Furthermore, the Chamber of Commerce is being consulted in relation to the creation of the residence permit of investor, as the Ministry of Economy has informally asked them for their point of view.¹⁷¹ The Chamber of Commerce consults on applications for the long-term residents permit when the applicant sends them their file, and they provide administrative support by checking whether all the documents are provided.¹⁷²

When a self-employed worker wants to change to the category of salaried worker, it is the future employer that takes the necessary steps to enable the change of status of their future employee.¹⁷³

¹⁶⁹ Article 42 (2) of the Law on Immigration.

¹⁷⁰ Interview with the Ministry of Economy, 14 September 2015.

¹⁷¹ Phone interview with the Chamber of Commerce, 9 October 2015.

¹⁷² For more information please see LU EMN NCP, *Admitting third-country nationals for business purposes*, Luxembourg 2014, p.16.

¹⁷³ Phone interview with the Chamber of Commerce, 9 October 2015.

Other possible actors include the University of Luxembourg and research institutes for the category of researcher and the ADEM for any question relating to the declaration of a job vacancy and the certificate to be issued after the labour market test.

Q5. Do specific institutional communication channels (i.e. Migration Agencies' websites) offer information on the possibility to change status?

The most effective communication channel of the Government is the [guichet.lu](http://www.guichet.lu) website¹⁷⁴, which offers relevant information under its “citizens” and “business” categories.

The only active information channel within the Directorate of Immigration is when a third-country national renews his/her permit and the possibility to obtain a long term residence permit exists.¹⁷⁵ In such a case the Directorate of Immigration informs the concerned person in written form through the letters that are sent as reminder to renew their permits. These letters also mention the possibility to apply for a long stay permit in cases where the person qualifies.¹⁷⁶ Third-country nationals can also be provided with this information during help desk hours, by email or telephone, but the Directorate of Immigration is only proactive when it receives an application for the renewal of a permit. In addition, during the ‘Welcome and Orientation Day’ organised by the Luxembourgish Reception and Integration Agency (OLAI), the Directorate of Immigration is always represented and the stand receives many inquiries on how to change status and under which conditions.¹⁷⁷ In most cases, salaried workers ask about the conditions on how to get a long-term residence permit and family members ask about how they can change to a salaried worker status. These events occur four to five times a year.¹⁷⁸ The Directorate of Immigration has also published a leaflet to inform on the procedure on how to obtain a long term residence permit¹⁷⁹.

For changes towards other statuses, no steps are taken to inform the concerned parties in a general way. Here, the Directorate of Immigration operates on a case by case basis¹⁸⁰.

¹⁷⁴ Please see: <http://www.guichet.public.lu/home/fr/index.html> [accessed 13.11.2015].

¹⁷⁵ It should be noted that Article 7 of the Directive 2003/109 creates an obligation for the Member States to inform people who qualify for this permit.

¹⁷⁶ Interview with the Directorate of Immigration, 10 September 2015.

¹⁷⁷ Interview with the Directorate of Immigration, 10 September 2015.

¹⁷⁸ Interview with the Directorate of Immigration, 10 September 2015.

¹⁷⁹ Please see <http://www.gouvernement.lu/4708761/depliant-statut-resident-longue-duree.pdf>. [accessed 13.11.2015].

¹⁸⁰ Interview with the Directorate of Immigration, 10 September 2015.

The Ministry of Economy generally does not provide information to the general public. It may occur that a business expresses an interest for a salaried worker with specific qualifications and will then turn to the Ministry of Economy to ask about the procedure that has to be followed. In such cases, the Ministry has a purely explanatory role but does not get involved in the actual case at hand.¹⁸¹ When people turn to the Ministry to ask for information, they are generally steered towards the Directorate of Immigration, with the exception of salaried workers who are asking about the possibility to change into the category of self-employed worker. In that case they are advised to turn to the Chamber of Commerce which can provide them with an estimation of whether the business proposal would qualify or not.¹⁸²

Most of the information the Chamber of Commerce provides to the concerned parties is on a case by case basis, when persons reach out to ask about a procedure or for some advice. Mostly this is done by appointment at the Chamber of Commerce, however occasionally persons are sent by the Ministry of Economy, or persons contact the Chamber by phone or mail.¹⁸³ The Chamber of Commerce also provides some of the information uploaded on the guichet.lu website. They have concluded an agreement with the website not to produce any separate documentation. This said, the Chamber of Commerce has published a document entitled *‘Vivre et travailler au Luxembourg’*, where some procedures on how to obtain a residence permit are explained.¹⁸⁴

The City of Luxembourg also provides some information through their brochure called *‘Just Arrived’*.¹⁸⁵

¹⁸¹ Interview with the Ministry of Economy, 14 September 2015.

