



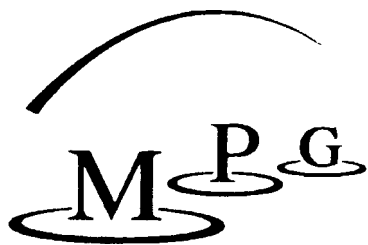
EU and US approaches to the management of immigration

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Raphaële Magoni (eds.)

Luxembourg

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With the support of the German Marshall Fund of the United States

The Migration Policy Group (MPG) is an independent organisation committed to policy development on mobility, migration, diversity, equality 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.

This report is part of a series of 18 country reports prepared in the framework of the project *EU and US approaches to the management of immigration*, which was carried out by MPG with the support of the German Marshall Fund of the United States and in co-operation with partners in the European Migration Dialogue. Countries included in the project are Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Spain, Switzerland, and the UK.

Reports on these countries are available from MPG's website individually or jointly, together with EU-US comparative perspectives and European comparative perspectives. See Jan Niessen and Yongmi Schibel, *EU and US approaches to the management of immigration – comparative perspectives*, MPG/Brussels, May 2003.

All papers were presented and discussed at a transatlantic dialogue meeting preceding the official launch of the European Migration Policy Dialogue attended by Commissioner António Vitorino (Brussels May 2003).

Brussels/Luxembourg, May 2003

Preface

The European Union and the United States are areas of immigration, and both are entities of multi-level governance facing the task of managing international migration. However, unlike the United States most European states do not consider immigration as a matter of national interest.

In the US a regulated immigration system aims to enhance the benefits and minimise the drawbacks of immigration. The country's bi-partisan immigration policy receives strong support from a wide variety of stakeholders.

In Europe the emphasis is on immigration restriction and prevention, reflecting the position of most stakeholders that the costs of immigration outweigh its benefits. Immigration is a sensitive and sometimes controversial issue, as is demonstrated in recent elections in a number of European countries.

On both sides of the Atlantic migration ranked high on the agenda throughout the nineties. Changes in the size and direction of migratory movements as a result of global developments, EU enlargement and NAFTA received a great deal of attention. The ways in which migration policies are designed and implemented were reviewed and underwent some important changes.

In 1997, the US Commission on Immigration Reform presented its final report to Congress, proposing important changes in US immigration policies and management.

In Europe the 1997 Amsterdam Treaty empowered the European Union's institutions to act on migration, changing intergovernmental co-operation among member states into the development of joint policies on immigration and immigrant integration. A new debate emerged on the role of immigration to address economic and demographic imbalances.

The events of September 11 did not in themselves have an impact on the foundations of immigration policies' governance structures, or lead to changes in them, other than those already proposed. The events added, however, a range of other issues to the overall policy agenda (issues related to the fight against terrorism became a top priority) and the immigration agenda (where security issues became a priority). This resulted in a stagnation of the further development of immigration policies (the best example probably being the US-Mexico migration agreement) and in a refocusing of attention on countering the victimisation of immigrants and the straining of community relations.

It is against this backdrop that MPG launched the project *EU and US approaches to the management of immigration* in an attempt to identify the main drivers of immigration management in EU and US systems of multi-level governance. Building on an understanding of how migration needs are assessed and translated into policy on the national or state level, the project focused on the way in which national or state governments promote their immigration related interests within the federation (in the case of the United States) and the Union (in the case of the European Union). How successful are the different entities in shaping common policies according to their needs? Do they consider centralisation (which the extension of EU powers suggests), or decentralisation (as the campaigns of some states for a greater say in immigration matters suggest) more useful for realising their immigration-related goals?

The reports on fourteen EU Member States, three candidate countries and one associated state each have four chapters:

