



■ Current Immigration
Debates in Europe:
A Publication of the
European Migration
Dialogue

Jan Niessen, Yongmi Schibel and
Cressida Thompson (eds.)

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Serge Kollwelter

for

ASTI

(Association de Soutien aux Travailleurs Immigrés)

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The Migration Policy Group (MPG) is an independent organisation committed to policy development on migration and mobility, and diversity and anti-discrimination by facilitating the exchange between stakeholders from all sectors of society, with the aim of contributing to innovative and effective responses to the challenges posed by migration and diversity.

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1. Preliminary remarks

A few basic facts to understand the migration situation in Luxembourg:

During the 20th century, immigration made a significant contribution to the economic and social development of the Luxembourg. This immigration consisted mostly of white, Catholic, European immigrants.

At the moment, Luxembourg has a population of approximately 440,000. Foreign nationals make up 38 per cent of the population. Most of them are citizens of European Union (EU) Member States, however, five per cent come from third (non-EU) countries.

The working population includes a large percentage (37 per cent) of people crossing the boarder each day (commuting from France, Belgium and Germany). Approximately 36 per cent of these are Luxembourg citizens, and 26 per cent are foreign nationals.

The unemployment rate over the last 20 years has been steady at around two to three per cent.

In 2003, the 12,613 new arrivals left a positive net migration balance of 2,073.

1.1 The immigration debate

Traditionally, immigration has been a welcome topic in official discourse. For many years, the economy has flourished, resulting in a situation where there have been more jobs than workers. As such, the last quarter of the 20th century was a period of almost full employment. It was a time of job creation and it saw an increase in Luxembourg's working population.

Because of this, there was no explicit 'immigration policy'. The only discourse was about the successful and easy integration everybody was supposed to achieve. It is interesting to note that an integration policy was considered equally unnecessary, as it was something that 'just happened over time.'

In 1972, a law was passed on the entry and residence of foreign nationals and there have only been a few, minor changes since. The law was developed for non-EU employees, including Portugal.² Because Portugal has since become a member of the EU, this legislation is now only applicable to a small section of the community - migrants from third (non EU) countries.

In recent years, the immigration debate has focused on demographic trends and how these might affect the welfare system, in particular the pension system. In the last few years there has also been a change in the public attitude towards 'foreigners'. This is largely the result of an increase in asylum applications. However, this issue is only addressed briefly in this report as the main focus is on immigration, not asylum.

¹ This report is based on information up to 1 August 2005.

² Portugal has been a significant contributor to the Luxembourg workforce.

The report also aims at highlighting policy debates taking place in governmental and non-governmental organisations, rather than analysing public concerns.

Demographics, pensions and welfare

The national statistical office (STATEC) regularly publishes demographic statistics and projections. Their data reveals a significant proportional increase in first and second-generation migrants. However, population projections are a difficult area and have proven to be unreliable in some cases.

Early (1982) population projections estimated that there would be a total number of 403,880 inhabitants in Luxembourg in 2000. However, the actual figure was 435,700. STATEC estimated that this would include 133,090 foreign nationals, when there were in fact 159,400.

STATEC has also released statistics on birth rate: in 2001, foreign nationals (37 per cent of the population) had 2,736 children, while Luxembourg nationals (63 per cent of the population) had only 2,723 children.

In 1995, STATEC projections indicated that the 'national' population would remain static. However, like most countries around the world, Luxembourg is ageing, and it is therefore in need of more young (active) people. With no increase in the 'national' population, immigration will be essential, particularly if Luxembourg is to maintain services and continue its generous pension system. At the same time, it is important to note that this is not considered a significant issue at present, as contributions paid by the (currently) large number of workers are sufficient to fund the (current) pension system.³

The Parliamentary Commission on immigration maintains that immigration is not connected to the survival of the pension system.⁴ It believes that one must separate immigration from the financing of the social security system, and in particular the pension system. One might reasonably argue that this separation is artificial and made for political reasons, avoiding to make a discussion about social security and its funding in the future.

Since the two questions are to be treated separately, the Commission focuses on preparing parliamentary debates and political proposals, which look at immigration as an issue in isolation. However, the question of welfare and, in particular, pensions, remains persistent.

Robert Kieffer, Chairman of the *Union des Caisses de Maladie* (public health system) has argued that the pension system works on the basis of growing employment within the country. While the resident population increased by 20 per cent between 1985 and 2000, employment (i.e. all people working in Luxembourg, including border-crossing workers) grew in the same period by 63 per cent. The system is akin to a pyramid, which is in continuous need for new members to finance the promises made to previous members (Robert Kieffer Forum 221. November 2002). Those working in Luxembourg but living outside Luxembourg also receive pensions from Luxembourg once they retire.

³ It is important to note that a debate about pensions has been ongoing for the last 15 years. The debate has led to the creation of a political party, the ADR, seeking a fair deal regarding pension levels in the public and private sectors. ADR now has five MPs out of 60.

⁴ At the same time, however, the Commission is not prepared to explain in detail the future functioning of the pension scheme, because such a procedure is not part of its mandate.

In its January 2003 bulletin, the Luxembourg Central Bank published a file on "the sustainability of the pension system" (Cahier d'études No 6 BCL, January 2003), which presented a similar argument, claiming that the present pension system will only survive if there are 7,000 supplementary border-crossing workers and 4,000 new migrants each year, from 2005.