¹⁸² Interview with the Ministry of Economy, 14 September 2015.

¹⁸³ Phone interview with the Chamber of Commerce, 9 October 2015.

¹⁸⁴ For more information please see:

http://www.cc.lu/uploads/tx_userccpublications/Brochure_Vivre_et_travailler_FR_2015-Web.pdf, [accessed 13.11.2015].

¹⁸⁵ For more information please see: <http://www.justarrived.lu/en/>, [accessed 13.11.2015].

3.2. Aims of National policies to permit changes of status without leaving the territory of the (Member) State

Q6a. Have the measures in place in your Member State been driven by any specific policy goals (i.e. addressing labour shortages, reducing unemployment, retaining talents, harnessing entrepreneurial skills of third-country nationals, tackling bottleneck occupations, general economic performance targets, etc.)?

Yes.

Q6b. If yes, please explain the rationale behind their design/implementation, whether such decision were based on a needs assessment and if specific indicators/target were identified.

According to the Chamber of Commerce there is a strong case to be made to facilitate the switch from the student residence permit to the self-employed worker permit. The Chamber of Commerce indicated that the policy goal of attracting students and businesses to Luxembourg should be extended to these switches as it makes no sense in practice to ask them to go back home first.¹⁸⁶ As already mentioned in the previous sections, the provisions of Article 59 of the Law on Immigration allowing a third-country national who has finished his/her studies in Luxembourg to engage in a first professional experience was motivated on one hand by the desire to allow the student to build on his/her qualifications with a first professional experience or fill the gaps in the workforce in Luxembourg and on the other hand, to avoid contributing to the possibility of draining the country of origin of educated people.¹⁸⁷

In regards to facilitating the change into the category of self-employed worker, a minor consideration is to reduce unemployment. Indeed by facilitating the creation of a new business, there is a hope that it will also create new jobs.¹⁸⁸

The goal of retaining talents is not addressed directly by allowing for changes of status in the Law of Immigration. According to the Ministry of Economy, if the Government had as a policy goal to retain talents, they would not resort to the legislation on immigration to achieve that

¹⁸⁶ Phone interview with the Chamber of Commerce, 9 October 2015. Please also see Question 9.

¹⁸⁷ Article 59 of the Law on Immigration.

¹⁸⁸ Interview with the Ministry of Economy, 14 September 2015.

goal because the current law on Immigration is not an obstacle in this area. It is more likely that the Government would put new policy tools into place in order to foster retaining talented workers, rather than trying to go ahead through a modification of the legislation on immigration. One of these new tools could be support in setting up a business plan.¹⁸⁹

The provision of Article 76 of the Law on Immigration, which provides for the possibility for a family member of a third-country national to obtain an independent status in specific situations¹⁹⁰, is driven by the goal of allowing people in a vulnerable position to stop being dependent on the status of the sponsor thereby granting them legal security¹⁹¹. A further motive to establish these ad hoc rules was in order to protect vulnerable persons in a particularly difficult situation such as a traumatic break in family ties due to domestic violence, repudiation or similar circumstances. A targeted policy goal for Article 76 of the Law on Immigration was to protect victims of violence from a family member in order to not penalise them should they decide to leave home.¹⁹² In that logic, Article 76 enables victims of domestic violence to obtain an autonomous permit of residence when leaving the abusive home.

The same motivation to protect vulnerable persons underlines the mechanism of Article 132 concerning removal suspensions for medical reasons. Indeed, as the persons falling under Article 131 of the Law on Immigration find themselves in a vulnerable position it was considered indispensable to find a solution to their situation that would offer them an adequate legal security.¹⁹³ Article 132 of the Law on Immigration provides for the possibility to convert the suspension of the removal order into an authorisation of stay, should the medical condition be of long duration.¹⁹⁴ In an effort to respect the third-country national's family and private life, the benefit of this authorisation of stay will be extended to the person's family members¹⁹⁵.

This concern for humanitarian reasons is also at the centre of Article 78, paragraph 3 which transposes Article 6.4 of the Return Directive¹⁹⁶. According to the State Council, humanitarian

¹⁸⁹ Interview with the Ministry of Economy, 14 September 2015.

¹⁹⁰ In cases of a change of family situation such as separation, divorce, death. This provision also applies to victims of domestic violence who decide to leave their abusive home and to persons who would find themselves in particularly difficult situations should they return to their country of origin.

¹⁹¹ Parliamentary document 5802/00, p.76.

