

EMN FOCUSED STUDY 2012

Intra-EU mobility of third-country nationals

National Contribution from Luxembourg

Section 1

The National Legislative Framework: Visas and Residence Permits

(National Contribution: Maximum 8 pages)

Groups of third-country nationals who enjoy mobility rights under the EU's migration Directives:

1.1. Long-term residents in another Member State

- 1) What national rules and procedures apply to third-country nationals who are long-term residents in another Member State in respect of their access to a visa and/or residence permit in your country?

The Law on free movement of persons and immigration specifies in article 85 the criteria¹, which apply to third-country nationals with long-term resident status in another Member State. Hence, a third-country national with long-term resident status in another Member State may be granted the right to stay in the Grand Duchy if:

- a) he or she exercises an employed or independent professional activity;
- b) he or she proceeds his or her studies or a professional training;
- c) he or she resides in the country for other justified purposes.

When exercising an employed or independent professional activity, the general legal procedure established for third-country nationals applies. The third-country national has to apply for a temporary permit to stay (autorisation de séjour) from his or her country of residence and the filed application needs to be positively granted before entering the national territory². However, in exceptional cases, a third country national may file his/her application when finding himself or herself on the national territory³. The Regulation on administrative aspects incumbent on third-country nationals with long-term resident status in another EU member state further specifies in article 16 that the applicant has to complete the application with a certified copy of a valid passport and a certified copy of the long-term resident status delivered by the EU country of residence. Furthermore, the applicant has to provide proof of sufficient, regular and stable financial resources for him or herself and, in case, for his or her family members, proof of a health insurance for him or herself and his or her family members and a copy of his or her criminal record delivered by

¹ [Law on the free movement of persons and immigration](#)

² Article 39 (1) of the [Law on the free movement of persons and immigration](#)

³ Article 39 (2) of the [Law of free movement of persons and immigration](#)

the EU country of residence. Finally, family members also have to give proof of their long-term resident status⁴. Once the temporary permit to stay granted, a third-country national has three days to declare his or her arrival and to register at the population bureau of the municipality of residence⁵. When registered, the third-country national has three months to apply for the permit to stay (titre de séjour). In order to complete his or her application, the third-country national has to present the temporary residence permit, take a medical examination⁶ and deliver proof of a suitable housing⁷. The residence permit is valid for a period of five years and renewable⁸. This does not mean that he or she gets the long-term resident status. In order to get the long-term resident status, the applicant has to go through the general procedure related to this status and established by national law⁹.

- 2) Please explain how these national rules and procedures differ from the national rules and procedures that apply to EU citizens.

Article 6 of the Law on free movement of persons and immigration specifically refers to EU citizens willing to reside on the territory of Luxembourg for more than three months. EU citizens have a residence right on the territory (derived from the freedom of movement) if they are employed or pursue an independent professional activity, if they prove to have the necessary and adequate resources for themselves and their family members or if they are registered in a public or private education institution¹⁰. EU citizens also have to register at the municipality of residence in accordance with article 8 of the Law on the free movement of persons and immigration. The Regulation specifying administrative requirements incumbent on EU citizens lists the documents, which need to complete the application for the registration certificate. Thus, the EU citizen needs to provide in accordance with his or her situation: a) a valid work contract or at least a promise of employment, b) the proof of an independent professional activity, c) the proof of his or her registration in an education institution¹¹. If the documents required correspond, the certificate of registration from the population bureau of the municipality is delivered instantly. A EU citizen has permanent resident status after five years of uninterrupted residence in the country¹².