At the moment, the ever-growing working population contributes more to the pension fund than is needed. This has created significant political pressure to raise the pension payments. However, the current level of pensions can only be maintained for future generations if the employed population continues to grow. The Prime Minister explained this situation when he launched a discussion about a potential future '700,000 inhabitants state' in his address to Parliament in May 2001. Starting from the (then) current 440,000 inhabitants, he used demographic projections based on four per cent growth in the economy and the working population over the next 50 years, to demonstrate that higher pension levels in the future will require a larger number of contributors.⁵

Since this address the debate has evolved, and it now appears the increase in the population (to 700,000 by 2050) is the primary policy objective. If such an increase will go ahead, however, the government must address the challenges it would create for the environment, transport and quality of life. Further, the fact that any growth of population could only come from foreign nationals has only been implicit. There have been no opportunities for public debate. It appears there has also been little consideration on the outcomes of the policy, including the fact that within a decade, up to 50 per cent of residents would be 'foreign', and border-crossing workers could increase to 300,000 by 2050.

In October 2002, the economist Guy Schuller gave a conference during the seminar titled *Migrations* in which he described a favourable economic situation and harmonious society through the image of a virtuous spiral: in which social cohesion would contribute to economic performance. That evolution was positive because all the elements were positive: what would happen if one element became negative? In other words, what would it mean for economic performance if there were no social cohesion?

Lionel Fontagné, professor of economics, has also contributed to the debate with his report *The Competitiveness of Luxembourg* (November 2004). In this report Professor Fontagné also broaches questions relating to immigration and integration. Fontagné proposes to open the public service to foreigners: "... nothing decisive can probably be done without changing the balance of the political economy. (...) [The fact that] the dynamic of employment is based essentially on employees who migrate or commute, while voting is concentrated among the working and non-working populations of the public sphere, is a source of blockage, which could be solved by re-examining the questions of dual nationality/citizenship and the political participation of foreigners in elections." This argument, which is one of the main conclusions of the report, has been passed over in silence, or covered up by comments on the sliding salary scale.

⁵ However, despite his predictions, pension reforms were made later that year following a roundtable discussion with social and economic actors. The reforms focused on higher pensions, without higher contributions. Employer groups were the only ones in disagreement, arguing the system was not viable in the long term.

Labour migration

As outlined above, the demographic and labour market trends reveal a need for immigration. This is generally accepted as fact across all sectors, including high, low and semi skilled workers.

It should be noted that in the autumn of 2002, speculation on the future growth of the economy dropped from between three and four per cent to between 0,5 and one per cent. The debate on the future '700,000 inhabitants state' now appears to be a long way away, but the question of the funding of the pension system and the demographic challenges still exist.

Admission of migrants is based on the 1972 Law on the entry and residence of foreigners. There are three types of work permits:

- Type A is valid for one year and for one employer;
- Type B is valid for four years and for one sector of activity; and
- Type C is valid for five years and for all sectors of activity.

Residence permits are valid for five years. Before employing an immigrant, an employer must prove that they were unable to find anyone in the EU to fill the position.

It is also important to note that candidates cannot apply for new or renewed permits themselves. This responsibility falls to the employer alone, regardless of the type of permit being sought.

After an A permit the employer may apply for another A permit maintaining a direct dependency for another year.

High-skilled migrants

Immigration of highly qualified people is not mentioned in official discourse as it generally takes place without difficulty. This pragmatic approach works particularly well in the case of athletes. Numbers aren't high and we have to consider that there are officially no professional athletes, but they get much public attention.

Luxembourg has signed the international conventions on the recognition of qualifications. This means that in various sectors, such as medicine (law of 18/07/01) or pharmacy (regulation of 29/08/01), a high school degree from Luxembourg or any other EU country is required. In other sectors, a university or college degree from any EU country is sufficient. There are 20 paramedical professions that do not admit third country citizens, except in cases of emergency. Such an emergency is defined by a regulation, which has not been updated since the law of 26 March 1992.

High skilled people come mainly from the border regions where they have been well trained in a basically monolingual school. So the common language within a company may be French or English.

Low-skilled migrants

Limits or quotas on the number of immigrants have not been established on grounds of social considerations, and there is currently no debate on this issue. The 1972

Law states that permits are granted according to the economic situation. This clause can lead to rejected applications, depending on the number of unemployed people in the sector concerned.

A survey⁶ on the consequences of the introduction of the 40-hour week (1992) was carried out among employers in the sectors of hospitality and catering. It revealed that there is a need for 1,000 additional workers. Employers were asked which nationalities they would prefer to hire. The answer was clear: they generally prefer people from Cap Verde and Yugoslavia.

There are no legal provisions for seasonal workers. A few hundred have come from Poland over the last few years. Their employment is administered by a simplified procedure without legal base.

Currently the unemployment rate has risen to over four per cent. While a number of new jobs are being created, there are problems with getting the low-skilled unemployed back into the labour market. A significant number of unemployed are migrants from Portugal.

Family migration

At the moment, there is no legislation on family reunification in Luxembourg. The law on the entry and residence of foreigners (Law of 28 March 1972) does not mention this issue. This might be explained by the fact that when this piece of legislation was passed, agreements on workforce had already been signed with Portugal⁷ and Yugoslavia,⁸ which were both non-EU countries at the time. The Luxembourg-Portugal agreement stated in its Article 9 that Portuguese immigrants were entitled to bring their families to Luxembourg after three-months, provided certain conditions regarding housing were met. Family members had to be financially dependent on the immigrant to be entitled to family reunification.

