



# Responses to long-term irregularly staying migrants: practices and challenges in EU Member States and Norway

## Common Template for EMN Study 2020

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**Action:** EMN NCPs are asked to complete this template and submit their National Report by 2 November 2020

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### 1 BACKGROUND AND RATIONALE FOR THE STUDY

Member States are confronted with the situation of third-country nationals who no longer or have never fulfilled the conditions of stay, who were denied a residence permit or who have exhausted all legal options against the enforcement of their return decision. The Return Directive (Directive 2008/115/EC) sets the obligation for Member States to issue a return decision for third-country nationals once it has been established that they are not eligible for legal stay.<sup>1</sup> This is aimed at reducing situations of legal uncertainty for third-country nationals, so that any third-country national physically present in a Member State should be either considered as legally staying – and enjoying a valid right to stay – or as illegally staying and be issued a return decision.<sup>2</sup>

However, in practice, a certain share of third-country nationals issued with a return decision do not leave the territory of Member States. National authorities might be unable to proceed with removals due to either legal or practical obstacles. Issuance of a return decision allows for a period of voluntary departure, however a third-country national could be unwilling to leave voluntarily. Forced return may be impossible to enforce without some level of co-operation from the third-country national. In other cases, national authorities postpone return to respect the principle of non-refoulement, individual circumstances or other practical reasons impeding the enforcement of a return decision.<sup>3</sup> Additionally, there are cases of third-country nationals whose residence permits expire and renewal is not secured, or who for other reasons do not or no longer fulfil conditions for legal stay, and who were not issued a return decision for a variety of

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<sup>1</sup> Article 6 of the Return Directive. The directive applies to all EU countries except Ireland, nevertheless the concepts covered by the study are also relevant to the Member State.

<sup>2</sup> European Commission, Return Handbook (section 1.2 'illegal stay').

For the purpose of this study, illegal stay and irregular stay (as used in the EMN Glossary) will be used interchangeably.

<sup>3</sup> According to Article 9 of the Return Directive, Member States should postpone removal where it would infringe the respect of the principle of non-refoulement or where the return decision is reviewed by a competent national authority. Member States may postpone return by taking into account the specific individual circumstances of the third-country national or for practical reasons impeding removal (lack of identification of the third-country nationals or transport capacity).

administrative and practical reasons. In some cases, third-country nationals may disappear from the supervision of the competent authorities involved. In other cases, migrant who entered illegally remained undetected by migration authorities.

These situations may result in long-term or protracted situations of illegal stay and legal uncertainty over several years, as well as deplorable living conditions.<sup>4</sup> Examples include homelessness, (mental) health issues, addiction issues, falling victim to organised crime (i.e. labour and sexual exploitation) or involvement in crimes, all of which contribute to the detriment of the third-country national concerned, national governments and the communities in which irregular migrants reside.

In terms of practices, the actions of national governments, and local authorities (cities, regions) may be contradictory. Central authorities are responsible for achieving the objectives of the national migration policy, such as ensuring the prevention and fight against illegal stay and enforcement of return decisions. Local authorities (municipalities and regions) are at the forefront of the practical consequences of third-country nationals irregularly staying for a prolonged time and are confronted with challenges such as ensuring access to basic services and public order. Accordingly, complementarity or tension can result between policy objectives at the central level aimed at achieving the return of irregular migrants and the practical realities faced at the local level. That is, having to accommodate the presence of irregular migrants and provide basic services when return does not happen and when access to mainstream services is not legally possible due to their residence status. Ultimately, the applicable legal framework, demarcation of competences and institutional structure also play a role in the process of cooperation and communication between central authorities and municipalities.

Recent research was carried out by the City Initiative on Migrants with Irregular Status in Europe (C-MISE) examining policies and measures implemented in 11 cities across 10 Member States considering the applicable legal framework.<sup>5</sup> It showed that cities' responses ranged from adopting policies aimed at discouraging irregular migrants from residing in their territories to adopting measures that include them in the provision of some municipal services.

While existing research offered some insights into approaches adopted by Member States towards long-term irregular migrants, policies and practical measures are changing rapidly and there is currently no recent and comprehensive EU-wide overview regarding this group of third-country nationals. This study aims to respond to this gap.

## 2 EU LEGAL AND POLICY CONTEXT

The return of illegally staying third-country nationals has been an important issue in the EU's policy agenda on migration over the past 20 years and has accentuated since 2015, as illustrated by the emphasis on enforcement of return in the European Agenda on Migration. There is little recent information available on the number of persons staying illegally in the EU Member States.<sup>6</sup> Eurostat data provides only rough estimate of 'third-country nationals found to be illegally present' in the EU as it covers persons who are apprehended or otherwise come to the attention of national immigration authorities. Accordingly, not all irregularly staying migrants are included in these figures. In 2017, the European Commission (in its communication on the delivery of the European Agenda on Migration) estimated that around 1 million third-country nationals were irregularly staying in the EU. More specifically, extrapolating from statistics

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<sup>4</sup> Refugee Law Initiative in cooperation with the Centre for International Criminal Justice (2016) *Undesirable and Unreturnable Migrants*. This research concerned excluded asylum seekers and other migrants suspected of serious criminality who cannot be removed. Available at: <https://cicj.org/wp-content/uploads/2016/09/Undesirable-and-Unreturnable-Full-report.pdf>.

<sup>5</sup> Delvino, N. (2017) *European Cities and Migrants with Irregular Status: Municipal initiatives for the inclusion of irregular migrants in the provision of services*, Oxford: Centre on Migration, Policy and Society (COMPAS) - University of Oxford. Available at: <https://www.compas.ox.ac.uk/wp-content/uploads/City-Initiative-on-Migrants-with-Irregular-Status-in-Europe-CMISE-report-November-2017-FINAL.pdf>

<sup>6</sup> A EU-wide research project on this topic carried out in 2008 found an estimate of around 3.8 million of persons were staying illegally in the EU ('Clandestino' project, [http://clandestino.eliamep.gr/wp-content/uploads/2010/03/clandestino-final-report\\_-november-2009.pdf](http://clandestino.eliamep.gr/wp-content/uploads/2010/03/clandestino-final-report_-november-2009.pdf))

on the numbers of return decisions which could not be enforced (amounting on average to ca 60% out of 500 000 per year), one can assume that the issue concerns up to 300 000 migrants per year.<sup>7</sup>

In terms of the applicable legislative framework at EU level, the return of third-country nationals as set by the Return Directive is the relevant starting point for this study.<sup>8</sup> The Return Directive lays down common EU standards on forced return and voluntary departure. It has a two-fold approach: on the one hand, it provides that Member States are obliged to issue return decisions to all third-country nationals staying irregularly on the territory of a Member State. On the other hand, it emphasises the importance of implementing return measures with full respect for the fundamental rights and freedoms and the dignity of the individual returnees, including the principle of 'non-refoulement'. As a result, any return may only be carried out in compliance with EU and other international human rights' guarantees.

The Return Directive provides a framework which imposes an obligation on Member States to issue a return decision to any third-country national illegally staying on their territory, unless there are compassionate, humanitarian reasons not to do so, or if there is a pending procedure for renewing a residence permit.<sup>9</sup> The respect of this obligation aims at reducing situations of legal uncertainty for third-country nationals since they can be either considered as legally staying, and enjoying a valid right to stay, or illegally staying and subject to a return procedure.

The Directive provides several cases where Member States should or may postpone return of a third-country national. According to Article 9 of the Return Directive, Member States *should* postpone removal where it would infringe on the respect of the principle of non-refoulement or where the return decision is reviewed by a competent national authority. Member States *may* postpone return by taking into account the specific individual circumstances of the third-country national or practical reasons that impede removal (e.g. lack of identification of the third-country nationals or transport capacity).

While postponement of removal of irregular migrants is allowed under the Directive, the legal situation of this category of third-country nationals is only partially addressed.<sup>10</sup> In cases of postponement of return, the Return Directive refers to a set of minimum basic rights and procedural guarantees for third-country nationals.<sup>11</sup> These 'basic rights' include family unity, emergency health care, basic education for minors and taking into account the needs of vulnerable persons.<sup>12</sup> In a 2014 case, the Court of Justice of the EU (CJEU) ruled that Member States must cover other basic needs to ensure that emergency health care and essential treatment of illness are in fact made available during the period in which that Member State is required to postpone removal.<sup>13</sup> Additionally, according to the Return Directive, Member States should also provide a third-country national with a written document confirming the postponement of their removal, in order for that person to be able to prove his or her situation in the event of administrative controls or checks.<sup>14</sup> In practice, such a document is not always issued although in another case, the CJEU stated that while Member States have wide discretion concerning the form and format of the written confirmation,

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<sup>7</sup> Commission Staff Working Document Fitness Check on EU Legislation On Legal Migration {SWD(2019) 1056 Final}, 2/2, p. 84. See also Eurostat data on non-EU citizens found to be illegally present (*migr\_eipre*), ordered to leave the EU (*migr\_eiord*), and returned (*migr\_eirtn*, *migr\_eirt\_vol*, *migr\_eirt\_ass*).

<sup>8</sup> Ireland does not participate in the Return Directive. National legislation in relation to return applies.

<sup>9</sup> Article 6 of the Return Directive.

<sup>10</sup> Recital 12 of the Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (hereafter the Return Directive): "*The situation of third-country nationals who are staying illegally but who cannot yet be removed should be addressed. Their basic conditions of subsistence should be defined according to national legislation. In order to be able to demonstrate their specific situation in the event of administrative controls or checks, such persons should be provided with written confirmation of their situation. Member States should enjoy wide discretion concerning the form and format of the written confirmation and should also be able to include it in decisions related to return adopted under this Directive*".

<sup>11</sup> Article 14 of the Return Directive.

<sup>12</sup> Article 14 of the Return Directive.

<sup>13</sup> CJEU, *Abdida*, case C-562/13 of 18 December 2014, ECLI:EU:C:2014:2453. See also Opinion of Advocate General Bot that includes means to secure accommodation as part of 'decent standard of living' (ECLI:EU:C:2014:2167). While there is no general legal obligation under EU law to provide for the basic needs of all third-country nationals pending return, the Commission encourages Member States to do so to ensure humane and dignified conditions of life for returnees (Return Handbook, p. 75).

<sup>14</sup> Article 14(2) of the Return Directive.

they must provide it to third-country nationals when there is no longer a reasonable prospect of removal within the meaning of Article 15(4) of the Return Directive.<sup>15</sup> Lastly, the Return Directive prohibits detention where prospects for removal no longer exist.<sup>16</sup>

There is no political consensus nor harmonisation at EU level on the approach to this category of third-country nationals.<sup>17</sup> While the Return Directive foresees some basic rights, also referring to the respect of the Charter of Fundamental Rights, international law and the European Convention for Human Rights in the implementation of the Directive, the way Member States approach this category of third-country nationals is largely determined by domestic law and practices.

Studies have shown that practices vary considerably across Member States. Several trends were identified, considering that a combination of these situations may be encountered in the same Member State:<sup>18</sup>

- Third-country nationals are only issued a return decision and do not have rights that are in addition to those referred to in the Return Directive.
- Third-country nationals receive a certificate or other written confirmation to stay in the territory of the Member State until they are removed, yet it is not considered as a fully-fledged residence permit. This is sometimes referred to as a 'toleration status'.
- Third-country nationals may have their return postponed but do not receive a written confirmation. In practice, their presence is 'tolerated' until the return decision can be implemented.

As mentioned in the Return Directive, third-country nationals may receive a decision granting temporary residence to persons who are not or cannot be returned for humanitarian or other policy considerations.<sup>19</sup> In this event, any pending return procedures should be closed, and if a return decision was already issued, it should be withdrawn or suspended. Thus, Member States can either withdraw or suspend the return decision, considering the nature and duration of the right to stay granted as well as the need to ensure effective return procedures.

The framework provided in the Return Directive should be read in conjunction with other legal instruments which also apply to the category of third-country nationals falling under the scope of the study. For example, national authorities' approach to vulnerable persons should also consider obligations stemming from the 1989 UN Convention on the Rights of the Child<sup>20</sup>, from the EU's framework on victims of trafficking in human beings.<sup>21</sup> Additionally, albeit the Return Directive is silent on access of irregular third-country nationals to other social assistance than emergency healthcare and access to education, other instruments may nonetheless apply. For instance, the European Committee of Social Rights<sup>22</sup> laid down further specifics on the situation of irregularly staying migrants in their decision in the case *Conference of*

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<sup>15</sup> CJEU, *Mahdi*, case C-146/14 PPU of 5 June 2014, ECLI:EU:C:2014:1320.

<sup>16</sup> Article 15(4) of the Return Directive.

<sup>17</sup> Lutz, F. (2018) *Non-removable Returnees under Union Law: Status Quo and Possible Developments*, in European Journal of Migration and Law 20 (2018) 28–52.

<sup>18</sup> EMN 2010 Study, FRA 2011 Study on the situation of third-country nationals pending return/removal and 2013 Study on the situation of third-country nationals pending return/removal.

<sup>19</sup> Article 6(4) of the Return Directive and CJEU ruling in the *Mahdi* case, C-146/14. The Return Handbook provides a number of criteria that Member States may take into account for granting permits related to the individual and policy situation. These criteria can consider the cooperative/non-cooperative attitude of the returnee, the length of factual stay of the returnee in the Member State, the integration efforts made by the returnee, the personal conduct of the returnee, its family links, etc. (Return Handbook, p. 77).

<sup>20</sup> UN Convention on the Rights of the Child, 1989, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

<sup>21</sup> As consolidated in Directive 2011/36/EU and Council Directive 2004/81.

<sup>22</sup> The European Committee of Social Rights (previously, the Committee of Independent Experts on the European Social Charter) is a regional human rights body that oversees the protection of certain economic and social rights in most of Europe. The European Committee of Social Rights was established under the auspices of the Council of Europe, pursuant to articles 24 and 25 of the 1961 European Social Charter. The Committee monitors implementation of the 1961 Charter, the 1988 Additional Protocol, and the 1996 Revised European Social Charter. It is unique among regional human rights mechanisms for its collective (as opposed to individual) complaint mechanism, and the flexibility it allows States in deciding which provisions of the Charter to accept.

*European Churches vs. the Netherlands*.<sup>23</sup> This decision made clear that, in light of its established case-law, shelter must be provided not only to migrant children but also to adult migrants in an irregular situation and even when they are requested to leave the country.

### 3 STUDY AIMS AND PRIMARY QUESTIONS

The overall aim of this study is to provide an overview of existing policies and practices in Member States and Norway towards third-country nationals in a prolonged situation of illegal stay. The study aims to explore the responses and approaches to bring such situations to an end both by central and local authorities, and to mitigate the social consequences for the affected third-country nationals. As mentioned, these could range from providing access to basic services or support, other indirect measures to encourage eventual return to their country of origin or other non-EU country, or options to obtain a legal status.

More specifically, this study covers the EU Member States and Norway and aims to:

- Determine the legislation and policies of central, regional and local authorities towards long-term irregular migrants;
- Examine the policies and practices in place to provide access to public services and rights to long-term irregular migrants in the realm of Member States' obligation to cater for basic needs;
- Examine existing practices in Member States and Norway to identify cases of exploitation and abuse among long term irregular migrants;
- Explore cooperation mechanisms between central, regional and local authorities if and when implementing policies targeting this category of third-country nationals;
- Examine the policies and practices in place in Member States and Norway to end long term illegal stay, including return and granting authorisation to stay;

To this end, the below primary research questions will be addressed:

- What is the political and policy debate on the situation of long-term irregularly staying migrants?
- What are the characteristics of the group of third-country nationals who remained in a protracted situation of illegal stay? What information is available on the size of the (sub)groups or categories?
- To what extent are central, regional, and local authorities in your (Member) State confronted with the issue of long-term irregularly staying migrants?
- Which rights and public services are long-term irregularly staying migrants provided access to?
- What is the role of cities dealing with this group of migrants? To what extent are cities involved and cooperate with the central government?
- What is the role of NGOs regarding access to public services for long-term irregularly staying migrants?
- Which measures (e.g. policies, practical tools, guidance) – if any – were implemented to bring protracted situations of illegal stay to an end?
- Were there any studies or research published on the effectiveness of these measures?
- What are the key challenges and good practices in terms of policy regarding long-term irregularly staying migrants?

### 4 SCOPE OF THE STUDY

The overall focus of this study is on **long-term irregular migrants** in a situation of protracted illegal stay, namely:

- Third-country nationals subject to a return decision and whose return, despite the return decision becoming final, was not enforced or was postponed for legal (non-refoulement principle, medical or humanitarian reasons) or other practical reasons (e.g. non-cooperation on the part of the person concerned or of the country of origin or other administrative reasons), and

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<sup>23</sup> For more information please see: [https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset\\_publisher/5GEFkJmH2bYG/content/no-90-2013-conference-of-european-churches-cec-v-the-netherlands?inheritRedirect=false](https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-90-2013-conference-of-european-churches-cec-v-the-netherlands?inheritRedirect=false)

- Third-country nationals who do not or no longer fulfil conditions for entry and stay in the territory of a State (as set out in the Schengen Borders Code (Regulation (EU) 2016/399) or other conditions for entry, stay or residence in that EU Member State), and who were not issued a return decision because they were unknown to the authorities.

In the latter case, despite the complexity in the determination of the duration of stay of the irregular migrant, authorities are usually able to distinguish between newly arrived irregular migrants and those that have already been in the Member State for a considerable amount of time before detection (of their illegal stay).

The study will focus on the cooperation between central authorities and municipalities in the implementation of national policies on irregular migration, as well as the margin of discretion of local authorities in the provision of services to third-country nationals. Where relevant, cooperation between municipal authorities and civil society organisations will also be explored.

More specifically, the study aims to examine the type of access to mainstream services of these target groups. It also aims to identify the type of services accessible to a person without a residence permit or other form of authorisation.

The study thus aims to map possible responses to end such long-term irregularity. Various measures directly relate to the enforcement of a return decision such as Assisted Voluntary Return (AVR) programmes or other incentives to return were already captured in numerous other studies and discussions at expert group level and are not the primary focus of this study.<sup>24</sup> This study will rather investigate measures which may indirectly relate to the promotion of return – either in the country of origin or another third-country – such as restricted access to mainstream services or specific programmes geared towards third-country nationals in a prolonged situation of illegal stay. Other possible responses to be explored include legal stay options for third-country nationals based on an integration criterion (e.g. length of stay, work, social and family ties, or education reasons). Additionally, Member States may also consider granting a temporary residence permit to migrants in an irregular situation who cooperate with the justice system, either as victims of trafficking in human beings or as witnesses of other offences or crimes.<sup>25</sup>

While the reasons for issuing the return decision as well as the reasons for the return decision not being enforced or postponed could play a role in the measures implemented by national authorities, their examination does not fall within the scope of this study.

The Study covers the period from 2015 – October 2020.

## 5 RELEVANT SOURCES AND LITERATURE

### **EMN Studies and other sources**

- EMN (2017) The effectiveness of return in the EU. Accessible: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00\\_eu\\_return\\_study\\_synthesis\\_report\\_final\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_eu_return_study_synthesis_report_final_en.pdf)
- EMN (2016) Approaches to rejected asylum seekers. Accessible: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/emn-studies-00\\_synthesis\\_report\\_rejected\\_asylum\\_seekers\\_2016.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn-studies-00_synthesis_report_rejected_asylum_seekers_2016.pdf)
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- EMN (2012) Practical Measures to Reduce Irregular Migration. Accessible: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/irregular-migration/00a\\_emn\\_synthesis\\_report\\_irregular\\_migration\\_october\\_2012\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/irregular-migration/00a_emn_synthesis_report_irregular_migration_october_2012_en.pdf)

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<sup>24</sup> Reference is made to the activities on these topics carried out by the EMN Return Experts Group.

<sup>25</sup> Under Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

## EMN AHQs

- EMN (2017) Ad-hoc query on the cost of a forcible removal of the irregular third country nationals. Accessible: [http://www.emnitalyncp.it/wp-content/uploads/2018/02/029\\_hr\\_ad-hoc\\_query\\_on\\_the\\_cost\\_of\\_a\\_forcible\\_removal\\_of\\_the\\_irregular\\_tcns\\_wider.pdf](http://www.emnitalyncp.it/wp-content/uploads/2018/02/029_hr_ad-hoc_query_on_the_cost_of_a_forcible_removal_of_the_irregular_tcns_wider.pdf)
- EMN (2019) Ad-hoc query on children with prolonged stay without a permanent right of residence.

## Other policy documents, reports and studies (chronological order)

- European Commission (2020) *Compilation of national practices related to Covid-19 related extensions of legal stay*. Accessible: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/handbook-annex-41\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/handbook-annex-41_en.pdf)
- European Commission (2017) *Communication on a more effective return policy in the EU – a renewed action plan* and Recommendation (EU) 2017/432 on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council, COM (2017)200. Accessible: <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32008L0115>
- Return Directive 2008/115/ EC, complemented by ECJ case law and the European Commission's "Return Handbook" (Commission Recommendation C(2015)6250 of 1.10.2015)
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- Ataç I, Schütze T., Reitter V. (2020) *Local responses in restrictive national policy contexts: welfare provisions for non-removed rejected asylum seekers in Amsterdam, Stockholm and Vienna*, *Ethnic and Racial Studies*, 43:16, 115-134.
- Leerkes A., Van Houte M. (2020) *Beyond the deportation regime: differential state interests and capacities in dealing with (non-)deportability in Europe*, *Citizenship Studies*, 24:3, 319-338.
- Timmerman, R., Leerkes, A., & Staring, R. (2019) *Safe reporting of crime for migrants with irregular status in the Netherlands*, Centre on Migration, Policy and Society (COMPAS), University of Oxford, Accessible: <https://www.compas.ox.ac.uk/project/safe-reporting-of-crime-for-victims-and-witnesses-with-irregular-migration-status-in-the-usa-and-europe/>
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- Hinterberger K.F. (2019) 'An EU Regularization Directive. An effective solution to the enforcement deficit in returning irregularly staying migrants', *Maastricht Journal of European and Comparative Law*, n 26, 736-769.
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## 6 DEFINITIONS

There are several key terms used in this template. The definitions listed below are defined with help from the **EMN Glossary**,<sup>26</sup> version 6. Please see the table below.

Term	Definition
Entry ban	An administrative or judicial decision or act prohibiting entry into and stay in the territory of the EU Member States for a specified period, accompanying a return decision.
Family members	A third-country national, as specified in Article 4(1) of Directive 2003/86/EC (normally members of the nuclear family – i.e. the spouse and the minor children), who has entered the territory of the European Union for the purpose of family reunification
Forced return	The process of going back – whether in voluntary or enforced compliance with an obligation to return – to one’s country of origin, a country of transit in accordance with EU or bilateral readmission agreements or other arrangements; or another third country, to which the third-country national concerned voluntarily decides to return and in which they will be accepted (Article 3(3) of the Return Directive).
Illegal or irregular stay	The presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Art. 5 of the Regulation (EU) 2016/399 (Schengen Borders Code) or other conditions for entry, stay or residence in that EU Member State.

<sup>26</sup> Available at: [https://ec.europa.eu/home-affairs/what-we-do/networks/european\\_migration\\_network/glossary\\_en](https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_en).



Term	Definition
Irregular migration	The movement of persons to a new place of residence or transit that takes place outside the regulatory norms of the sending, transit and receiving countries.
Non-refoulement	A core principle of international refugee and human rights law that prohibits States from returning individuals to a country where there is a real risk of being subjected to persecution, torture, inhuman or degrading treatment or any other human rights violation.
Overstayer	A person remaining in a country beyond the period for which entry was granted. In the EU context, a person who has legally entered an EU State, but who has stayed beyond the expiry of his/her visa and/or residence permit.
Regularisation	State procedure by which illegally staying third-country nationals are awarded a legal status.
Residence permit	An authorisation issued using the format laid down in Regulation (EC) No 1030/2002 entitling its holder to stay legally on the territory of a Member State.
Return	The movement of a person going from a host country back to a country of origin, country of nationality or habitual residence usually after spending a significant period of time in the host country whether voluntary or forced, assisted or spontaneous.
Return decision	An administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return.
Social protection benefits	For the purpose of this study please refer to the definition of 'core benefits' as included in the Qualification and Long-Term Residents Directives which is understood as covering – as a minimum – income support, assistance in the case of illness, or pregnancy, and parental assistance.
Postponement of removal	(Temporary) suspension of removal of a third-country national who has received a return decision but whose removal is not possible either for humanitarian reasons (as their removal would violate the principle of non-refoulement or due to the third-country national's physical state or mental capacity) or for technical reasons (such as lack of transport capacity or failure of the removal due to lack of identification or the country of origin's refusal to accept the person) and for as long as a suspensory effect is granted in accordance with Art. 13(2) of Council Directive 2008/115/EC (Return Directive).
Third-country national	Any person who is not a citizen of the European Union within the meaning of Art. 20(1) of TFEU and who is not a person enjoying the Union right to free movement, as defined in Art. 2(5) of the Schengen Borders Code.
Trafficking in human beings	The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. <sup>27</sup>
Voluntary departure	Compliance with the obligation to return within the time limit fixed for that purpose in the return decision.

<sup>27</sup> Article 2 par.1 of the Anti-trafficking Directive

Term	Definition
Vulnerable person	Minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of trafficking in human beings, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation (Art. 21 of Directive 2013/33/EU (Recast Reception Conditions Directive)).

## 7 ADVISORY GROUP (CORE AND WIDER GROUP)

An “Advisory Group” (AG) has been established within the context of this Study for the purpose of providing support to EMN NCPs during the development of the specifications for the Study, as well as the drafting of the Synthesis Report. In addition to COM, and the EMN Service Provider (ICF and the Odysseus), the members of the AG for the Study include EMN NCPs from BE, EE, FI, LU, SE, SI, NL and NO. NL NCP is the chair of the Advisory Group.

EMN NCPs are invited to send any requests for clarification or further information on the Study to the following representatives of the core AG:

Organisation	Name	Contact details
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## 8 TIMETABLE

The following timetable presents the key milestones in preparation of the Study:

Date	Action
19 March 2020	Circulate first draft to 'core' Advisory Group members
23 March 2020	Call with core AG group
17 April 2020	Circulate <b>first draft</b> to all Advisory Group members
24 April 2020	<u>Deadline</u> comments Advisory Group on the first draft of the template
29 April 2020	AG meeting to discuss comments on the first draft of the template
12 May 2020	Circulate <b>second draft</b> to Advisory Group members
19 May 2020	<u>Deadline</u> comments Advisory Group on the second draft of the template
5 June 2020	Circulation of <b>third draft</b> to all EMN NCPs, COM and Odysseus
19 June 2020	<u>Deadline</u> for comments on third draft
30 June 2020	<u>Final draft for approval to COM</u>
17 July 2020	<u>Launch of the EMN study</u>
2 November 2020	<u>Deadline for national reports</u>

## 9 TEMPLATE FOR NATIONAL CONTRIBUTIONS

The template provided below outlines the information that should be included in the National Contributions of EMN NCPs to this Study. The indicative number of pages to be covered by each section is provided in the guidance note. For National Contributions, the total number of pages should not exceed 40 pages, including the questions and excluding the introduction of the study. A limit of 30 pages will also apply to the Synthesis Report, in order to ensure that it remains concise and accessible.

## Common Template of EMN Study 2020

# Responses to long-term irregularly staying migrants: practices and challenges in EU Member States and Norway

### National Contribution from Luxembourg

*Disclaimer: The following information has been provided primarily for the purpose of contributing to a Synthesis Report for this EMN Study. The EMN NCP has provided information that is, to the best of its knowledge, up-to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of the EMN NCPs' Member State.*

### Top-line factsheet [max. 1 page]

*The top-line factsheet will serve as a summary of the **national contribution** introducing the study and drawing out key facts and figures from across all sections, with a particular emphasis on elements that will be of relevance to (national) policy-makers. The top-line factsheet should be a stand-alone product. Please add any innovative or visual presentations that can carry through into the synthesis report as possible infographics and visual elements.*

The scope of the issue of long-term irregular migrants is difficult to determine in Luxembourg as reliable figures on this phenomenon are difficult to obtain. The amended law of 29 August 2008 on free movement of persons and immigration (hereinafter Immigration Law) does not differentiate between a short-term or long-term irregular migrant. The profile of the irregular migrants in Luxembourg is largely constituted by migrants who entered the territory legally (either overstayers who overstayed their visas or the 90-day period if they were not subject to the visa requirement, or rejected applicants for international protection (hereafter AIPs)).

In principle, the irregular migrants do not have any rights and must return to their country of origin. Luxembourg promotes voluntary return over forced returns, which is seen as a last resort measure. However, the Immigration Law foresees exceptions for certain categories of individuals who have obstacles to return to their country of origin through a legal remedy (residence permit for private reasons granted on humanitarian reasons of exceptional gravity) or administrative measures (postponement of removal for technical reasons and suspension of removal for medical reasons), which do not grant the person the right to residence but a right to stay. Finally, another group of irregular migrants that can benefit from limited rights are rejected AIPs who are waiting to be returned, namely, they can remain being housed in the reception centers and can receive healthcare and financial assistance.

The only solution for the long-term regular migrants is the regularisation foreseen by article 89 of the Immigration Law but the legal framework and its interpretation are quite restrictive.

