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Understanding to better apprehending

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Very often, the terms “migrant”, “refugee” or “asylum seeker” are used interchangeably although they all have a precise legal meaning. Incorrectly used, these terms can lead to bias and discrimination in the society and in companies.

Migrants, asylum seekers, refugees: what differentiates them

Migrants in the broad sense

The term “migrant”, which includes both immigrants and emigrants, is considered as broad, as it includes: European Union nationals, third-country nationals (non-EU), economic migrants, asylum seekers, beneficiaries of international protection (refugees and beneficiaries of subsidiary protection), climate refugees, etc.

A migrant is a person who leaves his/her country in order to go and live on another territory for several reasons, whether on a temporary or a permanent basis. Most of the time, a combination of choices and constraints are involved. Indeed, some migrants voluntarily leave, others are forced to do so, in particular as a result of war or persecution.

Economic migrants choose to leave their country to seek better prospects for themselves, their family, but also because of increased poverty in their country of origin. However, no definition for economic migrants is actually legally recognised.

An illegal migrant is a person who has not obtained the authorisation to stay in the country or who has overstayed the period of validity of his/her residence permit.

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In this guide, we will speak about third-country nationals...

Third-country nationals, contrary to European citizens, are neither members of the European Union, nor considered as assimilated to the 28 Member States of the European Union.

This guide will address the issue of employment and integration on the labour market of nationals who do not come from a European Union member country, who have left their country for economic, political, family, climate reasons or even to study. Because of the high number of individual, and thus hard to classify, cases, we will focus on the most frequent ones.

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Asylum seekers, who are they?

Asylum seekers are third-country nationals who have fled their country from fear of persecution.

Did you know?

European Union nationals can ask for international protection. However, cases remain rare.

Applicants for international protection (or asylum seekers) are persons who have left their country seeking international protection, but who have not yet obtained the status of refugee or beneficiary of subsidiary protection (see page 11). They cannot be sent back by force to their country during the examination procedure of the claim for asylum. As long as the definitive status has not been granted, the person retains the status of asylum seeker. The definitive decision from the Ministry of Foreign and European Affairs is made at least six months after the applicant's initial request for international protection.

An applicant for international protection whose request has been filled is authorised to stay on the territory but is not allowed to leave it. This status is not a residence permit, and the person's identity document is kept at the Ministry in exchange for a "pink paper" (papier rose) that proves that the request for international protection has been submitted. Then, each month, the applicant must go to the Ministry in order to extend his/her situation until his/her status has been approved (or rejected).



Did you know?

What rights do asylum seekers have?

- ▶ Housing (accommodation centres)
- ▶ Meals
- ▶ Monthly allowance (25 euros per adult, 12.5 euros per child)
- ▶ Basic medical care, social guidance
- ▶ Supervision of non-accompanied minors
- ▶ Public transports
- ▶ Psychological care and counselling (if necessary)

In Luxembourg legislation, the Law of 5th May 2006 on the right to asylum and complementary forms of protection, introduced two categories of international protection: the refugee status and the subsidiary protection status.

Not everyone can benefit from the status of refugee, such as war criminals or persons who have committed a serious crime (levels of crime determined by the Geneva Convention).

▶ **Beneficiaries of subsidiary protection** are third-country nationals who do not meet the requirements to be recognised as refugees. Since the Geneva Convention does not protect persons fleeing an armed conflict or a civil war (such as those in Iraq or Somalia), the European Union has set up this status that grants them protection in a country outside of their own.

- ▶ **Refugees** are third-country nationals whose request for asylum/international protection has been accepted.
- ▶ Persons fleeing their country will be recognised as refugees if:
 - they have fled outside of their country;
 - they have legitimate fears of persecution;
 - they cannot ask for protection in their own country.

By definition, "a refugee is a person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social or political group, is outside the country of his/her nationality and is unable or, owing to such fear, unwilling to avail him/herself of the protection of that country; or who, not having a nationality and being outside the country of his/her former residence as a result of such events, is unable or, owing to such fear, unwilling to return to it". Excerpt from the 1951 Geneva Convention, Article 1.