- The first chapter reviews the (emerging) debates on migration and pays particular attention to the terms of the debate. It examines whether migration is debated in terms of control, security and restriction, or rather in terms of migration management and the assessment of migration needs. It asks whether the terms of the debate are different for different types of migrants, for instance irregular migrants vs. highly qualified migrants. The chapter analyses whether immigration has been linked with and embedded in larger discussions about social and economic policies for the future. In particular, it looks at the debates around the labour market and demography and considers whether and how immigration has been considered as an option for meeting emerging challenges in these areas.
- The second chapter provides an inventory of stakeholders and an analysis of their activities. It gives a detailed account of who is responsible for which area of migration management in the different government departments. It also covers the activities of the various non-governmental organisations active in this field. The central question is which groups (within government, employers, trade unions, NGOs, academics and other experts) assess national migration needs, which instruments and mechanisms they use to make these assessments, and how they assert influence in the political decision-making process to translate these assessments into policies.
- The third chapter provides an analysis of migration management in the areas covered by three of the most important Directives proposed by the European Commission (on admission for employment, family reunification¹, and long-term residents). Rapporteurs compare the national legal framework with the proposed European measures, and assess the degree of convergence between the two. The chapter addresses each of the substantive points dealt with in the Commission's proposals and sets out the corresponding national provisions, if such provisions exist under the current system. Recent and impending changes of national law are also examined, with a view to assessing whether immigration management rules are moving closer to or further away from the proposed European legislation.
- The fourth chapter offers concluding remarks and evaluations by the rapporteurs. It addresses the Commission proposal for an Open Method of Co-ordination and considers whether such a mechanism would fit well with existing policy-making structures. Where appropriate, the chapter looks more closely at the proposed Guidelines and evaluates the degree to which they are already tackled in national policy. The impact of the European Employment Strategy on immigration management is also assessed. The fourth chapter also gives the rapporteurs an opportunity to make recommendations and to suggest alternative benchmarks for future debates and policy developments.

¹ Reports were drafted before the definition of a common approach to family reunification, which Member States agreed to at the Justice and Home Affairs Council of 27/28 February 2003. Rapporteurs base their comments on the text of draft Directive COM (2002) 225, published on 2 May 2002.

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Chapter 1: The terms of the policy debates

1.1. Preliminary remarks

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

During the last century, migration has contributed to a large extent to the economic and social development of the country.

At the moment, Luxembourg has a population of 440,000: foreigners make up 38% of the population. Most of them are citizens of EU Member States, while only 5% come from third countries.

The implicit and very effective policy which has been carried out by the authorities was to admit almost only white, catholic, European immigrants.

The active population comprises 37% of people crossing the border each day, coming from France, Belgium and Germany, 36% of nationals, and 26 % of foreigners.

The unemployment rate over the last 20 years has been approximately 2 to 3 %.

1.2. The context of the policy and public discussions on immigration

Traditionally, immigration is welcome in official discourse: for many years, the economy flourished, and this resulted in a situation where there were more jobs than workers available in the country. The last quarter of the 20th century was a period of almost full employment, and saw the creation of many new jobs, as well as an increase in the active population. There was no real debate on immigration: it just took place, and it was a "win/win" situation. The only discourse was about the successful and easy integration everybody was supposed to achieve.

There was no explicit policy regarding immigration.

The Law on the entry and residence of foreigners was passed in 1972, and only a few non-significant changes have taken place since then. The law was conceived for non-EU workers. As Portugal (which used to be the main provider of working force) has since then become a member of the EU, this legislation is now only applicable to a small part of the foreigners: migrants from third-countries.

The only real debate which took place in that period was about the voting rights of EU nationals at local and European level, mentioned in the Maastricht 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: very long residence periods and no executive charge (for example, mayor)².

The debates which took place in that period gave the impression that the legislator was prouder of the restrictive conditions than of the principle itself.

² Law of 28 December 1995 establishing the conditions for EU citizens' participation in local elections (élections communales).

As a result, in the following local elections (October 1999)³ the rate of inscription on the voting lists was very low, with few foreign candidates, half a dozen of whom were elected⁴. 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.

This non-existing debate about immigration is in the process of changing, due to three new factors. As this change has only started recently, it is still difficult to assess its importance.

1.2.1. The debate on the rise of pension levels

It is important to note that the debate about pensions has been ongoing for the last 15 years. It has led to the creation of a political party which asks for a fair deal regarding pension levels in the public and private sectors: this party has always won, and at the moment, it has 7 MPs out of 60.

In the present repartition system, the constantly growing working population produces more than needed to pay for pensions, so there is political pressure to raise the pension levels. However, the present level of pensions can only be maintained in the next generations provided the active population continues to grow. The Prime Minister launched the discussion about a potential future "700,000 inhabitants state" in his address to the Parliament in May 2001, using a demographic projection based on a 4% growth of the economy and of the active population in the next 50 years, starting from the present 440,000 inhabitants of the country, trying to show that higher pension levels in the future require a larger number of contributors.

The debate was simplified as if those 700,000 people were a main policy objective. Environment, transport and quality of life would be endangered. The fact that any growth of population could only come from foreigners was only an implicit argument. Nevertheless, an important reform of pensions levels was adopted after a roundtable with social and economic actors in 2001: higher pension levels, without higher contributions. Employers were the only ones having problems, arguing the system could not be paid in a few years.

The debate was so much focused on the figure of 700,000, which was supposed to be reached in 2050, that closer projections, such as the one according to which the Luxembourg/foreign residents rate could reach 50/50 within a decade, were neglected, as well as the possible increase in border-crossing workers, who could reach 300,000 in the year 2050!