¹⁹² Parliamentary document 5802/00, p.76.

¹⁹³ Parliamentary document 5802/00, p.86.

¹⁹⁴ Parliamentary document 5802/00, p.87.

¹⁹⁵ Parliamentary document 5802/00, p.87.

¹⁹⁶ Directive 2008/115/CE 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.

reasons justifying the suspension of removal can result from a multitude of situations that may not be covered in the current wording of the article, as the article refers to ‘humanitarian grounds that are extremely serious’.¹⁹⁷ This questioning of a restrictive wording of the article demonstrates the importance of the humanitarian concern. A concern that according to the Luxembourgish Council of Refugees and the Consultative Commission on Human Rights, should have been reflected more strongly in the amendment of the law.¹⁹⁸ While the Luxembourgish Council of Refugees comments that Article 6.4 of the directive should not have been transposed *a minima* by limiting the application of Article 78 (3) to humanitarian grounds that are extremely serious while Article 6.4 of the directive mentioned the possibility of granting a residence permit ‘for compassionate, humanitarian or other reasons’.¹⁹⁹ On the other hand, the Consultative Commission on Human Rights deplores the combination of the restrictive grounds on which this provision may apply and the fact that the minister also enjoys discretionary power over the granting of permits on this legal basis. They argue that if the requirement is set to such a high standard (humanitarian grounds that are extremely serious) then the granting of the residence permit should be automatic as it is difficult to imagine any other stronger ground to base the decision upon.²⁰⁰

The Consultative Commission on Human Rights had advanced the same argument in its comment on Article 98 of the Law on Immigration²⁰¹, when this piece of legislation was being elaborated. In their opinion, the situation of victims of human trafficking automatically constitute extremely serious humanitarian grounds and therefore Article 98 of the Law on Immigration would be better equipped to protect victim’s rights with a mechanism establishing an automatic change of authorisations of stay as the rule and provide a few limited grounds for refusal²⁰².

In the latest legal modification of Article 89 of the Law on Immigration²⁰³ which extended the possibility of a case by case regularisation to children having attended school in Luxembourg for a minimum of four years but also to their parents, a special drive for this modification was

¹⁹⁷ Parliamentary document 6218/02, p.3. The State Council’s proposal is to modify Article 78 (3) to refer to ‘serious humanitarian grounds’.

¹⁹⁸ Parliamentary document 5802/16, p.15; parliamentary document 6218/01, p.7 and parliamentary document 6218/04, p.4.

¹⁹⁹ Parliamentary document 6218/01, p.7.

²⁰⁰ Parliamentary document 6218/04, p.4.

²⁰¹ Article 98 of the Law on Immigration establishes that at expiry of the authorisation of stay for victims of human trafficking, the minister may grant an authorisation of stay for private reasons in application of Article 78 (3).

²⁰² Parliamentary document 5802/16, p.15.

²⁰³ Law of 18 December 2015 on International protection and temporary protection.

the relative integration of these children in Luxembourg society²⁰⁴. Indeed, the removal of families with children attending school was vividly criticised and perceived as unjust by the general public. The State Council justifies this modification on the basis of the fundamental principle of the best interests of the child as defined in Article 3, paragraph 1 of the International Convention on the Rights of the Child of 26 June 1990 and in Article 24 of the Charter of Fundamental Rights of the European Union.²⁰⁵ Indeed in its opinion on the amendment of Article 89, the State Council admits that the combined reading of the interest of the child ‘to pursue his/her education in a continuous manner in an educational institution in Luxembourg since at least four years’ with the principle of unity of the family, may be considered by the legislator as within its purview of political appreciation in order to create an exception to the rule of removal of the entire family.²⁰⁶

Q7. Have any evaluations or studies in your Member State considered the effectiveness of national measures allowing third-country nationals to change status from within the territory of the (Member) State?

No.

Q8. Have any evaluations or studies in your (Member) State considered the impact of such national measures to national economy?

No.

Q9. How are such changes of status perceived in your (Member) State?

In general, changes of statuses are perceived in a positive light, as it makes sense to support third-country nationals retaining a regulated status for economic or humanitarian reasons.²⁰⁷ This positive perception is evidenced by both the reactions of commentators during the elaboration of the Law on Immigration, but also by interviews held with the Chamber of Commerce and Caritas Luxembourg²⁰⁸.

²⁰⁴ Parliamentary document 6779/01, p.2.

²⁰⁵ Parliamentary document 6779/03, p.14.

²⁰⁶ Parliamentary document 6779/03, p.15.

²⁰⁷ Interview with the Directorate of Immigration, 10 September 2015 and CLAE asbl, 28 October 2015.

