



Legal Migration Fitness Check

Evidence base for practical
implementation

Member State summary

Luxembourg

Annex 2 LU

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Limited

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LEGAL NOTICE

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More information on the European Union is available on the Internet (<http://www.europa.eu>).

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Introduction

This document provides an overview of the legal and practical implementation of EU legal migration acquis in **Luxembourg**. The legal and practical implementation study is structured according to the eight steps – ‘phases’ of the migration process from the perspective of the migrant¹ for the following Directives:

Directive	FRD (Family Reunification Directive 2003/86/EC)	LTR (Long Term Residency Directive 2003/109/EC)	SD (Students Directive 2004/114/EC)	RD (Researcher's Directive 2005/71/EC)	BCD (Blue Card Directive 2009/50/EC)	SPD (Single Permit Directive 2011/98/EU)
National parallel scheme	No	No	No	No	No	No
Options implemented?			Pupil	Trainee		Volunteer

Main differences between EU statuses and the respective national parallel schemes – there are no differences to report as there are no national parallel schemes in Luxembourg.

1 Pre-application phase

1.1 Legal transposition of the EU legal migration acquis

The Luxembourg legislation is compliant with the EU legal migration directives regarding the pre-application phase. According to the conformity assessments, no compliancy issues have been identified.

1.2 Practical application of the EU legal migration acquis

Directive	FRD (Family Reunification Directive 2003/86/EC)	LTR (Long Term Residency Directive 2003/109/EC)	SD (Students Directive 2004/114/EC)	RD (Researcher's Directive 2005/71/EC)	BCD (Blue Card Directive 2009/50/EC)	SPD (Single Permit Directive 2011/98/EU)
Languages	National language(s), English, Albanian, Arabic,					

¹ See ref document (EU summary) Under each phase, the following aspects are examined:

Legal transposition of the EU legal migration acquis: including whether the MS has overall complied with the transposition of the relevant EU acquis in the respective phase and whether these non-compliance issues affect the practical application of the Directive; **Practical application of the EU legal migration acquis:** overview of the main application issues/problems arising in the MS per each of the migration phases; **Differences between national statuses and the EU legal migration acquis:** substantial differences at the level of legislation and practical implementation between the EU legal migration Directives and their national equivalents (where these exist).

	Chinese,						
	Farsi						
	Portuguese						
The information is easy to find*	4	4	4	4	4	4	4

* 1: Strongly agree; 2: Agree; 3: Neither agree/nor disagree; 4. Disagree; 5. Strongly disagree

Information can be found on the following aspects of the application procedure:

Application procedure	Conditions for admission	Entry requirements (e.g. visa etc.)	Cost of application	Applicable deadlines	Rights upon admission	Any differences between the Directives
Yes	Yes	Yes	Yes	Yes	Yes	No comment for LTR on Entry Requirements

Information upon request

Information can be provided to a third-country national via face to face consultation either:

- by national administrations in third countries such as embassies or consulates, or
- by national administrations in Luxembourg thanks to the '*guichet information*' that gathers all information and provides information upon request via the telephone or through face-to-face consultation

1.3 Differences between national statuses and the EU legal migration acquis

Luxembourg does not have any parallel national schemes. Its immigration law mostly consists of the transposition of EU directives.

2 Preparation phase

2.1 Legal transposition of the EU legal migration acquis

In general, Luxembourg has complied with the legal transposition of the EU legal migration acquis in relation to the preparation phase of applications. There are however some non-conformity issues identified regarding the BCD and the LTR.

Regarding the LTR, the transposition of Article 7(1) was found partially conform with the EU Directive. To acquire long-term resident status according to Luxembourg national law, the third-country national needs to prove that he/she has an appropriate accommodation. Contrary to the LTR, the absence of such evidence is a ground for refusing the application. In addition, the third-country national also needs to provide the Authorities with a recent extract from his/her judicial record. This requirement is an extra requirement, which is not enshrined in the Directive.

In what concerns the BCD, both partial and non-conformity were acknowledged in relation to Article 5. More specifically, the transposition of Article 5(1)(e) has been found non-conform with the EU Directive. Whereas the BCD stipulates that Blue Card applicants need to prove evidence of having applied for a sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or resulting from, the work contract, Luxembourg authorities require that the third country national needs to prove a sickness insurance covering all risks on the territory, which is an obligation that is stronger compared to the one in the EU Directive.