This law should be evaluated in a broader context:

Luxembourg has relied on foreign labour since industrialisation in the second half of the 19th Century. Until the 1960s, immigration took place without families (Cordeiro, A. 1976). This policy changed in the 1960s for various reasons: Treaty of Rome, demographic collapse and a booming economy. Therefore, family reunification was favoured. However, the conditions and rights pertaining to family reunification were not established by law. Instead they set out in the Portugal-Luxembourg agreement, and not in the agreement with Yugoslavia. This allowed, and still allows for selective family reunification. The absence of precise legislation on foreigners is permanent in Luxembourg (see, for example, the sporadic regularisation of the "*sans-papiers*" and the case of independent workers outlined below).

Both agreements are now void: Portugal joined the EU in the 1970s, and the agreement with Yugoslavia, which was never really activated, was suspended because of the Bosnian war. There is, therefore, no legal base for family reunification. Family reunification now takes place in an almost law-free space, leaving the Ministry of Immigration totally free to decide on each case individually.

⁶ Not published, discussion with an executive of this organisation, 21 November 2002.

⁷ "Accord entre le Grand Duché de Luxembourg et la République Portugaise relatif à l'emploi des travailleurs portugais au Luxembourg", signed in Lisbon on 20 May 1970.

⁸ "Loi du 11 avril 1972 portant approbation de l'Accord entre le Grand Duché de Luxembourg et la République socialiste fédérale de Yougoslavie réglementant l'emploi au Luxembourg des travailleurs yougoslaves" signed in Belgrade on 28 May 1970.

Nevertheless, some guidelines have been established for independants. At the moment, a bank guarantee of €12,350 per family member is required for family reunification in Luxembourg. A spouse can enter the country with her husband, but both need to pay a bank guarantee.

The conditions of admission for independent workers are different. Independent workers are generally people who set up small businesses and who are therefore not attached to an employer. Conditions of their entry are listed on information sheet published by the Ministry of Justice, also without any legal base. These conditions include:

- A copy of the travel ticket;
- A trade authorisation from the Ministry of the Middle Class;⁹ and
- A bank guarantee, conditions regarding housing, etc.

The authorisation is valid for one year and is renewable provided the business has been able to generate sufficient revenue.

An information sheet for self-employed persons specifies that these workers are entitled to family reunification after three years in Luxembourg. If the dependent minor is 17, there may be problems as the procedure can last beyond his/her 18th birthday, after which s/he is not considered a child any more. A migrant's parents can only be admitted if they have passed the working age.

It is hoped that the EU family reunion Directive will be soon transposed to Luxembourgian law.

The status given to a 'family migrant' can be withdrawn if it has been acquired fraudulently, and in such a situation, the third country national is liable to expulsion. Withdrawal can also take place if the holder leaves the country for more than six months (Art 8, regulation of 28 March 1972).

Before making a decision on withdrawal, refusal to renew the permit or expulsion, the Minister of Justice must seek the advice of an independent commission (*Commission consultative en matière de police des étrangers*). The third country national has the right to present his case before the commission. However, the proceedings before the commission do not suspend the decision (Art 1-6, regulation of 28 March 1972). In other words, the Minister is not bound by the opinion of the commission.

There is also a possibility of appeal against the Minister's decision before the administrative court. There are a series of court decisions applying Article 8 ECHR to the case of Luxembourg (Administrative Court: TA 24.2.97, 9500 CHIYA; TA 18.2.99, 10687 Ramdedovic; TA 25.11.98, 10670 Lutovac; TA 20.10.97, 10183 Ferhat). Some of these decisions have led to a *de jure* recognition of special status based on long-term residence and family grounds. In a recent judgment, the tribunal held that the refusal to renew the residence permit of a third-country national after 12 years of residence in Luxembourg constituted a disproportionate interference to family life between a mother and her ten-year-old child (TA 23.12.1999, 11500 Mwang Chuchu). Persons who are entitled to obtain the status of citizenship by naturalization or option may not be expelled as long as this right can be exercised (Article 10, Law of 28 March 1972).

⁹ The Ministry of the Middle Class looks after small and medium enterprises.

Undocumented migrants

In the early 1990s, Luxembourg experienced its first real influx of refugees, mainly from Bosnia. At this time, there was no legislation on asylum. Asylum seekers were instructed to find a job and accommodation and could stay, just like immigrants.

The Kosovo war led to an even greater influx of refugees. During this time, a law on asylum was passed (Law of 3 April 1996 creating a procedure for the examination of asylum applications). The question of integrating them in the labour market as had happened a few years before with the refugees from Bosnia, no longer applied. It is important to note that the economic situation in Luxembourg had not changed: each year, five to six thousand newly created jobs had to be filled by cross border workers or by immigrants.

During this period, the number of people without papers grew dramatically, fuelling a need for a regularisation campaign, which took place in the spring of 2001. The conditions for regularisation required that the applicant prove his/her presence in Luxembourg before 1 July 1998, or to prove that s/he had worked illegally in Luxembourg since 1 January 2000. People from Kosovo were entitled to regularisation if they had arrived before 1 January 2000. Those who could fulfil one of these conditions were given six months to find work.

The "*sans-papiers*" were a semantic creation in Luxembourg: during its most prosperous years, illegal immigrants were legalised every day. In the early 1970s, most Portuguese immigrants came illegally but were legalised almost as soon as they arrived. Economic needs overran the official procedure.

It would appear that regularisation was designed (though not publicly) to get a few hundred people out of the crowded asylum procedure. However, many asylum seekers were excluded from the process, including people from Sandjak, an area covering the south of Serbia and the North of Montenegro. Those excluded were predominantly Muslim.