²⁰⁸ Phone interviews with the Chamber of Commerce, 9 October 2015 and with Caritas Luxembourg, 9 November 2015.

During the elaboration of the Law on Immigration, the Chamber of Commerce lamented the limited scope of Article 59 which requires a contract to convert to the salaried worker permit. The Chamber was of the opinion that a binding offer should be enough and that students who do not fall under the scope of Article 59 should be able to benefit from a fast-track procedure to be granted an authorisation of stay with a duration of more than a year²⁰⁹. The State Council also expressed doubts in regards to the condition that the first work experience of the young graduate should serve the economic interests of Luxembourg and of his/her country of origin²¹⁰, with the argument that Article 59 would ‘disappoint the expectations of the national economy as well as of third-country nationals if the requirements of Article 59 are multiplied’²¹¹. While they acknowledged the wording of that condition to be based upon a wish to prioritise the return home of the third-country national, they considered that paragraph (3) of Article 59, which requires the first work experience to relate to the young graduate’s background, already put focus on the third-country national’s eventual return home.²¹²

In this regard, case law applies the requirements of Articles 39 (3) and 59 strictly, not taking into account any other argument put forth to justify changing status as a student without leaving the country. As such the Administrative Tribunal in its decision n°29118 of 19 September 2011 refused to consider the third-country national’s family situation, economic situation or any explanations relating to his/her studies arguing that Article 39 (3) of the Law on Immigration completely excludes the possibility for a student permit holder to change status before the expiry of his/her student permit²¹³.

Civil society also interpreted the possibility of changing immigration status as a positive development. In a common commentary to the proposed law, several organisations²¹⁴ welcomed the introduction of the possibility to change status²¹⁵, criticised the restrictive requirements of Article 76 allowing a third-country national with a family member residence

²⁰⁹ Parliamentary document 5802/05, p.13.

²¹⁰ Article 59 (2) of the Law on Immigration.

²¹¹ Parliamentary document 5802/10, p.20.

²¹² Parliamentary document 5802/10, p.20.

²¹³ Administrative Tribunal n°29118 of 19 September 2011, p.6.

²¹⁴ Common opinion of ASTI (Association for the Support of Immigrant Workers), CCPL (Confederation of the Portuguese Community in Luxembourg), FAEL (Federation of Associations of Spaniards in Luxembourg), FNCTTFEL (Professional Union of Luxembourg Railroad Workers), Fondation Caritas Luxembourg, LCGB (Luxembourgish Christian trade union), OGB-L (Luxembourgish independent trade union), Rosa Lëtzebuerg, SeSo Pi-CL (Service socio-pastoral intercommutaire) and SYPROLUX (Luxembourgish towns and local communities union) with the occasional support of CEAL (Union of African Students in Luxembourg), LUS (Luxembourg University Students organization) and UNEL (Student’s union of Luxembourg).

²¹⁵ Parliamentary document 5802/04, p.6.

permit to be granted an autonomous permit after the death of/separation with the sponsor²¹⁶, rejoiced of the simplified access to the labour market given to third-country nationals with authorisations of stay for private reasons under Article 79²¹⁷ but also of the possibility for young graduates to have a first professional experience in Luxembourg for up to two years pursuant to Article 59²¹⁸.

This positive welcoming of the provisions of Articles 39, 59 and 132 was shared by the National Council of Foreigners (*Conseil National pour étrangers - CNE*)²¹⁹ who congratulated the possibilities offered to third-country nationals by Articles 39²²⁰ and 59²²¹ and greeted ‘the act of generosity’ shown to third-country nationals with a medical condition and their families under Article 131²²².

As already mentioned in the answer to Question 6 of this study, changes based on humanitarian grounds benefit of a large approval in theory.

While commenting on the combined application of Articles 98 and 78 (3) of the Law on Immigration, granting victims of human trafficking an authorisation of stay on humanitarian grounds, the Consultative Commission on Human Rights considered ‘indispensable to duly take into account the personal situation of distress of the victim’²²³.

The large approval of switches based on humanitarian grounds is also evidenced in the comments of the Luxembourgish Council for Refugees and the State Council regarding the restrictive transposition of Article 6.4 of the Return directive by Article 78 (3) of the Law on Immigration.²²⁴ Case law applies this restrictive requirement by defining ‘exceptionally serious grounds’, not as ‘rare’ but as ‘implying that the humanitarian grounds put forth by the concerned person are strong in a different way when compared to people facing a similar situation’²²⁵.