The main differences between a EU citizen and a third-country national with a long-term resident status in another EU member state reside in the fact that the EU citizen has a right of residence if certain minimal

⁴ Article 16 of the [Regulation on administrative aspects incumbent on third-country nationals with long-term resident status in another EU member state](#)

⁵ Article 40 (1) of the [Law on the free movement of persons and immigration](#)

⁶ It is important to mention that this test is not systematically required for the third country national long term residents from other Member States nor for his/her family members. See article 41 (2) of the [Law on the free movement of persons and immigration](#)

⁷ Article 40 (2) of the [Law on the free movement of persons and immigration](#)

⁸ Article 87 of the [Law on the free movement of persons and immigration](#)

⁹ Article 88 of the [Law on the free movement of persons and immigration](#)

¹⁰ Article 6 of the [Law on the free movement of persons and immigration](#)

¹¹ Article 2 of the [Regulation on administrative aspects incumbent on EU citizens](#)

¹² Article 9 of the [Law on the free movement of persons and immigration](#)

conditions are fulfilled. While the third-country national has to ask for the residence permit before entering the territory, the EU citizen only has to register at the municipality upon arrival. A third-country national with long-term resident status in another EU member state does not get automatically the same status in Luxembourg, but has to go through the national procedure applying for the long-term resident status. Moreover, the EU citizen gets a permanent resident status after five years of residence on the territory without further administrative requirements, whereas a third-country national, even with long-term resident status, has to renew his or her permit every five years. Finally, the residence permit for the purpose of an employed activity of a third-country national with long-term resident status in another EU member state is only granted, if conditions set out under article 42 of the Law on the free movement of persons and immigration (“the labour market test”) are fulfilled. First, the labour market test gives priority to jobseekers on the national and EU labour market. Second, the employed activity pursued by the third-country national has to serve the national economic interests and third the third-country national has to possess the required qualifications for the job and a valid work contract¹³.

1.2. EU Blue Card holders

- 1) What national rules and procedures apply to third-country nationals who are EU Blue Card holders in another Member State in respect of their access to a visa and/or residence permit in your country?

The procedure applying to third-country nationals who are EU Blue Card holders in another Member State is established in article 45-4 of the Law on the free movement of persons and immigration¹⁴. According to this legal provision, a third-country national holding a EU Blue Card has the right to move to another Member State with his or her family after 18 months of legal residence in the Member State that issued a Blue Card in the first place. Upon arrival and no later than a month after entry, the EU Blue card holder has the obligation to apply for a EU Blue card at the national level. The application may be filed in while the third-country national is still residing in the first Member State that has granted the first EU Blue Card holder status¹⁵. The Minister grants the EU Blue Card status if the applicant presents a valid passport and is not mentioned in the SIS system¹⁶, provides a valid work contract for at least one year in a highly qualified position, possesses the required qualifications for the job, receives a minimum wage as set out in a national regulation¹⁷ and has adequate housing conditions¹⁸. If the latter conditions are fulfilled, the Minister grants a residence permit entitled “European Blue Card” valid for

¹³ Article 42 of the [Law on the free movement of persons and immigration](#)

¹⁴ Article 45-4 of the [Law on the free movement of persons and immigration](#)

¹⁵ *Ibidem*

¹⁶ Article 34 (1) and (2) of the [Law on the free movement of persons and immigration](#)

¹⁷ Article 45 (1), (2) and (3) of the [Law on the free movement of persons and immigration](#)

¹⁸ Article 45-1 of the [Law on the free movement of persons and immigration](#)

two years or at least for the duration of the work contract and is renewable¹⁹. During the first two years of his or her legal residence on the national territory, the EU Blue Card holder has a limited access to the labour market. Indeed, access is limited to paid activities for which the Blue Card has been issued. However, the Blue Card holder may change employer. After two years of legal residence in the country, the European Blue Card holder is equally treated with nationals in terms of access to highly qualified jobs, except those implying national sovereignty²⁰. The third-country national holding a Blue Card status is allowed to be accompanied by his or her family members when entering the national territory²¹. Family members are defined in article 70²² and general conditions for family reunification must be respected²³.

Finally, a Blue Card holder is allowed to cumulate his or her periods of stay on the territory of the EU when applying for the long-term resident status. However, there are two limitations: the accumulated periods must correspond to five uninterrupted years of legal residence in the EU, from which the last two in the Grand Duchy as a Blue Card holder²⁴.

- 2) Please explain how these national rules and procedures differ from the national rules and procedures that apply to EU citizens.