At the end of the campaign, 2,850 people had been regularised, 2,007 of whom came from former Yugoslavia, and practically all of whom were asylum seekers, suspended for years in the asylum procedure waiting for a decision. The total amounted to 1,554 applicants, 64 per cent of these obtained both work and residence permits.

This regularisation process had no specific legal base. The government published something akin to a "*vademecum*" and referred to the Immigration Law of 1972, i.e. the issuance of a permit depends on Luxembourg's economic situation. Therefore, the criteria of the *vademecum* (such as date of arrival) were not necessarily decisive. The explanation given to an applicant who had been refused was not based on the *vademecum* conditions, but on the vague rules of the 1972 law. The government based its *vademecum* on a parliamentary resolution (Parliamentary motion of 22 March 2001), in which those criteria were indicated (arriving before 1 July 1998 for instance)

It should be noted that the asylum procedure in Luxembourg is very strict, with a recognition rate of two to five per cent per year. Expulsions have taken place since November 2002.

The media and the influence of public opinion on policy development

In Luxembourg, neither the economic nor the demographic situations are common (low unemployment combined with an increasing need for workers from abroad). This has led to a general acceptance of immigrants. However, the ever-growing foreign population and the traditionally good integration seem to be accompanied by some changes in public sentiment. It would seem that the arrival of a significant number of asylum seekers might have contributed to this change, especially since the end of the 1990s.

Luxembourgers have generally been accustomed to the significant number of foreigners working in the country. However, references to 'foreigners' laziness' have started to emerge. Further, this perception has not been countered by the government, who has failed to explain why it does not allow asylum seekers to work.

At the same time, the relatively 'open' attitude of all the traditional political parties was not challenged by an openly rightwing party, the National Movement, which has not managed to secure more than three per cent of the vote (1999 general elections). On the other hand, the ADR (Committee for Democracy and Pension's Justice) party nibbled votes from the conservatives, for example, from the Christian Party's voters. The populist approach of ADR is not openly xenophobic, but its restrictive views on immigration have influenced other parties. After 15 years of coalition between Christian and Social Democrats, the 1999 elections brought a Christian-Liberal coalition to power. The Liberals won due to the huge support they received from civil servants and from their influential Union CGFP, which tries to keep public jobs for nationals.

The debate about foreigners has become more rigid, even restrictive, as the number of foreign workers continues to grow. At the same time, significant numbers of asylum seekers are present in the country. Nevertheless, the government (and the Christian Party) keep their options open. The Prime Minister advocates on behalf of foreigners', while the Minister of Justice is still a hardliner promoting law and order.

In June 2004, the Social Democrats returned to power. They inherited responsibility for immigration and asylum, while integration policy continues to fall to a Christian Party Minister.

Political leaders know that Luxembourg needs and will continue to need additional work force and inhabitants in the future, but they rarely say as much. What is even worse is that the negative discourse on asylum seekers has had effects on the population and on the attitude towards foreigners in general. The law and order slogans of the government are a very new phenomenon. It is interesting to note that the prevalence of arguments for restriction exist along side a general acceptance and understanding of the need for immigration. This attitude comes from the mainstream political parties.

The terrorist attacks of 11 September 2001 have also had an impact in Luxembourg. Prior to the attacks, the Muslim community was about to be publicly recognised and receive public financing, giving them the same status as Catholic, Protestant, Orthodox and Jewish communities. However, after the attacks *Le Jeudi* (a popular current affairs magazine) (10 October 2002) published an article containing accusations and speculations on Muslim activities, arguing that some of these activities were bordering on illegal.

The terrorist attacks did not provoke openly anti-Islamic reactions, however

suspicions began to develop. The fact that a large number of Muslims are asylum seekers from the Sandjak region has contributed to and confused the situation.

The idea of managing migration flows is very present in the public discourse, especially in relation to the expulsion of asylum seekers. The government declared that if it allowed rejected asylum seekers to stay and work in the country, it would be a signal for more people to come and claim asylum. It quoted the 2002 figures: 1,046 new asylum seekers, half of them from former Yugoslavia.

One should not forget, however, as mentioned before, that the government had a contradictory attitude at least twice in the last decade: Bosnian asylum seekers were given an opportunity to stay once they had found a job, this opportunity was withdrawn, or restricted during the Kosovo war.

In January of the election year 2004, the Prime Minister during his weekly press conference, called African asylum seekers – ‘drug traffickers’!

A few days later, the Minister of Justice followed suit when speaking on RTL about some 30 African asylum seekers who had been imprisoned for drug trafficking. When the journalist reports that the prison officials mention only 11 individuals, the Minister says that the addition should include all those who had been imprisoned in the past few months, even if they have been released in the meantime.¹⁰

Result of the elections: the Christian Party gained five seats, producing a total of 24 (of a total of 60); its coalition partner, the liberal party, lost six seats, while the socialist party gained one and now has 14 seats. The Minister of Justice did very well. A Christian-Socialist coalition formed the government. On the question of asylum, the socialists extracted a few small concessions. But no regularisation was envisaged as outlined in the socialist programme.

The coalition between Christian Democrats and Social Democrats will change the legislation after the Luxembourg Presidency of the EU (to finish on 1 July 2005). The law on immigration dating from 1972 will be modernised and a clause on dual nationality will be introduced. The new law should transpose the Directives on family reunification and long-term residents. It will be interesting to know how the government will approach the formulation of new legislation on immigration. The government states that it intends to base its programme on recent legislation in Germany and France.