As there is no legal framework regulating long-term irregular migrants, the authorities do not deal with these individuals directly as most of the time they tried to avoid detection. This situation makes it even harder for them to have to access certain services, as a certain number of conditions must be fulfilled, in particular the proof of legal residence.

However, the individuals who fall into the exceptions mentioned above have direct contact with the authorities (Directorate of Immigration, National Reception Office ("*Office national de l'accueil*" - ONA)) and municipalities as they can benefit from accommodation and humanitarian aid in case an administrative measure applies.

The role of civil society organisations or other entities regarding the access to public services for long-term irregularly staying migrants is limited to exceptional or emergency cases, such as the provision of services to victims of violence or giving access to education to migrant children (this last is based on compulsory education).

Nevertheless, access to healthcare is possible for third-country nationals through voluntary health insurance with the National Health Fund ("*Caisse nationale de santé*" - CNS) but this implies that they have to pay the monthly

contribution and the proof of residence. Furthermore, access to education is possible for irregular migrant children (children aged 4 to 16 years old) as there is an obligation to attend school which is free of charge.

There has not been a constant political debate dealing with long-term irregular migrants during the period 2015-2019. It is only during the migration crisis of 2015 and in 2020 due to the Covid-19 pandemic crisis that the issue has resurfaced.

The key challenges that this population is confronted with are:

- The admission criteria of accommodation structures (including emergency shelters) require proof of residence;
- They are often exposed to labour exploitation.
- Although education for minors is compulsory in Luxembourg, regardless of their migratory status, their access may be hampered by the parents who do not want to be detected by the authorities.

Finally, to confront the public health crisis, the Luxembourgish authorities took a series of measures in order to avoid that regular migrants fall into irregularity, but must importantly provided access to certain services to irregular migrants (health care, social grocery shops, and access to emergency shelters) to confront the spread of the virus.

## Section 1: National legal and policy framework

*This introductory section of the synthesis report will map the institutional, legal and political contexts on the issue of long-term irregular migrants and aims to provide an overview of main points of discussion in Member States and Norway.*

*The primary questions addressed in this section are:*

- *To what extent are central, regional and local authorities in your Member State confronted with the issue of long-term irregular migrants?*
- *What is the political and policy debate on the situation of long-term irregular migrants?*
- *What are the characteristics of the group of third-country nationals who remained in a protracted situation of illegal stay? What information is available on the size of the (sub)groups or categories?*

### SECTION 1.1: CATEGORIES OF LONG-TERM IRREGULAR MIGRANTS AT NATIONAL LEVEL

**Q1a.** Is there a distinction between ‘short-term’ irregular migrants and ‘long-term’ irregular migrants (as defined in the scope of this study) in your (Member) State?

Yes

No

*If yes, please explain how these are defined and where (policy, legislation and/or practice):*

In Luxembourg, Article 100 of the amended law of 29 August 2008 on free movement of persons and immigration (hereinafter Immigration Law)<sup>1</sup> defines which third-country national is considered an irregularly staying migrant. This article states that the presence on the territory of a third-country national shall be regarded as an illegal stay giving rise to a return decision where the person concerned:

- a) Does not fulfill, or no longer fulfills, the conditions of entry and short stay.<sup>2</sup>
- b) Remains on the territory after their visa has expired, or, if they are not subject to the obligation to possess a visa, after three months have elapsed from the date of their entry onto the territory (“overstayer”).
- c) Does not have the authorisation to stay valid for a period exceeding three months or a work permit, if the latter is required.
- d) Has been expelled from the territory because they represent a serious threat to public order or national security or if they reappear on the territory despite having been issued an entry ban.

Consequently, there is no difference between short-term and long-term irregular migrants.

**Q1b.** Are different categories of **long-term** irregular migrants (as defined in the scope of this study) – stemming from law or practice – present in your (Member) State?

Yes

No

**Q1c.** If yes to Q1b, are these:

- irregular migrants subject to a return decision but the return cannot be enforced due to legal obstacles (e.g. non refoulement, medical or humanitarian reasons, etc)?
- irregular migrants subject to a return decision but the return cannot be enforced due to practical obstacles (cooperation of the person concerned, problems with travel documents etc)?
- former (rejected) applicants for international protection who absconded?
- third-country nationals whose short-stay visa, residence permit expired and/or was not renewed?
- other irregular migrants who were not (yet) detected by national migration authorities?
- Other (e.g. long-term irregular migrants with a criminal record, dependant family members) (please describe in the box below)?

Another category concerns third-country nationals who are condemned to imprisonment in Luxembourg and have been issued an expulsion decision or an entry ban. Even though they are in an irregular situation, they are detained in the Luxembourg Penitentiary until they finish their prison term or they benefit from an early release.<sup>3</sup> The Public Prosecutor Office, which is in charge of the execution of sentences, will have to decide if they grant the earlier release. Early release is a concession (*"mesure de faveur"*) that does not entail any rights.

**Q1d. If yes to Q1b**, please also provide, if possible, an **estimation** of the numbers of persons (for each category identified in Q1a, 1b, and 1c, as relevant) in your (Member) State, annually since 2015.

*Please also indicate the relevant source of such estimate(s) and other relevant information if available (e.g. country of origin).*

**Number of persons whose removal cannot be enforced because of the non refoulement principle:** no information available (n.i.a)<sup>4</sup>

**Number of persons whose removal cannot be enforced because of medical reasons:**

186 individuals received a decision regarding a suspension of removal during the period 2015-2019. This number comprehends first-time issuances and renewals.<sup>5</sup>

For first-time issuances, the numbers are as follows: In 2015: 80 residence permits, 2016: 22 residence permits, 2017: 13; 2018: 22 and 2019: 28.<sup>6</sup>

**Number of persons whose removal cannot be enforced for humanitarian reasons:**

The Immigration Law does not foresee a postponement of removal based on "humanitarian reasons".<sup>7</sup> However, the Immigration Law foresees a residence permit for "Private reasons for humanitarian reasons of exceptional gravity". This measure allows the Minister in charge of Immigration to grant a third-country national (irregularly staying or not) the right to stay and reside on the territory based on humanitarian reasons of exceptional gravity.

During the period 2015-2019, 88 residence permits for "private reasons for humanitarian reasons of exceptional gravity" were issued to third-country nationals in an irregular situation.<sup>8</sup>

**Number of persons whose removal cannot be enforced for reasons of non-cooperation:** n.i.a<sup>9</sup>

**Number of rejected applicants for international protection who absconded:** n.i.a

To the exception of individuals that are placed in detention or that are under house arrest, it is very difficult to determine the exact number of rejected applicants for international protection (hereafter AIPs) on the territory, as they are free to move around Luxembourg at any moment. Therefore, the number of rejected AIPs varies from day to day, some leave

Luxembourg without notifying the Directorate of Immigration, others return to their country of origin and others travel to other Member States (for more information, refer to Q4a).<sup>10</sup>

**Number of third-country nationals whose visa expired:** n.i.a.<sup>11</sup>

**Number of third-country nationals whose residence permit expired and was not renewed:** n.i.a.

No statistics are available because it is difficult to determine how many of the people concerned remain in Luxembourg as there are no external borders that would allow controlling the entries and exits from the territory.<sup>12</sup>

**Estimation of irregular migrants who have not yet been detected by national migration authorities:**

Generally, it is not possible to give exact numbers on how many irregular migrants are living in Luxembourg. This is because the individuals concerned do not notify the authorities of their presence on the territory.<sup>13</sup> There is, however, partial data on the number of irregular persons who use the services of NGOs or who are detected as a result of monitoring operations.

The NGO ASTI (*Association de Soutien aux Travailleurs Immigrés*), for example, reported that they are only aware of the people that present themselves to their services and noted that any estimation of the phenomena would be an underestimation. According to them, their "*Guichet Info Migrants*" receives, on average, 1 000 new cases per year, of which 1/3 concern undocumented migrants (so roughly 350 new cases every year).<sup>14</sup> For the most part, the undocumented migrants that present themselves to ASTI came to Luxembourg through another Member State (i.e. using a Schengen visa and then overstaying it). Their presence is usually unknown to the authorities and then becomes known when they try to seek work or make an application for a permit or international protection. Very few undocumented migrants come to Luxembourg using an irregular route, according to ASTI.<sup>15</sup>

In 2019, Caritas received 175 consultations from rejected AIPs, 82 from irregular migrants, and 59 from beneficiaries of a suspension or postponement of removal. In total, the consultations concern 45 rejected AIPs, 15 undocumented persons, 7 beneficiaries of a postponement of removal, and 2 beneficiaries of a suspension of removal. Since 2015, however, the number of consultations from beneficiaries of a suspension of removal, as well as, rejected AIPs has declined.<sup>16</sup>

The Red Cross also stated that it is difficult to provide figures on this phenomenon as many different cases exist. Individuals come to their primary reception structures for applicants for international protection when they first arrive in Luxembourg and then they have to report to the Directorate of Immigration, but often they disappear without lodging their request for international application at the Directorate of Immigration. Usually, they only spend a night or two in the primary reception structures before leaving. Of the 3 600 individuals<sup>17</sup> who come to their services, 2 400 apply for international protection.<sup>18</sup>

In 2019, Médecins du Monde (MDM) received 884 people in their centers in Bonnevoie and Esch-sur-Alzette.<sup>19</sup> MDM's statistics from 2019 showed that 51% of their clients have a European background (not necessarily EU citizens). 39% are economic migrants from the African continent that do not have a residence permit. They are mainly from Northern Africa, most prominently from Morocco (12%) and Algeria (7%).<sup>20</sup>

Among the beneficiaries who are not European citizens, 7% said that they are concerned by an international protection application (ongoing or appealing) and 14% have a valid residence permit (5% in 2017, 13% in 2018)). However, the vast majority of these people remain without a residence permit, either because they are rejected AIPs or because they did not apply for asylum. Among those affected by an application for international protection, 30% reported that had been rejected (2018: 40.5%).<sup>21</sup>

Moreover, the Inspectorate of Labour and Mines ("*Inspection du Travail et des Mines*" - ITM) does not have the number of irregularly staying third-country nationals in Luxembourg as it is not part of their mandate to keep any records. However, they keep data related to inspections conducted in the workplace, during which they detected irregularly staying third-country nationals that were working for the employer. As part of these inspections, the ITM detected 73 irregularly staying third-country nationals (without a residence permit or work permit) who were employed illegally by employers in Luxembourg between 1 January 2020 and 30 September 2020.<sup>22</sup>



Number of third-country nationals in an irregular situation that have been issued an order of removal and are condemned to imprisonment in Luxembourg: n.i.a.

Q1f. If no to Q1b, please explain why this is not the case (in the box below)

N/A

Q2. If a third-country national is subject to a return decision but there are **legal obstacles to return** (i.e. for non-refoulement reasons, medical reasons, etc), can they receive:

*Tick as many boxes as applicable in your (Member) State and use the box below to briefly describe the situation (e.g. procedure followed, conditions of application).*

*For instance, please indicate if the option ticked is based on i) an administrative practice (please explain the practice); ii) legislation (please legislation); iii) case law (indicate case law reference and a short summary), or iv) other (e.g. policy).*

*Please briefly describe also indicating estimations of the scale/numbers per year between January 2015-October 2020), if available.*

*For clarifications on the categories below, please refer to section 2.*

Written confirmation of postponement of return (please briefly explain the procedure, conditions below):

#### Suspension of removal for medical reasons ("sursis à l'éloignement")

It is a measure based on legislation.<sup>23</sup>

Individuals that benefit from a suspension of removal for medical reasons as defined under Article 131 of the Immigration Law are delivered a certificate of postponement ("*attestation de sursis à l'éloignement*").<sup>24</sup> The certificate allows them to remain in Luxembourg without being authorised to reside there. It also grants them a right to humanitarian aid as defined by the Law of 18 December 2009 organising social aid (for more information please see Q10).

#### Conditions

The suspension of removal for medical reasons is a measure to protect people that suffer from a serious illness that requires treatment that cannot be supplied in their country of origin. It allows them to stay temporarily in Luxembourg for medical care. The persons in question must not pose a threat to public order or national security.

The state of health must be such that the failure to take medical action would have detrimental consequences for the person (e.g. death, reduced life expectancy, or serious disability). The burden of proof is on the applicant who must prove that s/he cannot benefit from appropriate treatment in their country of origin or in the country to which s/he is likely to be removed.<sup>25</sup>

#### Procedure

The third-country national must submit his/her request for suspension of removal for medical reasons with the Directorate of Immigration. Through medical certificates, s/he must prove that his/her state of health requires treatment without which they will suffer consequences of exceptional gravity.

The medical certificates are then sent to a medical examiner at the Directorate of Health of the Ministry of Health. The doctor will examine the patient and send a report to the Directorate of Immigration determining whether medical treatment is necessary and if it is available in the patient's country of return.

The agent in charge of the file can request additional information that s/he considers relevant for the examination of the application.

Once the Directorate of Immigration receives the medical examiner's report, the Minister of Immigration and Asylum will make a decision based on the doctor's recommendations. The law does not set time limits for making this decision.

The requests are analysed on a case-by-case basis, as soon as possible. In practice, the duration of the procedure may be prolonged if a person is not in the possession of medical documents or tests.

The refusal of an applicant to submit medical examinations may result in a refusal to grant the suspension of removal. However, depending on the circumstances of the case and after exhaustive evaluation, another authorisation to stay may be granted if the Directorate of Immigration considers that the person cannot be returned.

If the third-country national receives a positive decision, the Directorate of Immigration grants a stay for a maximum period of 6 months, the decision may be renewed, on the advice of the medical officer for a maximum period of two years.<sup>26</sup>

#### Figures

In 2015, 49 people benefited from a suspension of removal for medical reasons for the first time, 52 people received a renewal of their suspension.<sup>27</sup> In 2016, 22 people benefited from a suspension of removal for medical reasons (first instance and extensions included),<sup>28</sup> 13 in 2017,<sup>29</sup> 22 in 2018,<sup>30</sup> 28 in 2019.<sup>31</sup> For more information, please refer to Q1d.

Temporary/tolerated stay (please briefly explain the conditions, application procedure below):

#### **Postponement of removal**

It is a tolerated stay, a measure based on legislation.<sup>32</sup> See the answer to question Q3.

Residence permit (please briefly explain the conditions, application procedure, duration of status below):

#### **Residence permit 'private reasons – (medical reasons)'**

As it was mentioned above, when the suspension of removal for medical reasons has been issued for 6 months and then renewed for the same period until a maximum of two years, an authorisation to stay for medical reasons and a residence permit for private reasons may be issued to the third-country national.<sup>33</sup>

#### Conditions

To obtain an authorisation to stay and a residence permit for medical reasons, the applicant must fulfill two conditions: 1) having benefited from a suspension of removal for medical reasons for a maximum period of two years; 2) having an ongoing medical condition that justified the suspension of removal for two years.<sup>34</sup>

#### Procedure

See "Suspension of removal for medical reasons" ("*sursis à l'éloignement*").

#### Duration of Status

The residence permit will be issued for the duration of the treatment that cannot exceed more than one year. If the health condition of the holder has not changed, the residence permit will be renewed based on the opinion of the medical officer (not exceeding one year).<sup>35</sup> The residence permit is considered of temporary nature.

#### Figures

In 2015, the number of residence permits was 0; in 2016: 0; in 2017: 1; in 2018: 1; and in 2019: 2.

### **Residence permit 'Private reasons for humanitarian reasons of exceptional gravity'**

Even if the Immigration law does not foresee to provide for a suspension of removal based on humanitarian grounds, the law provides the Minister in charge of Immigration the discretionary power to grant a third-country national a residence permit for private reasons based on humanitarian reasons of exceptional gravity. The Immigration law states that any authorisation of stay for a third-country national must be requested in the country of origin before entering Luxembourg,<sup>36</sup> otherwise the application is declared inadmissible.<sup>37</sup> However, the Minister in charge of Immigration can grant an authorisation to stay on humanitarian grounds of exceptional gravity to a third-country national (who does not necessarily have to be an irregular migrant) provided that their presence does not constitute a threat to public order, public health or public security.<sup>38</sup>

#### Conditions

Any migrant (irregularly staying or not) who can argue humanitarian grounds of exceptional gravity can make the request. Rejected applicants for international protection may also apply on the condition that the request is based on other grounds than those put forward in the procedure for international protection. If this is not the case, the request is considered inadmissible.<sup>39</sup>

#### Procedure

The applicant must submit the request in writing to the Directorate of Immigration. No specific form for this purpose exists. The person must detail the humanitarian reasons of exceptional gravity and must provide the evidence to their claim. The third-country national does not have to prove sufficient resources, appropriate accommodation, and health insurance as it is required by the Immigration Law for the other authorisations of stay foreseen in the Immigration Law.<sup>40</sup>

The request is processed by the Foreigners Department of the Directorate of Immigration. The agent in charge of the file can request the third-country national any additional information that they consider necessary for the analysis of the case. This additional information must be provided within the deadline provided by the Directorate of Immigration. If the applicant does not comply with this request, the agent will assess the application with the information available in the file. The final decision lays in the discretion of the Minister.

There is no time limit for processing the request and to make the decision.

If the decision is positive, the third-country national is granted a residence permit for private reasons.<sup>41</sup>

In the case of a negative decision, the applicant will be issued a return decision. The third-country national can appeal the decision before the First Instance Administrative Court.<sup>42</sup> If the decision of the administrative court is negative, the third-country national can file an appeal before the Administrative Court in a deadline of 40 days after the notification of the decision.<sup>43</sup> Neither the appeal before the First Administrative Court nor the appeal before the Administrative Court has a suspensive effect.<sup>44</sup>

#### Duration

The residence permit is valid for a maximum period of three years and can be renewed upon demand if the conditions for exceptional gravity continue to exist. However, in practice, it is issued for a maximum duration of one year.<sup>45</sup>

#### Figures

In 2015, 8 residence permits were delivered for the first time,<sup>46</sup> 7 in 2016,<sup>47</sup> 24 in 2017,<sup>48</sup> 21 in 2018,<sup>49</sup> and 28 in 2019.<sup>50</sup> The Directorate of Immigration estimates on average that they receive 100 applications per year.<sup>51</sup>

### **Authorisation to stay for exceptional reasons (regularisation)**

It is a regularisation on a case-by-case basis and based on a precise criterion.

### Conditions

The Immigration Law foresees that an irregular third-country national who has resided for at least four years on the territory, whose presence does not constitute a danger to public order, security or health, nor used false or misleading information regarding their identity and who shows a real desire for integration, without ever avoiding a return decision, can apply for this authorisation to stay and a residence permit.<sup>52</sup>

To be eligible the applicant must either:

1. Exercise parental authority over a minor who lives with them in their household and who is enrolled in an educational establishment in the Grand Duchy of Luxembourg for at least four years and can justify being able to provide for their own needs and those of their family members.
2. Have continuously and successfully attended school for at least four years in an educational establishment in the Grand Duchy of Luxembourg and submits their request before the age of twenty-one, justifying having sufficient resources to cover their own needs.<sup>53</sup>

The third-country national is issued a salaried worker residence permit if the applicant fulfills the criteria for issuing such a permit or a residence permit for private reasons if the applicant pursues studies or vocational training.<sup>54</sup>

### Procedure

The applicant must apply to the Directorate of Immigration. No specific form is used for this procedure and there is no deadline fixed to take the decision.

### Figures

Between 2016 and 2019, a total of 35 applications were examined, which concerned 150 individuals. The breakdown is as follows:<sup>55</sup> 2016: 29 files (122 persons); 2017: 2 files (16 persons), 2018: 1 file (3 persons), and 2019: 3 files (9 persons).<sup>56</sup>

Extension of the short-stay visa

N/A. However, during the Covid-19 crisis, the Luxembourgish authorities declared a state of crisis<sup>57</sup> which authorised the extension of the period of validity for visas, temporary residence permits, residence cards, and residence permits, which expire after 1 March 2020, for the duration of the state of crisis. Likewise, the stay of third-country nationals not subject to the visa requirement, and whose stay exceeded 90 days, was regularised for the duration of the state of crisis.<sup>58</sup> Even though the state of crisis ended on 23 June 2020, the Law of 20 June 2020 extended the validity of the visas until 31 July 2020<sup>59</sup>, and the validity of the residence permits until 31 August 2020.<sup>60</sup>

Extension of the voluntary departure period

In principle, a third-country national that is issued a return decision is granted 30 days to voluntarily leave the territory.<sup>61</sup> When necessary and taking into consideration the returnee's circumstances (such as the length of stay, the existence of children attending school, and other family and social ties)<sup>62</sup>, the Minister may exceptionally allow for a voluntary departure time exceeding 30 days. There are no statistics on the number of extensions of voluntary departures.<sup>63</sup>

No return decision issued (for administrative or other reasons including non-refoulement)

N/A

Other (e.g. no other form of certificate/tolerated stay/residence permit granted)

N/A

**Q3.** If a third-country national is subject to a return decision but there are **practical obstacles to return** (i.e. lack of means of transportation, lack of identification or travel documents, lack of cooperation of the third-country national, absconding, etc.), can they receive:

*Tick as many boxes as applicable in your (Member) State and use the box below to briefly describe the situation (e.g. procedure followed, conditions of application).*

*For instance, please indicate if the option ticked is based on i) an administrative practice (please explain the practice); ii) legislation (please legislation); iii) case law (indicate case law reference and a short summary), or iv) other (e.g. policy).*

*Please briefly describe also indicating estimations of the scale/numbers per year can be provided for the years 2015–October 2020), if available.*

*For clarifications on categories below, please refer to section 2*

A written confirmation of postponement of return (please briefly explain the procedure, conditions below):

See answer to Q.2 “Suspension of removal for medical reasons”. The beneficiary of a suspension of removal is issued a certificate of suspension of removal, which permits them to stay on the territory without being authorised to reside.<sup>64</sup>

The certificate shall confer on the beneficiary the right to humanitarian aid.<sup>65</sup>

A temporary/tolerated stay (please briefly explain the conditions, application procedure):

#### Conditions

When a third-country national shows that they are unable to leave the territory for reasons not of their own making, or if they are unable either to return to their country of origin or to travel to any other country, the Minister in charge of Immigration may postpone the removal of the third-country national for a specific period determined in accordance with particular circumstances to each case, and until there is a reasonable prospect of achieving the obligation to leave the territory.<sup>66</sup> The third-country national may remain on the territory on a provisional basis (temporary stay), without being authorised to reside in the country.<sup>67</sup> The decision to postpone the removal may be accompanied by less coercive control measures than detention such as house arrest.<sup>68</sup>

#### Procedure

The third-country national must submit their request for postponement of removal with the Directorate of Immigration. The requests are analysed on a case-by-case basis. There is no specific deadline is foreseen in the law for taking a decision. If granted, the law foresees that if the obstacle to return remains, the beneficiary can receive several extensions of the postponement. The request for postponement of removal must be introduced by the concerned or his lawyer.

#### Figures

In 2015, 22 people benefited from a postponement of removal,<sup>69</sup> 34 in 2016,<sup>70</sup> 27 in 2017,<sup>71</sup> 104 in 2018<sup>72</sup>, and 96 in 2019.<sup>73</sup>

During the period of postponement of the removal, the third-country national shall be given humanitarian aid.<sup>74</sup> Minors shall have, depending on the length of their stay, access to the basic education system. Family unity with family members present on the territory shall be maintained as far as possible. The specific needs of vulnerable persons, namely minors, unaccompanied minors, disabled persons, pregnant women, single parents with minor children, elderly persons, and persons who have been subjected to torture, rape, or other serious forms of psychological, physical, or sexual violence shall be taken into account.<sup>75</sup>

- A residence permit (please briefly explain the conditions, application procedure, duration of status below):

See "Residence permit for medical reasons" and "residence permit for private reasons for humanitarian reasons of exceptional gravity" and authorisation to stay for exceptional reasons in answer to Q.2.

- An extension of the short-stay visa

N/A

- No return decision issued (for administrative or other reasons including non-refoulement)

N/A<sup>76</sup>

- Other (e.g. no other form of certificate/tolerated stay/residence permit granted)

In 2019, a procedure amending the Immigration Law for reviewing prolonged detention periods under the judicial review of the administrative jurisdictions was introduced.<sup>77</sup> In case the Minister of Immigration and Asylum decides to extend the detention period beyond four months (after an initial detention period of one month renewed three times, on each occasion for one month), the Minister seizes ex officio the First instance Administrative Court, by request lodged within five working days of the notification of the decision. The president of the First Instance Administrative Court will decide within ten days of the filing of the request. The detainee is duly informed and summoned. An appeal can be filed before the Administrative Court against this decision.

## SECTION 1.2: PRIORITIES AND DEBATES AT A NATIONAL LEVEL

**Q4a.** Has the issue of long-term irregular migrants been subject to **policy or legislative debate** (i.e. discussions) in your (Member) State since 2015?

Yes

No

If yes, (i) what was the debate about and (ii) how has the debate evolved since 2015 (include debates related to Covid-19)?

*Please provide a brief explanation of the main focus (i.e. main aspects discussed) and the evolution since 2015. Please indicate the main stakeholders involved. Please provide qualitative evidence to support your answer (e.g. national parliamentary debates, strategies, other policy documents).*

The debates for the period 2015 to 2020 are not directly related to the issue of long term irregularly staying migrants. However, they do relate to issues that are connected to them, for example, administrative detention and return. The most relevant debates surround the Law of 18 December 2015 and the Covid-19 crisis, which particularly highlights the problems that irregularly staying migrants face (see below).

### **The Law of 18 December 2015 on International Protection and Temporary Protection**<sup>78</sup>

On 1 January 2016, the Law of 18 December 2015 on International Protection and Temporary Protection (hereinafter Asylum Law) came into force. This law also amended dispositions of the Immigration Law relative to the regularisation of irregular migrants, alternatives to detention, and introduced sanctions for irregular migrants entering Luxembourg.

The amendment of Article 89 of the Immigration Law (see the answer to Q.2 above) concerning the regularisation of irregular third-country nationals is related to the obligation of families with children enrolled in education to leave the territory. It focused on the fact that if these children were integrated into Luxembourgish society, the obligation for them and their families to leave the country was criticised.<sup>79</sup> However, this amendment was subject to criticism, as the abrogated version required that irregular third-country national had to prove that they had completed their education in a school in Luxembourg, and spent at least six years in the school system.

The amendment required that the long-term irregular migrant needs to have completed their studies.<sup>80</sup> The Council of State considered, based on the fundamental principle of the best interest of the child, that the disposition under which a child must follow “their education, continuously, in an educational establishment in Luxembourg for at least four years” can be justified in relation with the right to family unity. Therefore, the legislator could, in the name of family unity, make an exception to the rule of removal.<sup>81</sup>

The Luxembourgish Refugee Council (LFR) suggested to broaden the conditions to children attending pre-school, as well as, to people aged 18 and over in certain cases. The Council of State rebutted this argument indicating that the meaning of a child following “their education, continuously, in an educational establishment” can only cover primary and secondary schooling, excluding any other form of teaching or care.<sup>82</sup>

The Consultative Commission on Human Rights of the Grand Duchy of Luxembourg (“*Commission Consultative des Droits de l’Homme*” - CCDH) questioned the condition of third-country nationals who become 18 to have completed their education in Luxembourg for at least four years, further pointing out that the notion of success is not defined. The CCDH further considered these criteria to be useless and dangerous.<sup>83</sup> The Parliamentary Commission believed, however, that academic success is a prerequisite for showing a real desire for integration.<sup>84</sup> In an additional opinion of 17 November 2015, the LFR approved the proposed changes made by the Government. Nevertheless, they questioned if these amendments analyzed the complexity and diversity of situations faced by irregularly living migrants in Luxembourg.<sup>85</sup> They recommended the legislator to delete the condition “to demonstrate a real desire for integration”, questioning whether this would exclude children whose parents do not meet this condition for the regularisation process. In this regard, the LFR also questioned the legislator’s unquestionable link between a person’s level of integration and academic success.<sup>86</sup>

The requirement “to not have evaded a removal order” was also criticised. Caritas suggested to the legislator to change the formulation as it is open to interpretation and raises questions for individuals who have received a removal order that has not yet been executed but appears in administrative files, as well as, for persons that despite having received a removal order, live at a known private address or in a reception center.<sup>87</sup> The LFR then also reiterated their position that families in charge of children aged 18 or older and enrolled in an educational establishment should be included in the law. It also requested clarifications on the condition ‘sufficient resources’ and recommending that in case a person is a resident of an official accommodation structure managed by the National Reception Office (ONA), the person to be regularised can benefit from a period of one year to find appropriate accommodation.<sup>88</sup>

On 10 December 2015, the party Déi Lénk asked some of the same questions highlighted above and raise awareness that the link between academic success and the level of integration of the applicant does not exist.<sup>89</sup>

### **Alternatives to Detention**

Another element of the debate in connection with migrants in an irregular situation concerned the conditions and alternatives to detention. This debate took place in the context of the legislative changes made by the Asylum Law.<sup>90</sup> The main elements of the debate concerned the applicability of the alternatives of detention and the detention of minors.

During the legislative procedure, the LFR welcomed the provision of alternatives to detention but criticized some legal provisions adding that less coercive measures to detention did not take into account the measures announced in the governmental programme and that the proposed alternatives would be difficult to apply.<sup>91</sup> The LFR also criticized that the bill allows that minors can be detained.<sup>92</sup>

Finally, the LFR also criticized the use of electronic surveillance as an alternative to detention. However, the criticism was disregarded as the surveillance mechanism does not pose any intrusion on the private life of the person and is only triggered when the person concerned leaves the designated area.<sup>93</sup>

The discussions on alternatives to detention continued throughout 2020.