As mentioned above, the EU citizen has to register upon arrival at the bureau of population in the municipality of residence, provide proof of stable sufficient, regular and stable financial resources (generally through a valid work contract) and adequate housing. Third-country national who are EU Blue Card holders in another Member State may only move after eighteen months of legal residence in the first EU Member State that granted the Blue Card, but they don't see their status automatically recognised and have to go through the national legal procedure established for Blue Card holders. Moreover, in case the Blue Card status is granted, access to the labour market remains limited during the first two years.

1.3. Researchers

- 1) What national rules and procedures apply to third-country nationals who are resident in another EU Member State who wish to undertake work as a Researcher in your Member State?

The general procedure laid down in the Law on the free movement of persons and immigration foresees two different cases. If the third-country national has been authorised to reside in another EU Member State as a researcher and wishes to carry out part of his or her work in Luxembourg for less than three months, the hosting agreement between the third-country national and the host research institution remains valid for

¹⁹ Article 45-1 (2) of the [Law on the free movement of persons and immigration](#)

²⁰ Article 45-1 (3) and (4) of the [Law on the free movement of persons and immigration](#)

²¹ Article 71 (b) of the [Law on the free movement of persons and immigration](#)

²² Are considered to be family members : spouse or partner, minor children, direct descendants children over eighteen under certain circumstances. Article 70 of the [Law on the free movement of persons and immigration](#)

²³ In particular : sufficient, regular and stable financial resources, appropriate housing, health insurance. Article 60 of the [Law on the free movement of persons and immigration](#)

²⁴ Article 80 (3), (a) and (b) of the [Law on the free movement of persons and immigration](#)

Luxembourg. In this case, the third-country national needs to prove to have sufficient financial resources for the duration of his or her stay and does not constitute a threat to public order, security or health²⁵. However, if the planned stay is more than three months long, the candidate researcher has to conclude a new hosting agreement for his or her research work in Luxembourg²⁶. More precisely, a third-country national needs to present valid travel documents²⁷, a signed hosting agreement with a previously certified national research institution and an attestation of support²⁸. The conditions, which a research institution has to respect in order to be certified and be able to host foreign researchers are listed in article 65 and 66²⁹. Basically, the research institution has to guarantee the quality of the research work foreseen, verify if the researcher meets the required qualification criteria for the planned research and if the third-country national researcher has the necessary financial means to cover stay and return costs. The third-country national who is granted a researcher permit is allowed to be accompanied by his or her family members when entering the national territory³⁰. Family members are defined in article 70³¹ and general conditions for family reunification must be respected³².

Another different administrative procedure applies when the third-country national has a long-term resident status in another Member State. Indeed, a third-country national with long-term resident status in another Member State is allowed to, under certain conditions, work, pursue studies or a professional training or remain on the territory for any other justified reason according to article 85³³. Hence, the general procedure applying to third-country nationals holding a long-term resident status as detailed above prevails³⁴.

The law does not seem to foresee special procedures for cases such as: a third-country national who is legally residing in another Member State as a family member (of a EU citizen or third-country national), as a family member of a Blue Card holder, as a (independent, seasonal) worker, as a student who wishes to carry out research in Luxembourg.

- 2) Please explain how these national rules and procedures differ from the national rules and procedures that apply to EU citizens.

The Law on the free movement and immigration does not make a specific reference to researchers who are also EU citizens. Hence researchers are treated under the general procedure and rules applicable to EU citizens

²⁵ Article 67 (1) of the [Law on the free movement of persons and immigration](#)

²⁶ Article 67 (2) of the [Law on the free movement of persons and immigration](#)

²⁷ Article 34 (1) and (2) of the [Law on the free movement of persons and immigration](#)

²⁸ Article 63 (1) of the [Law on the free movement of persons and immigration](#)

²⁹ Article 65 and 66 of the [Law on the free movement of persons and immigration](#)

³⁰ Article 71 (b) of the [Law on the free movement of persons and immigration](#)

³¹ Are considered to be family members: spouse or partner, minor children, direct descendant children over eighteen under certain circumstances. Article 70 of the [Law on the free movement of persons and immigration](#)

³² In particular: sufficient, regular and stable financial resources, appropriate housing, health insurance. Article 60 of the [Law on the free movement of persons and immigration](#)

³³ Article 85 (1) of the [Law on the free movement of persons and immigration](#)

³⁴ Please refer to Section 1.1.

seeking to work in Luxembourg.