²¹⁶ Parliamentary document 5802/04, p.7. The requirement of three years of residence between the granting of the residence permit and the separation/death is believed to be too long. The Chamber of Trades and Crafts and the Chamber of Private Employees also criticised this point. See Parliamentary documents 5802/06, p.11 and 5802/06, p.18.

²¹⁷ Parliamentary document 5802/04, p.7.

²¹⁸ Parliamentary document 5802/04, p.9.

²¹⁹ The National Council for Foreigners (CNE) is an advisory body in charge of studying issues relating to foreigners and their integration. It submits to the Government an annual report on the integration of foreigners in Luxembourg.

²²⁰ Parliamentary document 5802/09, p.4.

²²¹ Parliamentary document 5802/09, p.4.

²²² Parliamentary document 5802/09, p.5.

²²³ Parliamentary document 5802/16, p.15. See Question 6 for more information.

²²⁴ See Question 6 for more information.

²²⁵ Administrative Court decision n°35248C of 1 October 2014.

Article 78 (3) of the Law on Immigration may be applicable to rejected international protection applicants, if they fulfil the conditions²²⁶. However, case law also establishes that if the application under Article 78 (3) of the Law on Immigration does not entail other grounds of persecution or discrimination threatening the life of the concerned person in his/her country of origin other than those already included in the final negative decision in his/her application for international protection, the new application under Article 78 (3) will be rejected.²²⁷

In regards to article 131 (2) which foresees an authorisation of stay for medical reasons after the expiry of the suspension of removal after two years, it was considered ‘indispensable’ to sort out their situation in a manner that would offer them ‘an adequate legal security’.²²⁸ The positive perception of this conversion into an authorisation of stay for medical reasons is further exemplified by the fact that Article 131 (4) extends the benefit of this conversion to the third-country national’s family members in order to ‘respect his/her private and family life’²²⁹.

During the most recent amendment of the Law on Immigration, the government extended the scope of Article 89 (1)²³⁰ in response to a perceived injustice to remove rejected international protection applicants and their families from the country²³¹. The criticism centred on the removal of children attending school in Luxembourg and the fact that these children were relatively well integrated in Luxembourg society. Both the Consultative Commission on Human Rights²³² and the Luxembourgish Council for Refugees²³³ received the amendment with delight, asking for clearer definition of the conditions attached to the granting of the authorisation of stay for exceptional reasons.

The State Council acknowledged the legislator’s decision to create an exception to the rule of removal of families based on the best interests of the child, but emphasised that the condition

²²⁶ Parliamentary document 5802/13, p.12 and Administrative Tribunal decision n° 34316 of 7 April 2014.

²²⁷ Administrative Court decisions n°29888 of 20 February 2012 and n°34316 of 7 April 2014.

²²⁸ Parliamentary document 5802/00, p.86.

²²⁹ Parliamentary document 5802/00, p.87.

²³⁰ See Section 2 Question 1 for more details on the amendment.

²³¹ Parliamentary document 6779/01, p.2.

²³² Parliamentary document 6779/07, p.2.

²³³ Parliamentary document 6779/08, p.1.

of successfully attending an educational institution²³⁴ was a necessary condition to prove a real wish for integration²³⁵.

In an interview held in October 2015, the Chamber of Commerce expressed regrets in regards to the legal obstacles for students to change into the category of self-employed worker. Considering all the efforts invested in being a host country and attracting students and other smart people to Luxembourg, the Chamber of Commerce considers it a pity that these people are not given a chance to become self-employed without having to leave the country. They consider that if the third-country national resides in Luxembourg through a regulated residence permit, there should be a procedure in place that allows amending the residence permit without leaving Luxembourg. Therefore, they think it advisable to modify the legislation in order to allow students to apply for a self-employed residence permit without having to leave the country and wait for three months before they can come back.²³⁶

For Caritas Luxembourg, changes of status are generally perceived in a positive light, especially for the changes from private reasons to salaried worker or family member to salaried worker as the status of salaried worker is to be considered as more favourable.²³⁷ Indeed the salaried worker permit is issued for three years when renewed²³⁸ while the main permits for private reasons that Caritas sees in their consultations are issued for one year.²³⁹ Furthermore, in the case of women changing from family member to salaried worker, they gain in independence and security with regards to their sponsor, which can be a very important factor in situations of conflict in the family.²⁴⁰

Q10a. Is there any evidence or are there any indications that such changes of status contribute to the prevention of irregular stays or to reduce irregularity in your (Member) State?

No.

²³⁴ According to the State Council, Article 89(1) only applies to elementary and secondary education. See Parliamentary document 6779/11, p.35.

²³⁵ Parliamentary document 6779/11, p.35.