### **Schengen Evaluation in the Field of Return (2016, 2017, 2018 and 2019)**

In 2016, the application of the EU return *acquis* by Luxembourg was assessed.<sup>94</sup> Following the evaluation, seven recommendations were identified and adopted at the European Council of 12 December 2016.<sup>95</sup>

A recommendation for Luxembourg was to reduce the predictability of the operations for the removal of families with children attending school and subject to an obligation to return, thereby addressing abuses and preventing absconding.<sup>96</sup> The Government took steps to change the provisions on detention by introducing a bill<sup>97</sup> which proposed to amend the Immigration Law and the law of 28 May 2009 on the creation and organization of the Detention Centre<sup>98</sup> (hereinafter Law on Detention), authorizing the detention period for families with children from 72 hours to seven days.<sup>99</sup> It was argued that 72 hours was too short to prepare the effective return of families resulting, in some of the cases, in a suspension of the execution of removal.<sup>100</sup> This proposal generated controversy and debate among civil society<sup>101</sup> which requested the elimination of this disposition from the bill.<sup>102</sup> Furthermore, the Council of State stated that it could only accept the extension of the detention period if it was clear that this measure is imposed as a last resort and that the period of detention is kept as short as possible. It also indicated that persons or families with children must not be placed in detention for a period greater than 72 hours.<sup>103</sup> Therefore, only compelling reasons, external to the constraints of public authorities, can justify a detention period of seven days.<sup>104</sup> However, the Parliamentary Commission disregarded this argument based on the Schengen evaluation in which Luxembourg was criticized as being the only Member State of the European Union to have introduced the restriction of 72 hours, a restriction which is not foreseen in the Return Directive.<sup>105</sup>

In 2017, the LFR criticized the amendment because it infringes upon the fundamental rights of the persons concerned, especially those of children.<sup>106</sup> They insisted that detention should only be used as a last resort and its duration should be as brief as possible.<sup>107</sup>

Nevertheless, the law was approved and it extended the detention period of adults or families with children from 72 hours to 7 days.<sup>108</sup>

A motion introduced by a Deputy from the social-democratic party (LSAP) was adopted which, among others, invited the Government to establish an assessment of the Detention Centre.<sup>109</sup> On 20 November 2017, the assessment<sup>110</sup> was presented to Parliament and during the discussion, it was noted that the majority of detainees at the Detention



Centre were mainly irregular migrants that were not previously known to the authorities and were intercepted on Luxembourgish soil. A grand majority of detainees are young delinquents, some were transferred from the Luxembourg Penitentiary.<sup>111</sup>

#### **« Joint Way Forward on migration issues » Agreement between Afghanistan and the EU (2016)**

On 2 October 2016, Afghanistan and the EU signed the declaration «Joint Way Forward on migration issues». The agreement sparked controversy among civil society.<sup>112</sup> Several associations feared that the agreement would harm the recognition rate of AIPs from Afghanistan. In response to these criticisms, the Minister of Foreign and European Affairs reiterated Luxembourg's commitment to respecting human rights and the principle of non-refoulement. The Minister also reminded the public that the agreement had put in place procedural guarantees, helping and protection to vulnerable people.<sup>113</sup>

#### **Legislative Elections (2018)**

In 2018, the legislative elections took place. The topic of irregular migrants in Luxembourg was not much addressed, related issues such as return, removals, fight against illegal migration, and detention were also not central topics in the different parties' electoral programmes (for more information on the view of the different political parties, please refer to our Annual Report on Migration and Asylum 2018).<sup>114</sup>

The elections led to the continuation of the former coalition (DP, LSAP, and Déi Gréng). Although the electoral debates only just touched upon irregular migration, the Coalition Agreement of 2018-2023 deals with the topic more in detail.<sup>115</sup> The Government states that its immigration policy is established by the Common European Asylum System and EU migration policies.<sup>116</sup> In consequence, the government prioritizes voluntary return over forced returns. A proper dissemination plan of information aimed at rejected AIPs will be created and foresees the possibility of the working group within the Directorate of Immigration in charge of evaluating the situation of irregular migrants to involve representatives from civil society to help advise on cases of regularization of migrants for humanitarian grounds of exceptional seriousness.<sup>117</sup>

It also reiterates to implement alternatives to detention and states that they will create a facility aimed at women and vulnerable people and once this accommodation structure is available, the legislation on the detention of children will be adapted.<sup>118</sup>

Finally, the Coalition Agreement also focuses on irregularly staying unaccompanied minors in Luxembourg who do not want to apply for international protection or whose request for international protection was rejected. The Government engages to establish adequate facilities to house them and that all the decisions will be taken based on the best interest of a child, in particular with regards to return decisions.<sup>119</sup>

#### **Law of 4 December 2019 amending the Immigration Law (2018-2019)**

There was some discussion regarding the subject of irregular migrants during the Parliamentary process of the Law of 4 December 2019 amending the Immigration Law which came into force on 27 December 2019.<sup>120</sup>

This law foresees that a consultative commission to evaluate the best interest of children in the return decision-making process would be implemented. Its functioning and modalities would be determined by Grand-Ducal Regulation.<sup>121</sup>

During the legislative process, there was also a discussion on the systematic review by the administrative courts of the extension of detention of irregular migrants after four months. The Council of State criticized the fact that judicial verification of the decision to extend the detention by the Minister would amount to the Minister appealing to the President of the Administrative Tribunal against his own decision to extend the detention.<sup>122</sup>

There were some other minor debates on this bill, such as the norm allowing the Grand Ducal Police to enter a premise used as a living space by a third-country national<sup>123</sup> based on the recommendations of the European Commission and the evaluation of the application of Schengen.

Finally, a revision of the sanctions sections foreseen by the Immigration Law was part of the debate.<sup>124</sup>

**Q5a.** Has the issue of long-term irregular migrants been subject to **inter-institutional debate** between local (municipal, regional, federal) and central level authorities, in your (Member) State since 2015?

Yes

No

If yes, please indicate the main stakeholders involved in your answer and qualitative evidence (e.g. public debates, policy documents).

N/A

**Q5b.** If yes to Q5a, (i) what was the debate about and (ii) how has it evolved since 2015?

*Please provide a brief explanation of the main focus (i.e. main aspects discussed) and the evolution since 2015.*

N/A

**Q6.** If yes to Q4a and/or Q5a, has the debate influenced **policy or legislative measures** (e.g. national strategies or plans, legislative framework, etc.)?

Yes

No

If yes, please indicate the policy or legislative measures adopted:

Partially in the context of the Covid-19 crisis, see access to health care for irregular migrants under Q4.

**Q7a.** Has the issue of long-term irregular migrants been subject to **public debate** (i.e. media/NGOs) in your (Member) State since 2015?

Yes

No

**Q7b.** If yes to Q7a, (i) please indicate the main stakeholders involved (ii) the main circumstances of the debate and (iii) if there has been any change in the debate since 2015?

*Please provide a brief explanation of the main focus (i.e. main aspects discussed) and the evolution since 2015.*

*Please provide qualitative evidence to support your answer (e.g. reliable media reports, statements or reports of NGO/civil society organisations or International Organisations (IOs), research studies, official surveys, barometers, other policy documents).*

Much of the debate took place within the framework of the legislative process and parliamentary questions where civil society was also involved, or in the context of the Covid-19 crisis (see the answer to Q4).

The specific subject of long term irregularly staying migrants was hardly discussed between 2015 and 2019 by civil society (mainly the CCDH and the LFR) and the media:

### 2015

In 2015, during the legislative procedure to amend the Immigration Law regarding the regularization of long-term irregular migrants, the CCDH questioned the condition of third-country nationals who become 18 to have completed their education<sup>125</sup> and the LFR questioned the requirement to “to not have evaded a removal order” as it is open to interpretation.<sup>126</sup>

For more information see section ‘The Law of 18 December 2015 on International Protection and Temporary Protection’ under Q4.

### 2018 and 2019

Some organizations (ORK, CCDH, LFR) intervened within the framework of the legislative process relating to bill n° 7238 amending the amended law of 29 August 2008 on the free movement of persons and immigration, especially on the question of return, detention, and immigration. Please refer to Q4a for more information.

### 2020

The issue of the situation of irregular migrants was discussed during in the context of the Covid crisis.

Please refer to to Q8 below.

**Q8.** Has the issue of long-term irregularly staying migrants been subject to **policy or public debate** in your (Member) State specifically in connection with the measures taken in responses to **COVID-19** and their impacts?

The issue of long term irregularly staying migrants in Luxembourg was highlighted by the Covid-19 pandemic. The main topics of discussion were access to healthcare, maintaining social distancing in the Detention Centre, access to accommodation in the name of public health, and access to social aid (food vouchers). Linked to all these aspects was a discussion on a general regularization.

#### ***Access to healthcare***

On 3 April 2020, the Luxembourg Refugee Council (LFR) sent a letter to the Ministry of Health asking about the situation of illegally staying migrants in Luxembourg, in the context of the Covid-19 pandemic. In the context of access to health care, the LFR asked about the “absence of risk of administrative prosecution due to the absence of valid documents”.

The Ministers of Foreign and European Affairs, Justice and Health answered a parliamentary question<sup>127</sup> regarding irregular migrants’ access to healthcare. During the pandemic crisis, to protect public health, irregular migrants had access to healthcare and were able to go to a hospital without a return decision or placement in the detention center being issued against them. Emergency healthcare in the context of the pandemic was available to third-country nationals in irregular stay because public health is concerned, and the primary aim was to control the virus by allowing individuals who in principle would avoid hospitals to come forward to prevent further spread of the disease. They were informed by the dedicated website ([www.covid19.lu](http://www.covid19.lu)) and by a hotline, as well as by civil society organisations in contact with third-country nationals and irregularly staying migrants.

Moreover, the Minister of Health indicated at a press conference that people with symptoms of infection would be taken care of at one of the advanced health care centers, regardless of their social security coverage, which also applied to foreign nationals at the end of their rights and those who are irregularly staying and do not have social security coverage. To counter the psychological barrier that some people may face when going to the advanced health care centers, the Ministry of Health passed an official communication to all healthcare professionals in advanced care centers, to raise their awareness that all people can benefit from care provided in these centers, regardless of their social security coverage or residence status. Moreover, translators from the Red Cross were

available by telephone to ensure good communication between the health workers and the patient. For other measures taken concerning irregular migrants, please refer to Q15a.

### **Access to social grocery stores**

Several NGOs began pleading with the government to provide access to the social grocery stores to irregular migrants. On 15 April 2020, the Ministry of Family Affairs, Integration, and the Greater Region gave access to social grocery stores to irregularly staying migrants. Thus, undocumented people were able to benefit from food aid through social welfare offices and partner associations of the social grocery projects. People were able to register with the various partners of the social grocery stores anonymously and without having to indicate any social security numbers.<sup>128</sup>

On 9 July 2020, the Minister of Family Affairs and Integration and the Minister of Immigration and Asylum recognized that irregular migrants were in a very precarious situation during the pandemic.<sup>129</sup>

On 7 October 2020, ASTI relaunched a second call for donations reiterating that without a residence permit in Luxembourg, undocumented migrants are not entitled to any assistance, often without social security coverage. ASTI continues to receive calls for food aid as people struggle to find a job that allows them to earn enough money to support their families.<sup>130</sup>

### **Advocating for regularization of irregular migrants**

The opposition party, Déi Lénk, asked in a parliamentary question if the Government intended for a general regularization of irregular migrants, especially concerning released detainees. The Minister in charge of Immigration replied that a general regularization of detained irregular migrants was not foreseen but that he was open to analyse the situation.<sup>131</sup> However, he made clear that a regularization of individuals who have obtained a return decision and a ban on entry into the territory were not foreseen.<sup>132</sup>

The regularisation of irregular migrants during the crisis has become an issue. Some NGOs have been promoting this idea. Médecins du Monde,<sup>133</sup> CLAE, and ASTI are advocating for a general regularization and universal healthcare.<sup>134</sup> In light of the pandemic and its impact on irregular migrants, ASTI pleads that the Government initiates a general regularization.<sup>135</sup>

CLAE presented the decisions taken during the last general assembly to the public in which they state for:

- 1) A new regularization campaign;
- 2) A universal healthcare coverage system;
- 3) The respect of the right to international protection and decent living conditions for AIPs.

The reasoning behind these demands is that the sanitary crisis, along with the confinement measures, particularly affected persons in an irregular administrative situation. As mentioned above, many became unemployed. Moreover, people who are not normally covered by health insurance were particularly vulnerable during the crisis. Irregularly staying migrants are often concerned by this problematic. Lastly, the CLAE asks that the application of the Dublin Regulation be suspended as long as the pandemic is ongoing and that living conditions in accommodation structures for AIPs preserve their physical and mental health.<sup>136</sup>

**Q9. Are there any planned changes in law/policy/practice regarding long-term irregular migrants in your (Member) State?**

- Yes, there are planned changes in law. Please explain below:
- Yes, there are planned changes in policy. Please explain below:
- Yes, there are planned changes in practice. Please explain below:
- No.

N/A

## Section 2: National policies and approaches regarding long-term irregularly staying migrants

*This section aims to provide an overview of national policy in (Member) States and Norway on the way States address long-term irregularity. It will address the following research questions:*

- *Which rights and public services are long-term irregularly staying migrants provided access to?*
- *What is the role of central, regional and local authorities in dealing with this group of migrants?*
- *To what extent are regional and local authorities involved and cooperate with the central government?*
- *What is the role of civil society organisations or other entities regarding the access to public services for long-term irregularly staying migrants?*
- *What measures (e.g. policies, practical tools, guidance) were implemented regarding the access to public services for long-term irregularly staying migrants?*
- *Were there any studies or research published on the effectiveness of these measures?*

### SECTION 2.1: RIGHTS AND ACCESS TO SERVICES OF LONG-TERM IRREGULAR MIGRANTS

*This section aims to understand the rights and services accessible to long-term irregular migrants, which central, regional and local authorities are involved in the provision of services, as well as the role of civil society organisations.*

**Q10.** What **services are accessible** to **long-term irregular migrants** who were issued a return decision, but return cannot be implemented for legal or practical obstacles?

*Please complete the table below for each type or authorisation to stay or statuses indicated Q2 and Q3 (i.e. written confirmation of postponement of return, temporary or tolerated stay, residence permit, only return decision).*

*Please complete the below table for each relevant status. If two or more types of authorisations to stay give the same access to services, please fill the table only once.*

Former long-term irregular migrants who obtain a residence permit are no longer considered as persons in an irregular stay and benefit from the same rights as any other third-country national legally residing on the territory.

Table 1: Rights and services available to long-term irregularly staying migrants who have been issued a return decision				
Type of stay or status as identified in Q2 and/or Q3: <u>Suspension of Removal for Medical Reasons</u>				
Type of service	Service provided? (Y/N)	Is the provision of service <b>mandatory or discretionary</b> ? <sup>137</sup>	Brief description Please consider for each type of services the long-term irregular migrants are entitled or have access to:  i. Does this access stem from national law or practice? Does it stem from local (regional, municipal) rules or practice?  ii. Which authorities are competent to provide access to services? Please indicate if access is provided by other entities (NGO, charities, private entities, etc) as service providers on behalf of the national or local authorities?	Please briefly assess and explain if the rights and access to services are more limited, same or more favourable than those of legal migrants or of nationals?
<b>Accommodation</b>				Less <input checked="" type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/>
<b>Accommodation</b> <i>If yes, please briefly describe</i>	<i>No and Yes</i>	<i>Discretionary when yes</i>	<i>i. It stems from practice.</i>  <i>ii. The National Reception Office (ONA) and NGOs that act as service providers such as Caritas and the Red Cross.</i>  They do not have access to the normal social housing market and services. However, it is important to mention that many rejected AIPs remain in the reception centers aimed at AIPs whilst waiting upon the execution of the return decision <sup>138</sup> or benefiting from a suspension of removal as they cannot find	

			<p>appropriate accommodation outside of the reception centers. As beneficiaries of a suspension of removal (“<i>sursis à l’éloignement</i>”) are the object of an administrative measure that allows them to remain on the territory, they can continue to live in the accommodation structures.<sup>139</sup></p> <p>In general, beneficiaries of a suspension of removal are registered on the waiting list of the registry of natural persons of the concerned municipality and cannot be issued a residence certificate. Only persons registered in the principal register can be issued such a certificate.<sup>140</sup> The lack of registration hampers their access to most services.</p>	
<p><b>Special accommodation facilities (i.e. shelter for victims of violence, children, etc.)</b></p> <p><i>If yes, please briefly describe</i></p>	Y	Discretionary	<p><i>i. It stems from practice.</i></p> <p><i>ii. NGOs, the Ministry of Equality between Women and Men and the Ministry of Education, Children, and Youth.</i></p> <p>There exist different services of assistance and support to victims of domestic violence managed by the NGOs ‘Femmes en détresse’<sup>141</sup> or ‘Fondation Pro Familia’.</p>	
<p><b>Other forms of accommodation or shelter or a specialised center</b></p>	N			
<b>Healthcare</b>				Less <input checked="" type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/>
<p><b>Emergency healthcare</b></p> <p><i>If yes please describe, as this notion can be understood in a large or restrictive way</i></p>	Y	Discretionary	<p><i>i. It stems from national law<sup>142</sup> and administrative practice.</i></p> <p><i>ii. The Ministry of Immigration and Asylum, the Ministry of Health, and the National Health Fund (CNS).</i></p> <p>In general, undocumented migrants do not have access to official health care services, unless they are covered by voluntary insurance contributions (for more information, please refer to Table 1, Q.11).<sup>143</sup> However, beneficiaries of a suspension of removal for medical reasons benefit from medical care.<sup>144</sup></p> <p>The Division of Social Medicine, Addiction Diseases and Mental Health of the Ministry of Health is in direct contact with this population. The medical consultations are done on the demand of the Directorate of Immigration under the framework of the suspension of removal for medical reasons (please refer to Q2 for more information on the framework).<sup>145</sup></p> <p>If a person is residing in the reception structures, they have access to social security and to the services provided by the ONA doctor if they are residing in their accommodation structures. This situation is explained by the fact that</p>	

			<p>rejected AIPs or beneficiaries of a suspension residing in these structures maintain their affiliation to the National Health Fund (CNS), as long as they present themselves monthly to the ONA. If they do not respect this condition, their CNS membership can be terminated.</p> <p>In these cases, the CNS normally takes care of the medical bills. If a person is not affiliated with the CNS, the Health Inspectorate will cover the costs of medical bills for beneficiaries of a suspension of removal.<sup>146</sup></p>	
<p><b>Basic medical care</b> <i>If yes, please briefly describe</i></p>	Y	Discretionary <sup>147</sup>	<p>i. <i>It stems from national law and administrative practices</i></p> <p>ii. <i>The Ministry of Immigration and Asylum, the Ministry of Health, and the National Health Fund (CNS).</i></p>	
<p><b>Specialised care</b> <i>If yes, please briefly describe</i></p>	Y	Discretionary <sup>148</sup>	<p>i. <i>It stems from national law<sup>149</sup> and administrative practice.</i></p> <p>ii. <i>The Ministry of Immigration and Asylum, the Ministry of Health, and the National Health Fund (CNS).</i></p> <p>The granting of a suspension of removal for medical reasons is dependent on the medical condition of the person concerned. If their medical condition is such that they need specialised care, they are entitled to it.</p>	
<p><b>Other healthcare services</b> <i>If yes, please briefly describe</i></p>	N			
<b>Social assistance</b>				Less <input checked="" type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/>
<p><b>Are long-term irregularly staying migrants entitled to receive social benefits?</b><sup>150</sup> <i>If yes, please briefly describe what these benefits are</i></p>	Y	<p><i>Mandatory. Beneficiaries of a suspension of removal are entitled to humanitarian aid</i><sup>151</sup></p>	<p>i. <i>It stems from national law and administrative practices</i><sup>152</sup>.</p> <p>ii. <i>The National Reception Office (ONA) of the Ministry of Foreign and European Affairs and the social welfare offices of the municipalities.</i><sup>153</sup></p> <p>The beneficiaries of a suspension of removal are granted a right to humanitarian aid as defined by the Immigration Law in accordance with the Law of 18 December 2009 organising social aid.<sup>154</sup></p> <p>Since humanitarian aid - provided by the social offices<sup>155</sup> - must be urgent and of short duration and since humanitarian aid expressly excludes persons in temporary stay, rejected AIPs benefiting from the suspension or postponement of removal may continue to receive certain aid from the ONA, if necessary.<sup>156</sup></p> <p>Also, the law of 4 December 2019 creating the National Reception Office (ONA)<sup>157</sup> foresees that the ONA can offer punctual support to third-country</p>	



			<p>nationals who do not have the right to any existent aid or allowances in exceptional cases duly justified. Also, this aid can be provided for reasons that take into consideration the family, humanitarian, or health situation of the individuals concerned, without exceeding the amounts foreseen by the amended law of 18 December 2015 on the reception of applicants for international protection and temporary protection (Reception Law).<sup>158</sup></p> <p>In consideration of exceptional situations, motivated by family, humanitarian or health reasons, the ONA can grant, for a limited period of time, material aid relating to health, hygiene, nutrition, education and training. This applies in particular to applicants whose applications for international protection have been rejected, whether or not they benefit from a suspension or postponement of removal, and who are still housed in ONA accommodation facilities.<sup>159</sup></p> <p>The comments of this article in the exposition of motives provide certain clarifications on the type of persons who can benefit from this punctual aid. They can be: rejected international protection applicants; rejected international protection applicants who benefit from a suspension or postponement of removal; and rejected international protection applicants who benefit from an authorisation of stay for medical reasons.<sup>160</sup></p>	
<b>Employment</b>				Less <input checked="" type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/>
<p><b>Are there circumstances in your MS where long-term irregularly staying migrants are entitled to access to the labour market?</b></p> <p><i>If yes, please describe any specific conditions attached to their employment.</i></p>	Y	<i>Discretionary</i>	<p><i>i. It stems from national law.<sup>161</sup></i></p> <p><i>ii. Minister of Immigration and Asylum and the National Employment Agency (ADEM).</i></p> <p>The Minister may, upon application, grant the beneficiary an authorisation of temporary occupation ('<i>autorisation d'occupation temporaire</i>' - AOT) so that they may engage in temporary work for a period not exceeding six months. This authorisation can be renewed for a similar period, but shall not exceed the period of the suspension of removal. To obtain the AOT, the beneficiary has to fulfill the conditions laid down for the authorisation of stay for salaried workers.<sup>162</sup> The AOT is valid for a specific employer and a single occupation. It will be withdrawn if the beneficiary does not work for the employer or in the occupation that it was granted for, or if they, with fraudulent intent, have engaged in dishonest practices or have made false statements in view of obtaining the authorisation.<sup>163</sup></p> <p>Before employing a third-country national, an employer must notify the ADEM of the vacancy. The ADEM then verifies if anyone enrolled at the ADEM is</p>	

			<p>suitable for the job. If no candidates are available, then a person benefiting from a suspension of removal is entitled to apply for the vacancy by filing for an AOT at the Directorate of Immigration.<sup>164</sup></p> <p>In practice, it is very difficult to obtain a temporary occupation authorisation.<sup>165</sup></p>	
<b>Education</b>				<b>Less <input checked="" type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/></b>
<p><b>Do (long-term irregular migrant) children have access to compulsory education?</b></p> <p><i>If yes, please briefly describe access.</i></p>	<i>Y</i>	<i>Mandatory</i>	<p><i>i. It stems from national law.<sup>166</sup></i></p> <p><i>ii. The Ministry of National Education, Children and Youth, the College of mayors and aldermen of the municipalities or the office of the intercommunal school.</i></p> <p>Any child living in Luxembourg who is four years old before 1 September must attend school. This obligation runs for twelve consecutive years from 1 September of the year in question.<sup>167</sup></p>	
<p><b>Are adult long-term irregularly staying migrants entitled to participate in educational programmes and/or professional training?</b></p> <p><i>If yes, what types of education and under which conditions?</i></p>	<i>Y and N</i>	<i>Discretionary when Yes</i>	<p><i>i. It stems from practice</i></p> <p><i>ii. The Vocational Guidance Department of the National Employment Agency (ADEM), the ONA, and NGOs acting as service providers.</i></p> <p>In principle, this is not impossible because for certain as for all professional training programmes, the beneficiary may be is required to have a right of residence permit and/or an affiliation to the Joint Social Security Centre or to have an AOT for an apprenticeship if the person concerned has requested international protection. However, if a person benefits from an administrative measure such as a suspension/postponement of removal or if they continue to reside in a State structure, they may have access to different educational programmes (i.e. they can access the services provided by the Red Cross or Caritas). Under certain circumstances, they can access language courses.<sup>168</sup></p>	
<b>Legal aid or assistance</b>				<b>Less <input type="checkbox"/>   Same <input checked="" type="checkbox"/>   More <input type="checkbox"/></b>
<p><b>Do long-term irregular migrants have access to legal aid or assistance type of services?</b></p> <p><i>If yes, please briefly enumerate and explain</i></p>	<i>Y</i>	<i>Mandatory</i>	<p><i>i. It stems from national law.<sup>169</sup></i></p> <p><i>ii. Ministry of Justice and the Luxembourgish Bar Association.</i></p> <p>All persons are entitled to appeal against a return decision. Depending on the case, they are entitled to free legal aid, only if they have insufficient income (in most of the cases free legal aid is granted).<sup>170</sup></p>	

Other?				Less <input checked="" type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/>
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<p>Are any other rights relevant to mention here? Please describe</p>	<p>Y</p>	<p><i>Mandatory</i></p>	<p>According to the Labour Code,<sup>171</sup> it is strictly forbidden to employ an irregularly staying third-country national. However, if an irregularly staying third-country national is employed and detected, the employer has to pay their salary and any attached fees. Any unpaid salaries or fees have to be paid by the employer and be sent to the irregular migrant to the country where they were returned. The employer must also pay any unpaid social security contributions and taxes, including, if applicable, administrative fines.<sup>172</sup> Furthermore, before the execution of a return decision, illegally staying third-country nationals who were illegally employed are systematically and objectively informed by the authorities of their rights, including the possibility to access free legal aid.<sup>173</sup></p>	
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Table 2: Rights and services available to long-term irregularly staying migrants who have been issued a return decision

Type of stay or status as identified in Q2 and/or Q3: *Postponement of Removal*<sup>174</sup>

Type of service	Service provided? (Y/N)	Is the provision of service <b>mandatory</b> or <b>discretionary</b> ? <sup>175</sup>	Brief description Please consider for each type of services the long-term irregular migrants are entitled or have access to:  i. Does this access stem from national law or practice? Does it stem from local (regional, municipal) rules or practice? ii. Which authorities are competent to provide access to services? Please indicate if access is provided by other entities (NGO, charities, private entities, etc) as service providers on behalf of the national or local authorities?	Please briefly assess and explain if the rights and access to services are more limited, same, or more favourable than those of legal migrants or of nationals?
<b>Accommodation</b>				Less <input checked="" type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/>
<b>Accommodation</b> <i>If yes, please briefly describe</i>	Y	<i>Discretionary</i>	<p>i. <i>It stems from practice.</i></p> <p>ii. <i>The ONA and NGOs that act as service providers such as Caritas and the Red Cross.</i></p> <p>Similar to the information reported in Table 1 for beneficiaries of a suspension of removal for medical reasons, the answer to this question is in principle also no for beneficiaries of a postponement of removal. As beneficiaries of a postponement of removal (<i>'report à l'éloignement'</i>) are the object of an administrative measure that allows them to remain on the territory, they can continue to live in the accommodation structures.<sup>176</sup></p>	
<b>Special accommodation facilities (i.e. shelter for victims of violence, children, etc.)</b> <i>If yes, please briefly describe</i>	Y	<i>Discretionary</i>	<p>i. <i>It stems from practice</i></p> <p>ii. <i>NGOs.</i></p> <p>See the same item in Table 1 above.</p>	
<b>Other forms of accommodation or shelter or specialised center</b>	N			
<b>Healthcare</b>				Less <input checked="" type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/>

<b>Emergency healthcare</b> <i>If yes please describe, as this notion can be understood in a large or restrictive way</i>	Y	Mandatory	<ul style="list-style-type: none"> <li>i. <i>It stems from national law<sup>177</sup> and an administrative practice</i></li> <li>ii. <i>The Ministry of Immigration and Asylum, the Ministry of Health, and the National Health Fund (CNS)</i></li> </ul> <p>Beneficiaries of a postponement of removal benefit from medical care.<sup>178</sup> The type of access depends on the fact if they are covered by voluntary insurance contributions or not (for more information, please refer to Table 1, Q.11).<sup>179</sup></p>	
<b>Basic medical care</b> <i>If yes, please briefly describe</i>	Y	Discretionary. <sup>180</sup>	<ul style="list-style-type: none"> <li>i. <i>It stems from national law and administrative practices</i></li> <li>ii. <i>The Ministry of Immigration and Asylum, the Ministry of Health, and the National Health Fund (CNS)</i></li> </ul> <p>See supra.</p>	
<b>Specialised care</b> <i>If yes, please briefly describe</i>	Y	Discretionary. <sup>181</sup>	<ul style="list-style-type: none"> <li>i. <i>It stems from national law<sup>182</sup> and administrative practice.</i></li> <li>ii. <i>The Ministry of Immigration and Asylum, the Ministry of Health, and the National Health Fund (CNS)</i></li> </ul>	
<b>Other healthcare services</b> <i>If yes, please briefly describe</i>	N			
<b>Social assistance</b>				Less <input checked="" type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/>
<b>Are long-term irregularly staying migrants entitled to receive social benefits?<sup>183</sup></b> <i>If yes, please briefly describe what these benefits are</i>	Y	Mandatory	<ul style="list-style-type: none"> <li>i. <i>It stems from national law<sup>184</sup> and administrative practices.<sup>185</sup></i></li> <li>ii. <i>The National Reception Office (ONA) of the Ministry of Foreign and European Affairs and the social welfare offices of the municipalities.</i></li> </ul> <p>Beneficiaries of a postponement of removal are entitled to humanitarian aid.<sup>186</sup></p> <p>The same conditions apply as described in Table 1 under the same item (see supra).</p>	
<b>Employment</b>				Less <input checked="" type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/>
<b>Are there circumstances in your MS where long-term irregularly staying migrants</b>	Y	Discretionary	<ul style="list-style-type: none"> <li>i. <i>It stems from national law.<sup>187</sup></i></li> <li>ii. <i>Minister of Immigration and Asylum, and the ADEM.</i></li> </ul> <p>The same conditions apply as described in Table 1 under the same item (see supra).</p>	

are entitled to access to the labour market? <i>If yes, please describe any specific conditions attached to their employment.</i>				
<b>Education</b>				Less <input checked="" type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/>
<b>Do (long-term irregular migrant) children have access to compulsory education?</b> <i>If yes, please briefly describe access.</i>	Y	Mandatory	<ul style="list-style-type: none"> <li>i. <i>It stems from national law.<sup>188</sup></i></li> <li>ii. <i>The Ministry of National Education, Children and Youth, the College of mayors and aldermen of the municipalities or the office of the intercommunal school.</i></li> </ul> <p>Any child living in Luxembourg who is four years old before 1 September must attend school. This obligation runs for twelve consecutive years from 1 September of the year in question.<sup>189</sup></p>	
<b>Are adult long-term irregularly staying migrants entitled to participate in educational programmes and/or professional training?</b> <i>If yes, what types of education and under which conditions?</i>	N	Discretionary	<ul style="list-style-type: none"> <li>i. <i>It stems from national law and practice.</i></li> <li>ii. <i>The Vocational Guidance Department of the National Employment Agency, the Ministry of National Education, Children and Youth, the ONA and NGOs</i></li> </ul> <p>The same conditions apply as described in Table 1 under the same item (see supra).</p>	
<b>Legal aid or assistance</b>				Less <input checked="" type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/>
<b>Do long-term irregular migrants have access to legal aid or assistance type of services?</b> <i>If yes, please briefly enumerate and explain</i>	Y	Mandatory	<ul style="list-style-type: none"> <li>i. <i>It stems from national law.<sup>190</sup></i></li> <li>ii. <i>The Ministry of Justice and the Luxembourgish Bar Association.</i></li> </ul> <p>All persons are entitled to appeal against a return decision. Depending on the case, they are entitled to free legal aid, only if they do not have sufficient income (in most of the cases free legal aid is granted).<sup>191</sup></p>	
<b>Other?</b>				Less <input checked="" type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/>
Are any other rights relevant to mention here? Please describe	Y	Mandatory	With regard to other rights relevant to mention in this context, please refer to the same item in Table 1 above.	