1.2.2. The restrictive asylum policy and the regularisation campaign

In the early 1990s, Luxembourg received a few thousand refugees, mainly from Bosnia. There was no legislation on asylum: asylum-seekers were instructed to find a job and accommodation and could stay, just like migrants.

With the Kosovo war, a few other thousands refugees came. Meanwhile, a Law on asylum⁵ was passed. There was no more question of integrating them. One should note that there was no change in the economic situation in Luxembourg: each year, five to six thousand newly created jobs had to be done by newcomers crossing the border, or by immigrants.

³ RED 4 SeSoPi 1998

⁴ RED 6 SeSoPi 2000

⁵ Law of 3 April 1996 creating a procedure for the examination of asylum applications.

A regularisation campaign followed, as a first reaction: it was a "one-shot action" which took place in the spring of 2001. The conditions to be fulfilled were the following: the applicant had to prove his/her presence in Luxembourg before 1 July, 1998, or to prove that s/he had worked illegally since 1 January, 2000. People from Kosovo were entitled to regularisation if they had arrived before 1 January, 2000. People fulfilling one of these conditions were given 6 months to find a job.

The "*sans-papiers*" were a semantic creation in Luxembourg: in the 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 overruled the official procedure.

The regularisation had the (non admitted) purpose to get a few hundred people out of the crowded asylum procedure. However, many asylum seekers were excluded: the people from Sandjak, an area covering the south of Serbia and the North of Montenegro. The population in this region is mainly 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: the total amounted to 1,554 applicants, 64% of which got an work and residence permit. This regularisation had no specific legal base: the government published a kind of "*vademecum*" and referred to the Immigration Law of 1972, i.e. the issuance of a permit depends on the economic situation. Therefore, the criteria of the *vademecum* (date of arrival, for example) were not necessarily decisive: the explanation for a refusal was not based on the *vademecum* conditions but on the vague rules of the 1972 law. The government based its *vademecum* on a parliamentary resolution⁶.

For example, an asylum-seeker from Montenegro who arrived after 1 July 1998 but who worked illegally from 1 January, 2000 onwards, saw his application for regularisation rejected. He introduced his request on 13 July, 2001, and was called in October to the regularisation office to be informed that it had been rejected. He was put in prison for being in Luxembourg illegally, and then sent back to Yugoslavia a few days later. He went to Court: the lower administrative court rejected his case, but he made an appeal before the High Administrative Court and won. The Court declared that the conditions established in the *vademecum* had the value of directives and that the government had to respect them⁷. As the examination of applications was over and the corresponding office had closed on 31 December, 2002, the judgment of the Court had little influence on the way the government dealt with the regularisation process.

As the asylum procedure is very strict (recognition rate of refugee status in Luxembourg: 2 to 5 % a year), most asylum-seekers receive a negative answer. This is the case for almost all Muslims from the Sandjak: hundreds and hundreds are invited to return. As those invitations are not very successful, the government started expulsions of rejected asylum-seekers on 5 November, 2002.

1.2.3. The slower economic development

There was a change in the autumn of 2002: economic predictions dropped from 3-4 % in the previous years to 0,5-1 %. The debate on the future "700,000 inhabitants state" now seems far away, but the question of the funding of the pension system remains. The demographic challenge still exists: in 2001, 37% of the population (i.e. foreigners) had 2,736 children, whereas the other 63% (Luxembourg inhabitants) had only 2,723. The ageing population

⁶ Parliamentary motion of 22 March 2001.

⁷ Judgment of the Administrative Court, 12 November 2002.

needs young people, who are not "available" in the country, and, therefore, have to come from abroad.

1.3. Different terms for different types of immigrants

As stated before, Luxembourg's situation is not typical (little unemployment, increasing workforce due to immigration). The continuously growing foreign population and the traditionally good integration seem to be accompanied by a changing discourse. The arrival of a significant number of asylum-seekers may have contributed to this change, especially since the end of the 1990s. The population was accustomed to the many foreigners who were usually employed in the numerous positions created in the past, as well as in the new ones. However, suddenly, the reference to foreigners' "laziness" became easy, as the government did not explain why it did not and does not allow asylum-seekers to work.

The open attitude of all the traditional political parties was not challenged by the openly right-wing party, as it never got more than 3% of the votes (1999 general elections). On the other hand, the ADR party nibbled votes on the conservative side, for example, from the Christian party's voters. The populist approach of ADR is not openly xenophobic, but its restrictive views on immigration influence other parties. After 15 years of coalition between Christians and Social Democrats, the 1999 elections brought a Christian-Liberal coalition. 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 discourse about foreigners has become more rigid, even restrictive, while the number of foreign workers has continued to grow. In parallel, significant numbers of asylum-seekers are present in the country. Nevertheless, the open option has been maintained in the government (and in the Christian party). The Prime Minister stays on the foreigners' side, while the Minister of Justice is still a hardliner promoting law and order.