²³⁶ Phone interview with the Chamber of Commerce, 9 October 2015.

²³⁷ Phone interview with Caritas Luxembourg, 9 November 2015.

²³⁸ The duration of validity for a first salaried worker permit is of one year.

²³⁹ Phone interview with Caritas Luxembourg, 9 November 2015.

²⁴⁰ Phone interview with Caritas Luxembourg, 9 November 2015.

Q10b. If no, please provide also any other evidence/indicator that may be available in your (Member) State in this regard.

There is no evidence or indicator available for Luxembourg.

If the Directorate of Immigration detects a possibility for an irregular third-country national to fulfil the conditions to obtain a residence permit, it provides all the relevant information to do so. Nonetheless, this kind of situation is not a change of status.²⁴¹

According to the Ministry of Economy it is possible that a change of status may help reduce irregular stays, for example in situations where a third-country national loses his/her job and applies for the status of self-employed worker. However, according to them such situations are very rare.²⁴²

For the non-governmental organisation CLAE asbl, the possibility of changing the status helps in preventing irregular stays in situations where the third-country national would be left without a permit when his/her personal circumstances change. This idea is reinforced by their appreciation that the Directorate of Immigration applies a certain flexibility and decides on a case by case basis.²⁴³

The recently amended Article 89 provides third-country nationals in an irregular situation meeting certain conditions²⁴⁴ with the possibility to be granted a permit for salaried worker without having to pass the labour market test. Article 79 (3) also absolves third-country nationals from passing the labour market test if they fall under Article 78 (1) b), c) or 78 (3) of the Law on Immigration. These special provisions seem to indicate a willingness to foster autonomy of third-country nationals in a vulnerable situation, such as victims of human trafficking or victims of domestic violence²⁴⁵.

²⁴¹ Interview with the Directorate of Immigration, 10 September 2015.

²⁴² Interview with the Ministry of Economy, 14 September 2015.

²⁴³ Phone Interview with CLAE asbl, 28 October 2015.

²⁴⁴ See Section 2 for more detail.

²⁴⁵ See Question 6 for more detail.

Section 4 - Challenges, good practices and lessons learned

Section 4.1 examines the existing challenges and obstacles for the design and implementation of specific policies allowing third-country nationals to change status whilst remaining on the territory of the Member State as experienced by the legislator / policy maker / practitioner.

Section 4.2 aims to highlight any good practices of the (Member) States that have successfully implemented and managed measures allowing third-country nationals to switch status without leaving the territory of the (Member) State.

4.1. Challenges and Obstacles to measures to enable third-country nationals to change status whilst remaining on the territory of the (Member) State

Q11. What are the main challenges/obstacles related to the change of status for third-country nationals whilst remaining on the territory of your (Member) State?

The biggest challenge is the lack of data on changes of status in Luxembourg. It is not a topic that has been studied or even widely discussed. This of course hinders the development of policies in this area.

Since there is no general dissemination of information on changes of status, the only information the concerned third-country nationals have access to is when contacted by the Directorate of Immigration in case of renewals or long-term resident status or when they actively seek advice from the ministries, professional chambers or NGOs active in the area of immigration. In this case by case advice sessions, the consequences of a change in categories is explained to the third-country nationals.

One of the major challenges for family members (and other categories with no direct access to the labour market) does not come from the law but from the realities of the labour market. The language requirements to qualify for job vacancies are the biggest obstacles for third-country nationals succeeding in finding a job, especially in regards to the French language.²⁴⁶ According

²⁴⁶ Interview with the Ministry of Economy, 14 September 2015.

to CLAE asbl a big challenge is the situation concerning people losing their residence permit of family member but being unable to find a job. On a procedural level, they indicate the steps of declaring the job vacant at the ADEM as a big hurdle for people changing from residence permits that do not grant direct access to the labour market (such as family members of a third-country national for private reasons²⁴⁷), especially in cases where the third-country national was already working illegally for the employer.²⁴⁸

A further challenge is to avoid potential misuses of the legislation, that the possibility to change status does not become a means of circumventing the law. One example concerns transferred workers. The residence permit of a transferred worker is easy to obtain: one has to work for the same business group and the two entities have to conclude a contract for the transfer and there is no minimum salary requirement.²⁴⁹ Considering these relative light conditions for the granting of the status of transferred worker, if the requirements allowing a change to another category were too easy to fulfil or with no controls in place, there would be a danger for abuse.²⁵⁰ Given the amount of information available online and the existence of several structures (governmental and non-governmental) that provide additional information and advice, it can be assumed that concerned persons are aware of the implications that changes of status will bring.

