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TENLAW: Tenancy Law and Housing Policy in Multi-level Europe

National Report for LUXEMBOURG

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1. Housing situation

1.1. General features

1.2. Historical evolution of the national housing situation and housing policy

- **Please describe the historic evolution of the national housing situation and housing policies briefly.**
 - **In particular: Please describe briefly the evolution of the principal types of housing tenures from the 1990s on. Explain the growth and decline of the different tenures and the reasons why that happened (e.g. privatization or other policies).**

Between 1991 and 2001, and according to official data, the number of households resident in Luxembourg grew 19% (from 144,686 households to 171,953). This phenomenon was attributed to immigration, which increased 53% in that period of time, but also to the overall decrease of the number of persons per household³.

The number of inhabited dwellings also increased between 1991 and 2001. This was particularly so in the country's most populous cities (Esch-sur-Alzette, Luxembourg and Differdange), where there was an increase of 1,000 newly inhabited dwellings, but also in the municipalities geographically close to these cities, i.e., Bertrange and Roeser, which registered about 500 additional inhabited dwellings. This growth revealed a new phenomenon of urban expansion to the periphery of the urban centres and the rural municipalities in the north of the country⁴, which included the construction of new dwellings⁵.

During the 1990s, the rate of homeownership increased slightly from 64 to 67%. The increase in the percentage of people who opted for apartments during this decade was statistically more important (31%) than the increase of those who opted for living in isolated, semi-detached dwellings or townhouses (13%)⁶. Due to this significant demand, the number of apartments per building block suffered an increase of 0.3 (4.7 dwellings in 2001, against 4.3 in 1991)⁷.

Dwellings were also improved in the decade from 1991 to 2001. The size of dwellings, in particular the number of rooms, was adapted to the structure of the households: On the one hand, dwellings with one to three rooms and dwellings with more than seven rooms slightly increased (respectively, from 15% in 1991 to 16% in 2001 and from 28% in 1991 to 30% in 2001); on the other

³ Observatoire de l'Habitat – Logements habités, 2003, p. 1.

⁴ Observatoire de l'Habitat – Logements habités, 2003, p. 3

⁵ Observatoire de l'Habitat – Logements habités, 2003, p. 3. See figs 2 (Evolution of the stock of inhabited dwellings between 1991 and 2001 in Luxembourg (II)) and 8 ("Characteristics of the Housing Stock in Luxembourg").

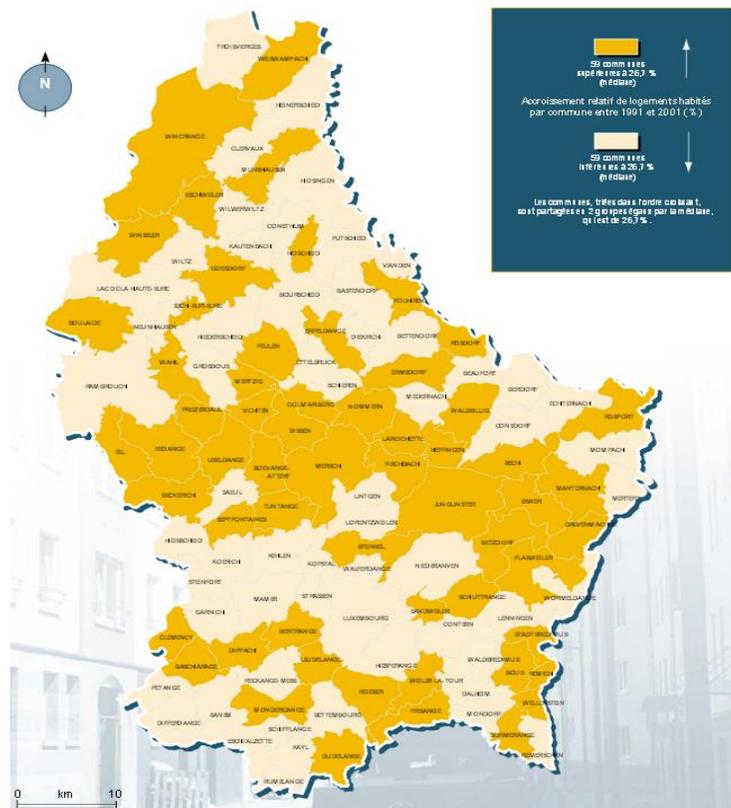
⁶ See fig. 3 (Evolution of the kinds of dwellings between 1991 and 2001 in Luxembourg).