**Table 3: Rights and services available to long-term irregularly staying migrants who have been issued a return decision**

<i>Type of stay or status as identified in Q2 and/or Q3: <u>Extension of period of voluntary return</u></i>				
Type of service	Service provided? (Y/N)	Is the provision of service <b>mandatory or discretionary?</b> <small>192</small>	Brief description Please consider for each type of services the long-term irregular migrants are entitled or have access to:  iii. Does this access stem from national law or practice? Does it stem from local (regional, municipal) rules or practice? iv. Which authorities are competent to provide access to services? Please indicate if access is provided by other entities (NGO, charities, private entities, etc) as service providers on behalf of the national or local authorities?	Please briefly assess and explain if the rights and access to services are more limited, same or more favourable than those of legal migrants or of nationals?
<b>Accommodation</b>				<b>Less <input checked="" type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/></b>
<b>Accommodation</b> <i>If yes, please briefly describe</i>	<i>N</i>		<ul style="list-style-type: none"> <li><i>i. It stems from an administrative practice.</i></li> <li><i>ii. The National Reception Office (ONA) of the Ministry of Foreign and European Affairs.</i></li> </ul> <p>Rejected international protection applicants, who have obtained an extension beyond 30 days to leave the territory, can stay in the reception facilities run by the ONA, or its partners during the duration of the extension.<sup>193</sup></p>	
<b>Special accommodation facilities (i.e. shelter for victims of violence, children etc.)</b> <i>If yes, please briefly describe</i>	<i>N</i>		<ul style="list-style-type: none"> <li><i>i. It stems from practice</i></li> <li><i>ii. NGOs</i></li> </ul> <p>Same information as provided under tables 1 and 2 under the same item.</p>	
<b>Other forms of accommodation or shelter or specialised centre</b>	<i>N</i>			

Healthcare				Less <input checked="" type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/>
<b>Emergency healthcare</b> <i>If yes please describe, as this notion can be understood in a large or restrictive way</i>	Y	Discretionary	<p><i>i. It stems from an administrative practice.</i></p> <p><i>ii. The National Reception Office (ONA) of the Ministry of Foreign and European Affairs and the Ministry of Health.</i></p> <p>In general, rejected AIPs (including persons that benefit from an extension of the period of voluntary return) residing in accommodation structures provided by the ONA, affiliated partners or in a private residence, maintain their affiliation to the National Health Fund (CNS), as long as they present themselves monthly to the ONA. If this deadline is not respected, their CNS membership can be terminated.</p> <p>The CNS normally takes care of the medical bills. If a person is not affiliated with the CNS, the Ministry of Health in some cases will cover their medical bills. This is an automatic administrative procedure and uses funds from the social offices of hospitals.<sup>194</sup></p>	
<b>Basic medical care</b> <i>If yes, please briefly describe</i>	Y	Discretionary	<p><i>i. It stems from national law and administrative practices</i></p> <p><i>ii. The National Reception Office (ONA) of the Ministry of Foreign and European Affairs and the Ministry of Health</i></p> <p>It should be noted that rejected AIPs residing in accommodation structures provided by the ONA, affiliated partners or in a private residence, maintain their affiliation to the National Health Fund (CNS), as long as they present themselves monthly to the ONA.</p>	
<b>Specialised care</b> <i>If yes, please briefly describe</i>	Y	Discretionary	<p><i>i. It stems from national law and administrative practices</i></p> <p><i>ii. The National Reception Office (ONA) of the Ministry of Foreign and European Affairs and the Ministry of Health</i></p> <p>Access to specialised care will depend on the medical situation of the person.</p>	
<b>Other healthcare services</b> <i>If yes, please briefly describe</i>	N			
Social assistance				Less <input checked="" type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/>
<b>Are long-term irregularly staying migrants</b>	N	Discretionary	<p><i>i. It stems from national law<sup>196</sup> and administrative practices</i></p> <p><i>ii. ONA of the Ministry of Foreign and European Affairs</i></p>	



<p>entitled to receive social benefits?<sup>195</sup></p> <p><i>If yes, please briefly describe what these benefits are</i></p>			<p>In principle, the answer to this question is No.</p> <p>However, the possibility exists for rejected applicants for international protection to have access to ONA's punctual support. The law of 4 December 2019 creating the National Reception Office (ONA)<sup>197</sup> foresees that ONA can offer punctual support to third-country nationals, who do not have the right to any existent aid or allowances in duly justified exceptional cases. Also, this aid can be provided for reasons that take into consideration the family, humanitarian, or health situation of the individuals concerned, without exceeding the amounts foreseen by the amended law of 18 December 2015 on the reception of applicants for international protection and temporary protection (Reception Law).<sup>198</sup></p>	
<p><b>Employment</b></p>				<p>Less <input type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/></p>
<p>Are there circumstances in your MS where long-term irregularly staying migrants are entitled to access to the labour market?</p> <p><i>If yes, please describe any specific conditions attached to their employment.</i></p>	<p>N</p>			
<p><b>Education</b></p>				<p>Less <input type="checkbox"/>   Same <input checked="" type="checkbox"/>   More <input type="checkbox"/></p>
<p>Do (long-term irregular migrant) children have access to compulsory education?</p> <p><i>If yes, please briefly describe access.</i></p>	<p>Y</p>	<p><i>Mandatory</i></p>	<p><i>i. It stems from national law.<sup>199</sup></i></p> <p><i>ii. The Ministry of National Education, Children and Youth, the College of mayors and aldermen of the municipalities or the office of the intercommunal school.</i></p> <p>Any child living in Luxembourg who is four years old before 1 September must attend school. This obligation runs for twelve consecutive years from 1 September of the year in question.<sup>200</sup></p>	
<p>Are adult long-term irregularly staying migrants entitled to participate in educational programmes</p>	<p>N</p>		<p><i>i. It stems from practice.</i></p> <p><i>ii. The National Reception Office (ONA) and NGOs</i></p>	

and/or professional training? <i>If yes, what types of education and under which conditions?</i>			However, if a person continues to reside in the reception centers run by the Red Cross or Caritas for example, they may have access to the services provided by these organisations. This sometimes includes language courses. <sup>201</sup>  In practice, rejected AIPs have access to education (school enrolment and contract of apprenticeship) and professional training until the day of return. Participation in such programs does not constitute a possible reason for non-return. <sup>202</sup>	
Legal aid or assistance				Less <input checked="" type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/>
Do long-term irregular migrants have access to legal aid or assistance type of services? <i>If yes, please briefly enumerate and explain</i>	Y	Discretionary	<ul style="list-style-type: none"> <li>i. It stems from national law.<sup>203</sup></li> <li>ii. The Ministry of Justice and the Luxembourgish Bar Association.</li> </ul> <p>All persons are entitled to appeal against a return decision. Depending on the case, they are entitled to free legal aid, only if they do not have sufficient income (in most cases free legal aid is granted).<sup>204</sup></p>	
Other?				Less <input checked="" type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/>
Are any other rights relevant to mention here? Please describe	Y	Mandatory	Concerning other rights relevant to mention in this context, please refer to the same item in Table 1 above.	

**Q11.** What services are accessible to other long-term irregular migrants who were **not issued a return decision**, and remained unknown to migration authorities (see answer to **Q1**)?

**Table 1: Services available to long-term irregularly staying migrants who were unknown to migration authorities (e.g. overstayers, irregular entry)**

Type of stay or status as identified in Q2 and/or Q3: [ N/A ]

Type of service	Service provided? (Y/N)	Is the provision of service <b>mandatory or discretionary</b> ? <sup>205</sup>	Brief description Please consider for each type of services the long-term irregular migrants are entitled or have access to: <ul style="list-style-type: none"> <li>iii. Does this access stem from national law or practice? Does it stem from local (regional, municipal) rules or practice?</li> <li>iv. Which authorities are competent to provide access to services? Please indicate if access is provided by other entities (NGO, charities, private entities, etc) as service providers on behalf of the national or local authorities?</li> </ul>	Please briefly assess and explain if the rights and access to services are more limited, same or more favourable than those of legal migrants or of nationals?
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Accommodation				Less <input type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/>
<b>Accommodation</b> <i>If yes, please briefly describe</i>	<i>N</i>		<p>To access certain services at the national or local level in the domain of housing (social housing, rent subsidy, etc.), it is necessary to be able to prove legal residence and attach the required documents to the request (copy of the authorisation or residence permit and/or proof of affiliation to social security). In the absence of the required documents, the request is refused.</p> <p>Persons who cannot prove a residence of at least 6 months<sup>206</sup>, which is often the case for irregularly staying migrants, are refused in homeless shelters.</p>	
<b>Special accommodation facilities (i.e. shelter for victims of violence, children, etc.)</b> <i>If yes, please briefly describe</i>	<i>Y</i>	<i>Mandatory</i>	<p>Special accommodation facilities exist for victims of violence. They offer shelter for the concerned persons regardless of their migration status.</p> <p>For example, the Fraenhaus service<sup>207</sup> of the NGO 'Femmes en Détresse' offers assistance and refuge to women - with or without children - victims of domestic violence.</p> <p>Moreover, the majority of people who seek the services of the SAVTEH ('Services d'Assistance aux Victimes de la Traite des Etres Humains') of 'Femmes en Détresse' are third-country nationals in an irregular situation (expired visa, absence of residence document etc.). As soon as a person shows signs of human trafficking, they enter a reflection period of three months and receive a certificate of suspension of removal.<sup>208</sup></p>	
<b>Other forms of accommodation or shelter or specialised center</b>	<i>N</i>			
Healthcare				Less <input checked="" type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/>
<b>Emergency healthcare</b> <i>If yes please describe, as this notion can be understood in a large or restrictive way</i>	<i>N</i>	<i>Discretionary</i>	<p><i>i. It stems from practice</i></p> <p><i>ii. NGOs and the Joint Social Security Centre ('Centre commun de la sécurité sociale' - CCSS)</i></p> <p>Undocumented migrants do not have access to official health care services unless they are covered by insurance contributions (please refer to Table 1 under Q.10). In these cases, irregular migrants will have full access to the different types of healthcare.</p> <p>According to the Social Security Code, persons residing in the Grand Duchy of Luxembourg who cannot otherwise benefit from health insurance protection are entitled to take out voluntary insurance. Entitlement to benefits is only</p>	Care is available against payment. <sup>216</sup>

			<p>available after a three-month insurance period starting from the submission of the application to the Joint Centre of Social Security (CCSS).</p> <p>In Luxembourg, they do not need a certificate of domicile issued by the municipality to insure themselves. It suffices to have a proof of payment of housing fees, a certificate issued by a person in a regular situation that makes a declaration on behalf of a person in an irregular situation that lives with them,<sup>209</sup> or a certificate issued by an NGO that works in the area of migration<sup>210</sup>. It should be noted that this is an administrative practice used as a measure of last resort.<sup>211</sup> Without a stable income, these persons cannot benefit from voluntary optional health insurance (€ 119.95 per month).<sup>212</sup></p> <p>Unemployed people who do not have social security coverage also do not have access to any medical services. The only services that they have access to are the services provided by 'Médecins du Monde'.<sup>213</sup> Different organisations also orientate their clients to 'Médecins du Monde' if need be.<sup>214</sup></p> <p>Finally, in relation to medical care for minors, there is a legal procedure that provides for minors to be taken care of by the State, regardless of their migrant condition.<sup>215</sup></p>	
<b>Basic medical care</b> <i>If yes, please briefly describe</i>	<i>N</i>	<i>Discretionary</i>	<i>i. It stems from practice.<sup>217</sup></i> <i>ii. NGOs, Joint Social Security Centre (Centre commun de la sécurité sociale - CCSS)</i>	Care is available against payment <sup>218</sup>
<b>Specialised care</b> <i>If yes, please briefly describe</i>	<i>N</i>	<i>Discretionary</i>	<i>i. It stems from practice.<sup>219</sup></i> <i>ii. NGOs, Joint Social Security Centre (Centre commun de la sécurité sociale - CCSS)</i>	Care is available against payment <sup>220</sup>
<b>Other healthcare services</b> <i>If yes, please briefly describe</i>	<i>N</i>			
<b>Social assistance</b>				Less <input checked="" type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/>
<b>Are long-term irregularly staying migrants entitled to receive social benefits?<sup>221</sup></b> <i>If yes, please briefly describe what these benefits are</i>	<i>N</i>		<p>In principle, only persons legally residing in Luxembourg are entitled to social welfare aid to help them achieve a dignified standard of living.</p> <p>However, in exceptional cases, the social offices may grant humanitarian aid to irregularly staying migrants. Humanitarian aid is in the form of access to</p>	

			<p>medical consultations or providing the person with medication. In these cases, the office will cover the costs. This may differ from one social welfare office to another.</p> <p>Social welfare offices do not cover social security costs, however, and if necessary they will redirect a person to the NGO 'Médecins du Monde'.<sup>222</sup></p>	
<b>Employment</b>				Less <input type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/>
<p>Are there circumstances in your MS where long-term irregularly staying migrants are entitled to access to the labour market?</p> <p><i>If yes, please describe any specific conditions attached to their employment.</i></p>	N			
<b>Education</b>				Less <input type="checkbox"/>   Same <input checked="" type="checkbox"/>   More <input type="checkbox"/>
<p>Do (long-term irregular migrant) children have access to compulsory education?</p> <p><i>If yes, please briefly describe access.</i></p>	Y	Mandatory	<p><i>i. It stems from the national law.<sup>223</sup></i></p> <p><i>ii. The Ministry of National Education, Children and Youth, the college of mayors and aldermen of the municipalities or the office of the intercommunal school.</i></p> <p>Any child living in Luxembourg who is four years old before 1 September must attend school. This obligation runs for twelve consecutive years from 1 September of the year in question.<sup>224</sup></p> <p>The college of mayors and aldermen or the office of the intercommunal school union ensure compliance with compulsory schooling. Each year, on 1 October they draw up a list of all the children residing in the municipality and who are subject to compulsory education.<sup>225</sup></p> <p>For the school registration of irregularly staying children, there is consultation between the school services and the population registrar of the municipality. Usually, school registration is based on a national identification number card ("matricule"), a proof of address, a lease contract, etc. Practices may differ between communes.</p> <p>By registering in the waiting list, a "matricule" is created to facilitate school registration.</p>	

Are adult long-term irregularly staying migrants entitled to participate in educational programmes and/or professional training? <i>If yes, what types of education and under which conditions?</i>	<i>N</i>			
Legal aid or assistance				Less <input type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/>
Do long-term irregular migrants have access to legal aid or assistance type of services? <i>If yes, please briefly enumerate and explain</i>	<i>N</i>			
Other?				Less <input type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/>
Are any other rights relevant to mention here? Please describe	<i>N</i>			

**Q12.** Do **authorities** (at central or local level) need to **check the migration status** (or the lack thereof) **before providing access to a service** (e.g. accommodation, healthcare, education), or are there ‘firewall provisions’ allowing persons concerned to access services without fear of being apprehended?

Yes. To access certain services at the national or local level, third-country nationals must fulfill certain conditions. The most important condition is to prove legal residence and to present proof of identity. Access may be refused in the absence of the required documents. Note that public officials are required to report infractions and crimes, but not situations of illegal stay.<sup>226</sup>

Municipalities do not have access to a governmental database on the legal status of foreigners but they are allowed to ask a person to provide identification and request the required documentation to prove their legal status in the country (e.g. authorisation to stay), in order to register them at the municipality.<sup>227</sup> The verification process is based on the documentation that people must attach to an application required for the registration in the civil registry of the municipal office. Information exchange between central and local authorities may happen on individual files in the case of registration (or removal from) in the municipal and national register of natural persons (see the answer to question 21).

For the school enrolment of children who are irregularly staying in the country, there is consultation between the school service and the population office of the respective communes. Usually, the school registration is based on the national identification number (“matricule”), proof of address, a lease contract, etc. Practices may differ between communes. By registering in the waiting register, a number is created to facilitate school registration.<sup>228</sup>

In practice, access to education can be difficult because they need an address for school enrolment. At the latest at the time of the children’s school registration, the address of the child (and of his/her parents) must be known.<sup>229</sup>

For undocumented parents, it is difficult to obtain an address, which is why children are not always in school. Also, there can always be a fear for the parents of being discovered.<sup>230</sup>

Access to health care is based on a person’s affiliation to social security. A person who is not affiliated can purchase voluntary health insurance. Even if s/he has to be a resident, the joint social security center does not require a certificate of domicile issued by the municipality and checks the migration status of the person concerned. It suffices to have a proof of payment of housing fees, a certificate issued by a person in a regular situation that makes a declaration on the behalf of a person in an irregular situation that lives with them,<sup>231</sup> or a certificate issued by an organisation that works in the area of migration.

Social welfare offices do not have contact with the Directorate of Immigration if they come into contact with an irregularly staying migrant. They are often in contact with ‘Médecins du Monde’. It is important to note that these measures may differ from one social welfare office to another.<sup>232</sup>

**Q13.** Is **cooperation to return to the country of origin an obligation** if one of the services are provided (under Q10 and Q11) to the long-term irregularly staying migrant?

Yes

No

If yes, please explain the applicable procedures and how it is carried out.

In the case of rejected AIPs who accept to leave the territory through a voluntary return, s/he may continue to benefit from certain services such as accommodation, medical care, and social assistance during the time the voluntary return is organised and executed. In these cases, the individual has to cooperate with the authorities.<sup>233</sup> However, the support that is provided is decided upon on a case-by-case basis and based on the opinion of the social worker processing the case and if the individual abides to internal regulations.<sup>234</sup> If the third-country national does not cooperate or tries to obstruct the organisation of the return, s/he risks being placed in the Detention Centre.<sup>235</sup>

**Q14.** Are there **any specific projects and/or (ad-hoc) programmes** implemented at the **local level** (by municipalities, regions, etc) in your (Member) State specifically targeting the access to services for long-term irregularly staying migrants?

Yes

No

*If yes, please provide examples (e.g. which stakeholders are involved in the design, implementation and effects of the projects or programmes, any evaluations conducted on the projects or programmes and any key learning points identified)*

N/A

**Q15a.** With the exception of organisations acting as a service provider for public authorities (Q10 and Q11), are **other entities or organisations** (e.g. NGOs, charities, other private entities) involved in providing or facilitating access to services for long term irregularly staying migrants?

Yes

No

*If yes, please specify which entities, what type of involvement and service (e.g. accommodation, health care, counselling) are they involved in and, which type of funding used to support their activities.*

In general, the below-mentioned organisations and projects are not obliged to provide services to irregular migrants that present themselves to them. They are accepted on an ad-hoc basis and in exceptional circumstances, as undocumented migrants do not fulfill the entry requirements for these services. In the context of Covid-19, exceptions were made and accepted by the authorities in the name of public health and interest<sup>236</sup> (i.e. healthcare and the social grocery stores – see answers to Q8, Q19 and Q24).<sup>237</sup>

#### Caritas

Caritas is in contact with migrants in an irregular situation as well as with beneficiaries of a suspension or postponement of removal. Migrants in an irregular situation, whether they are rejected AIPs or undocumented migrants, that present themselves to the Caritas' headquarters, receive information and orientation adapted to their personal situation, ad-hoc assistance in exceptional cases, clothes, and food vouchers.

Usually, migrants in an irregular situation hear about Caritas' consultations (especially undocumented migrants) from word of mouth.

Caritas has a small budget for people who do not have social insurance to pay for emergency medication. such as painkillers or treatment for fever etc.

During the state of emergency, Caritas opened a hotline to help advise and orientate people who are financially struggling, some of which were migrants in an irregular situation. This Corona-Helpline was financed by Caritas' own funds and donations.

#### Luxembourgish Red Cross

Beneficiaries of a suspension or postponement of removal have access to all of the Red Cross' services.<sup>238</sup>

There have also been cases where people who have not applied for international protection were accommodated by the Red Cross, however, this is very rare.<sup>239</sup>

Irregularly staying migrants are sometimes taken care of by the Red Cross even if they are not accommodated in one of the structures of the Red Cross. Normally, these individuals have serious health problems. They call the Red Cross Social Helpline, later they can receive food packages from the food bank.<sup>240</sup>



During the Covid-19 pandemic, the Red Cross took care of individuals who tested positive, including irregular migrants, as well as individuals who were put in quarantine and did not have a place to be lodged. Generally, within the service Abricoeur<sup>241</sup> of the Red Cross, they often come across irregularly staying migrants in Luxembourg.<sup>242</sup>

### **ASTI**

In 2020, ASTI's service 'Guichet Info Migrants' is subsidized by providing one social worker by the Ministry of Family Affairs, Integration, and the Greater Region, as well as through donations and private funds. It offers free advice and guidance on administrative procedures concerning questions on immigration and stay to foreigners in general independent of their legal status.<sup>243</sup>

In the context of Covid-19, the food vouchers for irregular migrants (see answers to Q.4 and Q.8) were organised through the 'Guichet Info Migrants', however, it was financed only through donations and private funds.<sup>244</sup> The aid was a spontaneous reaction to the crisis and it was later accepted by the Ministry of Family Affairs, Integration and the Greater Region that staff resources were reallocated towards providing support to undocumented migrants during the crisis.<sup>245</sup> It was the first time that a project is specifically focused on irregular migrants, as this population is excluded from receiving any kind of formal support from Social Welfare Offices who are not legally obliged to provide services to undocumented migrants.<sup>246</sup>

Since the end of October 2020, irregular migrants got access to free Covid-19 testing.<sup>247</sup>

ASTI also orientates this population to Médecins du Monde in case they need medical assistance.<sup>248</sup>

### **Médecins du Monde (MDM)**

Médecins du Monde is an NGO that provides medical care to vulnerable persons in Luxembourg, which includes homeless people and/or undocumented migrants.<sup>249</sup> Their staff is normally volunteers (130 at the end of 2019)<sup>250</sup> working in the healthcare industry and they have created a network with regards to giving access to healthcare. For example, they are in contact with healthcare professionals that work in medical centers that provide services voluntarily such as the CHL who also provide emergency dental care. Another example of their close collaboration with the Planning Familial which allows for pregnant women to receive care.<sup>251</sup>

They provide emergency and basic care.<sup>252</sup> In case of need for special care, Médecins du Monde has developed a network with specialised doctors who accept to give free healthcare to their patients. It is important to mention that Médecins du Monde has increased its services due to the increase in the number of persons (third-country nationals, EU citizens, and Luxembourg citizens) who demand their services. The beneficiaries of services provided by Médecins du Monde's services are individuals who find themselves excluded, in one way or another, from the healthcare system, either because they do not have access to it because of administrative or financial barriers, are not aware of it or because they are awaiting the opening of their rights. Families of migrants in an irregular situation also present themselves to MDM (i.e. rejected AIPs or who have not applied for international protection). They are undocumented and therefore cannot access health services.<sup>253</sup>

Social consultations are organized at each care center. In 2019, 650 social consultations were offered, allowing 472 people to receive support and guidance regarding their rights and access to health insurance.<sup>254</sup>

During consultations, beneficiaries have access to primary general medical care, medical treatment (drugs, therapeutic equipment, dressings, crutches), psychological support, and medical pedicures. Paramedical and hygiene products are also offered.<sup>255</sup>

More specialist care is organized thanks to their specialist partners, physiotherapists, dentists, laboratory and screening and prevention services, as well as to emergency departments and hospital policlinics.<sup>256</sup>

The healthcare services are carried out by volunteers working in the healthcare industry – nurses, doctors, and psychologists. The Healthcare Centres ('*Centre d'accueil, de soins et d'orientation*' – CASO) in Luxembourg City and Esch-sur-Alzette receive people in need of medical care and who do not have access to national social security schemes. The

medical consultations are free, and one does not need an appointment. Medication provided to patients is also free of charge.<sup>257</sup>

### **Luxembourgish Council for Refugees (LFR)**

The LFR is a grouping of associations that is funded by its member's private funds and works with volunteers. It is present at the Detention Centre to ensure the presence of civil society and to guarantee the transparency of the functioning of the Centre and respect for individual rights.<sup>258</sup> Its members visit detainees to provide moral support and to supervise that their rights are respected.<sup>259</sup>

### **Projects aimed at fighting for inclusion and against precarious situations**

There exist different initiatives which are sometimes open to irregular migrants.

#### **Homeless shelters and 'Wanteraktioun'**

Since 2001, the project aims to give homeless people shelter (day and night) during the winter from 1 December to 31 March.<sup>260</sup> However, during the state of crisis it worked until July 2020.<sup>261</sup> Due to the curfew implemented by the Luxembourgish government on 29 October 2020 to fight the increase of Covid-19 cases, the Wanteraktioun started on 2 November 2020.<sup>262</sup>

During the first months of the pandemic, the 'Wanteraktioun' also accommodated exceptionally irregular migrants.<sup>263</sup>

#### **Halte de Nuit – 'Nuetswaach'**

The 'Nuetswaach', a joined initiative of Caritas and the City of Luxembourg, is an emergency accommodation/night shelter for homeless people that do not want to or cannot stay in other centers due to their level of vulnerability. Except for non-violence and respect of others, no conditions are asked of the persons seeking assistance.<sup>264</sup>

#### **Streetwork**

Streetwork is an initiative that aims to identify people that could have access to various services offered by different NGOs.<sup>265</sup> Irregular migrants have access to their consultation services. After a first consultation, Streetwork staff orients the person to different services depending on their needs. They also come into contact with people who have received a suspension or postponement of removal, however, this does not happen often.<sup>266</sup>

#### **Chemins de Fer Luxembourgeois (CFL) - Parachute**

The Luxembourgish railway (CFL) hosts an initiative called Parachute, which is a shelter located in the Central Station created jointly with the City of Luxembourg and the Ministry of Family and Integration. A social worker of Caritas is on location daily to assist persons without a fixed or stable address that roam around the station and who can find refuge during the day and seek help if needed.<sup>267</sup> This service is open to irregular migrants and people who do not have access to other services.<sup>268</sup>

Seeing that social distancing measures were not possible to implement during the pandemic it was closed since the beginning of the pandemic.<sup>269</sup>

#### **Le Courage**

Le Courage is a social bistro created by the City of Luxembourg and Caritas, which allows homeless people to spend some time during the day in a safe environment and with no constraints. Since it opened, it became an essential component of the City of Luxembourg social network. One of its missions is to orientate people towards the various social services available to them in Luxembourg City. Irregular migrants can benefit from this initiative.<sup>270</sup>

**Q15b.** Do these **entities or organisations** need to **report on the migration status** (or the lack thereof) **before providing access to a service** (e.g. accommodation, healthcare, education) or are there 'firewall provisions' allowing persons concerned to access services without fear of being apprehended?