The transposition of Article 5(1)(f) of the BCD has been found partially conform with the EU Directive. In addition to the Directive requirements, the Luxembourg national law states that the person should not only be considered to pose a threat to public policy, public security or public health, but also requires that the third-country national should not threaten the international relations of the Grand Duchy of Luxembourg or of one of the States parties to an international convention on the crossing of external borders, linking the Grand Duchy of Luxembourg.

Finally, the transposition of the may-clause of Article 5(2) of the BCD has also been found partially conform with the EU Directive. According to national law, third-country nationals need to provide the proof of adequate housing, while the Directive only mentions that the member state can ask applicants to provide their address in the territory of the member state concerned. However, it must be noted that in practice the Ministry of Foreign Affairs do not seem to enforce this provision. Consequently, this non-compliance issue seems to be compliant with the Directive's obligation in practice.

2.2 Practical application of the EU legal migration acquis

For all legal migration statuses, the submission of an application follows the different steps:

Before the entry in Luxembourg, a third-country national needs to apply for a temporary authorisation ("autorisation temporaire"); at this stage, third-country nationals can only lodge their application via post from their country of residence to the Immigration Directorate, Department for Foreigners in Luxembourg. This application can also be lodged via post or in person to the diplomatic mission in the capital/ in the consulate of Luxembourg in the third country of residence.

After the entry into Luxembourg, a third-country national needs to convert his/her temporary authorisation into a final residence permit. Indeed, upon arrival in Luxembourg, third-country nationals need to do a declaration of arrival at their local town hall. Together with the copy of their declaration of arrival, they can then lodge the required documents (together with the received temporary work authorization) via post or in person to the Immigration Directorate, Department for Foreigners in Luxembourg to obtain their final residence permit. The "titre de séjour" (which is the residence permit) is the physical materialisation of the authorisation, which is the legal act allowing third-country nationals both to legally work and reside in the country.

To apply, third-country nationals can download application forms from the following site: www.guichet.public.lu. The application forms need to be printed out and sent by post/delivered in person to the Immigration Directorate, Department for Foreigners in Luxembourg.

Ease of the application procedure:

Step	FRD	LTR	SD	RD	BCD	SPD
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The information that applicants need to complete is not extensive	1	1	1	1	1	1
The application form is user-friendly	1	1	1	1	1	1

Key information/ documents required:

Type of information	FRD	LTR	SD	RD	BCD
Family ties	Yes, T, C				Yes
Continuous legal residence					
Sufficient resources	Yes, T	Yes, T	Yes	No	
Accommodation/Address in territory	Yes, T	No, R			Yes, C
Sickness insurance	Yes, T	Yes, T, C	Yes, T, C	No	No, T
Work contract (for RD host agreement)				Yes, T, C	
Minimum salary threshold (per month)	EUR 1998.6	EUR 1998.6	at least equal to 80% of the current guaranteed minimal income (above EUR 1598.9)	EUR 1998.6	(average gross annual salary) between EUR 59,198.40 and 73,998
Professional qualifications (for RD host agreement)				Yes, T, C	
(Pre-) Integration measures	No	Yes, T, R			
Pre-departure conditions					
Proof no threat to public	Yes, T, C, R	Yes, T, C	Yes, T, C	Yes, T, C	Yes, T, C
Medical examination certificate	Yes, T, C		Yes, C	Yes, T, C	Yes, C
Valid travel document			Yes, T, C	Yes, T, C	Yes, T, C
Entry visa					Yes, C
Other	Yes, T, C	Yes, T, C	Yes, T, C	Yes, T, C	Yes, T, C

Note: T = Translation; C = Certified, R = Requirement, i.e. without this proof the application cannot be lodged.

2.3 Differences between national statuses and the EU legal migration acquis

Luxembourg does not have any parallel national schemes. Its immigration law mostly consists of the transposition of EU directives.

3 Application phase

3.1 Legal transposition of the EU legal migration acquis

Some non-conformity issues have been found regarding the legal transposition of the RD, BCD and SPD into Luxembourg national law.

Regarding the RD, the transposition of Article 15.1 has been found non-conform with the EU Directive, since it has not been transposed in Luxembourg national law. While the directive mentions that the authorities should provide for accelerated procedures to adopt a decision, no provision has been adopted for such procedures in Luxembourg's national law.