In the fields of family reunification or long-term residents, successful integration has so far made an explicit attitude useless. Regarding more delicate topics, for example political rights, political parties and the government hide behind the decisions coming from Brussels.

In the very near future, it will become clearer as to whether the generous attitude of the past is sufficient or if more explicit determination is necessary and useful. The slower economic growth in the first part of 2005 will raise new questions in the public debate: the increasing xenophobia would have disastrous effects on a country where one in three workers is a foreign national and another one is crossing the border each day.

¹⁰ Comment: This intransigence had one very clear effect: the election result for the Minister of Justice. One may wonder what the collateral damages of this policy are. For the first time, an immigration country, such as Luxembourg, has officially endorsed a discourse based on suspicion of foreigners, and public opinion does not always make the necessary distinctions between immigrants.

The government does not consider any other regularisation of undocumented migrants necessary. NGOs disagree because after the so-called one-shot regularisation of 2001, nothing has changed: the same legislation has continued to 'produce' new undocumented migrants. A change of asylum and immigration legislation will only take place in 2006.

1.2 The integration debate

In Luxembourg, the traditional belief has been that integration is inevitable; it is something that will occur naturally over time. Because of this, policies have not been considered necessary. However, more recently, the question of integration has been raised by the Prime Minister and the House's Commission. It will be interesting to see if any new projects emerge in 2005. The particular linguistic situation of Luxembourg does not facilitate the choice of a first language by newcomers, because there are three languages being used: Luxembourgian, French and German.

The debate has avoided the question of the characteristics of future migrant. Until now, Luxembourg has chosen to admit white and Catholic migrants from Europe. Cap Verdians were an exception and got their 'entry ticket' at the time as citizens of the Portuguese colonial empire. The agreement with Yugoslavia was not really implemented for the same reason: not all Yugoslavs were Catholics.

The challenge for the future will be to integrate new migrants now they are no longer predominantly Catholic.

The relative importance of the integration debate

The integration debate has only just begun in Luxembourg. This is rather curious when one considers the numbers, but understandable taking in account the dominant characteristics of traditional immigrants.

The recent debates about asylum seekers and public controversy about them seems one of the reasons for the new attention paid to this debate. The other reason is the Hague programme.

The government will provide compulsory language courses before granting nationality and it will allow dual citizenship. There is some debate about keeping the current five years stay requirement for single citizenship and ten years for dual citizenship.

Introduction programmes

Government programmes do provide language courses, which incorporate civic education, to help with the preparation of the acquisition of citizenship. However, the government has remained largely silent on integration courses for new arrivals.

The department under the Ministry of Family has, however, coordinated an informal group consisting of officials and of NGOs to discuss integration courses.

At the end of May 2005, there was a meeting in Luxembourg that brought together experts from France, Belgium, Germany and the Netherlands to exchange views on

current practices with regard to integration courses. The meeting proved very interesting and outcomes can be found in the ASTI publication *Ensemble*.¹¹

Civic citizenship

There is no long-term resident status in Luxembourg. Although there have been changes in the legislation since 1972 (in 1975, 1977, 1993, 1994 and 1995), there has been no fundamental change in the legal status of third country nationals.

In the period around the adoption of the Maastricht Treaty, a debate took place about the voting rights of EU nationals at local and European level, mentioned in the Treaty. At the time of the discussion and adoption of this treaty in Parliament, it seemed that this 'European citizenship' was its main element. As a third of the residents were potentially concerned by this new dimension of citizenship, it was a real challenge. This may explain the exceptions and derogations Luxembourg was granted in the Maastricht Treaty and in the following directive: those granted the right had to prove very long residence periods and there was no right to run for higher office (for example, mayor) (Law of 28 December 1995 establishing the conditions for EU citizens' participation in local elections (*élections communales*)). Those who have resided in Luxembourg for a significant period of time can participate in elections (vote and stand for office); however, they cannot stand for the executive (to become mayor). The debates that took place in that period gave the impression that the legislator was prouder of the restrictive conditions than of the principle itself.

As a result, in the following local elections (October 1999) (RED 4 SeSoPi 1998) the rate of inscription on the voting lists was very low, with few foreign candidates (it should be acknowledged however, half a dozen were elected (RED 6 SeSoPi 2000)). It is noteworthy that the vote is compulsory in Luxembourg, and voting lists are established by the administration. However, foreigners have to register on the voting lists 18 months before Election Day. Once they are on the list, voting is compulsory for foreigners too.

The relatively non-existent debate about immigration is starting to change, due to three new factors (the economy, increasing numbers of asylum seekers and demography). As this change has only started recently, it is still difficult to assess its importance.

When the law on nationality was last modified (2001), the government was not ready to move towards dual nationality. It argued that, on the one hand, parliamentarians did not have a sufficient mandate to do so, and, on the other hand, a certain number of questions remained unanswered. However, in 2004, Messrs. Francis Delpérée and Michel Verwilghen, two university professors at the University of Louvain-la-Neuve were commissioned by the government to prepare the report; *Multiple citizenship and multiple nationality in the Grand Duchy of Luxembourg*. This report provided a thorough account of the situation, covering all relevant questions and risks.