No, as there is no obligation to denounce irregular migrants in Luxembourg.<sup>271</sup> For example, Médecins du Monde stated that they have never been contacted by the police nor have any of their volunteers been questioned after providing treatment to an undocumented migrant.<sup>272</sup>

**Q16.** If a long-term irregular migrant is a **victim of or witness to an offence** (e.g. labour exploitation, domestic violence, etc), are there any available '**safe reporting**'<sup>273</sup> channels between the TCN concerned and public authorities to report the incident without divulging their situation of illegal stay?

Yes

No

If yes, please briefly describe the channel/reporting mechanism:

If a third-country national is a witness of a crime and their testimony is important to the case, the Grand Ducal Police and the Public Prosecutor Office can request the Investigating Judge to stop the removal of this irregularly staying third-country national.<sup>274</sup> In this case, the Investigating Judge can request the Directorate of Immigration to suspend the removal until the witness has testified.

Where employment is concerned, under Article L. 612-1 of the Labour Code, the Inspectorate of Labour and Mines (ITM) is notably responsible for: [...]

b) advising and assisting employers and employees and providing practical legal and technical information in the implementation of legal, regulatory, administrative, and contractual provisions in matters of work and occupational safety and health, as well as, to act as a common interlocutor to prevent and resolve individual social conflicts;

c) putting an end to situations in contradiction with the legal, regulatory, administrative, and contractual provisions in matters of work and occupational safety and health;

d) ascertaining offenses in the areas within its competence and to notify the State Prosecutor; [...].

Therefore, third-country nationals can contact the ITM, either to obtain information on working conditions and occupational safety and health, or to lodge a complaint against their employer. It should also be noted that the ITM is bound to respect the confidentiality of complaints and professional secrecy. Complaints or denunciations can therefore be filed safely with the ITM.<sup>275</sup> The ITM has a Help Call Centre (HCC), which, among other functions, receives complaints originating from witnesses in the workplace (i.e. private persons, co-workers, labour unions ...) on the topic of illegal employment. In some cases, third-country nationals complain about poor working conditions.<sup>276</sup>

**Q17.** Are there any **assisted voluntary return (AVR) projects or programmes** implemented in your (Member) State that also specifically foresee support to access to services (in the host (Member) State, thus before departure) for long-term irregular migrants?

Yes

No

If yes, please describe (e.g. please consider any specific conditions to access the service(s)):

During information sessions provided by IOM, irregularly staying migrants essentially receive information on the voluntary return program. The orientation is focused on the assistance provided within the framework of the voluntary return program, both in Luxembourg and in the country of origin.

When the current situation of the irregular migrant appears difficult and is confirmed during the information session, general information on the existing support services in Luxembourg are shared (especially in terms of social assistance - housing, nutrition - and health).<sup>277</sup>

**Q18.** Please provide if applicable **illustrative (and anonymised) case(s)** of measures adopted by authorities (a) at central, (b) regional and (c) local level (e.g. municipalities) to provide access to services (e.g. accommodation, health, etc) – up to two examples.

In Luxembourg, there are no illustrative cases in general.

**Q19.** Did any change happen in relation to access of long-term irregular migrants to social services as described above, as consequence of measures taken in response to the COVID-19 pandemic?

Yes

No

If yes, please describe by referring to all relevant aspects and services covered in **Q10-Q17**.

During the state of crisis, the Minister of Health indicated at a press conference that people presenting symptoms of Covid-19 would be taken care of at one of the advanced health care centers, regardless of their social security coverage. This also applied to foreign nationals at the end of their rights and those who are irregularly staying and who do not have social security coverage.

To counter the psychological barrier that some people may face and hesitate to go to one of the advanced health care centers, the Ministry of Health has passed an official communication to all healthcare professionals in those centers to raise their awareness that all people can benefit from care provided in the centers, regardless of their social security cover or residence status. Moreover, translators from the Red Cross were available by telephone to ensure good communication between the health workers and the patient.

The Ministers concerned (Minister of Health and Minister of Foreign and European Affairs) ensured that no administrative sanctions would be imposed on those who would present themselves for medical care during the health crisis and that, in this regard, no return decision or a placement decision at the Detention Centre will be taken.

Other exceptions were made with accommodating irregular migrants in shelters (i.e. Wanteraktion) and providing access to social grocery stores (see above).

**Q20.** Is there any research available in your (Member) State on irregular migrants accessing rights and services listed above (conducted by relevant authorities, academics, NGOs, etc.)?

Yes

No

If yes, please describe the main findings and conclusions of such research and provide a full reference to the source.

N/A

## SECTION 2.2: COOPERATION MECHANISMS BETWEEN CENTRAL, REGIONAL AND LOCAL AUTHORITIES

*This section will focus on the cooperation between central authorities and, regional authorities as well as municipalities in the implementation of national policies on long-term irregular migration.*

**Q21.** Were specific measures (legislative, administrative, practices) implemented by central authorities to help regional and local authorities to anticipate and/or to respond to the situation of long-term irregular migrants in their territories?

Monitoring and follow-up approaches of long-term irregularly staying migrants

*Please provide a short description of the (i) measure(s); (ii) proposed effects and (iii) involved organisations (national stakeholders, cities, professionals, etcetera)*

N/A

Information exchange between central and local authorities about long-term irregularly staying migrants

*Please provide a short description of the (i) measure(s); (ii) proposed effects and (iii) involved organisations (national stakeholders, cities, professionals, etcetera)*

Information exchange between central and local authorities may happen on individual files in the case of registration (or removal from) in the municipal and national register of natural persons (see answer to Q.12). In practice, municipalities try to determine whether the person in question can be registered or ask the Directorate of Immigration what steps the person must take to regularize their administrative situation. Municipal administrations usually contact the Directorate of Immigration if a third-country national on a short stay (less than 3 months) declared their place of residence at the municipality but exceeded the duration of their short stay.<sup>278</sup>

Also, the municipality is notified by the Directorate of Immigration that a person has obtained a residence permit, which can result in registration on the main register, or no longer has a right of residence.<sup>279</sup> Usually, if a third-country national is in an irregular situation, or if a required document is missing, municipalities may notify the Directorate of Immigration. The municipality is notified in writing of a negative decision of the Directorate of Immigration. It is also marked by a code in the computer system and visible in the municipalities' registers.<sup>280</sup>

However, when dealing with long-term irregularly staying migrants, this information exchange does rarely happen, as they normally avoid any contact with administrative authorities in order to stay undiscovered.<sup>281</sup> The exchange of information with local authorities is done when there is a change in legislation on immigration or in administrative practices about legal migration. In general, national authorities inform municipal authorities via a circular with information notes on the new legal framework, measures, and their implementation. Since 2015, circulars and briefing notes have been addressed to municipalities<sup>282</sup>, but the question on irregularly staying migrants was not specifically addressed.<sup>283</sup>

Guidance or any other form of established practice made available to regional and local authorities on how to assist long-term irregularly staying migrants (e.g. training sessions, guidance (e.g. written instructions or guidelines), other)

*Please provide a short description of the (i) measure(s); (ii) proposed effects and (iii) involved organisations (national stakeholders, cities, professionals, etcetera)*

N/A

Other measure(s)

*Please provide a short description of the (i) measure(s); (ii) proposed effects and (iii) involved organisations (national stakeholders, cities, professionals, etcetera)*

N/A

**Q22.** Do local authorities in your Member State participate in **horizontal cooperation networks** (of local authorities) to develop good practices and/or programmes to address the situation of long-term irregular migrants?

Yes

No

If yes, please provide examples.

N/A

**Q23.** Were there any studies or research published on the effectiveness of any of the measures mentioned in Q21?

Yes

No

If yes, please mention references and brief description of the studies or piece of research:

N/A

### SECTION 2.3: GOOD PRACTICES

**Q24.** What are **good practices** regarding policy measures concerning long-term irregularly staying migrants?

*For each good practice mentioned, please describe **a)** for whom it is a good practice (policy-maker, organisation, other stakeholders), **b)** why it is considered a good practice and **c)** whether the assessment that this is a good practice is based on input from experts (and if so, which experts), surveys, evaluation reports, focus groups or from other sources (please indicate which ones).*

Providing services (housing, health care, other measures)

Please provide a brief explanation:

Normally there are no good practices concerning long-term irregular migrants. Nevertheless, there are some good practices.

#### **Provision of healthcare to rejected AIPs**

##### **Government and Civil Society**

The CNS affiliation of rejected AIPs and beneficiaries of postponement or suspension of removal is maintained if they report regularly to the ONA.<sup>284</sup>

Following a meeting in 2018 between Médecins du Monde and the Minister of Social Security, there was a common agreement to facilitate access to health insurance for all children living in Luxembourg, including those whose parents

are in an irregular situation based on articles 1 and 32 of the Social Security Code. In this case, the State takes responsibility for the costs. However, families must provide the costs up-front and they are then reimbursed. In cases where families do not have the means to do so, MDM offers to cover the costs and be reimbursed by the State, as some of MDM's patients often cannot afford to subscribe to voluntary health insurance (€ 119 per month) or, if they are insured, are unable to advance the costs. In 2019, the Minister of Social Security announced that a third-party generalized payment would be introduced. This is seen as a good practice.<sup>285</sup>

## **Education**

### **Government and Civil Society**

Any child living in Luxembourg aged 4 to 16 must attend school. According to Article 19, the college of mayors and aldermen or the office of the intercommunal school union must ensure compliance with compulsory education.<sup>286</sup>

## **Cooperation**

In general, NGOs collaborate between themselves and orient irregular migrants to services that could help with their particular situation (see the answer to Q15a).

During the Covid-19 pandemic crisis, there are some good practices concerning this population implemented by the Government.

### **State of crisis**

The year 2020 was marked by the Covid-19 crisis, and in this context, there have been some temporary changes introduced by legislation to avoid those third-country nationals residing or staying irregularly in the territory to become irregular migrants.

On 18 March 2020, a state of crisis was declared<sup>287</sup> to better manage the Covid-19 pandemic. The state of crisis was initially declared for ten days and later extended until 24 June 2020.<sup>288</sup>

On 19 March 2020, the Directorate of Immigration of the Ministry of Foreign and European Affairs communicated to the public through a press release<sup>289</sup> that the stay of third-country nationals holding one of the following documents, which would expire as of 1 March 2020, would be extended for the duration of the state of crisis:

- Short and long stay visas;
- Temporary residence permits;
- Residence cards;
- Residence permits.

Likewise, the stay of third-country nationals who were not subject to visa requirements and whose stay just exceeded 90 days was regularized for the duration of the state of crisis.<sup>290</sup>

The press release emphasized that the aforementioned measures were automatic and that the persons concerned did not have to make any specific request or process.

On 24 June 2020, the Ministry of Foreign and European Affairs further informed the public<sup>291</sup> that third-country nationals whose documents would expire were temporarily regularized during the state of crisis and beyond:

- The time limit during which third-country nationals – who submitted their declaration of arrival between 1 January and 31 July 2020 – need to request the issuance of a residence permit was extended from three to six months.<sup>292</sup>

- The validity period of residence permits that expired after 1 March 2020 was extended until 31 August 2020.<sup>293</sup>

Finally, third-country nationals exempt from a visa and who overstayed the 90-day period after 1 March 2020, along with third-country nationals whose short-term visa expired, were regularized until 31 July 2020.<sup>294</sup>

These measures were broadcasted across several communication channels.<sup>295</sup> The reason behind this policy is to prevent that legally staying migrants fall into an irregular situation.

#### **Healthcare linked to Covid-19 crisis**

##### **Government and Civil society**

The Minister of Health and the Minister of Immigration and Asylum notified healthcare professionals working in advanced care centers that all people could benefit from advanced care regardless of their social security cover or residence status during the Covid-19 pandemic crisis. The Ministers committed themselves that no administrative sanctions would be issued towards irregular migrants. Persons without health insurance (this is not specific to irregular migrants but includes them) were received in COVID-19 screening centers) and the costs of testing/isolation were borne by the State.<sup>296</sup> These measures were approved by the LFR on World Refugee Day.<sup>297</sup>

#### **Provision of food to people in precarious situations and Covid-19.**

##### **Government and Civil society**

From 15 April 2020, the Ministry of Family Affairs, Integration, and the Greater Region gave access to social grocery stores to irregularly staying migrants. Thus, undocumented people were able to benefit from food aid through social welfare offices and partner associations of the social grocery projects. People were able to register with the various partners of the social grocery stores anonymously and without having to indicate any social security numbers.<sup>298</sup> (See answer to Q.4).

#### **Provision of Shelter and Covid-19**

##### **Civil society**

See answers to Q. 15a under Luxembourgish Red Cross and Wanteraktioun.

- Exchanging information between national and local authorities on long-term irregularly staying migrants

Please provide a brief explanation:

Luxembourg's small geographic size has the beneficial effect that communication between national and local administrations is rapid and that decision-making channels are short.<sup>299</sup>

- Exchanging information between Member States?

Please provide a brief explanation:

#### **Government**

##### ***Benelux Sub-Committee "Readmission"***



As part of its activities at the Benelux level, the Directorate of Immigration regularly participates in the meetings of the Benelux Sub-Committee "Readmission". This sub-committee is not specifically concerned with the subject of irregular migrants, but with the development of readmission agreements and related implementation protocols. The Directorate of Immigration of the Ministry of Foreign and European Affairs identified this as a good practice.<sup>300</sup>

Furthermore, Luxembourg has very good cooperation with EU member states and associated countries, with the European Commission as well as with the European Border and Coast Guard Agency (FRONTEX).<sup>301</sup>

Other good practices

Please provide a brief explanation:

N/A

### Section 3: Responses to end long term irregular stay

*This section will focus on policies and good practices implemented in finding approaches to address (and end) the issue of long-term irregularity. This section aims to research the following:*

- *What measures (e.g. policies, practical tools, guidance) were implemented to bring protracted situations of illegal stay to an end?*
- *Were there any studies or research published on the effectiveness of these measures?*
- *What are the key challenges and good practices in terms of policy regarding long-term irregularly staying migrants?*

**Q25.** What options are available in your Member State to end long-term illegal stay of third-country nationals (e.g. return, legalisation of stay, other)? Which are prioritized?

The main option available to long-term irregular migrants is return. Voluntary return remains the preferred option - over forced return - to end the long-term irregular stay of third-country nationals. In the Coalition Agreement 2018-2023, the Government stated that they will continue their cooperation with IOM and set-up information dissemination campaigns aimed at rejected applicants for international protection, along with a personalized support mechanism for voluntary return.<sup>302</sup>

Other options are: individual regularizations are possible, but they are rare as the procedure is quite restrictive in the eyes of civil society<sup>303</sup> and the government does not have plans to initiate a general regularization.

#### SECTION 3.1. MEASURES TO PROMOTE RETURN OR DISCOURAGE ILLEGAL STAY

**Q26.** What measures to **promote return or discourage illegal stay** are in place in your Member (State) specifically for long term irregular migrants (as identified in this study)?

*e.g. restricted access to mainstream services or specific programmes geared towards third-country nationals in a prolonged situation of irregular stay, specific cooperation measures between national, regional and local authorities.*

*Please note that various measures directly related to the enforcement of a return decision such as AVR programmes or other incentives to return were already captured in numerous other EMN studies and discussions at expert group level and are not the primary focus of this study.*

In principle, any negative decision of an authorisation of stay or an application for international protection is accompanied by a return decision.<sup>304</sup>

International protection applicants are informed from the beginning of the international protection procedure of the possibility to return voluntarily with the assistance of the Assisted Voluntary Return and Reintegration – Luxembourg programme (AVRR).<sup>305</sup>

The main measures taken by the government to discourage illegal stay are restricting access to mainstream services as it has been described above, as the proof of legal residence and the proof of identity (which is accompanied by the request of the residence permit) make it almost impossible for irregular migrants to access any services.

The temporary measures that were taken by the government addressed to this population were taken based on public health and humanitarian criteria (i.e. access to health services and public grocery stores).

**Q27a.** What are the **good practices as identified in your Member States to promote return or discourage illegal stay** for long term irregular migrants identified in your (Member) State?

*For each good practice mentioned, please describe a) for whom it is a good practice (policy-maker, organisation, migrant, other stakeholders), b) why it is considered a good practice and c) what is the source of the statement – e.g. based on input from experts, surveys, evaluation reports or from other sources (please indicate which ones).*

The AVRR Luxembourg programme is considered as a good practice by the government and civil society as it allows the return of rejected international protection applicants and irregular migrants.<sup>306</sup> The AVRR is seen as a good practice and complement to an effective return policy. As Médecins du Monde works closely with IOM, they also consider the AVRR programme as a good practice.<sup>307</sup>

The Government and civil society see facilitating the access to information for rejected AIPs on AVR(R) programmes as a good practice because the dissemination of information promotes the willingness of rejected AIPs and irregular migrants to return.<sup>308</sup> The Covid-19 crisis has the effect that the AVRR programme experiences high demand.<sup>309</sup>

Efforts in using and creating alternatives to detention that are being developed further can be seen as a good practice to increase the efficiency and management of returns, and adapt the measures used to the needs of vulnerable groups.<sup>310</sup> However, the practical implementation of these alternatives can be viewed as a challenge (see the answer to Q4a).

The Directorate of Immigration considers that when more forced returns are executed, there is a direct impact on the number of voluntary returns.<sup>311</sup> Also, the intensification of controls by the ITM on construction sites and companies to detect a possible practice of clandestine work leads to an increase in voluntary returns because, failing to be able to work illegally, third-country nationals in an irregular situation lack the means of subsistence. The Directorate of Immigration perceives the fight against illegal employment as having a positive effect on returns. Luxembourg has registered an increase in returns towards Brazil and Montenegro recently.<sup>312</sup>

**Q27b.** Is there any research available in your (Member) State on **promotion of return or the discouragement illegal stay** (conducted by relevant authorities, academics, NGOs, etc.)?

Yes

No

If yes, please describe the main findings and conclusions of such research and provide a full reference to the source.

N/A

**Q28.** Please provide **illustrative example(s)** of responses and/or good practices to **promote return or discourage illegal stay** adopted by authorities (a) at central level, (b) regional and/or (c) at local level (e.g. municipalities) – up to two examples, in the form of anonymised case studies of individual long-term irregularly staying migrants):

See examples provided in answer to Q.27a.

## SECTION 3.2: LEGALISATION OF STAY OPEN SPECIFICALLY TO LONG-TERM IRREGULAR MIGRANTS

**Q29. Are options for legalisation of stay** open specifically to long-term irregular migrants in your Member (State)?

*E.g. a specific status/residence permit for legalising the stay of long-term irregularly staying migrants (see section 1)? specific schemes established at national level for legalising the stay of long-term irregular migrants? Or do such options form part of the system of residence permits available to all migrants?*

If yes, please briefly explain the criteria considered (e.g. integration in labour market, length of stay, language skills, absence of criminal record, social and family ties, having entered the country as a minor):

As it was mentioned above, article 89 of the Immigration Law provides the possibility to regularise on a case-by-case basis and it targets individuals who have accomplished at least four years of education in the Luxembourgish school system, as well as their parents, and that do not have a criminal record. Nevertheless, the criteria and interpretation are considered by several organisations as very restrictive, as was mentioned above.

The residence permit for private reasons for humanitarian reasons of exceptional gravity allows a long-term irregular migrant with a return decision to stay and reside in the country if s/he can prove the humanitarian reasons of exceptional gravity and the absence of criminal record and if s/he does not represent a threat to public order and national security.<sup>313</sup> This last criterion makes that the burden of proof is higher than simple humanitarian reasons and in most cases, these humanitarian reasons of exceptional gravity are related to serious medical conditions.

The Coalition Agreement of 2018-2023 foresees the possibility of the working group operating within the Directorate of Immigration in charge of assessing the situation of irregularly staying third-country nationals to involve representatives of civil society when advising the Minister of Immigration and Asylum on a possible decision to regularize a person, in particular based on humanitarian grounds of exceptional gravity.<sup>314</sup>

Discussions are currently underway on the creation of a permanent forum with a fixed timetable between the Directorate of Immigration and NGOs to analyse individual cases of irregular migrants submitted by NGOs. This issue will be discussed shortly with the NGOs in question.<sup>315</sup>

**Q30a. What are the good practices as identified in your Member States with regards to legalisation of stay** identified in your (Member) State?

*For each good practice mentioned, please describe a) for whom it is a good practice (policy-maker, national or local authority, organisation, migrant, other stakeholders), b) why it is considered a good practice and c) what is the source of the statement – e.g. based on input from experts, surveys, evaluation reports or from other sources (please indicate which ones).*

There were general regularisations in the past and they were based on the employment situation of the applicants, however, the last general regularization took place in 2013 with the transposition of the Sanctions Directive (2009/52/EC).<sup>316</sup> According to Caritas, a good practice was the fact that the Minister of Labour, Employment and Immigration at the time requested the collaboration of NGOs.<sup>317</sup>

Caritas considers that, in order to reduce irregular stays, the legislation should provide for a permanent regularization mechanism. Also, stronger sanctions must be applied in the fight against trafficking, exploitation at work, and illegal work.<sup>318</sup> They also consider that granting of a residence permit based on “humanitarian grounds or exceptional gravity” is a good practice, as it allows the regularization of an irregular migrant for humanitarian reasons of exceptional gravity.<sup>319</sup> ASTI and CLAE want the introduction of a temporary residence permit for the purpose of seeking work.<sup>320</sup>

Another good practice reported by ASTI is the option for an undocumented person to regularize their situation if they are the parent of a child with EU citizenship under the framework of Article 12 (2) paragraph 3, point b of the Immigration Law (*‘constatation de relation durable’*).<sup>321</sup> This article may apply to irregularly staying migrants even though it is not targeted at them.<sup>322</sup>

**Q30b.** Is there any research available in your (Member) State on **practices with regards to options for legalisation of stay** available specifically to irregular migrants (conducted by relevant authorities, academics, NGOs, etc.)?

Yes

No

If yes, please describe the main findings and conclusions of such research and provide a full reference to the source.

N/A

**Q31.** Please provide **illustrative example(s)** of responses and good practices related to the **legalisation of stay measures** adopted by authorities (a) at central level, (b) regional and/or (c) at local level (e.g. municipalities) – up to two examples, in the form of anonymised case studies of individual long-term irregularly staying migrants):

See answer to Q.29.

### SECTION 3.3.: MEASURES TAKEN IN RESPONSE TO THE COVID-19 PANDEMIC

**Q32.** Were measures taken to end the situation of long-term irregular migrants specifically in connection to the responses to and **impacts of the COVID-19** (e.g. legalisation of migrant workers employed in specific sectors)? Please describe.

No.

## Section 4: Challenges and future actions

**Q33.** What are the challenges regarding **policy measures** concerning long-term irregularly staying migrants?

*For each challenge mentioned, please describe **a)** for whom it is a challenge (policy-maker, organisation, other stakeholders), **b)** why it is considered a challenge and **c)** whether the assessment that this is a challenge is based on input from experts (and if so, which experts), surveys, evaluation reports, focus groups or from other sources (please indicate which ones).*

Providing services (e.g. housing, health care, etc)

Please provide a brief explanation:

### Accommodation

Médecins de Monde (MDM) state that the pandemic highlighted the need for existing accommodation structures to accommodate irregular migrants, those without a CNS affiliation and an income. Accommodation structures must, according to MDM, broaden the existing admission criteria.<sup>323</sup> Some homeless people, who are particularly ill, do not have the possibility of having a bed, even for a few days, even though their state of health is incompatible with life on the street. Existing structures do not accept them because they are either without a residence permit, without income and/or without access to social security coverage.<sup>324</sup>

### Health Care

In 2019, the Ronnen Dösch working group SANTE (Health), together with several different associations and civil society actors, made some recommendations on universal health coverage and related aspects in Luxembourg. Their recommendations highlighted that access to healthcare by irregular migrants is a challenge due to difficulties in becoming affiliated to social security without a registered address and economic constraints.<sup>325</sup>

The problem of non-affiliation to social security was also highlighted by the pandemic.

According to Caritas, CLAE and Médecins du Monde<sup>326</sup> access to universal health care is a challenge.<sup>327</sup> Médecins du Monde considers the four main barriers to access healthcare in Luxembourg to be the following: 1) costly medical consultations; 2) costly medications, 3) administrative barriers, and 4) costly health insurance.<sup>328</sup> Added to difficult economic and social conditions is the fact that MDM patients often live without their children: a third of them have children under the age of 18, but in 81% of cases (2018: 80%), they do not live with them. This highlights the break-up of families, linked in part to migration. It is recognized that long periods of separation and estrangement from the family have detrimental effects on the mental health of migrants, especially among women separated from all or part of their children.<sup>329</sup>

### Access to Social Security

Médecins du Monde considers that access to social security is a challenge. They base their opinion on the fact that only 13% of their patients declared having a CNS card (11% in 2017, 20% in 2018) and therefore having access to social security coverage.<sup>330</sup>

Barriers to voluntary affiliation exist: 1) an address must be provided, this not necessarily a legal address but an address of correspondence; 2) gaining access to a bank account: in some cases, undocumented migrants may ask if they can use a friend's bank account.

People without a stable home cannot fulfill the condition of having an address. Often, irregular migrants do not want to communicate the contact details of the persons who host them for fear of being apprehended.<sup>331</sup>

### Labour Market

The ITM is responsible for detecting the employment of illegally staying third-country nationals. If an infringement is found in this matter, an administrative fine of € 2 500 per irregularly staying third-country national is imposed on the employer. If aggravating circumstances are found, the ITM draws up a report for the Public Prosecutor's Office with a view to possible criminal proceedings. Between 2017 and 2019, the number of checks and as a result injunctions/legal proceedings and fines have increased.

Since 2015, the number of illegally staying third-country nationals that were detected by the ITM and the number of administrative sanctions that followed and have been imposed on employers is: 2 in 2015; 0 in 2016; 6 in 2017, 12 in 2018, 68 in 2019 and 73 during 2020. In 2015, the administrative fines for these violations amounted to EUR 5 000, EUR 15 000 in 2017, EUR 32 500 in 2018, and € 222 500 in 2019.<sup>332</sup> Finally, the number of administrative fines sanctioning employers that illegally employed irregularly staying third-country nationals were 2 in 2015, 6 in 2017, 11 in 2018, and 61 in 2019.<sup>333</sup>

A challenge for the ITM in the last years has been the recruitment of staff to increase inspections.<sup>334</sup> Another challenge is obtaining proof of illegal employment (i.e. an employment contract). In 2016, the Directorate of Immigration and labour unions voiced that illegally employed third-country nationals often do not manifest themselves to the authorities or labour unions due to their situation. Even if apprehended, they may be reluctant to cooperate with the authorities, making sanctioning of employers difficult.<sup>335</sup>

The Fraenhaus also perceives the conditions for victims of violence in some cases to be a challenge. These people can apply for a residence permit for private reasons, or they must find a job. If after six months the person has not been able to find a job, they must either make an extension of the request, or leave the territory. This is problematic as the Luxembourgish labour market requires a level of language (French or German) that these women often do not have.<sup>336</sup>

### **Education**

The Red Cross mentioned that access to education for children can sometimes be challenging because they need an address for school enrolment. For undocumented parents, it is difficult to obtain an address and even a reference address; therefore, children are not always in school.<sup>337</sup>

The general challenge is to see if people are in an irregular situation and live in Luxembourg or on the territory of a municipality, for example, in the context of school enrolment with the municipalities.<sup>338</sup>

Challenges exchanging information and/or cooperation between national and local authorities on long-term irregularly staying migrants

Please provide a brief explanation:

As it was mentioned above, irregular migrants try to pass undetected to the authorities (central and local authorities alike) making the detection and determination of the dimension of the phenomenon, as well as the exchange of information between the different authorities very difficult.

Challenges exchanging information between Member States?

Please provide a brief explanation:

### **Awareness Raising**

The Red Cross underlines that one of the biggest problems is linked to the fact that without a residence, access to services is not given. Also, their staff would often like to take care of people who are illegally staying but they do not have the tools to do so. To develop effective tools for providing information and taking charge of people in an irregular situation, it would be preferable to work in the Greater Region.<sup>339</sup>

The Red Cross mentions that it is difficult to approach the State concerning the phenomenon of irregular migrants and to raise awareness on it with the State and municipalities.<sup>340</sup>

☒ Other challenges (e.g. other measures mentioned in section 3) Please provide a brief explanation:

The Directorate of Immigration considers that due to the geographical size of Luxembourg and the fact that it only has diplomatic representations in a limited number of third countries, Luxembourg often faces difficulties to return the irregular migrants to their home country and welcomes the possibility to participate in joint actions with the other Member States.<sup>341</sup>

**Q34.** What are the challenges regarding **policy measures** concerning long-term irregularly staying migrants specifically linked to the reposes to and impacts of the **COVID-19 pandemic**?