The assessment of the national implementation of article 7(1) of the BCD leads to a partial conformity conclusion. Whereas the BCD provides that the Member State should grant third-country nationals every facility to obtain the requisite visas, it could not be derived directly from the national text that third-country nationals that are eligible for the EU Blue Card, and thus fulfil the conditions thereof, will also be offered or have access to requisite visas with no restrictions. The procedures for a visa and for an authorisation to stay are two different procedures.

As regards the procedure before the entry on the Luxembourg territory, the Ministry of European and Foreign Affairs is the competent authority to receive the application and issue the temporary authorisation for all categories of migrants covered by the legal migration Directives in scope of this study. This procedure also applies to the locally hired category (national status not covered by the EU Directives), the Agency for the Employment Development is in charge of issuing the required ADEM-certificate. This ADEM-certificate ensures that the hiring priority enshrined in Article L.622-4 of the Labour Code is not affected and hence verifies whether the vacancy can be filled first by one of the persons enumerated under Article L. 622-5. After the entry of the third-country national into Luxembourg territory, a doctor authorized in Luxembourg to exercise as a general practitioner will be in charge of issuing the required medical certificate. Finally, it is the Ministry of European and Foreign Affairs that is responsible to receive and issue the final residence permit to the third-country national.

3.2 Practical application of the EU legal migration acquis

While several actors are involved in the issuance of the residence permit, the procedure from the applicant's point of view is centralised by the Minister of European and Foreign Affairs. As regard to the procedure before the entry in the Luxembourg territory, the Minister of European and Foreign Affairs is the competent authority to receive the application and issue the temporary authorization, regardless of the place where the application is made (i.e. a third-country, Luxembourg or another EU Member State) and the person submitting the application (i.e. the third-country national or the employer). However, he may refer the matter to the advisory commission for salaried workers if the application does not comply with the required conditions, and before taking a refusal decision to grant such authorization. The advisory commission shall then forward its opinion on the application to the Minister. In addition, during the application process, the Agency for the employment development is in charge of ensuring that the hiring priority is not affected and hence and verifies whether the vacancy can be filled.

After the entry of the person concerned in the territory, a doctor will then be in charge of issuing the medical certificate specifying that the third-country national fulfils or not the medical requirements permitting his/her residence in the territory. A doctor of the Health Directorate delegated by the Minister of Health will review such decision. The Minister of European and Foreign Affairs is then responsible to receive and issue the residence permit as salaried workers. Eventually, with respect to the modification and renewal of residence permit as salaried worker, the Minister of European and Foreign Affairs is the competent Authority, but may again refer the matter to the advisory commission for salaried workers.

A third-country national is informed of a decision on his/her application by a decision in writing via a letter. The notification takes the form of one administrative act or decision – i.e. only a letter notifying the application that a decision is issued. In case of a rejection of the application, the reasons for the rejection are provided in French. If the applicant has doubts on the content of the letter, s/he can ask for explanations in another language.

Where the applicant is the employer rather than the third-country national, the third country national is involved in the application process more specifically during the pre-application process, at the document gathering process. The temporary work authorization is sent to the employer and the employer sends this document to the third-country national in his/her home country. Once the third-country national enters Luxembourg, it is up to the employee to convert his temporary work authorization into the final residence permit. In this manner, the third-country national is also notified of the decision.

The concept of **administrative silence** exists in Luxembourg and means a rejection of the application after the timeframe within which the application procedure should be concluded. There is no fixed term to go in appeal against the administrative silence decision, which means that some third-country nationals may even proceed after 3 years after applying for a residence permit for example. Available redress procedures against administrative silence are the 'recours gracieux' to the administrative authority that has competence to take the decision on the application and which suspends the delay that an applicant has to use the other redress procedure before an administrative court such as the 'recours au tribunal administratif', which is a redress procedure before an administrative tribunal. Third-country nationals are informed of these redress procedures in case the administration has adopted a decision. In case of administrative silence, no particular information exists, (which accounts for the absence of a fixed term to lodge a redress) and they can find out of them either via an enquiry to the 'guichet' (on the website) or ask for more information over the phone.