1.4. Students³⁵

- 1) The Law on the free movement of persons and immigration makes a general distinction between third-country nationals who have a long-term resident status and those who have not. A third-country national with a long-term resident status in another EU Member State has the right to pursue his or her studies in Luxembourg³⁶ if some conditions are fulfilled³⁷. In this case, the third-country national has to file in an application for a permit to reside in the Grand Duchy. The application file has to include proof of registration in a higher education institution, evidence of regular, sufficient and stable financial resources for him or herself as well as for possible family members for the duration of the studies. Moreover, the third-country national needs a health insurance and cannot constitute a potential threat to public security or order³⁸. The residence permit is granted for 5 years³⁹.

However, the Law does not have specific provisions in relation to third-country nationals who are legally residing in another Member State as family members (of a EU citizen or third-country national), as a family member of a Blue Card holder, as a (independent, seasonal) worker, as a researcher who eventually would like to pursue studies in Luxembourg. If the third country national is a family member of a EU citizen or a third country national residing in Luxembourg, s/he has access to education and training. In all other cases, it will depend on the duration of the stay and if the third country national studies in Luxembourg as cross border or if he/she resides in the country. In case that s/he resides in the country then the third country national will have to apply for a residence permit. If not it is not necessary.

Third-country nationals who have a student resident status in another EU Member State and wish to pursue or complete part of their studies in Luxembourg are authorised to reside in the country if the following conditions are met:

- a) Priority been admitted to a higher education institution
- b) A parental authorisation if the student is less than eighteen years old
- c) Sufficient financial resources to cover stay and return costs
- d) A health insurance
- e) A detailed academic curriculum⁴⁰.

The student permit delivered is valid for one year and renewable on a

³⁵ The statistics already compiled for the study Immigration of International Students to the EU may be used here.

³⁶ Article 85 (1) b) of the [Law on the free movement of persons and immigration](#)

³⁷ Article 86 of the [Law on the free movement of persons and immigration](#)

³⁸ Article 86 (1), (2) and (3) of the [Law on the free movement of persons and immigration](#)

³⁹ It is important to notice that the conditions are almost the same as for a regular student. The advantage of a long term residence is the duration of the residence permit.

⁴⁰ Articles 56 and 58 of the [Law on the free movement of persons and immigration](#)

yearly basis, unless the duration of the studies is less. In the latter, the permit is valid for the exact period of the envisaged studies⁴¹.

- 2) Please explain how these national rules and procedures differ from the national rules and procedures that apply to EU citizens.

EU citizens are exempted from the permit to stay. They fall under the general rule applying to EU citizens.

1.5. Posted workers

- 1) What national rules and procedures apply to third-country nationals who are resident in another EU Member State who are posted by a service provider for the purposes of cross-border provision of services in your Member State?

National legislation foresees the possibility of cross-border provision of services⁴². The sending company has to request a secondment permit to national authorities specifying the workers who will be posted, the type and length of work to be done and also how the national labour market will not be affected. The secondment permit is valid for the effective and foreseen duration of the services to be provided. It may be renewed exceptionally if the services have not entirely been delivered in the estimated time lapse. A secondment permit may only be delivered to workers under a permanent work contract regime for at least six months in the sending company. Finally, a secondment permit does not bestow a right to permanent residence and work permit⁴³.

The Law makes a distinction between EU/EEA service providers and third-country national service providers. Indeed, EU/EEA service providers may at any time detach their workers (independently of their nationality) for the purposes of service providing as long as they are legally established in a EU/EEA Member State. The only condition put forward is that the worker must be allowed to legally reside and work in the country of residence⁴⁴.

Please explain how these national rules and procedures differ from the national rules and procedures that apply to EU citizens.