9/11 had effects in Luxembourg, too. The muslim community was about to get recognition (and public financing) just like the catholic, protestant, orthodox and jewish ones, when a magazine⁸ published accusations and speculations on the fact that muslim activities were on the limit of legality. There were no openly anti-Islamic reactions, but suspicions developed. The fact that a large part of the Muslims are asylum-seekers from the Sandjak region contributed to confuse the situation.

Immigration of highly qualified people is not mentioned in the official discourse: it simply takes place, without difficulty. This pragmatic approach works particularly well when athletes are concerned.

1.4. Immigration and discussions about social and economic policies for the future

At the end of the parliamentary discussions on regularisation and refugees in winter / spring 2001, the House adopted a resolution calling for a larger debate about immigration. The proposal came from the Green party.

To this effect, the Special Parliamentary Commission on Immigration was created. This happened in the context of the "700,000 inhabitants state" debate and the pension debate. Later, the House initiated a debate on sustainable development: the corresponding public debate in the House had meanwhile taken place⁹.

⁸ Thursday, 10 October, 2002.

⁹ 4 July 2002.

At the time of the debate on the state of the nation¹⁰, the project of a "Future Convention" was put forward. The principle was adopted. Since then, the coalition parties do not agree anymore about the idea and that Future Convention seems dead before even coming to life. The Commission on Immigration issued an intermediary report in July 2002 and has not met since.

In Luxembourg, the link between immigration, which has been a constantly growing factor since the 1960s, and the ageing within the population, and consequently with the pension system, is more obvious than anywhere else.

1.5. Studies linking demography and immigration

The national statistical office (STATEC) regularly publishes demographic projections. The highest 1982 projections predicted a total number of 403,880 inhabitants in 2000, but in fact there were 435,700. STATEC forecast 133,090 foreigners in 2000, when there were in fact 159,400.

The 1995 projections showed that in any case, the national population would not increase: the increase could only result from foreigners. The age pyramid clearly shows that the base needs to be enlarged: but at the moment, this is not an issue. The contributions paid by the large amount of workers are sufficient to fund the pension system: in the short-term, political pressure works, and this has led to the 2001 pension reform.

The Parliamentary Commission has declared that immigration is not connected with the survival of the pension system. 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. It believes that one must separate immigration policy from the financing of the social security system, and in particular that of the pensions. In other words, immigration policy should not be carried out in the exclusive perspective of funding the pension system; this should be considered as the concern of general politics. Since the two questions should be treated separately, the mandate of the Commission focuses on the preparation of parliamentary debates and political proposals in which immigration is the only subject. This position is justified essentially by the fact that social security is independent from immigration.

Under the pressure of Luxembourg voters belonging to the older part of population, the government requested the opinion of the International Labour Office on the pension system in Luxembourg¹¹. ILO¹² declared that the present satisfactory situation is due to the numerous contributors and to the growing active population. If the economy continues developing, an increase in pension levels is possible, but in a decade the situation may change.

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 % between 1985 and 2000, employment (i.e. all the people working in Luxembourg, including border-crossing workers)

¹⁰ 5 May 2002.

¹¹ Évaluation actuarielle et financière du régime général d'assurance pension du Grand-Duché de Luxembourg, BIT, février 2001.

¹² The current surplus is not due to high-profit rates, but mainly to the demographic environment and the favourable rate of contribution. ILO - Actuarial and financial assessment of the general pension system regulations in Luxembourg.

grew in the same period by 63 %. The system is like a pyramid which continuously needs new members to finance the promise made to previous members¹³.

In its January 2003 bulletin, the Luxembourg Central Bank published a file on "the sustainability of the pension system"¹⁴ in which the authors show that the present pension system can only survive provided there are 7,000 supplementary border-crossing workers and 4,000 new migrants each year, from 2005 onwards.

The Economic and Social Council (CES) dedicated part of its 2002 report to the issue of immigration¹⁵. The CES pleads for an increase in the housing possibilities through strong public policy. In the OCDE PISA study, Luxembourg got very poor results. The CES asks for an important effort to adapt the Luxembourg schools to the new school population. The CES argues that it is important to prepare the country and its residents to welcome more migrants and to provide means to integrate them into the society. Dual citizenship should be introduced and political participation widened.