▲ Subsidiary protection can be granted to foreign nationals when they:

- — do not meet the requirements to be recognised as a refugee;
- — cannot be authorised to stay for medical reasons;
- — and yet however have a serious risk of being subject to grave harm if they return their country of origin.

Just as for the refugee status, war criminals and persons who have committed a serious crime cannot obtain the status of subsidiary protection (levels of crime determined by the Geneva Convention).

▼ Despite the implementation in 2006 of the Law introducing these two statuses, several differences in terms of rights continued to exist between these two types of beneficiaries. Since the adoption of the Law of 29th August 2008 on immigration and free movement of persons, the two categories of beneficiaries have the same rights with a residence permit that can last up to five years each (it used to be one year for the beneficiaries of subsidiary protection).

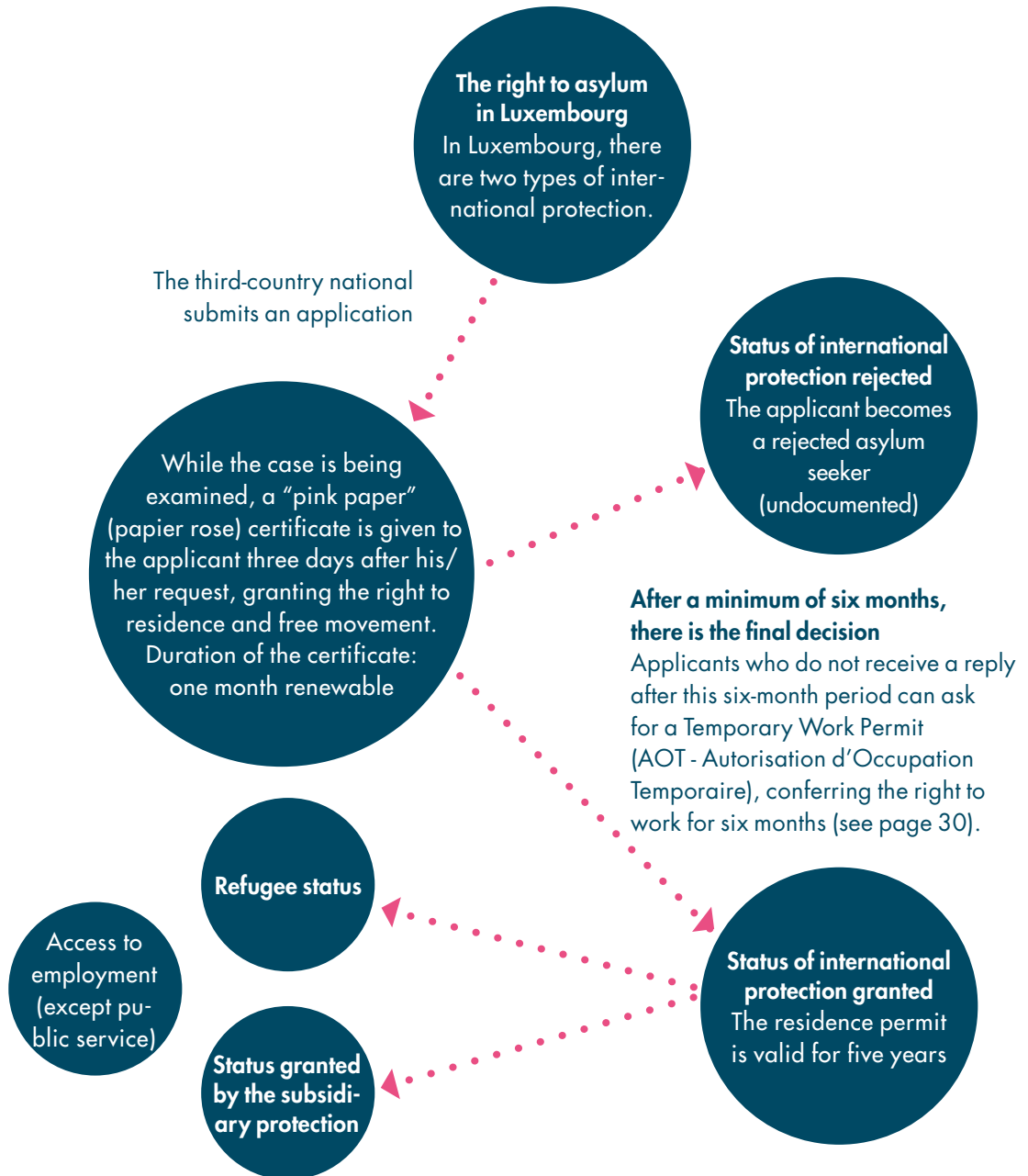
In addition to these two categories, there is a third status of international protection: the temporary/humanitarian protection status. It can be granted in the event of a major influx of displaced people from third countries who can no longer return to their country. Since the creation of this status in 2006, it has not yet been granted in Luxembourg.