⁷ Observatoire de l'Habitat – Logements habités, 2003, p. 3 and n. 4.

hand, dwellings with four to six rooms decreased (from 56% in 1991 to 53% in 2001)⁸.

In this period people started demanding comfortable homes⁹. As a response to these demands, there was a significant improvement in the spatial and technical comfort of the dwellings. The average surface per capita went from 119 m² in 1991 to 126 m² in 2001¹⁰. Moreover, the number of dwellings with central heating increased by 8% (from 84% in 1991 to 82% in 2001) and so did the number of dwellings with sanitation¹¹.

Fig. 1



Evolution of the stock of inhabited dwellings between 1991 and 2001 in Luxembourg (I)
Source: Observatoire de l'Habitat – Logements habités, 2003, p. 2.

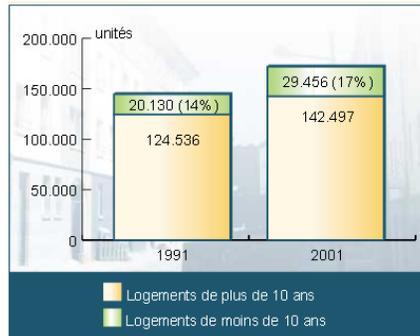
⁸ Observatoire de l'Habitat – Logements habités, 2003, p. 4.

⁹ Observatoire de l'Habitat – Logements habités, 2003, p. 1.

¹⁰ See fig. 4 (Average surface of the dwellings between 1991 and 2001).

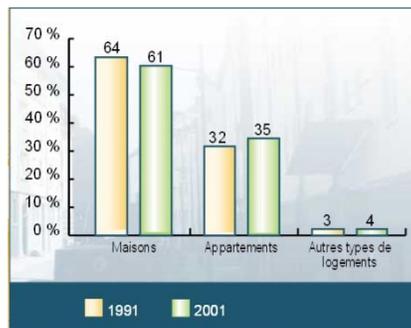
¹¹ Observatoire de l'Habitat – Logements habités, 2003, p. 4. See fig. 4 (Average surface of dwellings between 1991 and 2001).

Fig. 2



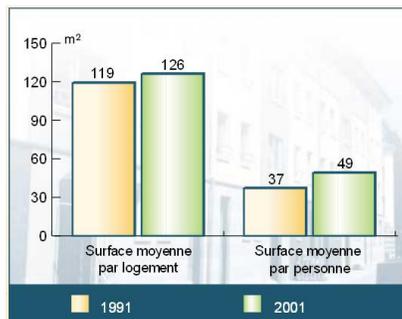
Evolution of the stock of inhabited dwellings between 1991 and 2001 in Luxembourg (II)
Source: Observatoire de l'Habitat – Logements habités, 2003, p. 3.

Fig. 3



Evolution of the kinds of dwellings between 1991 and 2001 in Luxembourg
Source: Observatoire de l'Habitat – Logements habités, 2003, p. 3.

Fig. 4



Average surface of dwellings between 1991 and 2001
Source: Observatoire de l'Habitat – Logements habités, 2003, p. 4.

Specifically, as far as the rental stock is concerned, rental dwellings have always been concentrated in the urban spaces where most of the professional activities and services are to be found, namely, the city of Luxembourg, the south region and the areas served by the major transportation routes (Diekirch and

Echternach). In these areas, as well as in the municipalities of the urban periphery of the city of Luxembourg, rents are the highest in the country¹².

Between 1991 and 2001 there was also a strong demand for bigger dwellings. For this reason the rents of dwellings from two up to seven rooms and the rents of dwellings with a surface higher than 150 m² both increased during this period (respectively, in 30 and 40%)¹³.

At the date of the last census (2011), there were 208,565 private households (which included both family and non-family households)¹⁴ distributed throughout the country¹⁵ in 130,091 dwellings. Two thirds of these dwellings (i.e., 83.5% of the housing stock or 108,682 dwellings) corresponded to single-family homes (*maisons unifamiliales*)¹⁶. Among these the isolated houses (*maisons isolées*) predominated: they represented 37.9% of the total housing stock (49,321 dwellings). The number of semi-detached houses (*maisons jumelées*) came immediately after, with 25% of the total stock (32,586 dwellings), whereas townhouses corresponded only to 20.6% of the total housing stock (26,775 dwellings)¹⁷. Multi-dwelling buildings (i.e., apartment buildings) were a clear minority in the national housing stock: they represented only 12.5% of the inhabited dwellings (16,267 dwellings) only. Of these, 10,927 were used solely for residential purposes, whereas 5,340 had a mixed use, i.e., were used both as a residence and for the performance of commercial activities¹⁸.