The need for immigrants exists in all sectors of activity, from those requiring low-skilled workers to those requiring highly skilled personnel, and all intermediary sectors. Many jobs in the public sector are reserved to nationals.

The economist Guy Schuller described a favourable economic situation and harmonious society through the image of a virtuous spiral: all the elements involved, including good social cohesion, contribute to economic performance¹⁶.

1.6. Use of the studies in the debate

Both the STATEC projections and the ILO advice led to a reform of the pension system and an increase in the level of pensions in July 2001. Discordant voices, alarming messages, even from the Prime Minister, could not stop the movement. The law on the reform of the pension system, however, contains a clause stipulating that, were the economic situation to deteriorate, the level of pensions would be re-discussed.

All these studies have not had a real impact on the political debate.

¹³ Demographic growth and the viability of pension systems, Robert Kieffer in: Forum 221, November 2002.

¹⁴ Long-term sustainability of the general pension system regulations in Luxembourg, Cahier d'études No 6 BCL, January 2003.

¹⁵ Opinion of the CES on the economic and social situation in Luxembourg, April 2002.

¹⁶ Guy Schuller, seminar "Migrations", 18 October 2002.

Chapter 2: The stakeholders

2.1. The contribution of governmental and non-governmental actors

- **The government**

Due to the double system of work and residence permits to admit migrants, both the Ministry of Employment and the Ministry of Justice are involved in immigration matters. Once immigrants are in Luxembourg, the Ministry of the Family is in charge of integration through the Commissioner for Foreigners. Other Ministries involved are the Ministry of Education, as well as 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 different address 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.

- **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" which was formalised on 12 June, 2001 and began its work in July. Thirteen meetings have taken place until now.

A few non-public hearings were organised, to which 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 were invited. The parliament's official report states that the following experts, NGOs and advisory bodies were invited: 3 ecological NGOs, 4 NGOs working in the field of migrants and refugees, as well as 4 advisory bodies among which the National Council for Foreigners. A historian and a demographer were also consulted.

Three the 11 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 4 migration NGOs is not ready yet. 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 and 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, but 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.

The following is a summary of the intermediary report dated 17 July, 2002:

- *Setting up an immigration policy*

Frontier workers

Aliens from member states of the European Economic Area

Aliens from third -countries

- *An immigration policy based on economic requirements*

Grand Duchy's economic perspectives

The Luxembourg employment market's needs

Concrete needs of work force by sector

Handicraft sector

Other sectors

- *An immigration policy aiming at the best possible integration*

Integration policy

The language question

What use of languages

conclusions

- *Islam in Luxembourg*

- *Accompanying measures*

- *An immigration policy dissociated from restrictions of financing the social security system.*

"The special commission is not inclined to pronounce upon the pension scheme's future, as this issue is not within its mandate."

- *The European dimension*

The report does not mention family reunification. It does not advocate a reform of basic legislation. The part on Europe was added after the Seville Summit: 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.

- **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 to 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;
- Eliminating the fear caused by a resurgence of xenophobia due to the "700,000 inhabitants state" perspective."

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 is rarely requested to comment on legislative proposals.

- **The Human Rights Consultative Commission**

It 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.

- **Non-governmental organisations:**

The following 4 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;
- 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. Mechanisms of influence

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"¹⁷. "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 parliament is also influential, even if the House's Commission has not been active since July 2002.

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

The senior civil servants are relatively easy to contact in Luxembourg.

¹⁷ "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.

Other actors include the ministers themselves, e.g. the Prime Minister or the Minister of Justice, as mentioned in this chapter.

Before the Seville Summit, 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 briefing¹⁸.

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 report¹⁹.

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 Balthes 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.

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 2002²⁰, 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 can also influence policies regarding 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.

¹⁸ Luxemburger Wort, 19 July 2002.

¹⁹ Press.

²⁰ "Les discriminations", seminar of 13-14 December 2002, in Bourglinster.

Chapter 3: European legislative proposals

3.1. Admission for economic purposes

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 5 years and for all sectors of activity. Residence permits are valid for 5 years.

Employers must prove that they could not find anyone in the EU to fill the position.

The Directive' proposal of a combined work/residence permit seems to be a progress.

Art 3.2 and 3: the exceptions included in these paragraphs have not been transposed in any legal text yet.

Art 5, 1 and 2: the Directive would give a right of initiative to candidates as well as to employers to apply for a work permit. Currently, in Luxembourg, employers only are allowed to submit applications for work permits or to apply for new permits, be they a first A, or a B after an A, etc.

Article 6 on the priority of EU nationals does not seem to bring about any change.