The main difference is that the third country national posted worker in the context of intra-community provision of services needs a residence permit to fulfil its functions if he or she has plans to stay more than three months in Luxembourg⁴⁵. In the case of an EU citizens they are exercising their residence right so they do not need an authorisation of stay if they fulfil certain conditions.

⁴¹ Article 57 of the [Law on the free movement of persons and immigration](#)

⁴² Article 49 of the [Law on the free movement of persons and immigration](#)

⁴³ *Ibidem*

⁴⁴ Article 49 of the [Law on the free movement of persons and immigration](#)

⁴⁵ Article 49 (3) of the [Law on the free movement of persons and immigration](#)

Groups of third-country nationals who are not provided for by the EU acquis:

1.6. Cross-border workers

- 1) Do specific national rules and procedures governing access to a visa and/or a residence permit apply to third-country nationals who are resident in another Member State but are employed as cross-border workers in your Member State?⁴⁶

Any third-country national legally residing in another EU Member State who wishes to work in Luxembourg, has to apply for a work permit. In this case, the general procedure that applies. The work permit is delivered following the same criteria and general procedure as those applicable to third-country nationals applying for work permit as wage earners or for a highly qualified work permit⁴⁷. In case, the third-country national fits the highly qualified profile, the Blue Card procedure is applicable as explained under section 1.2. of the present report. Otherwise, the general procedure applying to third-country nationals willing to work in Luxembourg applies⁴⁸. In particular, a “labour market test” has to be respected. Basically, the hiring of a third-country national legally residing in another EU Member State has to serve national labour market interests⁴⁹. A facilitation is however admitted in case the third-country national legally residing in another EU Member State is also married, the partner or the child of a EU citizen who in turn is also a cross-border worker⁵⁰. In the latter scenario, the third-country national is exempted from applying to a work permit, since he or she as a family member of EU citizen is benefiting of the freedom of movement derived from Council Directive 2004/38/EC.

- 2) If specific national rules and procedures apply to the third-country nationals described in 1.6 (1) above, how do these differ from the national rules and procedures that apply to EU citizens in a similar situation?

EU citizens who are cross-border workers are exempted from any legal procedure to work in Luxembourg.

1.7. Seasonal workers

- 1) Do specific national rules and procedures apply to third-country nationals who are resident in another Member State and who exercise an economic activity as seasonal workers in your Member State in respect of their access to a visa and/or residence permit?

National legislation does not foresee specific rules applying to third-country national seasonal workers who are resident in another Member State.

⁴⁶ This question only applies to those Member States that require cross-border workers to apply for a visa and/or residence permit in order to work in their Member State (even if their usual place of residence is in another Member State).

⁴⁷ Article 50 of the [Law on the free movement of persons and immigration](#)

⁴⁸ Articles 34, 42, 43 of the [Law on the free movement of persons and immigration](#)

⁴⁹ Article 42 of the [Law on the free movement of persons and immigration](#)

⁵⁰ <http://www.mae.lu/Site-MAE/VISAS-Immigration/Long-sejour-superieur-a-trois-mois/Travailleur-frontalier-ressortissant-de-pays-tiers>

- 2) If specific national rules and procedures apply to the third-country nationals described in 1.7 (1) above, how do these differ from the national rules and procedures that apply to EU citizens in a similar situation?

1.8. Workers in regulated professions

- 1) Do specific national rules and procedures apply to third-country nationals who are resident in another Member State and who apply to work in a regulated profession in your Member State in respect of their access to a visa and/or residence permit?

The general procedure and rules apply to third-country nationals and EU citizens when it comes to regulated professions⁵¹. National legislation lists up the regulated professions and establishes criteria for the recognition of diplomas. However, when it comes to third-country nationals, there is one limitation. Only third-country nationals with long-term resident status or family members of a EU citizen may apply for the recognition of their professional experiences and hence exercise a regulated profession⁵². Article 5 of the Law on regulated professions also specifies that any diploma obtained in a third-country and recognised in another Member State shall also be accepted in Luxembourg as long as the holder can prove three years of professional experience in the area of studies in the Member State that has granted the equivalence⁵³.