According to the last information available, which dates back to March 2013, 28.3% of households are tenants; among these, 91.9% pay a rent at the market price (on average, 887.77 EUR/month for 84.1m²) and the remaining 8.1% pay a reduced rent (in average, 396.68 EUR/month for a similar surface, more precisely of 83.5 m²)¹⁹. As one has said, the nearer the dwelling is to the city of Luxembourg, the more expensive the price per square meter is. Indeed, most of the tenants are concentrated in the city of Luxembourg (48.6%),²⁰ which necessarily increases the level of rents. Further aspects, such as the nationality, the size of the household and the date of moving into the dwelling also influence the amount of the rent²¹.

¹² Observatoire de l'Habitat – Logements habités, 2003, p. 3. See fig. 5 (Level of rents per square meter in Luxembourg in 2001).

¹³ Observatoire de l'Habitat – Logements habités, 2003, p. 3.

¹⁴ STATEC – Ménages et types de familles, 2013, pp. 1-2.

¹⁵ See fig. 1 (Evolution of the stock of inhabited dwellings between 1991 and 2001 in Luxembourg (I)).

¹⁶ STATEC – Ménages et types de familles, 2013, p. 1.

¹⁷ STATEC – Ménages et types de familles, 2013, p. 1.

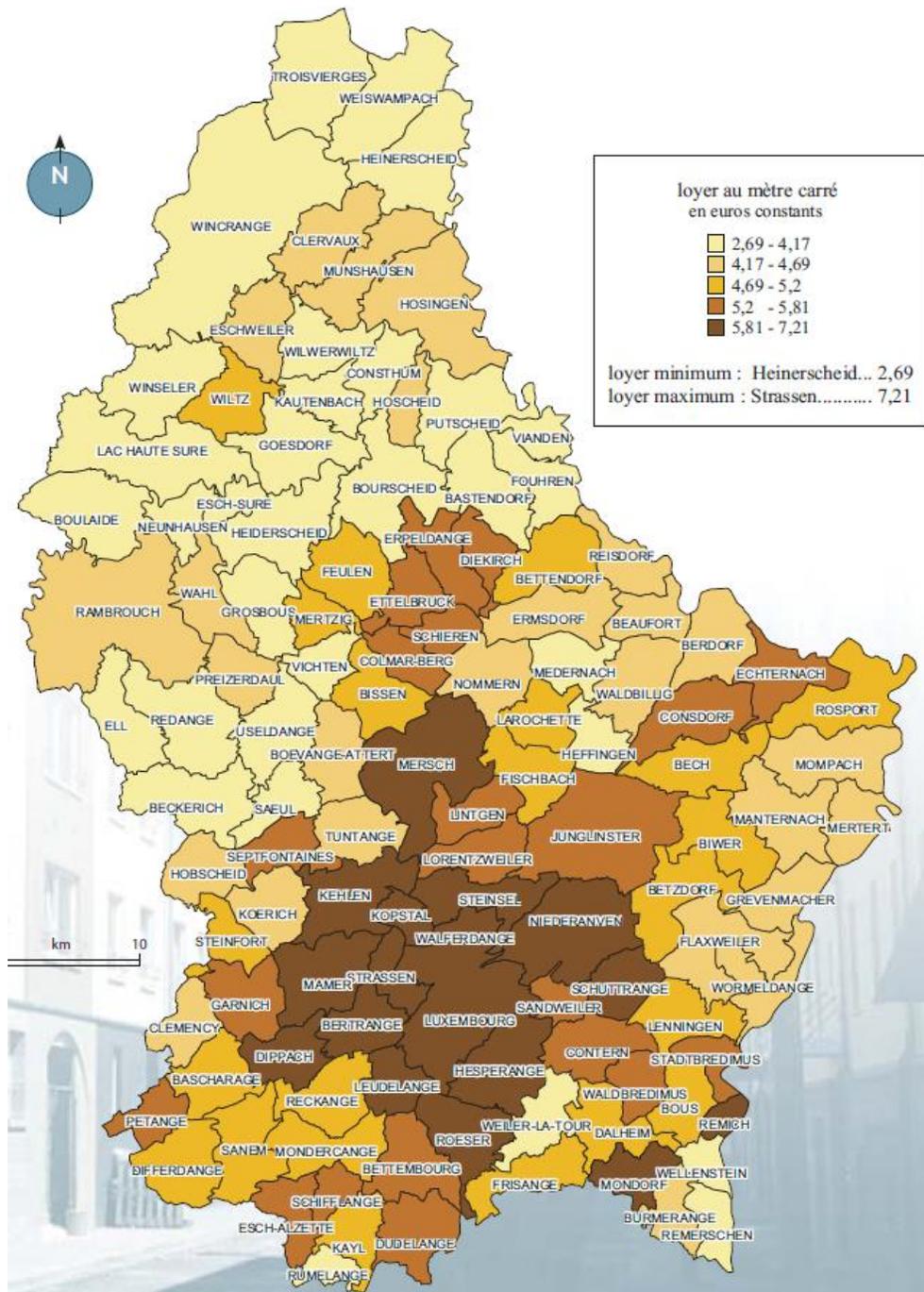
¹⁸ STATEC – Ménages et types de familles, 2013, p. 1.