Art 7, 1 and 2: a work permit of type A has a maximum validity of 1 year, and a residence permit has a 1-year duration, after which a foreigner can apply for a foreigner's ID.

Art.12: there are no legal provisions for seasonal workers. A few hundreds have come from Poland over the last few years: their employment is addressed by a simplified procedure without legal base.

Art 13: as Luxembourg has no border with non-EU countries, the question of border-crossing workers mentioned in the Directive is not relevant. Nevertheless, the case of third-country nationals living in neighbouring EU countries (France, Belgium or Germany) and crossing the border to work in Luxembourg raises questions.

Art 17: independent workers will have to prove much more than now, as at the moment, a bank guarantee of €12,350 per capita for the family is required in Luxembourg. A spouse can enter the country with her husband, but in this case they both need to pay a bank guarantee. The conditions of admission for independent workers are listed on an information sheet published by the Ministry of Justice, without any legal base. They include:

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

The authorisation runs for 1 year and is renewable provided there has been sufficient revenue.

Self-employed persons are entitled to family reunification after three years (information sheet).

At the moment, there are no time limits to give an answer: normally, an application for a permit takes 2 to 3 months, therefore, the Directive will double it in a certain way.

Art. 26: no limits on the level of immigrants have been established on grounds of social considerations, and there is currently no debate on this issue.

National legislation does not allow for practices such as beneficial effects tests, horizontal assessments, income thresholds or employers contributions. The 1972 Law states that permits are granted according to the economic situation: this statement appears in negative decisions, together with the number of unemployed people in the sector concerned.

There are no specific rules applicable to the special categories of persons mentioned in the draft Directive (intra-corporate transferees, trainees or au pairs).

3.2. Family reunification

At the moment, there is no legislation dealing with family reunification in Luxembourg. The Law on the entry and residence of foreigners²¹ 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 Portugal²² and Yugoslavia²³, 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 practice must be evaluated as part of a general context:

Luxembourg has relied on foreign labour since the industrialisation in the second half of the 19th Century. Until the 1960s, immigration took place without families²⁴. This policy changed in the 1960s for various reasons: Treaty of Rome, demographic collapse and booming economy. Therefore, family reunification was favoured. However, the conditions and rights pertaining to family reunification were not established by law, but 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 e.g. the regularisation of the "*sans-papiers*" in 2001 and the case of independent workers).

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. Therefore, there is no more legal base for family reunification.

Family reunification now takes place in an almost law-free space, leaving the Ministry of Justice totally free to form an opinion and make a decision on each case. Thus, the recent question of an MP²⁵ remained without an answer.

Nevertheless, practices have been established and migrants get an information sheet from the Ministry of Justice requiring a number of documents: copy of the child's ID, birth certificate, proof of appropriate housing. The information sheet does not refer to any legal text, as there is none in that field.

²¹ Law of 28 March 1972 on the entry and residence of foreigners.

²² "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.

²³ "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.

²⁴ Cordeiro, A. "L'immigration au Luxembourg", 1976.

²⁵ Parliamentary question of Mrs. Renée Wagner, Green MP.

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. As far as the other family members are concerned, only the migrant's parents are admitted provided they are over working age.

There is no specific article on family reunification in the legislation on asylum²⁶.

In the case of Luxembourg, any European regulation may be a progress, as it would at least create a legal base for family reunification.

3.3. Long-term residents

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.

Conditions to obtain the status ²⁷:

In order to obtain a residence permit ("*carte d'identité d'étranger*"), third-country nationals:

- (i) must have a valid passport and visa for entry;
- (ii) must not constitute a threat to public peace, security or health;
- (iii) must have sufficient resources to support themselves and their family, and to pay for their return to their country of origin (approximately 75,000 LUF per person).

There is no *right* to a residence permit. In practice, authorities also ask for:

- (iv) proof of social security;
- (v) adequate housing;
- (vi) a bank guarantee to the Ministry of Justice.

Third-country nationals are granted a work permit once they have obtained a work permit of B or C type.

The discretionary power to deny a residence permit is exercised in accordance with the jurisprudence of the European Court of Human Rights, which is taken into account by national courts.

There is no statistical data on the number of permits granted to third-country nationals.

Procedure to obtain the status:

Third-country nationals must make their application the local authorities.

The Minister of Justice is competent to reject an application for a residence permit²⁸.

When an application is rejected, the applicant can appeal against the decision before the Administrative Court. Residence permits are separate from work permits. They are valid for five years and renewable provided the requirements for their issuance are still fulfilled.

Family reunification:

There are no special family reunification rights attached to the status. The general requirements for family reunification (sufficient income and housing, and a work permit of B type) apply.