#### The Job Market

Even if the Government decided to extend short-time working measures for companies affected by the pandemic to revive the job market and ensure the continuity of job vacancies, it was feared that many people including third-country nationals facing the possibility of being made redundant could face losing their legal status or becoming dependent on welfare assistance. Irregular migrants living in a precarious situation or employed illegally (i.e. in the HORECA sector), lost their jobs and are unable to provide for themselves or their families. They relied on help provided by NGOs such as ASTI, Caritas, and Médecins du Monde, unable to access welfare assistance otherwise.<sup>342</sup> According to ASTI and Caritas, the loss of jobs and the loss of financial means more generally for people in already fragile situations are the most worrying aspects of the crisis.<sup>343</sup>

To avoid penalizing workers who encountered problems due to the health crisis linked to Covid-19, the Directorate of Immigration adopted a flexible approach. This mainly concerns certain deadlines provided for by the amended law of 29 August 2008.<sup>344</sup>

#### Seeking Medical Treatment

The reluctance of irregular migrants to seek treatment in the event of illness for fear of administrative and judicial consequences in the event of control by the authorities is also a challenge. However, this was curbed during the pandemic through the guarantees given by the Minister of Health and the Minister of Immigration and Asylum (see the answer to Q4).

According to Caritas, the response to the LFR letter was very important because irregular migrants were previously afraid to approach health centers. Moreover, since irregular migrants are not registered at a municipality, they did not have access to the distribution of masks. Another challenge was the access to testing and, in the future, to vaccinations. One possibility would be to facilitate their access and for the distribution of masks to be done by NGOs. For the moment, this has been done by Caritas but on own funds or thanks to donations.<sup>345</sup>

**Q35.** What are the challenges of **promoting return or discouraging illegal stay** concerning long-term irregularly staying migrants? Please describe any additional challenges specifically linked to the reposes to and impacts of the **COVID-19 pandemic**?

Irregular migrants who are not yet detected by the authorities are difficult to reach out to to provide information.<sup>346</sup> Furthermore, some rejected AIPs that received a negative decision and disappeared are probably not aware of the AVRR programme.<sup>347</sup> Another challenge in promoting return through the dissemination of information is that there is a lack of strategy in how to target this population.<sup>348</sup>

According to civil society, the unwillingness of people to return, the misunderstanding of available information (due to language barriers or misinformation (i.e. rumors of an upcoming general regularisation)), and the unsuitability of available programmes are considered a challenge.<sup>349</sup>

The identification procedure of irregular migrants and rejected AIPs has consistently proven to be difficult when organising their return (i.e. procuring travel documents or identity documents). This identification process is not only limited to the availability of identification documents of the persons in question, but it also depends in many cases on the cooperation with the countries of origin or their embassies.<sup>350</sup>



According to IOM, the challenges are the lack of prospects for migrants in the country of origin, especially in the absence of any reintegration assistance or in case of basic reintegration assistance, which is considered insufficient and the fear of having to face the same difficulties that led them to leave their country (violence of all kinds, economic difficulties). At the level of COVID: the difficulties are the reduced possibilities of return from Luxembourg (few flights available from Luxembourg). In the case of the organization of flights from Brussels airport, IOM has had some problems as some of the departures were postponed because the person concerned had not obtained the test result within the deadline. One case was postponed because of a positive COVID test.<sup>351</sup>

During the pandemic, the detention of irregular migrants was a challenge because it was difficult to guarantee social distancing. This caused the release of some of the detainees as the deadlines of detention were expired. Subsequently, the accommodation of the released detainees became a challenge (see the answer to Q.4a).

The Directorate of Immigration also mentioned that increasing the number of controls of residence documents and intensifying the fight against illegal employment was a challenge during the pandemic.<sup>352</sup>

**Q36.** What are the challenges regarding the **options for legalisation of stay** available to long-term irregularly staying migrants? Please describe any additional challenges specifically linked to the reposes to and impacts of the **COVID-19 pandemic**?

In general, the challenge concerning the regularization of the stay of people in an irregular situation is that the great majority of these people do not meet the conditions of the categories of residence permits foreseen by the Immigration Law.<sup>353</sup>

During the Covid-19 pandemic, the legislative measures that were taken by the government were intended to avoid that third-country nationals (i.e. persons with a visa or residence permit that was going to expired) did not fall in an irregular situation (see answers to Q.4 and Q.24). They were not foreseen for dealing with long-term irregular migrants who are unknown to the authorities.

From the perspective of civil society, regularising long-term irregular migrants is a real challenge for the reason mentioned above. According to Caritas, at the political level, one challenge is to introduce a permanent mechanism of regularization<sup>354</sup> as the possibility of individual regularisation foreseen in article 89 of the Immigration Law is insufficient to tackle the problem as it is very restrictive (see above), even though some of the NGOs considered at the time that the amendment of this article was good practice.<sup>355</sup> Nevertheless, eligibility criteria for the regularisation were limited to parents with children who are attending school. Some organisations consider that this could be seen by the parents who are in an irregular situation as a trap and will continue to avoid detection even though this implies to take the children out of school.<sup>356</sup> Also, they consider that the introduction of the requirement of not having avoided a return decision is open to (restrictive) interpretation and often excludes rejected AIPs and other irregular migrants. The combination of these changes render the article with little or no effect.<sup>357</sup>

Case-per-case regularisations by the Government are seen both as a good practice and a challenge as they create a pull-factor because some irregular migrants hope that a general regularisation can occur.<sup>358</sup> However, general regularisations are also challenging as it is difficult to reach this population and all will depend on the criteria required.<sup>359</sup> If having employment is a requirement, this will cause a problem to provide any evidence as the transposition of the Sanctions Directive imposes sanctions to the employers (administrative and criminal). As a consequence, some employers might not be willing to provide any proof of the existence of the labour relation. According to ASTI, increasing or creating alternative legal migratory pathways to the ones in place could hamper irregular migration and decrease the amount of irregularly staying migrants.<sup>360</sup>

**Q37.** According to (central and/or local) stakeholders in your (Member) State, what actions could be taken **at EU level** to support (Member) States to effectively cooperate and overcome the challenges faced in relation to long-term irregularly staying migrants?

*For each suggested improvement mentioned, please describe a) for whom it is a suggestion (policy-maker, organisation, other stakeholders), b) why it is considered a suggestion and c) whether the assessment that*

*this is a suggested improvement based on input from experts (and if so, which experts), surveys, evaluation reports, focus groups or from other sources (please indicate which ones).*

According to the Red Cross, the European migration policy could be amended to avoid irregular stay. Migration policies are always linked to an economic aspect. It would be important to consider the humanitarian aspect to limit irregular immigration. To implement this, they propose that the European Commission must enlarge the legal pathways to migrate to the European Union, complemented with more information on the risks of irregular migration in the countries of origin.

## Section 5: Conclusions

*This section of the Synthesis Report will draw conclusions as to the Member States' existing policies, practices and case law related to long-term irregularly staying migrants.*

**Q38.** With regard to the aims of this study (policy responses to long-term irregular migrants), what conclusions would you draw from your findings reached in elaborating your national contribution?

With reference to the primary research question, please elaborate your conclusions highlighting the relevance of your findings to (national and/or EU level) policy-makers. You may cover the following points:

- The size of the problem of long-term irregular migrants in your country
- the most topical issues raised in the political and policy debate on the situation of long-term irregularly staying migrants
- The main concerns and issues related to providing access to public services to long-term irregularly staying migrants
- The main concerns and issues related to implementing measures to bring protracted situations of illegal stay to an end

In Luxembourg, there is no distinction between a short-term irregular migrant and a long-term irregular migrant. The law does provide, however, for special administrative measures for irregular migrants that are subject to a return decision but for whom the decision cannot be enforced due to legal or practical obstacles - suspension of removal for medical reasons and a postponement of removal. They grant third-country nationals the right to stay, but not to reside. Beneficiaries of a suspension or a postponement of removal are entitled to continue residing in accommodation facilities aimed at AIPs. They are also entitled to healthcare, social assistance, employment through a temporary occupation authorisation (AOT), education, and legal aid. Albeit, beneficiaries of a suspension or a postponement of removal are only registered on the waiting list of the registry of natural persons of the concerned municipality and cannot be issued a residence certificate. This hampers their access to most services. Irregular third-country nationals who are unknown to the authorities, however, do not have a right to stay nor a right to residence.

In general, it is very difficult to produce figures on the number of irregular third-country nationals in Luxembourg. Unless they are residing in reception structures aimed at AIPs or if they have been placed in the Detention Centre, it is almost impossible to determine the exact number as they move freely around Luxembourg at any moment, are living undetected, or travel to the other Member States without notifying or being detected by the authorities. Although different State institutions and NGOs are in contact with irregular third-country nationals that do not benefit from an administrative measure, they are only aware of those that present themselves to their services. Therefore, any estimation on the size of the problem of long-term irregular migrants based on the available data in Luxembourg would not provide a realistic image of the phenomenon. Civil society also mentioned that it is sometimes a challenge to make national and local authorities aware of the issue of irregular third-country nationals residing in Luxembourg.

For the most part, the debates for the period 2015 to 2020 were not always directly related to the issue of long-term irregularly staying migrants. However, they did relate to issues that are connected to them, for example, administrative detention and return. The most relevant debates surrounded the Asylum Law in 2015, which amended the Immigration Law and the possibility to regularise an irregularly staying migrant and the Covid-19 crisis in 2020, which particularly highlighted the problems that irregularly staying migrants face, as they often find themselves in precarious situations.

The latter sparked a call from civil society for a general regularization mechanism and universal healthcare coverage for these individuals.

Irregular third-country nationals that are unknown to the authorities are not entitled to any services provided by the State, but exceptions do exist. In general, a person's access to healthcare is conditional to being affiliated to the CNS. If an irregular third-country migrant cannot opt for voluntary health insurance or be insured by other means, they may seek the services of the NGO Médecins du Monde. Furthermore, to ensure compliance with the compulsory education of children, irregular migrants may register themselves at their respective municipality so that their children can access education.<sup>361</sup> Another exception is if an irregular migrant is a victim of violence, they are accommodated in structures specifically aimed at victims of violence as the State recognizes that domestic violence infringes upon a person's rights. During this time, they can benefit from other services until they either leave the territory or can regularise their situation.

In other emergency situations, NGOs or other associations that do not normally provide services (e.g shelter, food etc.) for irregular migrants may do so. This is usually done on a case-by-case basis and in exceptional circumstances. In this event, they do not need to report to the authorities before providing a service. Moreover, the Covid-19 pandemic highlighted the need for support and aid to this population because, in order to have access to certain services, a certain number of conditions must be fulfilled, in particular relating to a legal residence by producing the necessary documents for this purpose.

At a municipal level, persons in an irregular situation or who benefit from a suspension or postponement of removal may have access to the activities offered by the various services provided by municipalities and can attend events open to the general public which is also usually free. Note that public officials are required to report infractions and crimes, but not situations of illegal stay. In this light, it is important to note that a safe reporting channel also exists for irregular migrants that have witnessed a crime or feel exploited in the workplace. In criminal investigations where the testimony of an irregular migrant is crucial for the case, their removal may be suspended until the witness has testified.

The Covid-19 pandemic highlighted several challenges concerning this population that was dealt with by the authorities in the name of public health and interest and viewed as a good practice both by civil society and the Government. The key good practices were: granting them access to healthcare without fearing to be apprehended, giving access to emergency shelters whose admission criteria do not normally allow for irregular migrants to be hosted, giving access to social grocery shops, and automatically extending permits to prevent third-country nationals from finding themselves in an irregular situation. Outside of the Covid-19 crisis, the granting of access to healthcare to rejected AIPs if they continue to reside in State structures or could affiliate to social security by voluntary assurance, compulsory education for all children, regardless of their migratory status, and circular migration programmes were listed as good practices. Furthermore, civil society has a good collaboration among themselves and with IOM in which they redirect irregular third-country nationals towards different services and NGOs that are adapted to their needs.

In regard to key challenges on the provision of services, three areas were detected:

**Healthcare:** civil society sees a need for the admission criteria of emergency shelters to be broadened and creating a universal health care system as access to healthcare by irregular migrants is limited due to difficulties to affiliate to social security without a registered address and economic constraints.

**Labour exploitation:** It is a challenge as illegally working third-country nationals often do not manifest themselves to the authorities or labour unions due to their situation. Even if apprehended, they may be reluctant to cooperate with the authorities, making the sanctioning of employers difficult.

**Education:** Although compulsory education is seen as a good practice from the State, in practice, it is difficult for undocumented migrants to obtain an address for the enrolment process of schools without making their presence known to the State, as a result, children are not always in school.

When it comes to ending the situation of long-term illegally staying third-country nationals, return is prioritized over legalisation of stay. No campaigns for general have taken place since 2013, however, individual regularisations had taken place on a case-by-case basis. These regularisations present a dilemma. On the one hand, it allows for a dialogue between the State and the undocumented migrant but on the other hand, it can create hope for irregular migrants who think that their situation might be regularised at some point. Even though civil society is advocating for a new general regularisation, they acknowledge that on a political level this is a challenge, as the question of how to reach this

population is an issue and what criteria should be put in place, as in the past some of the applicants did not fulfill the criteria.

## ENDNOTES

<sup>1</sup>Article 100 of the amended Law of 29 August 2008 on free movement of persons and immigration. Published in Memorial A-138 of 10 September 2009, URL: <http://legilux.public.lu/eli/etat/leg/loi/2008/08/29/n1/jo>

<sup>2</sup>Article 34 of the amended Law of 29 August 2008 on free movement of persons and immigration.

<sup>3</sup>Articles 686 (1) and 687 (1) of the Criminal Procedure Code. URL: [http://legilux.public.lu/eli/etat/leg/code/procedure\\_penale/20200320](http://legilux.public.lu/eli/etat/leg/code/procedure_penale/20200320)

<sup>4</sup>Information provided by the Directorate of Immigration on 21 October 2020.

<sup>5</sup>It is possible that the same person received several renewals in the same year. Directorate of Immigration, Ministry of Foreign and European Affairs, « Bilan de l'année 2015 en matière d'asile et d'immigration », Luxembourg, 2016, p. 21. URL: <https://statistiques.public.lu/fr/actualites/population/population/2016/02/20160204/20160204.pdf>

See also:

Directorate of Immigration, Ministry of Foreign and European Affairs, « Bilan de l'année 2016 en matière d'asile et d'immigration », Luxembourg, 2017, p.29. URL: <https://statistiques.public.lu/fr/actualites/population/population/2017/03/20170327/bilan-annuel-2016.pdf>

Directorate of Immigration, Ministry of Foreign and European Affairs, « Bilan de l'année 2017 en matière d'asile et d'immigration », Luxembourg, 2018, p.29. URL: <https://maee.gouvernement.lu/dam-assets/directions/d8/publications/statistiques-en-mati%C3%A8re-d-asyle/bilan-de-l-annee-2017-en-matiere-d-asile-et-d-immigration.pdf>

Directorate of Immigration, Ministry of Foreign and European Affairs, « Bilan de l'année 2018 en matière d'asile et d'immigration », Luxembourg, 2019, p. 34. URL: <https://maee.gouvernement.lu/dam-assets/directions/d8/publications/statistiques-en-mati%C3%A8re-d-asyle/20190131-Bilan-2018-Asile-Immigr-Accueil-presse.pdf>

Directorate of Immigration, Ministry of Foreign and European Affairs, « Bilan de l'année 2019 en matière d'asile et d'immigration », Luxembourg, 2020, p.27. URL: [https://maee.gouvernement.lu/content/dam/gouv\\_maee/directions/d8/publications/statistiques-en-mati%C3%A8re-d-asyle/Bilan-2019-Asile-Immigration-et-Accueil.pdf](https://maee.gouvernement.lu/content/dam/gouv_maee/directions/d8/publications/statistiques-en-mati%C3%A8re-d-asyle/Bilan-2019-Asile-Immigration-et-Accueil.pdf)

<sup>6</sup> Ibidem.

<sup>7</sup>Information provided by the Directorate of Immigration on 21 October 2020.

<sup>8</sup>Directorate of Immigration, Ministry of Foreign and European Affairs, « Bilan de l'année 2015 en matière d'asile et d'immigration », Luxembourg, 2016, p. 17.

See also:

Directorate of Immigration, Ministry of Foreign and European Affairs, « Bilan de l'année 2016 en matière d'asile et d'immigration », Luxembourg, 2017, p.23.

Directorate of Immigration, Ministry of Foreign and European Affairs, « Bilan de l'année 2017 en matière d'asile et d'immigration », Luxembourg, 2018, p.21.

Directorate of Immigration, Ministry of Foreign and European Affairs, « Bilan de l'année 2018 en matière d'asile et d'immigration », Luxembourg, 2019, p. 24.

Directorate of Immigration, Ministry of Foreign and European Affairs, « Bilan de l'année 2019 en matière d'asile et d'immigration », Luxembourg, 2020, p.19.

<sup>9</sup>Information provided by the Directorate of Immigration on 21 October 2020.

<sup>10</sup>Answer of the Minister of Immigration and Asylum of 20 February 2017 to the Parliamentary question n°2719 on reject applicants of international protection. URL: <https://csv.lu/files/2017/01/QP-2719.pdf>

<sup>11</sup>Information provided by the Directorate of Immigration on 21 October 2020.

<sup>12</sup>*Ibidem.*

<sup>13</sup>Joint answer of the Minister of Immigration, the Minister of Interior and the Minister of Education of 16 September 2019 to the Parliamentary Question n° 1042 on irregularly staying migrants. URL: [https://www.chd.lu/wps/PA\\_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=BE0DEF8626467290F208985E7FC68F56\\$6B340751CB77672449884520DFE24752&fn=BE0DEF8626467290F208985E7FC68F56\\$6B340751CB77672449884520DFE24752.pdf](https://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=BE0DEF8626467290F208985E7FC68F56$6B340751CB77672449884520DFE24752&fn=BE0DEF8626467290F208985E7FC68F56$6B340751CB77672449884520DFE24752.pdf)

<sup>14</sup>ASTI registers the people that seek their services anonymously into a database. The database records how the persons concerned entered Luxembourg, their gender, age, the number of years they have been in Luxembourg and their nationality. Information provided by ASTI on 13 October 2020

<sup>15</sup>Information provided by ASTI on 13 October 2020.

<sup>16</sup>Information provided by Caritas on 5 October 2020.

<sup>17</sup>This figure should be analyzed with care as it includes individuals who are counted several times as they come and go.

<sup>18</sup>Information provided by the Red Cross on 6 October 2020.

<sup>19</sup> Médecins du Monde, « Rapport d'activités 2019 », extended version, 9 July 2020, p. 10. URL : [https://medecinsdumonde.lu/sites/default/files/201959-MDM-L-Rapport-annuel-2019\\_page\\_WEB.pdf](https://medecinsdumonde.lu/sites/default/files/201959-MDM-L-Rapport-annuel-2019_page_WEB.pdf)

<sup>20</sup> *Ibid*, p. 16.

<sup>21</sup> *Ibidem*

<sup>22</sup>The three main nationalities were as follows: 11 Ukrainians, 10 Brazilians, 6 Chinese. Information provided by the Inspectorate of Labour and Mines (ITM) on 7 October 2020.

<sup>23</sup>Article 132 (1) of the amended Law of 29 August 2008 on free movement of persons and immigration.

<sup>24</sup>Article 132 (1) of the amended Law of 29 August 2008 on free movement of persons and immigration.

<sup>25</sup>LU EMN NCP, « Comparative overview of national protection statuses in the EU and Norway», 2019, pp. 16-17. URL: [http://www.emnluxembourg.lu/wp-content/uploads/2019/06/EMN-Luxembourg-Comparative-Overview-of-National-Protection-Statuses\\_2019-1.pdf](http://www.emnluxembourg.lu/wp-content/uploads/2019/06/EMN-Luxembourg-Comparative-Overview-of-National-Protection-Statuses_2019-1.pdf)

<sup>26</sup>*Ibidem.*

<sup>27</sup> Directorate of Immigration, Ministry of Foreign and European Affairs, « Bilan de l'année 2015 en matière d'asile et d'immigration », Luxembourg, 2016, p. 21.

<sup>28</sup> Directorate of Immigration, Ministry of Foreign and European Affairs, « Bilan de l'année 2016 en matière d'asile et d'immigration », Luxembourg, 2017, p.29

<sup>29</sup> Directorate of Immigration, Ministry of Foreign and European Affairs, « Bilan de l'année 2017 en matière d'asile et d'immigration », Luxembourg, 2018, p.29

<sup>30</sup> Directorate of Immigration, Ministry of Foreign and European Affairs, « Bilan de l'année 2018 en matière d'asile et d'immigration », Luxembourg, 2019, p. 34.

<sup>31</sup> Directorate of Immigration, Ministry of Foreign and European Affairs, « Bilan de l'année 2019 en matière d'asile et d'immigration », Luxembourg, 2020, p.27.

<sup>32</sup>The postponement of removal was introduced by the Law of 1 July 2011 amending the amended Law on the free movement of people and immigration and the amended Law of 5 May 2006 on asylum.

The postponement of removal replaced the measure of tolerance, introduced by the Law of 18 March 2000 amending the amended Law of 3 April 1996 establishing a procedure relating to the examination of an asylum application. The measure of tolerance was initially limited to unsuccessful asylum seekers, whilst the postponement of removal applies to all foreigners who find themselves in an irregular situation, whether they are rejected asylum seekers or not.

<sup>33</sup>Article 131 (2) and 132 (3) in accordance with article 78 (3) of the amended Law of 29 August 2008 on free movement of persons and immigration.

<sup>34</sup>*Ibidem.*

<sup>35</sup>LU EMN NCP, « Comparative overview of national protection statuses in the EU and Norway», 2019, p. 18

<sup>36</sup>Article 39 (1) of the amended Law of 29 August 2008 on free movement of persons and immigration.

<sup>37</sup>*Ibidem.*

<sup>38</sup>Article 78 (3) of the amended Law of 29 August 2008 on free movement of persons and immigration.

<sup>39</sup>LU EMN NCP, « Comparative overview of national protection statuses in the EU and Norway», 2019, pp. 11-12

<sup>40</sup>*Ibidem.*

<sup>41</sup>Article 79 (1) of the amended Law of 29 August 2008 on free movement of persons and immigration.

<sup>42</sup>Article 109 and 113 of the amended Law of 29 August 2008 on free movement of persons and immigration in accordance with article 16 of the amended Law of 21 June 1999 regulating the proceedings before administrative courts.

<sup>43</sup>Article 38 paragraph 1 of the amended Law of 21 June 1999.

<sup>44</sup>Article 113 of the amended Law of 29 August 2008 on free movement of persons and immigration.

<sup>45</sup>LU EMN NCP, « Comparative overview of national protection statuses in the EU and Norway», 2019, p. 10.

<sup>46</sup>Directorate of Immigration, Ministry of Foreign and European Affairs, « Bilan de l'année 2015 en matière d'asile et d'immigration », Luxembourg, 2016, p. 17.

<sup>47</sup>Directorate of Immigration, Ministry of Foreign and European Affairs, « Bilan de l'année 2016 en matière d'asile et d'immigration », Luxembourg, 2017, p. 23.

<sup>48</sup>Directorate of Immigration, Ministry of Foreign and European Affairs, « Bilan de l'année 2017 en matière d'asile et d'immigration », Luxembourg, 2018, p. 21.

<sup>49</sup>Directorate of Immigration, Ministry of Foreign and European Affairs, « Bilan de l'année 2018 en matière d'asile et d'immigration », Luxembourg, 2019, p. 24.

<sup>50</sup>Directorate of Immigration, Ministry of Foreign and European Affairs, « Bilan de l'année 2019 en matière d'asile et d'immigration », Luxembourg, 2020, p.19.

<sup>51</sup>To determine the number of irregular migrants that benefited from article 78(3), each file would have to be examined in detail. Information provided by the Directorate of Immigration on 21 October 2020.

<sup>52</sup>Article 89 (1) of the amended Law of 29 August 2008 on free movement of persons and immigration.

<sup>53</sup>*Ibidem.*

<sup>54</sup>Article 89 (2) of the amended Law of 29 August 2008 on free movement of persons and immigration.

<sup>55</sup>Information provided by the Directorate of Immigration on 21 October 2020.

<sup>56</sup>*Ibidem.*

<sup>57</sup>The amended Grand Ducal Regulation of 18 March 2020 on the introduction of a series of measures to fight Covid-19. The state of crisis was declared based on Article 32 (4) of the Luxembourgish Constitution. Published in Memorial A-165 of 18 March 2020, URL: <http://www.legilux.lu/eli/etat/leg/rgd/2020/03/18/a165/jo>. The declaration of state of crisis was later extended until 24 June 2020 by the Law of 24 March 2020 on the extension of the state of crisis declared by the Grand Ducal Regulation of 18 March 2020 on the introduction of a series of measures to fight Covid-19. Published in Memorial A-178 of 24 March 2020, URL: <http://legilux.public.lu/eli/etat/leg/loi/2020/03/24/a178/jo>

<sup>58</sup>Article 13 paragraphs 1 and 2 of the amended Grand Ducal Regulation of 18 March 2020 introducing a series of measures to fight COVID-19.

<sup>59</sup>Article 1 (3) of the Law of 20 June 2020 on the introduction of certain temporary measures regarding the application of the amended Law of 29 August 2008 on free movement of persons and immigration. Published in Memorial A-536 of 25 June 2020. URL: <http://legilux.public.lu/eli/etat/leg/loi/2020/06/20/a536/jo>

<sup>60</sup>Article 1 (2) of the Law of 20 June 2020.

<sup>61</sup>Article 111 (2) of the amended Law of 29 August 2008 on free movement of persons and immigration.

<sup>62</sup>*Ibid*, paragraph 2.

<sup>63</sup>Information provided by the Directorate of Immigration on 21 October 2020.

<sup>64</sup>Article 132 (1) of the amended Law of 29 August 2008 on free movement of persons and immigration.

<sup>65</sup>Article 132 (2) of the amended Law of 29 August 2008 on free movement of persons and immigration in accordance with article 27 of the amended Law of 18 December 2009 organising social aid.

<sup>66</sup>Article 125bis (1) of the amended Law of 29 August 2008 on free movement of persons and immigration.

<sup>67</sup>*Ibidem*.

<sup>68</sup>*Ibidem*.

<sup>69</sup>Directorate of Immigration, Ministry of Foreign and European Affairs, « Bilan de l'année 2015 en matière d'asile et d'immigration », Luxembourg, 2016, p. 21.

<sup>70</sup>Directorate of Immigration, Ministry of Foreign and European Affairs, « Bilan de l'année 2016 en matière d'asile et d'immigration », Luxembourg, 2017, p.29

<sup>71</sup>Directorate of Immigration, Ministry of Foreign and European Affairs, « Bilan de l'année 2017 en matière d'asile et d'immigration », Luxembourg, 2018, p.29

<sup>72</sup>Directorate of Immigration, Ministry of Foreign and European Affairs, « Bilan de l'année 2018 en matière d'asile et d'immigration », Luxembourg, 2019, p. 34.

<sup>73</sup>Directorate of Immigration, Ministry of Foreign and European Affairs, « Bilan de l'année 2019 en matière d'asile et d'immigration », Luxembourg, 2020, p.27.

<sup>74</sup>Article 125bis (2) of the amended Law of 29 August 2008 on free movement of persons and immigration in accordance with article 27 of the amended Law of 18 December 2015 on International Protection and Temporary Protection.

<sup>75</sup>Article 125bis (2) of the amended Law of 29 August 2008 on free movement of persons and immigration.

<sup>76</sup>Article 78 of the amended Law of 29 August 2008 on free movement of persons and immigration. However, in the case where a residence permit for private reasons based on humanitarian reasons of exceptional gravity is granted the return decisions issued against the individual are annulled.

<sup>77</sup>Article 123 (6) of the amended Law of 29 August 2008 on free movement of persons and immigration.

See also: European Migration Network, National Contact Point Luxembourg, « Annual Report on Migration and Asylum 2019 », Luxembourg, 2020.

<sup>78</sup>The amended Law of 18 December 2015 on International Protection and Temporary Protection.