Part of the procedure to change into the category of self-employed worker involves the Consultative Commission for Self-employed Workers. This commission meets only once a month, which some people criticise as not being often enough.²⁵¹

A further obstacle that was mentioned is the sometimes prolonged duration of the procedure, in particular concerning the change to a residence permit for self-employed worker. Here it was mentioned that it can take between three to six months.²⁵²

²⁴⁷ The labour market test does not apply for people falling under the scope of Article 79 of the Law on Immigration which refers to Article 78 (1), points b), concerning family members under Article 76, c), relating to intense personal and family ties, and (3) humanitarian reasons of exceptional gravity. However, Article 78 (1) a) on sufficient resources is not included in the special provision of Article 79.

²⁴⁸ Phone Interview with CLAE asbl, 28 October 2015.

²⁴⁹ Interview with the Ministry of Economy, 14 September 2015.

²⁵⁰ Interview with the Ministry of Economy, 14 September 2015.

²⁵¹ Interview with the Ministry of Economy, 14 September 2015.

²⁵² Phone interview with the Chamber of Commerce, 9 October 2015.

Once all the requested documents for the application have been provided to the Ministry of Foreign and European Affairs and the conditions are met, the procedure takes maximum three months. Some phases of the procedure do not depend on the Directorate of Immigration as other actors can be involved, such as for the ADEM certificate or the granting of a D-visa from embassies representing Luxembourg abroad²⁵³. The quality of the request will influence the processing time within the Directorate of Immigration: if the application contains every document required a decision will be taken within a month, depending on the total number of applications to be processed at any given time²⁵⁴.

The long duration of the procedure is also a hurdle for switches from a residence permit without direct access to the labour market to salaried worker (or Blue Card) due to the extra steps of the procedure to be granted an access to the market. This is especially the case for people who were already informally working and then obtain the job officially.²⁵⁵

One interesting idea that was mentioned concerned international protection applicants awaiting a decision by allowing them to change into the categories of self-employed worker or EU Blue Card holder. However, it was also acknowledged that it would be too politically challenging to introduce the possibility for them to switch to the category of salaried worker, because that would put them in competition with Luxembourgish job seekers.²⁵⁶

According to Caritas Luxembourg, an important obstacle to the switch to salaried worker is the amount of hours of work required to qualify. This can especially become a burden in case of

²⁵³ Information provided by the Directorate of Immigration, 13 January 2016.

²⁵⁴ Information provided by the Directorate of Immigration, 13 January 2016.

²⁵⁵ Phone Interview with CLAE asbl, 28 October 2015.

²⁵⁶ Interview with the Ministry of Economy, 14 September 2015.

Currently, Article 6 (1) and (2) of the Law on International Protection authorises international protection applicants to work based on a temporary work permit (*autorisation d'occupation temporaire* – AOT) in case the minister has not taken any decision on their application within six months of the introduction of the application and if this delay is not attributed to the applicant. The temporary work permit application is submitted to the National Employment Agency (*Agence pour le développement de l'emploi* – ADEM) by the prospective employer after the position has been declared vacant. The granting of an AOT is subject to the community priority given to EU citizens (Article 6 (3) of the Law on International Protection), citizens of countries party to the European Economic Area and third-country nationals based on specific agreements as well as third-country nationals residing legally in Luxembourg and receiving unemployment benefits. An AOT is valid for one profession and one specific employer, for a duration of six months. It may be renewed. The AOT will no longer be valid after the expiration date, in case one of the parties to the employment contract decides to put an end to the employment or if the application for international protection is definitely rejected or cancelled (Article 6 (6) of the Law on International protection).

single mothers who very often only find part-time work.²⁵⁷ Again, the difficulties lie with the situation rather than with the procedure to change status.

Finally, another hurdle that was mentioned concerns third-country nationals with an authorisation of stay for medical reasons, where Caritas reports numerous negative decisions by the delegated doctor to renew the authorisation. In the last year, third-country nationals with a tolerated status because of their health condition have received an opinion of the delegated doctor establishing that there is no treatment, or no need for treatment, for them in Luxembourg. In consequence, many holders of the private life permit for medical reasons have fallen into irregularity.²⁵⁸

4.2. Good practices and lessons learned

If the Directorate of Immigration detects a possibility for an irregular third-country national to fulfil the conditions to obtain a residence permit, it provides the concerned person with all the relevant information to do so. Nonetheless, this kind of situation is not a change of status.²⁵⁹

The Directorate of Immigration also proposes alternative solutions for third-country nationals who have held the permit of private life for medical reasons for a long time when they fall in irregularity: they propose alternatives such as to be able to switch to salaried worker if they provide them with a work contract, or private life if they can prove to have sufficient resources. While it is positive that the Directorate takes this initiative, in reality it is often the case that third-country nationals who fall in this category have many difficulties in finding a job because of their health condition (Phone Interview with Caritas Luxembourg, 9 November 2015).