²⁶ Law of 18 March 2000 on the creation of an asylum procedure.

²⁷ "The Legal Status of Third-Country Nationals who are Long-Term Residents in a Member State of the European Union" by Kees Groenendijk, Elspeth Guild and Robin Barzilay, Centre for Migration Law, University of Nijmegen, Netherlands, April 2000.

²⁸ Article 11 of the Law of 28 March 1972.

Right to work:

The residence permit does not exempt the holder from the obligation to obtain a work permit. This is an inversion of the rule: usually, third-country nationals who have been granted work permits of type B (valid for four years) or C (valid indefinitely) are granted a long-term residence permit²⁹. Work permits of B type may be granted after one year of employment; work permits of C type are granted to third-country nationals who are born in Luxembourg or have five years of uninterrupted residence and employment in the country³⁰.

Social security and assistance:

Third-country nationals must have a social cover to be granted a permit. Rights under that legislation are not conditional on holding a five-year card. With respect to social assistance, third-country nationals are required to be self-sufficient.

Possibility for family members to benefit from the status:

The spouse of the holder of a residence permit is usually first granted an authorisation of residence valid for one year and renewable twice. After three years, s/he will receive his/her own residence permit valid for five years. This does not give the spouse an automatic right to work. There are no special arrangements for the residence status of the second generation.

Loss of the status:

The status can be withdrawn if it was acquired by fraud, and the third-country national is liable to expulsion³¹. Withdrawal can also take place if the holder leaves the country for more than six months³².

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 decision³³. The Minister is not bound by the opinion of the commission. There is a possibility of appeal against the Minister's decision before the administrative court. There is a series of court decisions applying Article 8 ECHR to the case of Luxembourg³⁴. Some of these decisions have led to a *de jure* recognition of a 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 child³⁵. Persons who are entitled to obtain the status of Luxembourg citizen by declaration or option may not be expelled as long as this right can be exercised³⁶.

General Comments:

National law does not provide for the obligation to secure residence to third-country nationals who are long-term residents arising from international law.

Long-term resident status after 5 years:

As there is no such status in Luxembourg, the Directive proposal brings progress. Equal treatment is granted *de jure* in the fields of education, employment (except as far as work permits are concerned) and social benefits (with the exception of the right to a minimum

²⁹ Article 2, regulation of 12 May 1972 on the recruitment of foreign workers.

³⁰ Article 3, regulation of 12 May 1972.

³¹ 349 Art. 5(5), law of 28 March 1972.

³² Art 8, regulation of 28 March 1972.

³³ Art 1-6, regulation of 28 March 1972

³⁴ 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

³⁵ TA 23.12.1999, 11500 Mwang Chuchu.

³⁶ Article 10, 1972 Law.

income, which can only apply if the migrant has lived in Luxembourg for five years). The right of residence in other Member States could be very useful in the case of Luxembourg: migrants living in neighbouring countries could come to Luxembourg as border-crossing workers, for example. Protection against expulsion in the draft Directive is better than current practise.

At present there is no legal difference between short- and long-term residents.

As work and resident permits are linked, the system is the following: a work permit of A type allows the migrant to work for 1 year with the same employer, a permit of B type is valid for 4 years and the migrant can change employer, but must stay within the same economic sector, a permit of C type has no limitation attached to it. Going from A to B and from B to C is not automatic (sometimes migrants have 3 or 4 A permits in a row). There is no time limit after which a migrant is protected against expulsion if s/he has been sentenced to prison. Foreigners can apply for Luxembourg citizenship after 5 years of residence³⁷.

As mentioned before, regarding family reunification and the entry of self-employed workers, there is no legal base. During the December 2002 seminar on discrimination, the lawyer Marc Elvinger described the frustration of those who defend the rights of foreigners: "the level of development of the rule of law in a state is ideally measured by the extent of legal security it gives to foreigners. Many things remain to be done in this field" was Mr. Elvinger's conclusion³⁸.

Luxembourg has signed the international conventions on the recognition of qualifications: thus, in various sectors, like medicine (law of 18/07/01), or pharmacy (regulation of 29/08/01), an MA from Luxembourg or from an EU country is required, whereas in other sectors, a university or college degree from any EU country is sufficient. Twenty paramedical professions do not admit third-country citizens, except in cases of emergency to be defined by a regulation which has not been issued since 1992. This is based on the law of 26 March 1992.

³⁷ Law of 24 July 2001.

³⁸ 'L'avocat Me Marc Elvinger a longuement analysé les frustrations auxquelles sont confrontés ceux qui pratiquent le droit des étrangers, un droit dont, justement "le Droit est trop souvent absent." (...) "Le degré de développement d'un Etat de droit se mesure idéalement à la question de savoir combien de sécurité juridique il veut bien concéder à ses étrangers. Et à cet égard, il nous reste de grands progrès à faire !" a conclu Me Elvinger'. In: Luxemburger Wort, 18 December 2002.