- 2) If specific national rules and procedures apply to the third-country nationals described in 1.8 (1) above, how do these differ from the national rules and procedures that apply to EU citizens?

1.9. Any other category of migrant worker not mentioned above

- 1) Are there any specific national rules and procedures that apply to any group of third-country nationals who are resident in another Member State that has not been mentioned above?

No further category of migrant workers has been specified so far in national legislation.

- 2) If yes, please describe how these rules differ from the national rules and procedures that apply to EU citizens.

1.10. Common rules and procedures for all mobile third-country nationals

- 1) Does the national legislative framework in your Member State contain rules and procedures that are relevant to all mobile third-country nationals (rather than rules that differentiate between different groups) in respect of their access to a visa and residence permit?

The national legislative framework does not include common rules or procedures for all mobile third-country nationals.

- 2) If yes, please describe the rules and procedures and explain how they differ from the national rules and procedures that apply to EU citizens.

⁵¹ [Law on the recognition of professional qualifications transposing directive 2005/36/CE](#)

⁵² Article 2 of the [Law on the recognition of professional qualifications transposing directive 2005/36/CE](#)

⁵³ Article 5 of the [Law on the recognition of professional qualifications transposing directive 2005/36/CE](#)

Section 2

Scale and scope of the phenomenon

(National Contribution: Maximum 4 pages)

2.1. Are statistics on overall intra-EU (work-related) mobility of third-country nationals available in your (Member) State

- *If yes, please indicate, where possible, the type of available statistics, including Member State of previous residence, skills profile (high or low-skilled), demographic profile (age, nationality, etc.), occupational profile, family status.*

Please present these statistics in a way that permits the reader to obtain a sense of the scale of the phenomenon. This should include breaking down any data on overall numbers by nationality, country of previous residence, etc.⁵⁴ If the data can be cross-classified, please specify that this is the case. If the data is collected annually, please present it over the last 5 years; if the data is collected more sporadically, please present any data that may be available, irrespective of the years.

No statistics available. The Directorate of Immigration does not collect data on the country of origin of the applicants.

2.2. Are statistics based on administrative registrations available in your (Member) State on the following groups of mobile third-country nationals? If they are not available could they in principle be made available from existing registrations?

- *For each group, please indicate the type of statistics, including Member State of previous residence, skills profile (high or low-skilled), demographic profile (age, nationality, etc.), occupational profile, family status.*

No statistics available. The Directorate of Immigration does not collect data on the country of origin of the applicants.

Groups of third-country nationals who enjoy mobility rights under the EU's migration Directives:

- 1) Long-term residents coming from another Member States (information should be collected by national contact points established under Directive 2003/109/EC on third-country national long-term residents)

No information available.

- 2) EU Blue Card holders (information should be collected by national contact points

⁵⁴ If a number of nationality groups predominate, and individuals belonging to certain nationalities are very small in number, the latter can be grouped together under the category "Other nationalities".

established under Directive 2009/50/EC on EU Blue Card holders)

No information available.

3) Researchers

No information available.

4) Students⁵⁵

No information available.

5) Posted workers

No information available.

Groups of third-country nationals who are not provided for by the EU acquis:

6) Cross-border workers

No information available.

7) Seasonal workers

No information available.

8) Workers in regulated professions

No information available.

9) Any other category of migrant not mentioned above

No information available.

2.3. Are there any other/proxy sources of statistics that could provide indications of patterns and trends?

➤ *It is recognised that most proxy sources of statistics will only capture a portion of the mobile third-country nationals concerned and therefore cannot provide indications of the scale of total mobility among third-country nationals with any degree of accuracy. However, they may provide approximate indications of general patterns and trends and will be used with caution in the Synthesis Report.*

(i) Number of applications for the recognition of diplomas/certificates acquired in another Member State.

[If ***available***, please specify, where possible, the type of diploma or certificate, including information on whether the qualifications were obtained in a Member State or outside the EU. If the latter, were the qualifications already recognised in the first Member State, or was the request for recognition in your (Member) State the first of its kind within the EU?]