The Minister of Justice, who was opposed to dual nationality, has asked the Minister of Finance (himself) for an appropriation for this report. The contribution of the experts has allowed him to change his opinion. A draft law will be elaborated after Luxembourg's presidency of the European Union, in the second half of 2005. However, in August 2004, the parliamentary debates on the nomination of the new government have revealed that there is a beginning of open-mindedness at a

¹¹ Publication No. 79. For more information, go to www.asti.lu/

homeopathic dose, since the president of the parliamentary group of the Christian Social party has declared that five years of residency will be kept as a requirement to gain 'simple' nationality, but that ten years would be required for dual nationality.

On anti-discrimination, the two European directives against discrimination have resulted in two draft laws, but they have not yet entered into force. The European Commission introduced infringement proceedings against Luxembourg, and in February 2005 the ECJ ruled that Luxembourg had breached EU law by failing to transpose fully the Directive prohibiting discrimination on the grounds of race or ethnic origin.

1.3 The brain drain debate

Considering the main 'official' debate in the Parliament's first commission, one must note that the issue of links with third countries, brain drain, or return and circular migration are not debated.

Luxembourg's development package has exceeded the target 0.8 per cent of its gross domestic product (GDP).

In the context of the repatriation of asylum seekers to Montenegro, Luxembourg is investing €20 million over five years to help alleviate its economic challenges. No other return programme exists beside the individual financial help.

Luxembourg has been very flexible in allowing companies to recruit highly qualified individuals. The management of the companies – most of which are foreign – is largely foreign, and it recruits from abroad. In Luxembourg, only 18 per cent of the national population have a post-secondary education, while the average for the population of residents is 21 per cent with post-secondary education, and the average for the OECD countries is 25 per cent (CEPS, July 2005).

Luxembourg has only had a university since 2004. Students from third countries who wish to enrol in this university run into numerous obstacles.

Withdrawal of the residence status can take place if the holder leaves the country for more than six months (Art 8, regulation of 28 March 1972).

2. Basing policies on evidence and consultation

Governmental and non-governmental actors

- **The government**

Since June 2004 the Ministry of Immigration has been in charge of both the work and residence permit. Once immigrants are in Luxembourg, the Ministry of the Family is in charge of integration through the Commissioner for Foreigners. Other Ministries involved include the Ministry of Education and the Ministry of the Interior.

For example, during the regularisation period of May-June 2002, the three ministries (Employment, Justice and Family) created a 'Common Service' with a single contact point to receive and process the applications for regularisation. As one of the conditions was to have a valid passport, problems arose which are still not all solved today. It may have been useful to involve the Foreign Affairs Ministry in the whole regularisation procedure as well.

- **The Parliament**

In the context of the debate about the '700,000 inhabitants state', the parliament decided on 22 March 2001 to create a special Commission 'Immigration'. The commission was formalised on 12 June 2001 and began its work in July. 13 meetings have taken place since.

A few non-public hearings were organised, which included representatives of six ministries (Interior, Economy, Transportation, Women's promotion, Labour, Justice) as well as the government's Commissioner for Foreigners and the Employment Agency. The parliament's official report states that the representatives present included:

- three environmental NGOs;
- four NGOs working in the field of migrants and refugees; and
- four advisory bodies among which the National Council for Foreigners.

An historian and a demographer were also consulted.

Three MPs participated in at least one of the conferences of the *Migration campaign*. An internal report was made for each hearing. To this day, however, the report of 26 October 2001 meeting with the four migration NGOs has not been finalised. The chairman / reporter issued an intermediary report before the summer of 2002. Since then, there has been no further meeting of the Commission. There should be a final report, discussed and adopted by the Commission leading to a Public Orientation Debate in the House. Normally, in such a debate, a resolution is adopted with main focus points and with a series of recommendations for the government.

Contacts with Commission members belonging to all political parties on 9 January 2003 tend to show that it is unlikely that the work of the Commission will resume shortly. It seems that the intermediary report does not reflect the Commission's consensus, rather the chairman's work.

The bodies, which gave an opinion on the intermediary report, were invited to a second hearing in parliament on 7 March 2003.

Key elements of the intermediary report (issued on 17 July 2002):

- There was mention of family reunification.
- The report did not advocate for the reform of basic legislation.
- The section on Europe was added after the Seville Summit and there is no specific mention of any directive proposal being discussed during these months.
- The question of the arrival of third countries students, linked to the project of creation of a University in Luxembourg, is not dealt with.
- As far as frontier workers are concerned, the report states: "serious thinking on the situation of frontier workers is necessary".
- Immigration is dealt with only from the perspective of economic requirements.

The special commission on Immigration has completed its deliberations. They led to a public debate in a plenary session of Parliament on 12 February 2004. It should be noted that the commission did not prepare a written report on this hearing, as is usually standard.

On this occasion a motion was adopted:

The motion asks the government to define a global policy on immigration and integration, to task a member of the government with the co-ordination of such a policy, to maintain an open attitude with regard to immigration from third countries, to fight against illegal immigration, to promote the Luxembourgian language, to think about integration courses for the new arrivals, to make dual nationality possible, etc.

The motion was adopted by the votes of the parties of the governing majority and the Greens, with abstention of the socialists.¹²

The study after the debate

In April 2004, Marcel Glesener, a deputy of the Christian Social Party, presented his government commissioned report titled *Interactions between immigration and job market in Luxembourg: for a society based on shared well-being: A study of policy orientation*. The document had been elaborated on with the scientific support of the SeSoPi, a research centre connected with the archdiocese.

The study of policy orientation sets up a table of the needs of the economy and the potentialities and supplies, asking questions about the type of policy to be implemented and the implications of any given choice.