Directive	General	FRD	LTR	SD	RD	BCD	SPD
Application from third country	Yes						
Permit received in third country	No						
Number of authorities involved in the application	Yes						
Number of authorities involved in the issuance of the residence permit	4						
Application	Post,						

modalities	In person
Existence of a standard application form for all statuses	No
Language of the application form	National language(s)
Fees charged	€ 80
Other fees charged?	No
Fees charged for permit issuance	No
Fees charged for renewal / replacement of the permit	€ 80

The processing times are as follows:

Directive	FRD	LTR	SD	RD	BCD	SPD
Processing time /deadlines (according to law) (days)	120 (residence permit)	120 (residence permit)	120 (residence permit)	120 (residence permit)	120 (residence permit)	120 (residence permit)
	270 (temporary work authorization)		90 (temporary work authorization)	90 (temporary work authorization)	90 (temporary work authorization)	
Processing time (in practice)	Luxembourg Authorities usually issue the residence permit within the legal processing times					

3.3 Differences between national statuses and the EU legal migration acquis

Luxembourg does not have any parallel national schemes. Its immigration law mostly consists of the transposition of EU directives.

4 Entry and travel phase

4.1 Legal transposition of the EU legal migration acquis

Overall, the Grand Duchy of Luxembourg has complied with the legal transposition of the EU legal migration acquis in relation to the entry and travel phase.

4.2 Practical application of the EU legal migration acquis

The delivery of the final residence permit can only be done on the territory of Luxembourg. As the third-country national is not yet in the possession of a residence permit, the Member State issues a visa and has put a specific timeframe for issuing the latter (maximum 90 days). In procedures where the employer is the main applicant, the third-country national needs to request the initial entry visa.

Luxembourg allows third-country nationals who hold a valid permit and valid travel document to enter and re-enter their national territory only on the basis of the permit. The third-country national is also allowed to travel to other Schengen Member States only on the basis of the permit and valid travel document.

There are no specific entry requirements – except holding a biometric passport – imposed on third-country nationals of a visa free country.

Upon arrival in Luxembourg, third-country nationals are required to register with the local authority and with social security institutions. Registration with healthcare providers is a personal decision of the concerned third-country national. The third-country national is responsible of registering his/her family members to the relevant authorities.

4.3 Differences between national statuses and the EU legal migration acquis

Luxembourg does not have any parallel national schemes. Its immigration law mostly consists of the transposition of EU directives.

5 Post-application phase

5.1 Legal transposition of the EU legal migration acquis

Overall the Luxembourg legislation is compliant with the EU legal migration directives regarding the post-application phase. However, several compliance issues have been identified.

Regarding the FRD, partial conformity was acknowledged in relation to Article 13(2) entry and residence of family members. When they arrive in Luxembourg, family members of third country nationals have to undergo a medical check before applying for the final residence permit. This is not fully compliant with the FRD which does not allow any additional conditions after the third country national was authorized to enter the territory.

The transposition of Article 8 of the LTR is also only partially conform to the EU Directive. Whereas the LTR stipulates that the long term residence permit should be renewable automatically upon expiry, Luxembourg authorities ask for applications for renewal to be accompanied by a certified copy of the pages with content of their valid passport and a recent extract from the criminal records in Luxembourg. As the third country national must bring extra documentation in support of his/her application the renewal of the permit can't be considered as being automatic.

In what concerns the BCD, Luxembourg modified its legislation in March 2017 and made its legislation compliant with Article 7 related to the standard validity period of the BCD. Previously, the validity of the permit was either 2 years or the duration of the contract plus three months. However, it was not stipulated in the law that the

second validity duration only concerns third country nationals who are in possession of work contract of less than 2 years. The revised immigration law states that the new validity duration of a Blue Card in Luxembourg is four years or the duration of the contract + 3 months if the contract is less than 4 years.

5.2 Practical application of the EU legal migration acquis

Directive	FRD	LTR	SD	RD	BCD	SPD
Minimum validity of the first permit	12 months	60 months	Duration of the study cycle if less than 12 months	Duration of the research if less than 12 months	The duration of the work contract + 3 months	Depends on the permit
Maximum validity of first permit	60 months	60 months	12 months	12 months	48 months	Depends on the permit
Minimum validity of permit renewal	NA	NA	Duration of the studies if less than 12 months	NA	NA	NA
Maximum validity of permit renewal	The duration cannot exceed the duration of the sponsor's residence card	60 months	12 months	12 months	48 months OR the duration of the contract and 3 months	It depends on the status

Luxembourg does not have a set timeframe to deliver the permit following the notification of the decision: when the application is approved, the applicant will receive a letter inviting him to come in person with his/her valid passport and said letter to the Immigration Directorate of the Ministry of Foreign and European Affairs during opening hours. The applicant will have his photograph and fingerprints taken, which will be incorporated into the residence permit. The biometric residence permit can be retrieved a few days later at the Immigration Directorate.