¹⁹ STATEC – Location: surfaces et loyers, 2013, pp. 1-2. See fig. 7 (Information on the level of rents according to location).

²⁰ See fig. 6 (Number of renting households in the different municipalities).

²¹ See generally STATEC – Location: surfaces et loyers, 2013, p. 1 ff.

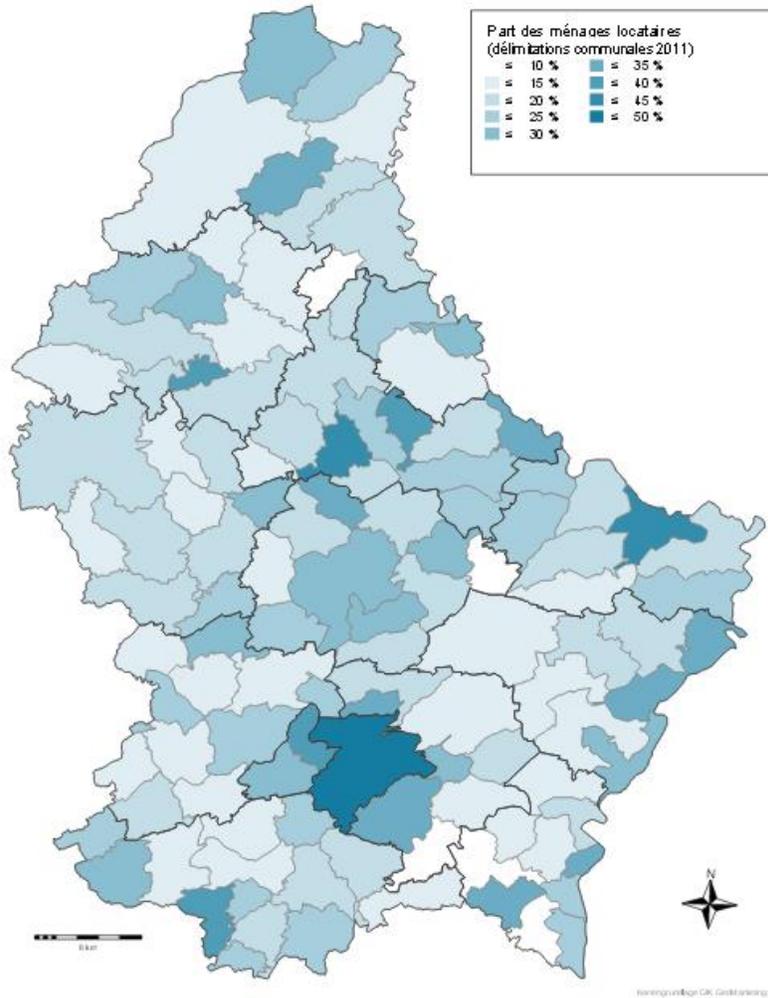
Fig. 5



Level of rents per square meter in Luxembourg in 2001
Source: Observatoire de l'Habitat – Logements habités, 2003, p. 2.

Fig. 6

Carte 1 : Part des ménages locataires selon les communes



Number of renting households in the different municipalities
Source: STATEC – Location: surfaces et loyers, 2013, p. 1.

