



## LEGAL AND JUDICIAL INFORMATION ON MIGRANT SMUGGLING

### LUXEMBOURG

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#### GENERAL INFORMATION ON MIGRATION



#### MAIN FIGURES AND TRENDS

Luxembourg is facing an increase in migration flows.

As regards **legal migration**, the number of third-country nationals arriving in Luxembourg has been rising for several years. The number of residence documents issued to third-country nationals arriving in the country for the first time increased to 9,042 in 2022, compared with 6,447 in 2021, 4,790 in 2020 and 6,622 in 2019. This is mainly due to a rise in the number of people coming to Luxembourg to enter paid employment. This trend continued in 2023, with 5,285 first documents issued between 1 January and 31 August.

In addition, there are those who come to Luxembourg under the rules on the free movement of persons within the European Union, which apply to EU citizens and their family members (in 2022, 17,759 residence documents were issued to EU citizens and 1,479 to third-country nationals who are family members of an EU citizen or a Luxembourg national). Compared with previous years, the number of documents issued to such persons remained stable. The figures for the first 8 months of 2023 also confirm that the level remains unchanged.

As in other European countries, the number of **applicants seeking international protection (AIP)** increased.

In 2022, 2,269 people applied for international protection in Luxembourg, compared with 1 250 in 2021.

There were a number of significant developments in 2022. Compared with previous years, almost 50% of the applications for international protection lodged in Luxembourg in 2022 were from Syrian nationals (1,008 out of a total of 2,269). The other main countries of origin were Eritrea and Afghanistan.

The number of applications received under the Dublin III Regulation was also lower. However, unlike in previous years, Luxembourg was responsible for processing the majority of applications for international protection lodged in Luxembourg. It should also be noted that a significant proportion of applicants for international protection came to Luxembourg for the purpose of family reunification, i.e. 21%.



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Another development is the arrival of large numbers of unaccompanied minors. In 2022, more than 160 unaccompanied minors arrived in Luxembourg, an increase of around 200% compared to previous years.

In 2023, the upward trend in the number of applicants for international protection continued, with 1,499 applications received between 1 January and 31 August. While the main countries of origin remained the same as in 2022, more applications were transferred from other countries under the Dublin III Regulation (mainly from Italy).

In addition to processing applications for international protection, Luxembourg's reception system also handles applications for temporary protection from people fleeing the war in Ukraine. In 2022, Luxembourg granted temporary protection to 5,087 people. Arrivals from Ukraine were lower in 2023, with 619 people granted temporary protection between 1 January and 31 August.

Because of the increase in the number of applications for international protection and the steady flow of new arrivals applying for temporary protection, public reception centres are close to saturation point.



## MIGRATORY ROUTES

No specific information is available on the migratory routes into Luxembourg. The country is exposed to European migration flows because of its size.

In terms of irregular border crossings into the EU, data from Frontex (the European Border and Coast Guard Agency) show an 18% increase in 2023 compared to 2022, with 232,350 crossings recorded, the highest number for the period from January to August since 2016. This increase is mainly due to the 96% rise in the number of arrivals on the Central Mediterranean route.

The rise in irregular crossings led to a corresponding increase in the number of international protection applications received at European level, from 523,884 to 675 825 in 2023 (+29%).



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## INSTITUTIONAL ORGANISATION

The institutional stakeholders involved in preventing, detecting and combating migrant smuggling are the same as those dealing with all other forms of crime: the Grand Ducal Police, the Public Prosecution Service and the judicial authorities.

In the Grand Ducal Police, the detection and combating of migrant smuggling falls within the remit of the Organised Crime Division of the Criminal Investigation Department. The police officers of this division focus on two different aspects:

- checking applicants for international protection (AIPs) and, in particular, interviewing AIPs in order to determine the route taken from their country of origin and the possible involvement of traffickers;
- launching criminal investigations on the basis of the statements made by AIPs in order to identify the traffickers.

In the latter case, relevant information is exchanged with the countries concerned via EUROPOL.