Where the employer is the main applicant, s/he is not involved in the delivery of the permit.

5.3 Differences between national statuses and the EU legal migration acquis

Luxembourg does not have any parallel national schemes. Its immigration law mostly consists of the transposition of EU Directives.

6 Residency phase

6.1 Legal transposition of the EU legal migration acquis

A number of partial and/or non-conformity issues have been discovered when assessing the implementation of the EU legal migration acquis concerning the residency phase into the Luxembourgish legislation. The first one relates to the

renewal of long term resident permits and the second one to the transposition of equal treatment articles in the LTR and BCD. .

The problem in the implementation of the LTR Directive is that, although the Immigration Law² states that the residence card of a long term resident is valid for 5 years after which it is '*renouvelable de plein droit sur demande*', the permit is not automatically renewable upon application as provided by article 8(2) of the LTR Directive. In practice, the third country national is required to produce at the moment of renewal, a certified copy of his/her valid passport, the evidence that he/she has resided continuously in the territory and a recent extract from his/her judicial record.³ For this reason, this provision is considered to be only partially in conformity with the EU LTR.

As to the non-conformity of the Luxembourgish legislation with some equal treatment provisions, it concerns the ones referring to the BCD. .

For the BCD, the first issue concerns the freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations (Article 14.1(b)).

So, the non-conformity problem in relation to Article 14.1(b) of the BCD is that according to the national legislation, workers who do not have a work permit type B or C cannot represent more than one third of the workers' representatives. This reduces significantly the chances for a third country national to be elected as representative, especially in a small company. Whereas this classification of work permits was abolished by the Grand-Ducal Regulation 05/09/2008 on residence authorisation as salaried worker, the Labour Code was not updated. The national law is thus not conform with the EU Directive in that it makes it more difficult, if not impossible for some third country nationals to take up a representation role⁴.

The second issue is the partial transposition of Article 14(1) of the BCD referring to access to goods and services and the supply of goods and services made available to the public, including procedures for obtaining housing, as well as information and counselling services afforded by employment offices. In the national law, Blue Card holders do not have access to services made available to the unemployed.

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Lastly, no transposition of Article 12.1(g) of the SPD framing the access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing as provided by national law, without prejudice to the freedom of contract in accordance with Union and national law could be found in the Luxembourgish legislation⁵.

6.2 Practical application of the EU legal migration acquis

a. Use of the permit:

The residence permit is issued using the format as set out in Regulation (EC) No 1030/2002 for residence permits. The permit has a constitutive value. It gives third-country nationals to right to move freely on the Luxembourg's territory.

Luxembourg allows third-country nationals holding residence permits from other Member States applying the Schengen acquis (together with a valid travel document) to enter and move freely within its territory.

² Article 82(1) of the Law of 8 March 2017 amending the Law of 28 August 2008 on free movement and immigration

³ Règlement Ducal du 5 septembre 2008 sur les formalités administratives, Article 14

⁴ Conformity assessment of the BCD

⁵ Idem.

The permit is required as a legal document for the following other administrative procedures:

Access to education	Access to healthcare	Registration with PES	Fixed telephone subscription	Utility subscription	Open a bank account	Social security registration
		X			X	

b. Renewals of the permit:

National legislation imposes indirectly a requirement to renew a valid residence document: an application for renewal must be submitted 2 months before the expiry date of the first card.

The renewal process follows a single procedure, involving only one authority – the Immigration Directorate within the Department for Foreigners of the Ministry of Foreign and European affairs. The Immigration Directorate is also involved in the first application procedure. However, during the renewal procedure, there are less authorities involved as in the first application procedure (where other authorities are involved in addition to the Ministry of Foreign and European Affairs such as: the advisory commission for salaried workers, the Agency for the employment development, a doctor established in Luxembourg and authorized in this country to exercise as general practitioner).

c. Change of status and naturalisation

Status changes are possible for most statuses, with the exception of holders of student residence permit that cannot change their status to that of a researcher (unless they were admitted for studies in view of obtaining a PhD) or a long-term resident. The procedure for requesting a status change is different from the first application procedure. For example, a holder of student residence permit that wishes to change to salaried work benefits from a simplified procedure in order to obtain an authorisation to stay for salaried workers with the purpose of carrying out paid work in Luxembourg. Certain conditions have to be completed that are different from first time salaried worker applicants, such as the fact that the salaried activity needs to be in accordance with the academic background for example.