Did you know?

Do not forget about climate refugees

The term appeared for the first time in 1985 in the United Nations Environment Programme (UNEP). It considers all the people who are obliged to leave their home as a result of natural disasters mainly due to climate change (floods, storms, earthquakes, etc.). Between 2011 and 2014, 83.5 million climate refugees, mainly from Asia, but also from Africa and the Pacific Region, have fled natural disasters and sought refuge. The United Nations foresee 250 million climate refugees by 2050. These refugees do not however benefit from a unified status as regards international law and are often named as "displaced persons" since most of them move within their own country.

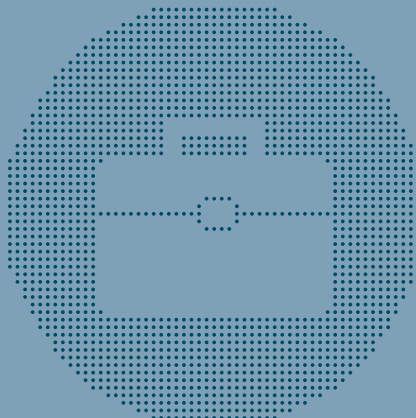
International protection overview



TWO TYPES OF INTERNATIONAL PROTECTION...

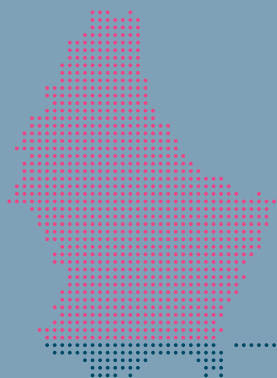


...GIVING ACCESS
TO THE JOB MARKET

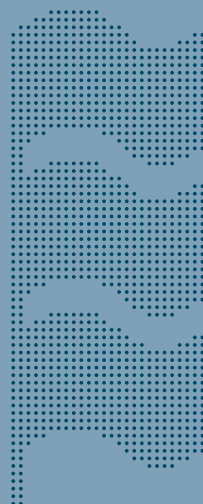


FIGURES ON MIGRATION

THIRD-COUNTRY NATIONALS



6.5%
39,669



MONTENEGRO

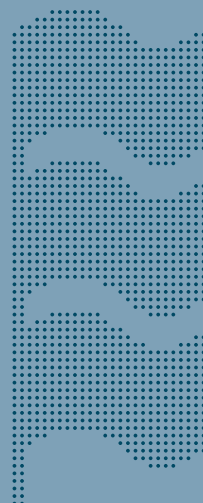
CAPE VERDE

CHINA

APPLICATIONS FOR INTERNATIONAL PROTECTION



25%



SYRIA

ALBANIA

KOSOVO

The situation in Luxembourg: figures and evolutions

Currently 244 million people are not living in their country of origin. In 2015, across the world, 65.3 million people were displaced, including 40.8 million within their own country, and only 3.2 million were asylum seekers.

According to Eurostat figures, 1.3 million people asked for asylum in Europe in 2015 (1,260,000 were first time applicants for international protection), representing 0.2% of the 508 million people living in Europe.