Similarly, information on persons linked to the Grand Duchy of Luxembourg received from other countries via EUROPOL is analysed and, where appropriate, forwarded to the competent law enforcement authorities.



## LEGISLATIVE FRAMEWORK

A distinction should be made between migrant smuggling, which involves the transportation of victims, and trafficking in human beings, which involves the exploitation of victims.

### Luxembourg Criminal Code

#### *Chapter VI-II. - Smuggling of migrants*

##### **Article 382-4**

*Any person who, by direct or indirect assistance, knowingly facilitates or attempts to facilitate the illegal entry, illegal transit or, for pecuniary gain, the illegal stay of a third-country national on or through Luxembourg territory, the territory of a Member State of the European Union or of a State Party to the Schengen Convention of 19 June 1990, or the territory of a State Party to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime, signed in Palermo on 12 December 2000, shall be liable to three to five years' imprisonment and a fine of between €10 000 and €50 000 or to one of these penalties only.*

##### **Article 382-5**

*The offence defined in Article 382-4 shall be punishable by five to 10 years' imprisonment and a fine of between €50 000 and €100 000 in the following cases:*



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- (1) when it has been committed by a person with authority over the victim or by a person who has misused the authority or facilities deriving from his or her functions;*
- (2) when it has been committed in the course of his or her duties by a public official or civil servant, a law enforcement officer or person exercising public authority;*
- (3) where the offence has been committed against a minor;*
- (4) where it has been committed by taking advantage of the especially vulnerable position in which the person is placed as a result of his/her illegal or insecure administrative situation, precarious social circumstances, pregnancy, illness or physical or mental infirmity or impairment, in such a way that the person actually has no real and acceptable choice but to submit to this wrongful treatment;*
- (5) where it has been committed by making direct or indirect use of fraudulent practices, violence, threats or any form of coercion whatsoever;*
- (6) where the victim's life has been imperilled deliberately or by gross negligence;*
- (7) where the offence has caused an apparently incurable disease, a permanent physical or mental disability, complete loss of an organ or use of an organ, or severe mutilation;*
- (8) where the activity in question constitutes a habitual activity;*
- (9) where it constitutes an act of participation in the principal or subsidiary activity of an association, whether or not the offender directs operations.*



## JUDICIAL FRAMEWORK

The offences referred to in Articles 382-4 and 382-5 are often linked to other criminal activities, such as trafficking in human beings, forgery, participation in a criminal organisation or conspiracy, violations of the Labour Code, etc.

The smuggling of migrants is subject to ordinary criminal procedure rules.

Practical difficulties in investigating the facilitation of the irregular entry, transit and stay of migrants include the reluctance of irregular migrants to give evidence and the fact that the main organisers of these criminal activities are often based abroad.

The Grand Ducal Police is therefore particularly dependent on:

- international co-operation between police authorities (international exchange of information);
- the quality of the intelligence/information provided;
- the result of a thorough analysis of the means of communication used (mobile phones, smartphones). This may take a long time and the messages have to be translated into one of the main languages of the Grand Duchy of Luxembourg;
- the results of financial flow searches (if money has been transferred).

If forged documents have been used, an expert opinion on the forgery may be requested.



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It should also be noted that, in the case of offences related to transnational organised crime and given the real reluctance of smuggled persons to complain to the authorities, proceedings against persons accused of facilitating the illegal entry, stay or transit of aliens are often lengthy and complex.



## INTERNATIONAL CO-OPERATION

Luxembourg benefits from a concerted European approach, including the strengthening of European agencies on the ground, such as Frontex (European Border and Coast Guard Agency) and Europol (European Union Agency for Law Enforcement Co-operation), and works with them to combat the smuggling of migrants.



## RELEVANT CASES

- ❖ On 18 December 2019, the criminal division of the Court of Appeal upheld the sentence of 8 years' imprisonment and a fine of €7,500 imposed on a defendant by the criminal division of Diekirch District Court, for offences under, *inter alia*, Articles 382-4 and 382-5 of the Criminal Code.