In order to obtain citizenship, the third-country national needs to comply with the following conditions:

- Have a habitual residence in Luxembourg
- Legally residing in Luxembourg for at least 5 years, of which the last year of residence and immediately preceding to the declaration of naturalisation needs to be uninterrupted.
- Needs to have the knowledge of the Luxembourgish language, proven by a specific certificate
- Participate on the course: *'Vivre ensemble au Grand-Duché de Luxembourg'* or passed the exam that awards this course.

d. Employment rights on the basis of the permit

In general, a work-related permit is not linked to a certain employer (with the exception of ICT and seasonal employees). For example, Blue Card holders must during the first two years of their residence in Luxembourg exercise the professional activities for which s/he was admitted regardless of the employer. When changing sector/profession, the third-country national needs to request a change to the permit. This is also the case for the category of salaried workers: A change of sector and/or profession is only possible if authorised by the Immigration Authorities.

e. Equal treatment

As per conformity assessments, identified restrictions with regard to equal treatment are the following:

- Freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations: third-country nationals' holders of salaried workers', Blue Card and researcher permits cannot represent more than one third of the workers' representatives (as they are not holders of the type of permit required in national legislation);
- Social security benefits listed in Article 3 of Regulation 883/2004: third-country nationals' holders of a salaried workers', Blue Card and researcher permits have restricted benefits regarding paternity benefits and leave.
- Education and vocational training: there is no equal treatment provision in national legislation on the access to vocational training and access to study grants for long-term residents.
- Access to goods and services and the supply of foods and services made available to the public including procedures for obtaining housing as provided by national law, without prejudice to the freedom of contract in accordance with Union and national law: not all counselling and information services were opened to EU Blue Card holders, namely not the services reserved to the unemployed.

With regard to identifying labour exploitation, the Member State has a mechanism in place to monitor the exploitation of third-country nationals, aimed at fighting illegal employment of third-country nationals and sanctioning employers illegally employing third-country nationals via fines and imprisonment, such as:

- Interdiction to perform the professional activity in which the third-country national was hired (for a maximum duration of 3 years)
- Temporary closure of the company (for a maximum duration of 5 years)
- The employer must pay the third country national his/her salary and the social and other taxes in addition to the legal costs.
- The employer will also have to pay the return costs of the third-country national.

Other specific measures in place to prevent labour exploitation of third-country nationals include:

- A Help Call Centre;⁶
- Ad-hoc labour inspections or following a complaint.

f. Integration:

Specific integration procedures and conditions apply to third-country nationals' holders of a long-term residence permit once established on the territory of the Member State. There are no consequences if the third-country national does not participate in these or fails the integration measure, with the exception of applicants for long-term residence permits. They need to submit documents proving the integration in the Luxembourg society (certificate of language courses, testimonial evidence et, club member card etc.). The integration in Luxembourg society can however be proven by any means, and there are thus no specific integration measures that the third-country nationals needs to participate in. However, if the applicant fails to submit documents

⁶ Annual Report of the ITM (2015), pp. 15- 16

that proof his/her integration in Luxembourgish society, the Immigration Authorities can refuse to grant him/her the long-term residence permit.

6.3 Differences between national statuses and the EU legal migration acquis

Luxembourg does not have any parallel national schemes. Its immigration law mostly consists of the transposition of EU Directives.

7 Intra-EU mobility phase

7.1 Legal transposition of the EU legal migration acquis

Some transposition issues have been revealed in Luxembourg regarding the intra-EU mobility phase.

A minor issue exists in the transposition of Article 15.4 of the LTR Directive in relation to the documentary evidence a third country national must who acquired long term resident status in one country must bring when he/she applies for a residence permit in Luxembourg. One document asked for by the Luxembourg authorities – a recent extract from his/her judicial record – is not per se mentioned in the EU Directive, but it could be considered as a proof the TCN is not a threat to public order or public security (Article 81 of the Law of the Law of 8 March 2017 amending the Law of 28 August 2008 on free movement and immigration). Furthermore, the LTR mentions that the documentary evidence has to be determined by national law and the list given in the Directive cannot be seen as being exhaustive. Therefore, the Luxembourg legislation is partially conform to the EU Directive.