In a first step, the study presents an inventory: current supplies, possibilities and reserves that can be mobilized. Next, it presents the needs as well as the current and

¹² Comment: The government that came to power after the national elections of 13 June 2004 has resumed thinking about the prospects of dual nationality and its concern for the Luxembourgian language. As far as the co-ordination of the government's policy is concerned, the competencies for entry (residence and work permit, and asylum procedure) have been transferred from the Ministries of Justice and Labour to the new Ministry of Immigration, while reception and integration have remained in the Ministry of Family, which added "and of Integration" to its title. In other words, not much progress. In the previous government, all the ministers who were competent for these matters belonged to the same political party, namely the Christian Social Party. The latter party has gained strength in the elections, and its new partner (junior partner) had to take immigration and asylum, areas that have been particularly out of control in previous years, essentially in the context of asylum seekers.

probable future demands for manual labour, and finally it connects the first set of information to the second one by discussing employment mobility and structures.

Review of the conclusions and recommendations in the document:

- The demographic situation is favourable thanks to the migratory movements, but it remains largely a result of the attractiveness of the location of Luxembourg for companies and employees;
- Economic growth must be combined with a policy of job creation;
- The employment rate in Luxembourg is considerably below the European average for women and for the elderly;
- The potential labour force in the greater region will continue to remain sufficient for a long time;
- The potential of Portuguese immigration does not appear to have been exhausted;
- Potential East-West movements, notably from the 'new' Member States, must be taken into account;
- The segmentations of the job market risk to become more pronounced;
- The revision of the legislation of 1972 concerning work and residence permits is indispensable;
- A definition of the linguistic policy in a multilingual Luxembourg is imperative; and
- The skills to be provided by the schools present a major challenge, the Luxembourgian school offering little possibilities for children of immigrants as shown in the last OECD PISA studies.

The authors define the following challenges for the policy:

a) The viability of the current social security system whose good financial health and level of current social services depend on continued growth in employment.

b) The increasing segmentation of the job market must be confronted. The work place tends to become an environment in which homogeneous groups, with regard to status, nationality and language, work side by side. If this trend increases, the place of work risks to function less and less as a place of exchange between nationalities, and thus of integration within the society.

c) A position must be taken on the priority areas of recruitment: a single country with the risk of policies that take into account minorities, or a larger area with the risk of being confronted with a variety of practices and even practices opposed to integration.

d) Foreigners should not be considered a simple 'factor' in the economic balance between supply and demand, rather the questions that should be raised are how to stabilise this population in the receiving country, and what means can be found to promote its insertion and its participation.¹³

¹³ Comment: It should be noted that Mr. Glesener was the president of the special parliamentary commission on immigration. He was its rapporteur in the debate of 12 February 2004.

• Official bodies

The government and the 'social partners' (employers and trade unions) make up the Economic and Social Council (CES), which gives essential advice on the social and economic situation each year. A large section of its 2002 report was devoted to immigration. There is a strong argument for an active immigration and integration policy including housing, dual citizenship, political participation, education policy, etc.

In order to achieve the harmonious integration of future immigrants, the following steps are necessary:

- Developing an active immigration policy to encourage workers from candidate countries to come and work in Luxembourg;
- Intensifying relations with candidate countries where the population is most likely to integrate rapidly and efficiently into Luxembourg's society;
- Determining Luxembourg's integration capacity at all levels;
- Adapting integration structures as well as the legislation primarily concerning work and residence permits, the possibility to choose dual citizenship, and voting rights; and
- Eliminating the fear caused by a resurgence of xenophobia due to the '700,000 inhabitants state' proposal.

The CES document is much more precise than that of the parliament. Normally, the CES paper, which is adopted unanimously, states the opinion of the so-called '*forces vives*' and that of the government.

The CES document does not seem to have influenced the parliamentary report. The House's Commission (or its chairman) denies any link between pension financing and immigration.

• The National Council for Foreigners (CNE)

This consultative body gives advice to the government on migrant questions. Half of its members are elected by foreigner's associations, the other half are Luxembourg citizens. This body often makes interesting statements on its own initiative, but it but is rarely requested to comment on legislative proposals.

• The Human Rights Consultative Commission

The Human Rights Consultative Commission advises the government on human rights issues, essentially on its own initiative. It is currently preparing a report on the conditions of administrative detention in the country.

• The Unions

OGB-L and LCGB represent a large part of the foreign workers. They traditionally have an open position on migration topics, though OGB-L is more conservative.

The Glesener/Sesopi report is much more substantial than the parliamentary debate after the //initial// parliamentary debate. Beyond the presentation to the press, this document has not been moved forward.

• Non-governmental organisations

The following four NGOs are the only ones with a staff of professionals:

- ASTI is an NGO based on individual membership, active in the north of the city of Luxembourg and fighting for equal rights for all inhabitants www.asti.lu;
- Caritas is very active in the field of asylum seekers and refugees;
- CLAE is an umbrella organisation gathering a hundred foreigners' organisations. It organises multicultural festivals, etc. www.clae.lu; and
- SESOPI is a catholic research centre and think-tank, in charge of Luxembourg for the last European value study www.restena.lu/sesopi-ci.

2.2 Including stakeholders

On 28 March 2002, the Prime Minister gave a public conference to open the debate in the campaign *Migration: the challenges for economic and social cohesion*.¹⁴ 'As simple citizen', he presented a number of new ideas, for example dual citizenship (which his government opposed a year earlier), and integration courses for newcomers, leading to a pilot-project for which funds were provided in the 2003 state budget.