Although most of the current housing stock was constructed after the 1940s²², several dwellings are still built according to the model used in the beginning of the twentieth century: ‘the living-room is the most spacious part of the house; the kitchen is similar to a laboratory and typically offers space for a table; in the sleeping room there is only place for a twin bed and a wardrobe; there are two rooms for the children which, together, are as big as a garage; and all of these rooms are under a ceiling which does not exceed 2.5 m high²³. There are usually no extra rooms, such as a laundry or a garage for bicycles. This is especially so in multi-family houses.

²² See fig. 8 (Characteristics of the Housing Stock in Luxembourg).

²³ Ministry of Housing – Le Logement, 2005, p. 6.

One can justify the maintenance of this traditional model by the need of coping with the increasing demand, but also by the need of ensuring a relatively uniform structure of dwellings²⁴. Nevertheless, the increase of one-person households²⁵ (workers and seniors), single-parent families and reunited families²⁶ and the need to attend to the special needs of people with reduced mobility and home officers, demands a diversified housing model which is capable of meeting these multiple, yet specific housing requirements²⁷.

Fig. 7

Tableau 1 : Données de base sur la location (niveau des ménages)

	Toutes les locations	Locations à loyer normal	Locations à loyer réduit
Part dans les ménages locataires	100.0 %	91.9 %	8.1 %
Les loyers			
Moyenne	846.93 €	887.77 €	396.68 €
Écart-type	498.65 €	492.64 €	277.04 €
Médiane	750.00 €	800.00 €	350.00 €
25ème percentile	570.00 €	600.00 €	225.00 €
75ème percentile	1000.00 €	1020.00 €	500.00 €
Autres données			
Surface (moyenne)	83.1	83.5	84.1
Loyer/m ² (moyenne)	12.00 €	12.45 €	4.95 €
Taille du ménage (moyenne)	2.2	2.2	2.1

Source : STATEC – RP 2011

Information on the level of rents according to location
Source: STATEC – Location: surfaces et loyers, 2013, p. 2.

Lately, urban neighbourhoods have been modernized. Public promoters have been initiating pilot projects, and municipalities have been actively responding to the progressive demand of housing. The construction of ecological, sustainable housing with a diversity of functions, density of occupation and the ability to ensure short commutes has been a concern of the authorities²⁸.

The needs of students have also been attended to at a political level. Students in Luxembourg come from around 96 different countries and alone fill the capacity of the student dorms provided by the University of Luxembourg. A few student dorms are under construction in the centre and south of the metropolis to meet the students' housing needs.

²⁴ Ministry of Housing – Le Logement, 2005, p. 25.

²⁵ Ministry of Housing – L'habitat sur mesure, 2004, p. 6.

²⁶ For the different type of households in Luxembourg, see fig. 9 (Number of persons living in private households according to the type of household in 02/2011).

²⁷ Ministry of Housing – Le Logement, 2005, p. 25.

²⁸ Ministry of Housing – Le Logement, 2005, pp. 3 and 15.

Fig. 8

Table 2.18.1 Characteristics of the Housing Stock in Luxembourg, 2001					
Category		Total No.	Owner No.	Non owner No.	Not specified No.
Dwellings by period of construction	< 1946	45,094	29,921	13,644	1,529
	> 1946	120,336	81,986	33,995	4,355
	Not specified	3,768	1,744	1,644	380
Dwellings by type and availability of amenities		No bath/shower, no lavatory and no central heating	With bath/shower, no lavatory and no central heating	With bath/shower, with lavatory no central heating	With bath/shower, with lavatory, with central heating
		No.	No.	No.	No.
	House	17	43	634	10,220
	Apartment	17	23	218	17,661

Characteristics of the Housing Stock in Luxembourg
Source: Norris & Shields – Housing Developments, 2004, p. 59.

Since the creation of the Housing Ministry in 1989, the government has led a very active policy in the housing sector. Namely, it enacted several measures aimed at directly influencing the offer and the demand. Several Grand-ducal regulations provided for subsidies for the purchase and construction of homes (e.g. RGD²⁹ 10 September 1990, RGD 17 June 1991; RGD 28 February 1994) as well as tax benefits (e.g. RGD 17 December 1991). More recently, a new Law Project introduced a “*subvention de loyer*” (rent subsidy). The government intends to help tenants who pay rents which surpass one third of their available incomes. For a long time policies were nearly exclusively aimed at promoting homeownership.

The *Pacte Logement* includes measures which are aimed at fostering rental tenures as well, such as the imposition on property developers to include at least 10% rented housing in the new constructed dwellings. This measure is pursuant to the recognition by the Government that many households can neither afford to buy a dwelling due to the relatively high price of land nor get access to social housing, which is very scarce.