If the Directorate of Immigration notices the possibility for a third-country national to obtain a more favourable status, they will inform the concerned person of the possibility. This good practice is also followed by the non-governmental organisation CLAE asbl which provides for legal advice upon demand.²⁶⁰ CLAE asbl also stated that in their experience the Directorate of

²⁵⁷ Phone interview with Caritas Luxembourg, 9 November 2015.

²⁵⁸ Phone interview with Caritas Luxembourg, 9 November 2015.

²⁵⁹ Interview with the Directorate of Immigration, 10 September 2015.

²⁶⁰ Phone Interview with CLAE asbl, 28 October 2015.

Immigration shows some flexibility and understanding whenever children or minors are involved.²⁶¹

In regards to the change into the status of self-employed worker, when the third-country national turns to the Chamber of Commerce for information and advice, the change normally occurs very smoothly. Almost all of the programmes offered by the Ministry of Economy, such as “1,2,3, Go”²⁶² and “Business mentoring” are open to third-country nationals as there are no nationality requirements. However, there is no specific programme targeting third-country nationals, because there are not enough cases to justify setting up a separate programme. According to the Ministry of Economy, there are between 20 and 30 self-employed worker permits granted per year. Such a low number does not warrant developing extra tools or introducing specific measures in the current law.²⁶³

In general, there is also the good practice of exchange of information between the relevant actors and that professional chambers representing businesses are allowed to give opinions on such topics. This is important because the discussion will go beyond the administrative aspects and include actors dealing with these issues in practice.

²⁶¹ Phone Interview with CLAE asbl, 28 October 2015.

²⁶² Please see <http://www.123go-networking.org/>, accessed [13.11.2015].

²⁶³ Interview with the Ministry of Economy, 14 September 2015.

Annexes

Annex 1: Statistics on Issued skilled or highly skilled national labour permits (2010-2014)²⁶⁴

(Member) State	2010	2011	2012	2013	2014
Luxembourg	128	186	45	2	N/A ²⁶⁵

Source: National data, Directorate of Immigration

Annex 2: Number of Persons who have changed immigration status 2 times by type of switch (2010 – 2014)

Although there is no data available on this issue, the Ministry of Foreign and European Affairs has indicated that there are a high number of cases where third country nationals switch status several times, especially the case of salaried worker to family member and then back to salaried worker²⁶⁶. According to the Chamber of Commerce, there are also cases of multiple switches from Self-Employed worker to salaried worker and back again, because of the increasing diversity in economic activity²⁶⁷.

Annex 3: Is the processing time set in the national legislation? If yes, does it differ for different groups of migrants – in legislation and/or in practice?

The Law on Immigration foresees a processing time of three months for the issuance of the following categories of permits: intra-corporate transfer worker, posted worker, self-employed worker, athlete, student, pupil, trainee, volunteer and researcher. For salaried workers, the processing time is set to four months, while the European Blue Card's processing time is of 90

²⁶⁴The data includes first issuances and renewals.

²⁶⁵ This permit no longer exists.

²⁶⁶ Interview with the Directorate of Immigration, 10 September 2015.

²⁶⁷ Phone interview with the Chamber of Commerce, 9 October 2015.

days and the third-country national family member permit can take up to nine months and the processing time is extendable.²⁶⁸

According to the Directorate of Immigration, it is very rare that applications take more than three months to be processed. EU law specifies that processing time starts from the moment when the application is complete.²⁶⁹

The processing time can depend on the applicant, on the number of documents joined to the application, on whether the Directorate of Immigration has to request missing documents to be added to the application and on how many applications the Directorate receives to be processed at a given time. This last point is especially true for applications for the student permit, they will tend to be introduced in the same period of time because of the start of the academic year.²⁷⁰ Certain changes might by definition take more time, such as from salaried worker to self-employed worker.²⁷¹

²⁶⁸ See Guichet.lu, *Délais*, <http://www.guichet.public.lu/entreprises/catalogue-formulaires/immigration/documents-communs/delais-traitements/delais-traitements-FR.pdf>

²⁶⁹ Interview with the Directorate of Immigration, 10 September 2015.

²⁷⁰ Interview with the Directorate of Immigration, 10 September 2015.

²⁷¹ Interview with the Directorate of Immigration, 10 September 2015.