(ii) Number of visa applications by third-country nationals who are resident in another EU Member State.

⁵⁵ The statistics already compiled for the study Immigration of International Students to the EU may be used here.

A third country national who has a resident permit in another member state is not required to have a visa for entering the country and to stay up to three months. In case the third country national intends to stay longer s/he will have to apply for an authorisation to stay.

[If **available**, please specify, where possible, the stated purpose of the visit].

(iii) Number of social security registrations⁵⁶ by third-country nationals who were resident in another Member State before arrival?

[If **available**, please indicate any characteristics of the individuals concerning, including their occupation, which may be available]

(iv) Information about previous country of residence contained in the latest population census.

[If **available**, please indicate the date of the census and the precise questions asked in this respect].

- **Your responses to the following proxy sources of information are OPTIONAL. Please ONLY respond if the information is considered relevant to this study in your Member State and readily accessible.**

(v) Any information that might be collected about the motivations of third-country nationals who apply for citizenship in (your) Member State (e.g. as a proxy source of information on the number of third-country nationals wishing to travel within the EU).

(vi) Any other proxy sources of statistics.

2.4. Please provide any statistics available on the flows of EU nationals within your (Member) State over the last 5 years in order to provide a comparison with the flows of third-country nationals

- *Please indicate, where possible, any available statistics, including Member State of previous residence, skills profile (high or low-skilled), demographic profile (age, nationality, etc.), occupational profile, family status.*

Please present these statistics in a way that permits the reader to obtain a sense of the scale of the phenomenon. This should include breaking down

⁵⁶ A social security registration is normally required on arrival in a Member State before access to employment can be granted.

any data on overall numbers by nationality, country of previous residence, etc.⁵⁷ If the data can be cross-classified, please specify that this is the case. If the data is collected annually, please present it over the last 5 years; if the data is collected more sporadically, please present any data that may be available, irrespective of the years

National data on migration does not make a distinction between third-country nationals and EU-citizens. Hence, it is not possible to provide the required disaggregation.

Section 3

Identified Restrictions to Intra EU mobility of third-country nationals

(National Contribution: Maximum 3 pages)

3.1. Member States (and Norway) may examine the situation of the labour market and give preference to Union (or EEA/EFTA) citizens when considering applications for work from a third-country national in another Member State or EFTA country.

As explained in more detail above, national legislation foresees a so-called “labour market test”⁵⁸ which in fact gives preference to Union citizens (or EEA/EFTA) in the access to the national market. A specific commission has been created in order to analyse the specific labour market situation⁵⁹.

3.2. Minimum wages are often specified in the national legislative framework that may affect the decision of a third-country national, who is resident in one Member State (or EFTA country), to settle in another Member State (or

⁵⁷ If a number of nationality groups predominate, and individuals belonging to certain nationalities are very small in number, the latter can be grouped together under the category “Other nationalities”.

⁵⁸ Article 42 (2) of the [Law on the free movement of persons and immigration](#)

⁵⁹ Article 150 of the [Law on the free movement of persons and immigration](#) and [Article 3 of the Regulation on the composition and procedure of the commission](#)

Norway).

Minimum wages have also been specified in national legislation. General financial resources and housing conditions have been defined by national regulation⁶⁰. According to article 2(1), the required minimum financial resources cannot exceed the national minimum salary as defined by law⁶¹. A third-country national who wishes to enter the country for study purposes must justify having financial resources corresponding to at least 80% of the social minimum wage⁶². The same applies to third-country nationals who take up an unremunerated traineeship⁶³. The same regulation also specifies for all other third-country national categories the financial and housing requirements. For third-country nationals applying to long-term resident status or in the framework of a family reunification, the regularity of the resources is also taken into account. For highly qualified third-country nationals, financial requirements are set out in a specific regulation⁶⁴. In this case, reference is no longer made the national minimum wage, but the highly qualified applicant must bring the proof of financial resources at least one and half times higher than the average gross annual salary⁶⁵.