<sup>79</sup>Parliamentary Document N°6779/01, « Governmental Amendment ». Introduced into Parliament on 18 May 2015, Explanatory statement, p. 2. URL : [https://www.chd.lu/wps/PA\\_RoleDesAffaires/FTSByteServletImpl?path=57F29BE89CE8C066D27C98B52E7083EF775D40957F956D1368D8AC01F0BEDBOCOE14BF5947A21EE526F4C65D8D9C7C17\\$E9292D47783312AE4E1782A61C4ADF88](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServletImpl?path=57F29BE89CE8C066D27C98B52E7083EF775D40957F956D1368D8AC01F0BEDBOCOE14BF5947A21EE526F4C65D8D9C7C17$E9292D47783312AE4E1782A61C4ADF88)

<sup>80</sup>CEFIS, « Immigration: Entrée et séjour » under « Les modifications apportées à la loi sur l'immigration par la loi du 18 décembre 2015 », n.d. URL : <http://www.cefis.lu/page8/page18/page18.html>

<sup>81</sup>Parliamentary Document N° 6779/11, « Rapport de la Commission des Affaires Etrangères et Européennes de la Coopération et de l'Immigration ». Introduced into Parliament on 7 December 2015, p. 27. URL : [https://www.chd.lu/wps/PA\\_RoleDesAffaires/FTSByteServletImpl?path=E214EFOA665B9636BD3EDCBD9EA20797E1DDB72F3515F1F1B80FFEEA0FE29C65C2488A663789345B675799D71A889491\\$F827966353F5673099B8618CF68F7A83](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServletImpl?path=E214EFOA665B9636BD3EDCBD9EA20797E1DDB72F3515F1F1B80FFEEA0FE29C65C2488A663789345B675799D71A889491$F827966353F5673099B8618CF68F7A83)

<sup>82</sup> Parliamentary Document N°6779/03, « Avis du Conseil d'État ». Introduced into Parliament on 17 July 2020, p. 15. URL: [https://www.chd.lu/wps/PA\\_RoleDesAffaires/FTSByteServletImpl?path=B0DA1DE1C1489D8798170983F280B8C7AFB8D2499F583606A2606EC5405C19A16A2EC8F94ECA2FC44905CBBCBBD4E95F\\$2FEC6F9354A3392A0B87FD2456E98D3B](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServletImpl?path=B0DA1DE1C1489D8798170983F280B8C7AFB8D2499F583606A2606EC5405C19A16A2EC8F94ECA2FC44905CBBCBBD4E95F$2FEC6F9354A3392A0B87FD2456E98D3B)

<sup>83</sup> Parliamentary Document N° 6779/07, « Avis complémentaire de la Commission Consultative des Droits de l'Homme ». Introduced into Parliament in August 2015. URL : [https://www.chd.lu/wps/PA\\_RoleDesAffaires/FTSByteServletImpl?path=95EF96CA01FE14BF32F6ED17EDF102A2E078B1435D9F9895DEAFAA30E6B5C4722AD8D136FB1A0DEC93B52CC86912319F\\$EF768DE7C028A7FB7B81CC81C9E5A3B9](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServletImpl?path=95EF96CA01FE14BF32F6ED17EDF102A2E078B1435D9F9895DEAFAA30E6B5C4722AD8D136FB1A0DEC93B52CC86912319F$EF768DE7C028A7FB7B81CC81C9E5A3B9)

<sup>84</sup> Parliamentary Document N° 6779/11, « Rapport de la Commission des Affaires Etrangères et Européennes de la Coopération et de l'Immigration ». Introduced into Parliament on 7 December 2015, p. 28.

<sup>85</sup> Parliamentary Documents N°6779/08, « Avis Complémentaire du Collectif Réfugiés Luxembourg ». Introduced into Parliament on 17 November 2015, p. 2. URL : [https://www.chd.lu/wps/PA\\_RoleDesAffaires/FTSByteServletImpl?path=83215C6EBC9E4C06B71FF59517F2596DE16A1BE58391086C0E2603764397982A41CF61F82C3690B0752EF191A62CA123\\$647AFB5924F9E67B938A889587B1AA3D](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServletImpl?path=83215C6EBC9E4C06B71FF59517F2596DE16A1BE58391086C0E2603764397982A41CF61F82C3690B0752EF191A62CA123$647AFB5924F9E67B938A889587B1AA3D)

<sup>86</sup> Parliamentary Documents N°6779/08, « Avis Complémentaire du Collectif Réfugiés Luxembourg ». Introduced into Parliament on 17 November 2015, p. 3.

<sup>87</sup> Caritas, the Red Cross and ASTI maintain this criticism. Information provided by the Red Cross and ASTI on 6 and 13 October 2020 respectively and by Caritas on 5 October and 17 November 2020.

<sup>88</sup> *Ibid*, p. 4.

<sup>89</sup> Déi Lénk political responsiveness intervention, Mr David Wagner, Deputy, Report of the sessions of the Chamber of Deputies, N°10, Thursday, 10 December 2015, p. 147. URL: [https://www.chd.lu/wps/PA\\_RoleDesAffaires/FTSShowAttachment?id=638A6963869CCB5C1ADFE9CDDCO0B9A3\\$4CFACC385BA61118AA4ADE6A8982ABFD](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSShowAttachment?id=638A6963869CCB5C1ADFE9CDDCO0B9A3$4CFACC385BA61118AA4ADE6A8982ABFD)

See also: European Migration Network, National Contact Point Luxembourg, « Annual Report on Migration and Asylum 2015», Luxembourg 2016, p. 42. URL: [https://www.emnluxembourg.lu/wp-content/uploads/2016/07/Policy-Report-2015\\_LU\\_EN\\_web.pdf](https://www.emnluxembourg.lu/wp-content/uploads/2016/07/Policy-Report-2015_LU_EN_web.pdf)

<sup>90</sup> Article 22 (3) of the amended Law of 18 December 2015 on International Protection and Temporary Protection.

<sup>91</sup> European Migration Network, National Contact Point Luxembourg, « Annual Report on Migration and Asylum 2015», Luxembourg 2016, p. 38. URL: [https://www.emnluxembourg.lu/wp-content/uploads/2016/07/Policy-Report-2015\\_LU\\_EN\\_web.pdf](https://www.emnluxembourg.lu/wp-content/uploads/2016/07/Policy-Report-2015_LU_EN_web.pdf)

See also: Parliamentary document N°6779/02, « Avis du Collectif Réfugiés Luxembourg ». Introduced into Parliament on 5 June 2015, pp. 6-7. URL : [https://www.chd.lu/wps/PA\\_RoleDesAffaires/FTSByteServletImpl?path=97DB17A6FDDE20C7AAB54AA06EDF5C399D44BF277B5181409D7537097D7CDF10279D13B43454FEB230A27B41DFB8B0A6\\$27115A403C76FBC2F4326CB34F49CF1C](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServletImpl?path=97DB17A6FDDE20C7AAB54AA06EDF5C399D44BF277B5181409D7537097D7CDF10279D13B43454FEB230A27B41DFB8B0A6$27115A403C76FBC2F4326CB34F49CF1C)

<sup>92</sup> Parliamentary document N°6779/02, « Avis du Collectif Réfugiés Luxembourg ». Introduced into Parliament on 5 June 2015, pp. 6-7.

<sup>93</sup> *Ibid*, p. 9.

<sup>94</sup> European Commission, Directorate-General, Home Affairs, Schengen Evaluation in the field of return, 18 March 2016. URL: <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=22801&no=3>

<sup>95</sup> Council of the European Union, Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2016 evaluation of Luxembourg on the application of the Schengen acquis in the field of return, 12 December 2016, URL: <http://data.consilium.europa.eu/doc/document/ST-15483-2016-INIT/en/pdf>

<sup>96</sup> Council of the European Union, Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2016 evaluation of Luxembourg on the application of the Schengen acquis in the field of return, 12 December 2016, p. 4.

<sup>97</sup> Bill n°6992 amending 1) the amended Law of 29 August 2008 on the free movement of persons and immigration; 2) of the amended Law of 28 May 2009 on the Detention Centre; 3) of the Law of 2 September 2011 regulating access to the professions of craftsmen, traders, industrialists and certain liberal professions. Introduced to Parliament on 18 May 2016. URL:



[https://www.chd.lu/wps/PA\\_RoleDesAffaires/FTSByteServletImpl?path=67ABD02BBD0EA1BC4422FB9573838FD0525ACS EA63E026839E4A38969C1ED754416D7B6FBF2F7A7E547A9CE6203C5085\\$0DD5BB6078082EC70ED7CA7C7DB1CA37](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServletImpl?path=67ABD02BBD0EA1BC4422FB9573838FD0525ACS EA63E026839E4A38969C1ED754416D7B6FBF2F7A7E547A9CE6203C5085$0DD5BB6078082EC70ED7CA7C7DB1CA37)

<sup>98</sup> Law of 28 May 2009 on the creation and organization of the Detention Centre amending: 1) the Social Security Code; 2) the amended Law of 22 June 1963 fixing the salary system for state officials; and 3) the Law of 29 August 2008 on the free movement of persons and immigration. Memorial A 119 of 29 May 2009. URL: <http://legilux.public.lu/eli/etat/leg/loi/2009/05/28/n1/jo>

<sup>99</sup> Bill n°6992, Exposé des motifs, p. 19.

<sup>100</sup> Bill n°6992, Commentaire des Articles, Article III, p. 27.

<sup>101</sup> See: LU EMN NCP, "Policy Report on Migration and Asylum 2016", Luxembourg 2017. URL: [https://www.emnluxembourg.lu/wp-content/uploads/2015/05/Rapport\\_politique-ENG-2016-web.pdf](https://www.emnluxembourg.lu/wp-content/uploads/2015/05/Rapport_politique-ENG-2016-web.pdf)

<sup>102</sup> Parliamentary document n°6992/09, « Avis du Lëtzebuurger Flüchtlingsrot (Collectif Réfugiés) ». Introduced to Parliament on 6 February 2017, p. 5. URL: [https://www.chd.lu/wps/PA\\_RoleDesAffaires/FTSByteServletImpl?path=F2318E8493ACFF170FE05956972D5FC2689D19D A383DE464FCE134CDCEE2B9653CA9AAC7BB208ED814EFB5F0B6D2DD37\\$E422A390C1CE7AA86E7604E9B26673BA](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServletImpl?path=F2318E8493ACFF170FE05956972D5FC2689D19D A383DE464FCE134CDCEE2B9653CA9AAC7BB208ED814EFB5F0B6D2DD37$E422A390C1CE7AA86E7604E9B26673BA)

<sup>103</sup> Parliamentary document n°6992/05, «Avis du Conseil d'Etat». Introduced to Parliament on 27 October 2016, p. 9. URL: [https://www.chd.lu/wps/PA\\_RoleDesAffaires/FTSByteServletImpl?path=DB0A3FA2A3B23720EDCB5760912F2B6B994841 4EB40B90DB65446ADE9AC09A62E73140D4F7881282D9A050AE05EFF710\\$0DE839DC4B0C257D8A5567B87D72CE4E](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServletImpl?path=DB0A3FA2A3B23720EDCB5760912F2B6B994841 4EB40B90DB65446ADE9AC09A62E73140D4F7881282D9A050AE05EFF710$0DE839DC4B0C257D8A5567B87D72CE4E)

<sup>104</sup> Parliamentary document n°6992/08 « Rapport de la Commission des Affaires Etrangères et Européennes, de la Défense, de la Coopération et de l'Immigration ». Introduced to Parliament on 9 January 2017, p. 6. URL: [https://www.chd.lu/wps/PA\\_RoleDesAffaires/FTSByteServletImpl?path=B758B5C225832C99150457D3D9B6C472B390E3 7CA71172F4367599D1D3C65AC3382C1742E15184DCB0EE75F90096280E\\$AFFFF96FABE1FEED8A0B954B423C972E](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServletImpl?path=B758B5C225832C99150457D3D9B6C472B390E3 7CA71172F4367599D1D3C65AC3382C1742E15184DCB0EE75F90096280E$AFFFF96FABE1FEED8A0B954B423C972E)

<sup>105</sup> *Ibid*, p. 16.

<sup>106</sup> Parliamentary document n°6992/09, « Avis du Lëtzebuurger Flüchtlingsrot (Collectif Réfugiés) ». Introduced to Parliament on 6 February 2017, pp. 1-2.

<sup>107</sup> *Ibid*, p. 2.

<sup>108</sup> Law of 8 March 2017 amending 1) the amended Law of 29 August 2008 on the Free Movement of Persons and Immigration, 2) the amended Law of 28 May 2009 on the Detention Centre and 3) the Law of 2 September 2011 regulating the access to the professions of craftsman, merchant, industrialist and certain liberal professions, Memorial A-298 of 20 March 2017. URL: [https://www.chd.lu/wps/PA\\_RoleDesAffaires/FTSByteServletImpl?path=D00E703F883A8F37F819D7A69191A9653D7ED4 DE8430F1A87AB004AC32904568C7A6FEFEE9BF3772ACA39E09FD48BE4E\\$0743E9E8EECC55207D9E6169EA07B68F3](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServletImpl?path=D00E703F883A8F37F819D7A69191A9653D7ED4 DE8430F1A87AB004AC32904568C7A6FEFEE9BF3772ACA39E09FD48BE4E$0743E9E8EECC55207D9E6169EA07B68F3)

<sup>109</sup> Socialist Party, Motion 1. Introduced to Parliament on 8 February 2017. URL: [https://www.chd.lu/wps/PA\\_RoleDesAffaires/FTSByteServletImpl?path=447C2F38E13BFABA8104E2D07FA1B213F77E746 F0B1FFC142653D7B8B954368458BB25C1F5E5FF22B7F1E158EB275998\\$A5231F4B1A40656E2DAED9F72E54683B](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServletImpl?path=447C2F38E13BFABA8104E2D07FA1B213F77E746 F0B1FFC142653D7B8B954368458BB25C1F5E5FF22B7F1E158EB275998$A5231F4B1A40656E2DAED9F72E54683B)

See also: LU EMN NCP, "Policy Report on Migration and Asylum 2016", p. 61.

<sup>110</sup> The Government of Luxembourg, « Premier bilan du fonctionnement du Centre de Rétenion », Luxembourg 2017. URL: <https://maee.gouvernement.lu/dam-assets/directions/d8/publications/premier-bilan-du-fonctionnement-du-centre-de-retention.pdf>

<sup>111</sup> Parliamentary session 2017-2018, Commission on Foreign and European Affairs, Defense, Cooperation and Immigration, « Procès-verbal de la réunion du 20 novembre 2017 », Luxembourg 2017, p. 6. URL: [https://www.chd.lu/wps/PA\\_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=691B49DDA0F470606C2E8645C2D 28E2\\$39D3CCF64EE5F7502E709DE4A3C82AOC&fn=691B49DDA0F470606C2E8645C2D28E2\\$39D3CCF64EE5F7502E709DE 4A3C82AOC.pdf](https://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=691B49DDA0F470606C2E8645C2D 28E2$39D3CCF64EE5F7502E709DE4A3C82AOC&fn=691B49DDA0F470606C2E8645C2D28E2$39D3CCF64EE5F7502E709DE 4A3C82AOC.pdf)

<sup>112</sup> Lëtzebuurger Flüchtlingsrot (LFR), Cercle de coopération des ONG, Reech eng Hand, Passerell, iamnotarefugee, Amitié Portugal-Luxembourg, Narin, Heemscht, Oppent Haus – Open Home, Press statement, "Afghanistan is not safe : non au retour forcé", URL: [https://issuu.com/caritas.luxembourg/docs/position\\_politique\\_ong\\_afghanistan](https://issuu.com/caritas.luxembourg/docs/position_politique_ong_afghanistan)

<sup>113</sup> The Government of Luxembourg, « Jean Asselborn expose la position du gouvernement sur l'accord Joint Way Forward on migration issues », 1 December 2016. URL: [https://gouvernement.lu/fr/actualites/toutes\\_actualites/communiqués/2016/12-decembre/01-asselborn-migration.html](https://gouvernement.lu/fr/actualites/toutes_actualites/communiqués/2016/12-decembre/01-asselborn-migration.html)

See also: LU EMN NCP, "Policy Report on Migration and Asylum 2016", p. 61, and OECD, Ministry of Family Affairs, Integration and the Greater Region, University of Luxembourg, « Migration Internationale of Luxembourg: Système Permanente des Migrations », October 2017, p. 44.

<sup>114</sup> LU EMN NCP, "Annual Report on Migration and Asylum 2018", Luxembourg 2019, pp. 95-96. URL: [https://www.emnluxembourg.lu/wp-content/uploads/2019/08/Annual-report-on-migration-and-asylum\\_2018\\_EN.pdf](https://www.emnluxembourg.lu/wp-content/uploads/2019/08/Annual-report-on-migration-and-asylum_2018_EN.pdf)

<sup>115</sup> DP, LSAP and Déi Gréng, « Accord de coalition 2018-2023 », 3 December 2018, pp. 231-233. URL: <https://gouvernement.lu/en/publications/accord-coalition/2018-2023.html>

<sup>116</sup> *Ibid*, p. 231.

<sup>117</sup> *Ibid*, p.232.

<sup>118</sup> *Ibidem*.

<sup>119</sup> *Ibid*. p. 231

<sup>120</sup> Law of 4 December 2019 amending the Law of 29 August 2009 on the free movement of persons and immigration. Published in Memorial A-884 on 23 December 2019. URL: <http://legilux.public.lu/eli/etat/leg/loi/2019/12/04/a884/jo>

<sup>121</sup> Article 1 and 2 of the Law of 4 December 2019 amending the Law of 29 August 2008 on the free movement of persons and immigration.

<sup>122</sup> Parliamentary Document N°7238/01, «Avis du Conseil d'Etat » p. 3. Introduced to Parliament on 8 May 2018. URL: [https://www.chd.lu/wps/PA\\_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=A140DAD5C99A85A1B31D4F53C4251270\\$CCEABA9F4873DCA9FCDA3813AEF1D617&fn=A140DAD5C99A85A1B31D4F53C4251270\\$CCEABA9F4873DCA9FCDA3813AEF1D617.pdf](https://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=A140DAD5C99A85A1B31D4F53C4251270$CCEABA9F4873DCA9FCDA3813AEF1D617&fn=A140DAD5C99A85A1B31D4F53C4251270$CCEABA9F4873DCA9FCDA3813AEF1D617.pdf)

<sup>123</sup> Article 6 of the Law of 4 December 2019 amending the Law of 29 August 2008 on the free movement of persons and immigration.

<sup>124</sup> *Ibidem*.

<sup>125</sup> Parliamentary Document N° 6779/07, « Avis complémentaire de la Commission Consultative des Droits de l'Homme». Introduced into Parliament in August 2015.

<sup>126</sup> Parliamentary Document N°6779/03, « Avis du Conseil d'État ». Introduced into Parliament on 17 July 2020, p. 15.

<sup>127</sup> Answer of the Ministers of Foreign and European Affairs, Justice and the Health of 11 June 2020 to the Parliamentary question n° 2181 of 11 May 2020 concerning the LFR. URL: [https://www.chd.lu/wps/PA\\_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=DD25E91A6B9BDB84ADCAFOC42D1E3CD0\\$7870AA41958BBA755DBD593F179F0720&fn=DD25E91A6B9BDB84ADCAFOC42D1E3CD0\\$7870AA41958BBA755DBD593F179F0720.pdf](https://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=DD25E91A6B9BDB84ADCAFOC42D1E3CD0$7870AA41958BBA755DBD593F179F0720&fn=DD25E91A6B9BDB84ADCAFOC42D1E3CD0$7870AA41958BBA755DBD593F179F0720.pdf)

<sup>128</sup> Joint answer of the Minister of Family and Integration, and the Minister of Immigration and Asylum of 9 July 2020 to the Parliamentary question n°2389 on the situation of irregular migrants and Covid-19. URL: [https://www.chd.lu/wps/PA\\_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=456D501B5CFFEC85BA64E5DF1BE91CF9\\$13FB005F9FF9506BA227FF776D157162&fn=456D501B5CFFEC85BA64E5DF1BE91CF9\\$13FB005F9FF9506BA227FF776D157162.pdf](https://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=456D501B5CFFEC85BA64E5DF1BE91CF9$13FB005F9FF9506BA227FF776D157162&fn=456D501B5CFFEC85BA64E5DF1BE91CF9$13FB005F9FF9506BA227FF776D157162.pdf)

<sup>129</sup> Joint answer of the Minister of Family and Integration, and the Minister of Immigration and Asylum of 9 July 2020 to the Parliamentary question n°2389 on the situation of irregular migrants and Covid-19.

<sup>130</sup> ASTI, « Nouvel appel à dons pour aider les personnes sans-papiers à survivre ».

<sup>131</sup> Joint answer of the Minister of Family and Integration, and the Minister of Immigration and Asylum of 9 July 2020 to the Parliamentary question n°2389 on the situation of irregular migrants and Covid-19.

See also: Parliamentary question n°2389.

<sup>132</sup> Ibidem.

<sup>133</sup> Information provided by Médecins du Monde on 28 October 2020.

<sup>134</sup> Lanners Maryse, « Existenznout vu "Sans-Papiers" a Covid-Kris », RTL 2020.

See also: ASTI, « Aide alimentaire pour les personnes en situation irrégulière – bilan final », 22 July 2020. See also: ASTI, « L'ASTI soutient les sans-papiers-les oubliés de la crise », 8 June 2020. URL : <https://www.asti.lu/lasti-soutient-les-sans-papiers-les-oublies-de-la-crise/> Also, Information provided by Caritas on 5 October 2020.

<sup>135</sup> ASTI argues that “If it is not [done] for humanitarian reasons, let’s do it out of pragmatism. Regularization is beneficial for all: employees can benefit from their rights, employers can legalize their work by paying contributions and taxes and the State receives more contributions”

<sup>136</sup> CLAE, « Résolution de l'Assemblée générale du 25 septembre 2020 », 25 September 2020. URL : <https://www.clae.lu/mailling/presse-resolution-ag/?frame=0>

<sup>137</sup> *For example, in some cases a service can be accessed but the costs must be met by the individual rather than the State/national authorities.*

<sup>138</sup> At the end of September 2020, 181 people housed in the ONA structures had the status of rejected international protection applicants. They represent 5.6% of the total number of people housed in ONA structures.

<sup>139</sup> Information provided by Caritas on 5 October 2020 and the Red Cross on 6 October 2020.

<sup>140</sup> Articles 26 and 27 of the amended Law of 19 June 2013 relating to the identification of natural persons, to the national register of natural persons, to the identity card, to the municipal registers of natural persons and amending: 1) article 104 of the Civil Code; 2) the amended Law of 30 March 1979 organizing the digital identification of natural and legal persons; 3) the amended municipal Law of 13 December 1988; 4) the amended electoral Law of 18 February 2003 and repealing 1) the amended Law of 22 December 1886 concerning population censuses to be carried out in execution of the electoral Law and 2) the Grand Ducal Decree of 10 August 1939 introducing the compulsory identity card. Memorial A-107 published on 25 June 2013. URL: <http://legilux.public.lu/eli/etat/leg/loi/2013/06/19/n3/jo#:~:text=9.5.2%20%2D%20202006261049-Loi%20du%2019%20juin%202013%20relative%20%C3%A0%20l'identification%20des,physiques%20et%20oportant%20modification%20de>

<sup>141</sup> Information provided by the Fraenhaus on 7 October 2020. If a person arrives in the middle of the night to the Fraenhaus service of the NGO 'Femmes en détresse', they have the right to a room. Normally they stay a night but in practice, it can be longer – two to three nights. The use of this room does not depend on the legal status of a person.

<sup>142</sup> Article 2 (2) of the Social Security Code. URL: [http://legilux.public.lu/eli/etat/leg/code/securete\\_sociale/20200101](http://legilux.public.lu/eli/etat/leg/code/securete_sociale/20200101)

<sup>143</sup> Information provided by Caritas on 5 October 2020.

<sup>144</sup> Article 131 (3) of the amended Law of 29 August 2008 on free movement of persons and immigration.

<sup>145</sup> Information provided by the Division of Social Medicine, Addiction Diseases and Mental Health on 14 October 2020.

<sup>146</sup> Information provided by the Division of Social Medicine, Addiction Diseases and Mental Health of the Ministry of Health on 14 October 2020.

<sup>147</sup> Article 132(2) of the amended Law of 29 August 2008 on free movement of persons and immigration in accordance with article 27 of the amended Law of 18 December 2009 on social aid.

<sup>148</sup> Article 132(2) of the amended Law of 29 August 2008 on free movement of persons and immigration in accordance with article 27 of the amended Law of 18 December 2009 on social aid.

<sup>149</sup> Article 2(2) of the Social Security Code and Article 131 (3) of the amended Law of 29 August 2008 on free movement of persons and immigration.

<sup>150</sup> Please consider the definition of 'core benefits' as included in the Qualification and Long-Term Residents Directives which is understood as covering – as a minimum – income support, assistance in the case of illness, or pregnancy, and parental assistance.

<sup>151</sup> Article 132(2) of the amended Law of 29 August 2008 on free movement of persons and immigration in accordance with article 27 of the amended Law of 18 December 2009 on social aid.

<sup>152</sup> LU EMN NCP, "Returning Rejected Asylum Seekers: Challenges and Good Practices", 2016, Table 1, p. 2. URL: [https://www.emnluxembourg.lu/wp-content/uploads/2016/08/Rejected-Asylum-Seekers\\_Final-for-publication.pdf](https://www.emnluxembourg.lu/wp-content/uploads/2016/08/Rejected-Asylum-Seekers_Final-for-publication.pdf)

<sup>153</sup> Usually, unless a person has the right to stay in Luxembourg social welfare offices can't help a person. Therefore, they may provide services to persons who benefit from an administrative measure such as a suspension or postponement of removal but not to irregular migrants unknown to the authorities or rejected AIPs that must leave the territory. Information provided by a social welfare office on 26 October 2020.

<sup>154</sup> Article 132(2) of the amended Law of 29 August 2008 on free movement of persons and immigration in accordance with article 27 of the amended Law of 18 December 2009 on social aid.

<sup>155</sup> The aid granted is paid by the Social Office in the first instance, but in the end it is the Ministry of the Family that covers these costs 100%. Information provided by the social office of one municipality on 13 November 2020.

<sup>156</sup> Information provided by ONA on 6 November 2020.

<sup>157</sup> Article 2 (3) of the Law of 4 December 2019 creating the National Reception Office (ONA) and amending: 1) the amended Law of September 21, 2006 on the lease for residential use and amending certain provisions of the Civil Code; 2) the amended Law of 16 December 2008 concerning the integration of foreigners in the Grand Duchy of Luxembourg; 3) the amended Law of 18 December 2015 relating to the reception of applicants for international protection and temporary protection. Published in Memorial A-907 of 28 December 2019. URL: <http://legilux.public.lu/eli/etat/leg/loi/2019/12/04/a907/jo#:~:text=la%20version%20PDF%20Loi%20du%204%20d%C3%A9cembre%202019%20portant%20cr%C3%A9ation%20de%20l'Office,ONA%20et%20portant%20modification%20de%20%3A&text=3%C2%B0%20Loi%20modifi%C3%A9e%20du%2018%20d%C3%A9cembre%202015%20relative%20%C3%A0%20l'internationale%20et%20de%20protection%20temporaire>.

<sup>158</sup> Article 13 paragraphs 2 and 3 of the amended Law of 18 December 2015 on the reception of applicants for international protection and temporary protection.

<sup>159</sup> Information provided by ONA on 6 November 2020.

<sup>160</sup> Parliamentary document n° 7403/05 on the bill on the creation of the National Reception Office, p. 3.

<sup>161</sup> Article 132 (2) of the amended Law of 29 August 2008 on free movement of persons and immigration.

<sup>162</sup> Article 132(2) in relation with article 42 (1) of the amended Law of 29 August 2008 on free movement of persons and immigration.

<sup>163</sup> Article 132 (2) of the amended Law of 29 August 2008 on free movement of persons and immigration.

<sup>164</sup> My Guichet, "Declaration of a vacant position", n.d. URL: <https://guichet.public.lu/en/entreprises/ressources-humaines/recrutement/recherche-candidat/vacance-poste-adem.html>

<sup>165</sup> LU EMN NCP, "Returning Rejected Asylum Seekers: Challenges and Good Practices", 2016, Table 3, p. 14.

<sup>166</sup> Articles 7 and 19 of the amended Law of 6 February 2009 on compulsory education. Published in Memorial A-20 on 16 February 2009. URL: <http://legilux.public.lu/eli/etat/leg/loi/2009/02/06/n3/jo>

<sup>167</sup> Articles 7 of the amended Law of 6 February 2009 on compulsory education.

<sup>168</sup> Information provided by Caritas on 5 October 2020 and by the Red Cross on 6 October 2020. In the case of the courses provided by Caritas, they are provided by volunteers in the reception facilities they managed.

<sup>169</sup> Article 37-1, paragraph (1), subparagraph 4, first sentence of the amended Law of 10 August 1991 on the profession of lawyer.

<sup>170</sup> Article 37-1 (1) paragraph 4 alinea 1 of the amended Law of 10 August 1991 on the profession of lawyer.

<sup>171</sup> Article L. 572-1 of the Labour Code.

<sup>172</sup> Article L. 572-7 of the Labour Code

<sup>173</sup> Article L. 572-7 of the Labour Code.

See also: LU EMN NCP, "Illegal employment of Third-Country Nationals in the EU", 2016, p.23.

<sup>174</sup> These migrants are known to the authorities.

<sup>175</sup> *For example, in some cases a service can be accessed but the costs must be met by the individual rather than the State/national authorities.*

<sup>176</sup> Information provided by Caritas on 5 October 2020 and the Red Cross on 6 October 2020.

<sup>177</sup> Article 2 (2) of the Social Security Code.

<sup>178</sup> Article 131 (3) of the amended Law of 29 August 2008 on free movement of persons and immigration.

<sup>179</sup> Information provided by Caritas on 5 October 2020.

<sup>180</sup> Article 125bis(2) of the amended Law of 29 August 2008 on free movement of persons and immigration in accordance with article 27 of the amended Law of 18 December 2009 on social aid.