The charges against the defendant included, among other things:

Attempting to facilitate the illegal entry of third-country nationals into the United Kingdom, on several occasions and in several locations, including France and Belgium, by providing direct assistance, e.g. by recruiting other persons as drivers, offering them the free use of vehicles or other pecuniary advantages in return, renting vehicles in their own name or through other persons, having vans fitted out with hiding places and providing third-country nationals with identity cards whose legitimate holders were other persons, while receiving various monetary payments from the United Kingdom and Albania.

### Aggravating circumstances

With regard to the aggravating circumstances, the Court of Appeal held as follows:

*The defendant's actions were not those of an individual who smuggled people across the border himself, but those of someone who participated in the conspiracy of a group that, although not structured or organised, had assigned roles to at least four people, so that the aggravating circumstance of conspiracy was correctly upheld by the judges who first considered the case.*

*The aggravating circumstance of minority was established by the findings of the foreign investigators when they searched the vans and identified the stowaways being transported.*



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*The aggravating circumstance of the vulnerable position of the immigrants in question derived from their illegal administrative situation, i.e. that those transported without European residence documents had no real and acceptable choice but to submit to this treatment in order to reach Great Britain.”*

## Sentencing

With regard to the factors to be taken into consideration in setting the sentence, the Court of Appeal held as follows:

*“In determining the sentence, account must be taken of the conditions of transport, the organised manner in which the accused proceeded, the gain and personal enrichment derived from the especially vulnerable position of refugees fleeing war and economic refugees [...].”*

- ❖ On 30 June 2022, the Twelfth Chamber of the Luxembourg District Court, hearing lesser offences, sentenced a defendant to 24 months in prison, suspended in full, and a fine of €1 500, for offences under, inter alia, Articles 382-4 and 382-5 of the Criminal Code.

The charges against the defendant were as follows:

On 26 October 2020, the police were informed by the Inspectorate of Labour and Mines (hereinafter ITM) that a joint inspection with Ministry of Health officials had revealed that three undocumented Chinese nationals were illegally employed in a restaurant (ESTABLISHMENT I).

According to the ITM investigation report, the Chinese restaurant in question had a total of six employees, including three illegal Chinese workers. The defendant said that all three were housed, fed and paid between €1,000 and €1,500 per month for the older two, while the younger one was only paid between €800 and €1,000 per month.

The defendant was therefore accused of having knowingly facilitated, for financial gain, the illegal residence of PERSON I, PERSON II and PERSON III, third-country nationals who were residing illegally in Luxembourg, in particular by providing them with accommodation so that they could work in ESTABLISHMENT I, an aggravating circumstance being that the offence was committed by taking advantage of the especially vulnerable position of the abovementioned persons as a result of their illegal administrative situation and their precarious social circumstances, i.e. that they were third-country nationals residing illegally in the country, without employment, resources or accommodation.

## The establishment of the offence of facilitating the illegal stay of third-country nationals

The District Court held as follows:



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*“The defendant claims that he did not bring the three aforementioned Chinese nationals to Luxembourg and that they had already been in Europe since 2017. In the present case, PERSON I, PERSON II and PERSON III are Chinese nationals and therefore nationals of a third country.*

*There is also no doubt that the defendant facilitated the illegal stay of PERSON I, PERSON II and PERSON III on Luxembourg territory by providing them with accommodation and food.*

*The Court observes that, in order to establish the offence, it is sufficient for the defendant to have facilitated the illegal stay of third-country nationals, as in the present case.*

*In its earlier reasoning, the Court found that the defendant had acted, at least in part, for pecuniary gain.*

*It follows that the offence under Article 382-4 of the Criminal Code is established both in fact and in law.*

*The aggravating circumstance provided for in Article 382-5 4° of the Criminal Code remains applicable to the defendant, for the same reasons as those set out above for Article 382-2 2) [... given that PERSON I, PERSON II and PERSON III had no identity papers, could not communicate in any of the languages commonly spoken in the country and had no financial resources of their own, making them totally dependent on the defendant].”*