3.3. If the third-country national who moves from another Member State (or EFTA country) is in a self-employed capacity, Member States (and Norway) may require that they have the appropriate funds which are needed, in accordance with national law, to exercise an economic activity in such capacity.

Concerning third-country nationals who wish to start an independent activity, national legislation foresees three main criteria: a) have the necessary education level if required⁶⁶, b) sufficient financial resources to start the activity and c) the planned activity has to correspond to the economic interest of the country⁶⁷.

3.4. National rules or procedures governing the recognition of degrees and diplomas may affect the decision of a third-country national, who is resident in one Member State (or EFTA country), to settle in another Member State (or Norway).

National legislation lists up the regulated professions and establishes criteria for the recognition of diplomas. However, when it comes to third-country nationals, there is one limitation. Only third-country nationals with long-term resident status or family members of a EU citizen may apply for the recognition of their professional experiences and hence exercise a regulated profession⁶⁸. Article 5 of the Law on regulated professions also specifies that any diploma obtained in a third-country and recognised in another Member State shall also be accepted in Luxembourg as long as

⁶⁰ [Regulation on financial resources and housing](#)

⁶¹ [Regulation on financial resources and housing](#)

⁶² Article 4 (1) of the [Regulation on financial resources and housing](#)

⁶³ Article 5 (1) of the [Regulation on financial resources and housing](#)

⁶⁴ [Regulation determining the minimum wage level for highly-qualified workers](#)

⁶⁵ Article 1 [Regulation determining the minimum wage level for highly-qualified workers](#)

⁶⁶ In particular regulated professions and recognition of diplomas

⁶⁷ Article 51 of the [Law on the free movement of persons and immigration](#)

⁶⁸ Article 2 of the [Law on the recognition of professional qualifications transposing directive 2005/36/CE](#)

the holder can prove three years of professional experience in the area of studies in the Member State that has granted the equivalence⁶⁹.

3.5. National rules or procedures governing access to social security and social services for third-country nationals and their families may affect the decision of a third-country national, who is resident in one Member State (or EFTA country), to settle in another Member State (or Norway).

Any person wishing to establish him or herself on the territory of the Grand Duchy for a period exceeding three months has to register at the social security office. Registration provides the national registration number⁷⁰.

3.6. Any other restrictions

[Insert comments here]

Section 4

Conclusions

(National Contribution: Maximum 2 pages)

With regard to the aims of this Focussed Study, what conclusions would you draw from your findings? What is the relevance of your findings to (national and/or EU level) policymakers?

Generally, the administrative procedure seems rather cumbersome. National legislation tries to take up a case-by-case approach without however pushing the logic to its full extension. As mentioned above, certain situations are not considered in the current legislation, most notably for third-country national students or researchers who are a EU citizen family member and wish to pursue their studies and/or investigation in Luxembourg. The national legislative framework does not yet clarify the situation for third-country national seasonal workers either.

The attribution of a long-term resident or a EU Blue Card holder status in another EU member state does not automatically entail the same legal status at the national level. In order to keep the status granted in another member state, third-country nationals have to go through the entire administrative national procedure related to the pretended status again. Further coherence and administrative solidarity among EU member states could facilitate mobility, at least for these two categories of third-country nationals.

Third-country national cross-border workers may have certain administrative facilities if married or living with a EU citizen who in turn is also a cross-border worker. This dependency is directly related to the exercise or not of the freedom of movement of the EU spouse or partner. Making administrative requirements for mobility dependent on another person, even spouse or partner, may be seen as a direct interference in

⁶⁹ Article 5 of the [Law on the recognition of professional qualifications transposing directive 2005/36/CE](#)

⁷⁰ <http://www.ccss.lu/salaries/assurance-obligatoire/>

family life and/or limit the intra-EU mobility for both (in order to avoid administrative burden).

Access to labour market remains limited for all the categories of third-country nationals and only long term resident status lifts the administrative barriers for acceding the labour market. An utilitarian approach towards labour migration has shown its limits and flaws in the past and lessons should be drawn from previous experiences, placing the human being at the centre of the equation.

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