The House's Special Commission (see above)

Political parties hold regular meetings with ASTI and CLAE (separately) documented by common press reports.

Senior civil servants are relatively easy to contact in Luxembourg.

Other actors include the Ministers themselves, e.g. the Prime Minister or the Minister of Justice.

Before the Seville Summit, which addressed the fundamental human rights of migrants and refugees, a delegation of the two main trade unions (OGBL and LCGB), two senior employer's leaders and ASTI held a meeting with the Minister of Justice, appointed by the Prime Minister: after the meeting, there was a press briefing.

When the intermediary report of the parliamentary Commission on Immigration came out, both the unions OGBL and LCGB, together with SESOPI and ASTI, gave a common evaluation of the report to the parliament: this was documented through a press report.

A campaign on migration was organised, with public conferences, with the participation of the Prime Minister, Commissioner Antonio Vitorino, Mrs. Catherine Wihtol de Wenden, Mrs. Cristina Alleman-Ghionda, Mrs. Christel Baltès and Mr. Marco Martiniello, promoted by ASTI, together with several foundations and the media. A two-day seminar on the economic and social cohesion challenges also took place.

Before the 2004 elections, the stakeholders manifested themselves on several occasions. For example, on 22 March 2004, the political parties signed the European charter for a Europe without racism, and a memorandum of the OGBL and LCGB

¹⁴ "Migrations – les enjeux! Défis pour l'économie et la cohésion sociale": campaign led by ASTI with the Weicker Foundation, the National Research Fund, the University, in partnership with trade unions, employers' organisations and the press, from March 2002 to March 2003.

unions and of ASTI titled: Five fields of action for living together. The employer organisation UEL has taken a similar, but separate, step.

To take advantage of Luxembourg's presidency of the European Union, during which the government was seriously taxed insofar as its Community obligations are concerned, the unions and the employers have been outlining a new piece of legislation on immigration and integration, which is to be submitted to the government.

A campaign called *Words and Pictures for the Future* was organised in schools, with exhibitions, discussions, workshops, theatre performances, etc.

A high-profile anti-discrimination seminar was organised in mid-December 2002¹⁵, supported by the Commission for Human Rights.

From July to December 2002, the media echoed a campaign launched by famous people calling on the government to stop the expulsion of rejected asylum seekers.

Judicial authorities have also exerted some influence on policies on immigrants: in 2001, the Administrative Court ruled that the non-EU partner of an EU citizen could access Luxembourg's labour market without a work permit, but the Constitutional Court denied this right to the non-EU partner of a citizen of Luxembourg.

¹⁵ "Les discriminations", seminar of 13-14 December 2002, in Bourglinster

Glossary

Political Parties

* Government coalition

CSV: Christian Democrats - 24 MPs

LSAP: Social Democrats - 14 MPs

*Opposition

DP: Liberals - 10 MPs

The Greens - 7 MPs

ADR: created a dozen years ago, it is fighting to establish the same pension levels for workers in the private sector as for civil servants - 5 MPs

Trade Unions

OGBL: left-wing Union, close to LSAP

LCGB: Christian Union, close to CSV

CGFP: Civil Servants' Union, close to DP

Employers' organisations

UEL: Union of the Employers of Luxembourg, umbrella organisation

Main NGOs

ASTI: based on a few hundred individuals of about 25 different nationalities

CARITAS: catholic welfare organisation

CLAE: umbrella organization gathering approximately a hundred NGOs

SESOPi: mainly a research centre linked to the Catholic Church

Official bodies

CES: Social and Economic Council

CNE: National Foreigners' Council

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Kieffer, Robert (November 2002) *Demographic growth and the viability of pension systems* in: Forum 221

Seminars

"Les discriminations", seminar of 13-14 December 2002, in Bourglinster

Schuller, Guy (18 October 2002) seminar "Migrations"

Reports

Cahier d'études. No 6 BCL (January 2003) *Long-term sustainability of the general pension system regulations in Luxembourg*

CEPS (July 2005) *Vivre au Luxembourg* [Living in Luxembourg]

Campaigns

"Migrations – les enjeux ! Défis pour l'économie et la cohésion sociale": campaign led by ASTI with the Weicker Foundation, the National Research Fund, the University, in partnership with trade unions, employers' organisations and the press, from March 2002 to March 2003.

Laws

Law of 28 March 1972 on the entry and residence of foreigners

Art 1-6, regulation of 28 March 1972

Art 8, regulation of 28 March 1972

Article 10, Law of 28 March 1972

Law of 28 December 1995 establishing the conditions for EU citizens' participation in local elections (élections communales).

Law of 3 April 1996 creating a procedure for the examination of asylum applications

Parliamentary motion of 22 March 2001

Administrative Court: TA 24.2.97, 9500 CHIYA; TA 18.2.99, 10687 Ramdedovic; TA 25.11.98, 10670 Lutovac; TA 20.10.97, 10183 Ferhat

TA 23.12.1999, 11500 Mwang Chuchu.

Agreements

"Accord entre le Grand Duché de Luxembourg et la République Portugaise relatif à l'emploi des travailleurs portugais au Luxembourg", signed in Lisbon on 20 May 1970.

"Loi du 11 avril 1972 portant approbation de l'Accord entre le Grand Duché de Luxembourg et la République socialiste fédérale de Yougoslavie réglementant l'emploi au Luxembourg des travailleurs yougoslaves" signed in Belgrade on 28 May 1970.

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