Concerning the BCD, more clarity is needed in the national provisions implementing Article 18(4) of the Directive. Indeed, the Luxembourg national law does not give extensive information about the conditions with which the applicant must comply when they are in possession of a Blue Card in another EU state and they want to apply for a Blue Card in Luxembourg after 18 months of legal stay in the first EU country. In this sense, reference is made to Article 45(4) to explain how the authorities will examine the application, but this article has been deleted in the most recent version of the consolidated law from March 2017. However, Article 45-4(2) of the Law of 8 March 2017 amending the Law of 28 August 2008 on free movement and immigration does mention in relation to negative decisions that they must be taken in accordance to Articles 109 and 114 of the Law of 8 March 2017 amending the Law of 28 August 2008 on free movement and immigration which clarify both the reasons and the procedure for rejections.

7.2 Practical application of the EU legal migration acquis

For short-term mobility, Luxembourg:

- Does not require the third-country national to notify
- Does not require the third-country national to ask for authorisation.

7.3 Differences between national statuses and the EU legal migration acquis

Luxembourg does not have any parallel national schemes. Its immigration law mostly consists of the transposition of EU Directives.

8 End of legal stay / leaving the EU phase

8.1 Legal transposition of the EU legal migration acquis

No transposition issues have been identified regarding this phase in the Luxembourgish legislation.

8.2 Practical application of the EU legal migration acquis

There are specific procedures in place for third-country nationals who choose to leave Luxembourg. These include:

- De-registration from national / local registers
- Returning the residence permit
- Leaving responsible authorities with an address in the next country of residence

Luxembourg allows third-country nationals to export certain social security benefits, such as payment of old age, invalidity and death statutory pensions. Information on the portability of social security benefits is not easy to find and not clear.

A third-country national residing in the Member State is allowed to be absent from the territory for a maximum of 180 days (FRD, SD, RD), 365 days (LTR), and 720 days (BCD) before s/he loses the residence permit and/or right to stay. The absence of third-country nationals is monitored by Luxembourg – such as de-registration lists kept by local communes.

Luxembourg does not have measures or a scheme in place to allow circular migration.

The consequences of deliberate overstay of the duration of the residence permit are the issuance of a return decision, which can be accompanied by an entry ban of a maximum of five years.

8.3 Differences between national statuses and the EU legal migration acquis

Luxembourg does not have any parallel national schemes. Its immigration law mostly consists of the transposition of EU Directives.

9 Main findings and conclusions – state of practical implementation of EU legal migration legislation in the Member State

In general, the Luxembourg national legislation is compliant with the EU Legal Migration Legislation (actually, most of the national law is a consequence of the implementation of the EU Legal Migration Directives).

In a few cases, the Luxembourg authorities chose to opt for a more favourable national legislation. This was for instance the case when Luxembourg transposed the SD and included non-compulsory categories, such as school pupils, unpaid trainees and volunteers.

Luxembourg national legislation is also positive in respect to intra-EU mobility. There is no visa requirement for third-country nationals if they are in possession of a valid residence permit from another EU Member State.

The website of the Ministry is very well structured and contains a lot of essential information. However, it must be noted that this website is not updated in a timely manner – several provisions have still not been updated after the changes in legislation from March 2017. Together with the website, the Ministry also provides online brochures that contain general information in several languages.

Nevertheless, several issues have been found regarding the practical implementation of the EU legal Migration Legislation. First of all, the document gathering process entails a significant administrative burden, since the Luxembourg Authorities ask for sworn translations and notarization of almost all required documents. On top of that, some documents that are required, such as birth certificates and police clearance certificates are very difficult to obtain in some countries.

Secondly, the fact that there is no possibility to submit the applications online, can also represent a possible challenge for the third-country national.

The fact that family members who join a third country national in Luxembourg are not able to work under the category of family reunification is another difficult aspect of migrating into Luxembourg. In order to start working, the family members must obtain a separate work authorization, and this is not included if they apply for a residence permit for family members.

Finally, the lack of information on possible conversions of statuses and on social security coordination rules within the EU, together with the exportability of the social security benefits to third countries are also acknowledged as strongly hampering the migration experience of third-country nationals.

Annex 1 References

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This report shows that in Luxembourg, family reunification is one of the main reasons for immigration of third-country nationals. In fact, "family member" and "private reasons (family links)" residence permits (first deliveries and renewals) represented more than a third of all residence permits issued during the last three years.

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