<sup>181</sup> Article 132(2) of the amended Law of 29 August 2008 on free movement of persons and immigration in accordance with article 27 of the amended Law of 18 December 2009 on social aid.

<sup>182</sup> Article 2(2) of the Social Security Code.

<sup>183</sup> Please consider the definition of 'core benefits' as included in the Qualification and Long-Term Residents Directives which is understood as covering – as a minimum – income support, assistance in the case of illness, or pregnancy, and parental assistance.

<sup>184</sup> *Ibidem.*

<sup>185</sup> LU EMN NCP, "Returning Rejected Asylum Seekers: Challenges and Good Practices", 2016, Table 1, p. 2.

<sup>186</sup> Article 125bis(2) of the amended Law of 29 August 2008 on free movement of persons and immigration in accordance with article 27 of the amended Law of 18 December 2009 on social aid.

<sup>187</sup> Article 125bis. (3) of the amended Law of 29 August 2008 on free movement of persons and immigration.

<sup>188</sup> Articles 7 and 19 of the amended Law of 6 February 2009 on compulsory education.

<sup>189</sup> Articles 7 of the amended Law of 6 February 2009 on compulsory education.

<sup>190</sup> Article 37-1, paragraph (1), subparagraph 4, first sentence of the amended Law of 10 August 1991 on the profession of lawyer.

<sup>191</sup> Article 37-1 (1) paragraph 4 alinea 1 of the amended Law of 10 August 1991 on the profession of lawyer.

<sup>192</sup> *For example, in some cases a service can be accessed but the costs must be met by the individual rather than the State/national authorities.*

<sup>193</sup> Information provided by the Directorate of Immigration on 21 October 2020.

<sup>194</sup> Information provided by the Division of Social Medicine, Addiction Diseases and Mental Health on 14 October 2020.

<sup>195</sup> Please consider the definition of 'core benefits' as included in the Qualification and Long-Term Residents Directives which is understood as covering – as a minimum – income support, assistance in the case of illness, or pregnancy, and parental assistance.

<sup>196</sup> Article 111 (2) of the amended Law of 29 August 2008 on free movement of persons and immigration.

<sup>197</sup> Article 2 (3) of the Law of 4 December 2019 creating the National Reception Office.

<sup>198</sup> Article 13 paragraphs 2 and 3 of the amended Law of 18 December 2015 on the reception of applicants for international protection and temporary protection.

<sup>199</sup> Articles 7 and 19 of the amended Law of 6 February 2009 on compulsory education.

<sup>200</sup> Articles 7 of the amended Law of 6 February 2009 on compulsory education.

<sup>201</sup> Information provided by Caritas on 5 October 2020 and by the Red Cross on 6 October 2020.

<sup>202</sup> LU EMN NCP, "Returning Rejected Asylum Seekers: Challenges and Good Practices", 2016, Table 3, p. 16.

<sup>203</sup> Article 37-1, paragraph (1), subparagraph 4, first sentence of the amended Law of 10 August 1991 on the profession of lawyer.

<sup>204</sup> Article 37-1 (1) paragraph 4 alinea 1 of the amended Law of 10 August 1991 on the profession of lawyer.

<sup>205</sup> *For example, in some cases a service can be accessed but the costs must be met by the individual rather than the State/national authorities.*

<sup>206</sup>Article 27 (1) of the amended Law of 19 June 2013 on the identification of natural persons, the national register of natural persons, the identity card, municipal registers of natural persons.

Article 31 also foresees the possibility of radiation from the municipal registry for an absence of the territory of the municipality for at least 6 months in a period of 12 months will be removed from the register.

<sup>207</sup> The Fraenhaus also accommodates women who lose their residence permits while in accommodation. This can happen to women whose status depends on their marriage. After a divorce, if the court does not recognize that there has been a case of domestic violence, the person in question must either find a job or leave the territory. Furthermore, usually, a person does not immediately contact the Fraenhaus. They are oriented towards their service through the SAVTEH or their ViSaVi service.

If a person arrives in the middle of the night, they have the right to an emergency room. Normally they stay a night but in practice it can be longer – two to three nights. The use of the emergency room does not depend on the legal status of a person. Information provided by the Fraenhaus on 7 October 2020.

<sup>208</sup> Information provided by the SAVTEH on 15 September 2020.

<sup>209</sup> Information provided by ASTI on 13 October 2020.

See also for example: Municipality of Dudelange, “Certificat d’Hébergement”, n.d. URL: <https://www.dudelange.lu/fr/Documents/Certificat-hebergement-2014.pdf>

<sup>210</sup> For example Caritas and ASTI provide these certificates to persons known to their services

<sup>211</sup> Information provided by Caritas on 5 October 2020 and by ASTI on 14 October 2020.

<sup>212</sup> Information provided by Caritas on 5 October 2020 and by ASTI on 13 October 2020.

See also: Médecins du Monde, « Rapport Annuel 2019 », 2020, p. 3. URL : [https://medecinsdumonde.lu/sites/default/files/201959-MDM-L-Rapport-annuel-2019\\_page\\_WEB.pdf](https://medecinsdumonde.lu/sites/default/files/201959-MDM-L-Rapport-annuel-2019_page_WEB.pdf)

<sup>213</sup> Information provided by Caritas on 5 October 2020.

<sup>214</sup> Information provided through telephone interview by Fraenhaus on 7 October 2020.

<sup>215</sup> Information provided by Caritas on 5 October 2020.

<sup>216</sup> European Union Agency for Fundamental Rights, “Healthcare entitlements of migrants in an irregular situation in the EU-28”, 30 May 2016. URL: <https://fra.europa.eu/en/publication/2016/healthcare-entitlements-migrants-irregular-situation-eu-28>

<sup>217</sup> *Ibidem*.

<sup>218</sup> *Ibidem*

<sup>219</sup> *Ibidem*.

<sup>220</sup> *Ibidem*.

<sup>221</sup> Please consider the definition of ‘core benefits’ as included in the Qualification and Long-Term Residents Directives which is understood as covering – as a minimum – income support, assistance in the case of illness, or pregnancy, and parental assistance.

<sup>222</sup> Information provided by a social welfare office on 26 October 2020.

<sup>223</sup> Articles 7 and 19 of the amended Law of 6 February 2009 on compulsory education.

<sup>224</sup> Articles 7 of the amended Law of 6 February 2009 on compulsory education.

<sup>225</sup> Article 19 of the amended Law of 6 February 2009 on compulsory education.

<sup>226</sup> Joint answer of the Minister of Immigration, the Minister of Interior and the Minister of Education of 16 September 2019 to the Parliamentary Question n° 1042 on irregularly staying migrants. URL: [https://www.chd.lu/wps/PA\\_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=BE0DEF8626467290F208985E7FC68F56\\$6B340751CB77672449884520DFE24752&fn=BE0DEF8626467290F208985E7FC68F56\\$6B340751CB77672449884520DFE24752.pdf](https://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=BE0DEF8626467290F208985E7FC68F56$6B340751CB77672449884520DFE24752&fn=BE0DEF8626467290F208985E7FC68F56$6B340751CB77672449884520DFE24752.pdf)

See also:

<sup>227</sup> Joint answer of the Minister of Immigration, the Minister of Interior and the Minister of Education of 16 September 2019 to the Parliamentary Question n° 1042 on irregularly staying migrants. URL: [https://www.chd.lu/wps/PA\\_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=BE0DEF8626467290F208985E7FC68F56\\$6B340751CB77672449884520DFE24752&fn=BE0DEF8626467290F208985E7FC68F56\\$6B340751CB77672449884520DFE24752.pdf](https://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=BE0DEF8626467290F208985E7FC68F56$6B340751CB77672449884520DFE24752&fn=BE0DEF8626467290F208985E7FC68F56$6B340751CB77672449884520DFE24752.pdf)

<sup>228</sup> Information provided by municipalities on 12 and 20 October 2020.

<sup>229</sup> Answer to the parliamentary question n° 1042 of 8 August 2019.

<sup>230</sup> Information provided by the Red Cross on 6 October 2020.

<sup>232</sup> Information provided by a social welfare office on 26 October 2020.

<sup>233</sup> Information provided by ONA on 6 November 2020.

<sup>234</sup> LU EMN NCP, "Returning Rejected Asylum Seekers: Challenges and Good Practices", 2016, p. 17.

<sup>235</sup> Article 120 (1) of the Immigration Law.

<sup>236</sup> Information provided by ASTI on 13 October 2020.

<sup>237</sup> Joint answer of the Minister of Family and Integration, and the Minister of Immigration and Asylum of 9 July 2020 to the Parliamentary question n°2389 on the situation of irregular migrants and Covid-19.

<sup>238</sup> Information provided by the Red Cross on 6 October 2020.

<sup>239</sup> *Ibidem*.

<sup>240</sup> *Ibidem*.

<sup>241</sup> Abricoeur is the Luxembourg Red Cross' name of the service brings together Streetwork, as well as, other programmes helping those living on the streets or in very precarious situations.

<sup>242</sup> Information provided by the Red Cross on 9 October 2020.

<sup>243</sup> Information provided by ASTI on 13 October 2020. See also: ASTI, « Guichet Info Migrants », n.d. URL : <https://www.asti.lu/quichet-info-migrants/>

<sup>244</sup> The initiative was organized in two phases, the first phase started in April and ended mid-July and the second phase restarted on 6 October 2020.

It was observed during the first phase that the people seeking the help of ASTI were in desperate situations, they only reached out to them if they were in need. With the start of the second phase, ASTI are noticing that more and more people are seeking their help. This could be explained by two factors: 1) the fear of being apprehended by the authorities decreased as they saw the first phase to be successful, and 2) as the crisis persisted, the situation of people who were already in a fragile situation, worsened pushing them to seek financial help. It is interesting to note that the average length of stay of undocumented persons who approached ASTI during this action was 3 to 4 years.

<sup>245</sup> Information provided by ASTI on 13 October 2020.

<sup>246</sup> *Ibidem*.

<sup>247</sup> Information provided by ASTI on 12 November 2020.

<sup>248</sup> Information provided by ASTI on 13 October 2020. See also: Ministry of Family Affairs, Integration and the Greater Region, « Action Hiver 2019/2020 (01 décembre 2019-31 mars 2020) – Prolongation Covid-19 (01 avril 2020-30 juin 2020)- Bilan », Luxembourg 2020. URL: <https://mfamigr.gouvernement.lu/dam-assets/publications/rapport/wak/1920/Bilan-de-l-Action-Hiver-2019-2020-Version-finale-avec-graphiques-horizontaux-ACC.pdf> and <https://gouvernement.lu/dam-assets/documents/actualites/2019/04-avril/Bilan-de-l-Action-Hiver-2018-2019.pdf>

<sup>249</sup> Information provided by Médecins du Monde on 26 Octobre 2020. This NGO is partially subsidized by the Ministry of Health but it receives private donations.

<sup>250</sup> Médecins du Monde, « Rapport d'activités 2019 », extended version, 9 July 2020, p. 52.

<sup>251</sup> Information provided by Médecins du Monde on 28 October 2020. See also : Médecins du Monde, « Rapport d'activités 2019 », extended version, 9 July 2020, p. 21.

<sup>252</sup> Information provided by Caritas on 5 October 2020.

<sup>253</sup> Médecins du Monde, « Rapport d'activités 2019 », extended version, 9 July 2020, p. 12.

<sup>254</sup> Médecins du Monde, « Rapport d'activités 2019 », extended version, 9 July 2020, p. 16.

<sup>255</sup> Ibid, p. 24.

<sup>256</sup> Ibidem.

<sup>257</sup> HelpDesk Integratioun website, « Médecins du Monde Luxembourg ». URL : <https://integratioun.lu/project/medecins-du-monde-luxembourg/>

See also: Médecins du Monde, “ Nos action au Luxembourg”, n.d. URL : <https://medecinsdumonde.lu/fr>

<sup>258</sup> LFR, « Devenir visiteur au Centre de Rétention », n.d. URL : <https://www.lfr.lu/nous-rejoindre>

<sup>259</sup> Luxembourgish Council for Refugees , « Entretien avec Antonio Valente, visiteur au Centre de rétention », November 2014. URL : [https://www.clae.lu/wp-content/uploads/2014/11/horizon127\\_antonio\\_valente.pdf](https://www.clae.lu/wp-content/uploads/2014/11/horizon127_antonio_valente.pdf)

<sup>260</sup> This initiative is led by the Ministry of Family Affairs, Integration and the Greater Region (MIFA), and is organized in close collaboration with Inter-Actions asbl, Caritas Accueil and Solidarité asbl, as well as the Luxembourg Red Cross.

The associations and organizations closely associated with its organization are: Croix-Rouge-Doheem Versuergt and its Refugee Department, the association Stëmm vun der Strooss, the National Committee for Social Defense / Vollekskichen, Jugend- an Drogenhëllef, Femmes en Détresse, the Foyer Abrisud, the Grand Ducal Police, Médecins du Monde, the Luxembourg Office for Reception and Integration (until end of 2019), the Ministry of Foreign Affairs, the Ministry of Health, the Ministry of Transport, Luxembourg Railways / Parachute, the City of Luxembourg / Department of Social Affairs and the Buses of the City of Luxembourg, as well as the city of Esch/Alzette

Ministry of Family Affairs, Integration and the Greater Region, « Rapport d'activité 2019 », February 2020, pp. 85-86. URL: <https://gouvernement.lu/dam-assets/fr/publications/rapport-activite/minist-famille-integration-grande-region/2019-rapport-activite-mfamiqr/2019-rapport-activite-mfamiqr.pdf>

<sup>261</sup> Information provided by Caritas on 17 November 2020.

<sup>262</sup> [https://gouvernement.lu/fr/actualites/toutes\\_actualites/communiqués/2020/10-octobre/28-couvre-feu-wanteraktioun.html](https://gouvernement.lu/fr/actualites/toutes_actualites/communiqués/2020/10-octobre/28-couvre-feu-wanteraktioun.html)

<sup>263</sup> Information provided by the Red Cross on 6 October 2020.

<sup>264</sup> Caritas, « Nuetswaach – L'Espoir», n.d. URL : <https://www.caritas.lu/service/nuetswaach-lespoir>

<sup>265</sup> Streetwork, Homepage, nd. URL : <https://streetwork.lu/>

<sup>266</sup> Information provided by Streetwork on 22 October 2020.

<sup>267</sup> Chemins de Fer Luxembourgeois, Reception Center 'Parachute', n.d. URL : <https://groupe.cfl.lu/en-gb/project/detail/reception-center-para-chute>

<sup>268</sup> Information provided by the Caritas Accueil et Solidarité - Foyer Ulysse on 22 October 2020.

<sup>269</sup> Joint answer of the Minister of Family Affairs and Integration and the Minister of Immigration and Asylum of 22 April 2020 to the Parliamentary question n°2014 on the situation of persons in social distress and applicants for international international protection in accommodation structures, and in the context of the fight against the spread of Covid-19. URL: [https://www.chd.lu/wps/PA\\_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=13E2DA2021806255D1F21463E5B4C73\\$F3E1470B78EF4D5BB6005232A79436FD&fn=13E2DA2021806255D1F21463E5B4CC73\\$F3E1470B78EF4D5BB6005232A79436FD.pdf](https://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=13E2DA2021806255D1F21463E5B4C73$F3E1470B78EF4D5BB6005232A79436FD&fn=13E2DA2021806255D1F21463E5B4CC73$F3E1470B78EF4D5BB6005232A79436FD.pdf)

<sup>270</sup> Caritas, « Bistrot Social 'Le Courage'», n.d. URL : <https://www.caritas.lu/content/bistrot-social-le-courage>



- <sup>271</sup> Joint answer of the Minister of Family and Integration, and the Minister of Immigration and Asylum of 9 July 2020 to the Parliamentary question n°2389 on the situation of irregular migrants and Covid-19.
- <sup>272</sup> Information provided by Médecins du Monde on 28 October 2020.
- <sup>273</sup> <https://www.compas.ox.ac.uk/project/safe-reporting-of-crime-for-victims-and-witnesses-with-irregular-migration-status-in-the-usa-and-europe/>
- <sup>274</sup> Article 69 (1) in accordance with article 70 (2) of the Criminal Procedure Code.
- <sup>275</sup> Information provided by the ITM on 7 October 2020.
- <sup>276</sup> LU EMN NCP, "Illegal employment of Third-Country Nationals in the EU", 2016, p. 10.  
See also: ITM, "Help Call Center –(HCC)", URL: <https://itm.public.lu/fr/nous-connaître/services/help-call-center.html>
- <sup>277</sup> Information provided by IOM on 29 September 2020.
- <sup>278</sup> Information provided by the Directorate of Immigration on 21 October 2020.
- <sup>279</sup> Information provided by a municipality on 20 October 2020.
- <sup>280</sup> Information provided by municipalities on 29 September 2020 and on 20 October 2020.
- <sup>281</sup> Information provided by the Directorate of Immigration, Foreigners service on 24 November 2020.
- <sup>282</sup> For example, the Minister of Interior and the Directorate of Immigration sent a circular on 3 April 2019, on the impact of Brexit on municipal administrations and British citizens. See: Circular N°3692, 4 April 2019. « Annex : Conséquences du « BREXIT » ». URL : <https://mint.gouvernement.lu/dam-assets/circulaires/2019/janvier-juin/3692.pdf>
- <sup>283</sup> Information provided by the Directorate of Immigration on 21 October 2020.
- <sup>284</sup> Information provided by Caritas on 5 October 2020.
- <sup>285</sup> Information provided by Médecins du Monde on 28 October 2020.
- <sup>286</sup> Articles 7 and 19 of the Law of 6 February 2009 on compulsory education. Published in Memorial A 20 on 16 February 2009. URL: <http://legilux.public.lu/eli/etat/leg/loi/2009/02/06/n3/jo>
- <sup>287</sup> The amended Grand Ducal Regulation of 18 March 2020 on the introduction of a series of measures to fight against Covid-19.
- <sup>288</sup> Law of 24 March 2020 on the prolongation of the state of crisis declared by the Grand Ducal Regulation of 18 March 2020 on the introduction of a series of measures to fight against Covid-19.
- <sup>289</sup> The Luxembourg Government, « Communiqué à destination des ressortissants de pays tiers se trouvant actuellement au Grand-Duché de Luxembourg », Press Release of 19 March 2020. URL : [https://gouvernement.lu/fr/actualites/toutes\\_actualites/communiques/2020/03-mars/19-luxembourgeois-deplacement.html](https://gouvernement.lu/fr/actualites/toutes_actualites/communiques/2020/03-mars/19-luxembourgeois-deplacement.html)  
See also: Article 13 of the Grand Ducal Regulation of 18 March 2020 on the introduction of a series of measures to fight against Covid-19.
- <sup>290</sup> Article 13 of the amended Grand ducal regulation of 18 March 2020.
- <sup>291</sup> The Luxembourg Government, « Communication by the Ministry of Foreign and European Affairs concerning temporary immigration measures », Press Release, 24 June 2020. URL: [https://gouvernement.lu/en/actualites/toutes\\_actualites/communiques/2020/06-juin/24-maee-mesures-immigration.html](https://gouvernement.lu/en/actualites/toutes_actualites/communiques/2020/06-juin/24-maee-mesures-immigration.html)  
See also: Law of 20 June 2020 introducing certain temporary measures relating to the application of the amended Law of 29 August 2008 on the free movement of persons and immigration.
- <sup>292</sup> Article 1 (3) of the Law of 20 June 2020 introducing certain temporary measures relating to the application of the amended Law of 29 August 2008 on the free movement of persons and immigration.
- <sup>293</sup> *Ibid*, Article 1 (2).
- <sup>294</sup> *Ibid*, Article 1 (3).

- <sup>295</sup> Answer of the Minister of Immigration and Asylum of 24 April 2020 to Parliamentary question n°2041 reception facilities and Covid 19. URL: [https://www.chd.lu/wps/PA\\_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=BA0A431592B7DE9FBC971416A0EFD6D7\\$E3D7D4B2D9D6AB4E59C57CE8C7271C16&fn=BA0A431592B7DE9FBC971416A0EFD6D7\\$E3D7D4B2D9D6AB4E59C57CE8C7271C16.pdf](https://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=BA0A431592B7DE9FBC971416A0EFD6D7$E3D7D4B2D9D6AB4E59C57CE8C7271C16&fn=BA0A431592B7DE9FBC971416A0EFD6D7$E3D7D4B2D9D6AB4E59C57CE8C7271C16.pdf)
- <sup>296</sup> Médecins du Monde, « 2019 : Des besoins croissants le 9 juillet 2020, Médecins Du Monde Luxembourg a présenté publiquement son rapport d'activité 2019.», 9 July 2020.
- <sup>297</sup> Luxembourg Refugee Council (LFR), Press Release for the World Refugee Day, 20 June 2020, p. 4
- <sup>298</sup> Joint answer of the Minister of Family and Integration, and the Minister of Immigration and Asylum of 9 July 2020 to the Parliamentary question n°2389 on the situation of irregular migrants and Covid-19.
- <sup>299</sup> Information provided by the Directorate of Immigration on 21 October 2020.
- <sup>300</sup> *Ibidem.*
- <sup>301</sup> *Ibidem.*
- <sup>302</sup> DP, LSAP et déi gréng, « Accord de Coalition 2018-2023 », Luxembourg, 2018, p. 232. URL : <https://gouvernement.lu/en/publications/accord-coalition/2018-2023.html>
- See also: Ministry of Foreign and European Affairs, Ministry of Family Affairs, Integration and the Greater Region. « Fonds 'Asile, Migration et Intégration' 2014-2020, Programme National du Luxembourg », p. 20. URL : [https://maee.gouvernement.lu/dam-assets/directions/d8/publications/amif/2017/Fonds-Asile\\_Migration-et-Integration-2014-2020\\_Programme-national-du-Luxembourg.pdf](https://maee.gouvernement.lu/dam-assets/directions/d8/publications/amif/2017/Fonds-Asile_Migration-et-Integration-2014-2020_Programme-national-du-Luxembourg.pdf)
- <sup>303</sup> Article 89 of the Immigration Law.
- <sup>304</sup> Article 111 (1) of the Immigration Law and article 34 (2) of the Asylum Law respectively.
- <sup>305</sup> See LU EMN NCP, "The effectiveness of return in EU Member States: challenges and good practices linked to EU rules and standards", 2017. URL: [http://www.emnluxembourg.lu/wp-content/uploads/2018/01/LU-EMN-NCP\\_Effectiveness-of-return\\_final.pdf](http://www.emnluxembourg.lu/wp-content/uploads/2018/01/LU-EMN-NCP_Effectiveness-of-return_final.pdf)
- <sup>306</sup> LU EMN NCP, "Returning Rejected Asylum Seekers: Challenges and Good Practices", 2016, Table 2, p. 10.
- <sup>307</sup> Information provided by Médecins du Monde on 28 October 2020.
- <sup>308</sup> LU EMN NCP, "Returning Rejected Asylum Seekers: Challenges and Good Practices", 2016, Table 2, p. 10.
- <sup>309</sup> Information provided by the Directorate of Immigration of 21 October 2020.
- <sup>310</sup> DP, LSAP and déi gréng, « Accord de coalition 2018-2023 », 3 December 2018, pp. 232-233.
- See also: Luxembourg Refugee Council (LFR), Press Release, 20 June 2019, pp. 3-4. URL : [https://docs.wixstatic.com/uqd/a35505\\_09597ed3d37b48478b5897ef98b5b0da.pdf](https://docs.wixstatic.com/uqd/a35505_09597ed3d37b48478b5897ef98b5b0da.pdf)
- <sup>311</sup> Information provided by the Directorate of Immigration on 21 October 2020.
- <sup>312</sup> *Ibidem.*
- <sup>313</sup> Article 78 (3) of the Immigration Law.
- <sup>314</sup> DP, LSAP et déi gréng, « Accord de Coalition 2018-2023 », Luxembourg, 2018, p. 232.
- <sup>315</sup> Information provided by the Directorate of Immigration on 21 October 2020.
- <sup>316</sup> LU EMN NCP, "Returning Rejected Asylum Seekers: Challenges and Good Practices", 2016, pp. 7-8 (23 – 24).
- <sup>317</sup> Information provided by Caritas on 5 October 2020.
- <sup>318</sup> Information provided by Caritas on 5 October 2020.
- <sup>319</sup> Information provided by Caritas on 5 October 2020 and by ASTI on 13 October 2020.

- <sup>320</sup> Information provided by ASTI on 12 November 2020. The recent example of Germany, which has amended its legislation, allowing skilled workers (persons with a higher education diploma or qualified vocational training of at least two years) to obtain a temporary residence permit for the purpose of seeking work, should inspire Luxembourg.
- <sup>321</sup> Information provided by ASTI on 13 October 2020.
- <sup>322</sup> Information provided by ASTI on 12 November 2020. According to ASTI only if they are able to prove that they will have a regular income or depending on the partners income, they cannot be a burden to the Government.
- <sup>323</sup> Médecins du Monde, « 2019 : Des besoins croissants le 9 juillet 2020, Médecins Du Monde Luxembourg a présenté publiquement son rapport d'activité 2019.», 9 July 2020.
- <sup>324</sup> Information provided by Médecins du Monde on 12 November 2020.
- <sup>325</sup> Ronnen Dësch, « Ensemble de recommandations pour assurer une Couverture Sanitaire Universelle CSU et des mesures connexes au Luxembourg », 1 October 2019 pp. 3-5. URL : <https://ronnendes.lu/wp-content/uploads/2019/10/De%CC%81f-Recommendations-.pdf>
- <sup>326</sup> Information provided by Médecins du Monde on 28 October 2020.
- <sup>327</sup> Information provided by Caritas on 5 October 2020.
- See also: Caritas, « Un bilan qui pousse à l'action », 8 October 2020. URL : <https://www.caritas.lu/caritas-news/actualites/un-bilan-qui-pousse-laction>
- <sup>328</sup> Information provided by Médecins du Monde on 28 October 2020.
- See also : Médecins du Monde, « Rapport d'activités 2019 », extended version, 9 July 2020, p. 18
- <sup>329</sup> Ibid, p. 15.
- <sup>330</sup> Information provided by Médecins du Monde on 28 October 2020. See also : Médecins du Monde, « Rapport d'activités 2019 », extended version, 9 July 2020, p. 17.
- <sup>331</sup> Ibidem.
- <sup>332</sup> Information provided by the ITM on 7 October 2020.
- <sup>333</sup> *Ibidem.*
- <sup>334</sup> LU EMN NCP, "Illegal employment of Third-Country Nationals in the EU", 2016, p. 2; p. 4; p.12. URL: <https://orbi.lu.uni.lu/bitstream/10993/30208/1/LU%20EMN%20NCP%20Illegal%20employment%20study.pdf>
- <sup>335</sup> LU EMN NCP, "Illegal employment of Third-Country Nationals in the EU", 2016, p.19 and p.22.
- <sup>336</sup> Information provided by the Fraenhaus on 7 October 2020.
- <sup>337</sup> Information provided by the Red Cross on 6 October 2020.
- <sup>338</sup> Information provided by ASTI on 13 October 2020. See also: ASTI, « Aide alimentaire pour les personnes en situation irrégulière », 22 July 2020.
- <sup>339</sup> Information provided by the Red Cross on 6 October 2020.
- <sup>340</sup> Information provided by the Red Cross on 6 October 2020.
- <sup>341</sup> Information provided by the Directorate of Immigration on 21 October 2020.
- <sup>342</sup> Lanners Maryse, « Existenznout vu "Sans-Papiers" a Covid-Kris », RTL 2020. URL : <https://www.rtl.lu/news/national/a/1547427.html>
- See also: ASTI, « Aide alimentaire pour les personnes en situation irrégulière – bilan final » and Caritas, « Un bilan qui pousse à l'action ».
- <sup>343</sup> Information provided by ASTI on 13 October 2020, Caritas, « Un bilan qui pousse à l'action ».
- <sup>344</sup> Information provided by the Directorate of Immigration on 21 October 2020.

<sup>345</sup> Information provided by Caritas on 5 October 2020.

<sup>346</sup> LU EMN NCP, "Dissemination of information on voluntary return: How to reach irregular migrants not in contact with the authorities", Luxembourg 2015, p. 4.

<sup>347</sup> *Ibid*, p. 18.

<sup>348</sup> *Ibid*, p.4.

<sup>349</sup> *Ibid*, p. 20.

<sup>350</sup> Answer of the Minister of Immigration and Asylum of 20 February 2017 to the Parliamentary question n°2719 on reject applicants of international protection.

<sup>351</sup> Information provided by IOM on 11 November 2020.

<sup>352</sup> Information provided by the Directorate of Immigration on 21 October 2020.

<sup>353</sup> Article 38 of the Immigration Law.

<sup>354</sup> Information provided by Caritas on 5 October 2020 and by ASTI on 13 October 2020.

<sup>355</sup> Information provided by the Red Cross on 6 October 2020, by ASTI on 13 October 2020.

<sup>356</sup> Information provided by Caritas on 5 October 2020.

<sup>357</sup> Information provided by Caritas on 5 October 2020 and ASTI on 13 October 2020.

<sup>358</sup> Information provided by the Red Cross on 6 October 2020.

<sup>359</sup> Information provided by ASTI on 13 October 2020.

<sup>360</sup> *Ibidem*.

<sup>361</sup> Information provided by a municipality on 20 October 2020.