On 1st January 2016, in Luxembourg, there were:

- ▶ 576,249 residents
- ▶ Of which 269,175 were foreign nationals (that is 46.7% of the total population)
- ▶ Of which 39,669 were third-country nationals

In 2016 in Luxembourg, among the 39,669 third-country nationals, there were:

- ▶ 3,818 Montenegrins
- ▶ 2,965 Cape Verdeans
- ▶ 2,801 Chinese

Number of asylum seekers

1,091	2,447	2,035
(2014)	(2015)	(2016)

Number of international protection applications that were turned down

698	525	409
(2014)	(2015)	(2016)

Number of granted refugee statuses

148	200	764
(2014)	(2015)	(2016)

Number of beneficiaries of subsidiary protection

31	28	26
(2014)	(2015)	(2016)

Country of origin of asylum seekers (in 2016)

1. Syria—13.9% (257 people)
2. Albania—11.3% (209 people)
3. Kosovo—11.2% (207 people)

Education among asylum seekers (in 2015)

- ▶ Higher education: 15%
- ▶ Secondary education: about 50%
- ▶ Primary education/illiterate: from 30 à 40%

Rate of recognition of the status of beneficiary of international protection

15%	35%	90%
(2014)	(2015)	(Syrians only)

Sources : UNHCR. *Global trends, forced displacement in 2015*

Ministry of Foreign and European Affairs. Immigration Directorate. *Bilan de l'année 2015 en matière d'asile et d'immigration.*

Available on: www.gouvernement.lu/5680602/Bilan-2015.pdf. 2015

Ministry of Foreign and European Affairs. Immigration Directorate. *Statistiques du mois de novembre.*

Available on: www.statistiques.public.lu/fr/actualites/population/population/2016/12/20161216/20161216.pdf. 2016

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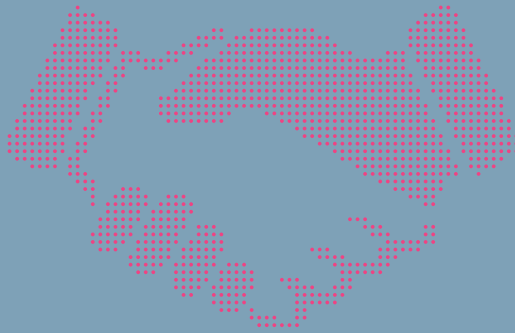
CEFIS. *100% Lëtzebuerg.* Available on: www.cefis.lu/resources.20180109-Luxembourg-100.pdf. 2017

EVOLUTION OF THE LEGAL FRAMEWORK



1951 GENEVA
CONVENTION

1990 DUBLIN
CONVENTION



International protection overview

For several years now the European Union has had a strong will to standardise policy within the Member States as regards asylum and immigration procedures in general at the same time as it puts into practice the principle of non-refoulement that consists in protecting persons whose lives are threatened.

28th July 1951	The Geneva Convention protects war refugees. It was signed by 150 countries who committed to protect all the persons who cannot be protected in their own country.
2003	The Dublin II Regulation (initially known as the Dublin Convention, 1990) is a European regulation that determines which European Member State is responsible for examining an asylum application under the Geneva Convention.
5th May 2006	The right to asylum is regulated in Luxembourg by the Law of 5th May 2006 regarding the right to asylum and complementary forms of protection. This law also introduces the authorisation of temporary work. A collective of associations (Lëtzebuurger Flüchtlingsrot or Collectif réfugiés) is careful to monitor the evolution of international and European standards as regards asylum as well as their transposition to Luxembourg legislation.
29th August 2008	With the new 2008 Law on immigration, the former work permit was replaced by an authorisation of residence for a salaried worker, which is valid for residence and work (there still are exceptions): it is also called residence permit (titre de séjour) .
1st December 2009	The Treaty of Lisbon enables the implementation of a common policy with uniform statuses and procedures within the European Union.
28th June 2013	With the Dublin III Regulation , third-country nationals have the possibility to change employer after having worked one year in Luxembourg. After this first year they can also ask for family reunification, a request which will be answered only nine months or more after the initial application has been filled.
1st January 2016	The Law on international protection aims at reducing differences between the status of refugee and the one conferred by the subsidiary protection. It repeals and replaces the amended Law of 5th May 2006 and aims at reinforcing the rights of applicants and accelerate procedures.