Chapter 4: Recommendations and open method of co-ordination

The idea of managing migration flows is very present in the public discourse, especially in relation with 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 (refugees from Bosnia, regularisation procedure).

In many respects, Luxembourg has special links with Cap Verde: the Cap Verdians came as Portuguese migrants in the early 1970s. They make up the largest non-EU group of migrants. Luxembourg is a privileged partner of Cap Verde in the field of development aid. During the regularisation campaign, Cap Verdians were the main group of "*sans-papiers*" (after the asylum-seekers from former Yugoslavia). Immigration continues from Cap Verde to Luxembourg but only on the basis of family reunification, or illegally.

In September 2001, the Ministry of Cooperation organised a cultural festival with the purpose of developing a better understanding of Cap Verde and Cap Verdians in Luxembourg. On a few occasions, the question of an agreement on immigration was raised. There was no answer from Luxembourg's side. This was an opportunity to regulate the flow of Cap Verdians to the country, but nothing happened.

There is a need for additional workforce in Luxembourg. The Prime Minister pointed out the opportunity of agreements with future EU Member States like Poland, the Czech Republic and Hungary.

A survey³⁹ on the consequences of the introduction of the 40-hour week has been 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.

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.

The question of integration has been raised by the Prime Minister and the House's commission and it will be interesting to see which projects are going to emerge in this year. The particular linguistic situation of Luxembourg does not facilitate the choice of a first language by newcomers.

Political determination does not seem to be extremely developed.

The fight against illegal migration has to be considered in the context of a small country that has no border with third countries, except for its airport.

However, the debate has avoided the question of the characteristics of the future migrants. 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

³⁹ Not published, discussion with an executive of this organisation, November 21, 2002.

the same reason: not all Yugoslavs were Catholics. The next immigrants are likely not to be Catholics.

Political leaders know that Luxembourg needs and will need additional work force and inhabitants in the future, but they hardly say so. 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 seems that it is politically interesting to promote a restrictive discourse while knowing that immigration is essential. This attitude comes from the mainstream political parties.

In the national employment strategy migration is an implicit argument, but not a topic on the political agenda. This is another illustration of what is happening in the fields of family reunification or long-term residents: generous integration makes an explicit attitude useless.

Regarding more delicate topics, for example political rights, political parties and the government hide behind the decisions coming from Brussels.

The very near future will show if the generous attitude of the past is sufficient or if more explicit determination is necessary and useful.

The slower economic growth over the few last months will raise new questions in the public debate: the increasing xenophobia would have disastrous effects on a country where 1 out of 3 workers is a foreigner.

The concept of the open method does not seem to have been followed in the country. European directives, such as those on asylum and the access of asylum-seekers to the labour market remain without consequences, in spite of the exhortation of the parliament in March 2001. As for the priorities of the Commission (management of admission of economic migrants, partnership with third-countries, integration of their citizens), there is no debate on them in Luxembourg.

As far as the different orientations suggested by the Commission are concerned, one can say that each one is discussed to some extent in the parliamentary work of the special Commission, but with no real effect.

What seems most regrettable is not the ignorance of the open method, but the absence of follow-up on EU legislative initiatives.

As for the more immediate influence of EU initiatives, they should help fill the empty pages of national legislation and contribute to improve the standards of a democratic state.

Glossary

Political Parties

* Government coalition

CSV: Christian Democrats - 19 MPs

DP: Liberals - 16 MPs

*Opposition

LSAP: Social Democrats - 12 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 - 7 MPs

The Greens - 5 MPs

The Left - 1 MP

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

SESOP: mainly a research centre linked to the Catholic Church

Official bodies

CES: Social and Economic Council

CNE: National Foreigners' Council

ASTI was established in 1979 to fight for equal rights for all residents in Luxembourg. It seeks to provide information for immigrants and Luxembourgers alike, defend the rights and interests of immigrants, combat racism and xenophobia, and promote the participation of immigrants in public life. One of its priorities is work with children, and it assists schools in building up an intercultural dimension. ASTI maintains a social and recreation centre for youth, a documentation centre and an intercultural agency that offers translation services and runs radio broadcasts. The association does community work and offers advice as well as information about refugees. ASTI publishes the journal 'Ensemble'. It also provides an umbrella structure for smaller groups working with refugees, asylum seekers and undocumented migrants. Its political activities are exclusively paid by members and donors.

www.asti.lu

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