Since the enactment of the *loi du 21 septembre 2006 sur le bail à usage d’habitation* (Law 21 September 2006 on residential rental agreements, hereinafter, LBUH), public policy is more directed at the promotion of tenancy.

Nevertheless, home-ownership is still actively supported.

More recently, the Housing Ministry has been working towards the development of public rental through social agencies (*Agence Immobilière Sociale* - AIS). These would allow the use of the already existing vacant dwellings to house people who have difficulties accessing the private rental market³⁰.

Concerning the constructions as such, as was mentioned housing policies in Luxembourg are directed at the continued, compact, functional and

²⁹ Grand-Ducal Regulation (*Réglement grand-ducal*).

³⁰ See generally *infra* “Public renting through agencies”.

environmentally friendly construction of housing. Dwellings shall be offered at a reasonable, affordable price, but still provide a high quality of life. Therefore, ‘air’, ‘light’ and ‘green areas’ have become watchwords for the reformers, and this has been increasingly followed by architects and urban planners³¹.

Fig. 9

Tableau 1: Nombre de personnes vivant dans des ménages privés selon le type de ménage au 1^{er} février 2011

Type de ménage	Personnes	en %
Ménages non familiaux	83 726	16.6%
Ménages d'une personne	69 529	13.8%
Ménages multiples	14 197	2.8%
Ménages familiaux	419 554	83.4%
Ménages unifamiliaux	366 152	72.8%
Couples sans enfants	82 188	16.3%
Couples avec enfant(s)	242 244	48.1%
Pères isolés	6 658	1.3%
Mères isolées	35 062	7.0%
Ménages multifamiliaux	53 402	10.6%
Personnes au total	503 280	100.0%

Source : STATEC – RP2011

Number of persons living in private households according to the type of household in 02/2011
Source: STATEC – Ménages et types de familles, 2013, p. 1.

- **In particular: What is the role of migration within the country, immigration or emigration from/towards other countries inside and outside the EU (including war migration as in Ex-Yugoslavia)**

For several decades, immigration has brought a particular demographic vitality to Luxembourg³². Currently, more than 60% of the population of Luxembourg has an immigration background, either directly or indirectly through their parents³³.

In 2009 non-nationals accounted for 43.5% of the population, and most of them (86.3%) were EU citizens³⁴. This was the highest share of non-nationals among the EU Member States in that year. Due to the importance of immigration in Luxembourg, the State subsidizes the construction of dwellings for foreign and temporary workers³⁵.

³¹ Ministry of Housing – L’habitat sur mesure, 2004, p. 7.

³² Lord & Gerber – Immigration et intégration, 2009, p. 85 and Zahlen – Le Luxembourg 1960-2010, 2012, p. 1. See figs 11 (Migratory background of the population), 12 (“Recent trends in migrants’ flows and stocks”) and 23 (“Immigration, emigration and net migration”).

³³ See figs 11 (Migratory background of the population), 13 (Number of immigrants per 1000 inhabitants) and 14 (Share of nationals and non-nationals among immigrants).

³⁴ Eurostat – Europe in Figures, 2012, p. 145. See figs 15 (Distribution of non-Luxembourgiens according to the citizenship in Europe), 16 (“Total population and resident non-national population by group of citizenship”), 17 (“Share of non-nationals in the resident population”) and 18 (“Immigration by main citizenship group”).

³⁵ For further developments, see *infra* “Subsidization”.

Together with the Portuguese nationality (16.1%), French (6.1%), Italian (3.5%), Belgian (3.3%) and German (2.3%) are the most represented nationalities in Luxembourg³⁶.

Although less qualified, non-European, non-Luxembourgian concentrate mainly in the south of the country (former coal mining region), one cannot talk of a geographic isolation of immigrants³⁷. However, statistics show that they occupy the smallest dwellings and those with fewer rooms per person³⁸.

Compared to Luxembourgian nationals and less skilled immigrants, highly skilled European immigrants represent the majority of tenants in the country (57%). From these, 38.1% of these immigrants rent apartments, while 19.4% rent houses³⁹.

Less qualified Luxembourgians represent the highest number of people suffering from exclusion connected to housing (55%). The amount of non-European non-Luxembourgians is also significant (15%), given that they correspond to only 5% of the active population⁴⁰. Exclusion connected to housing in Luxembourg infringes the right to housing which, despite not being expressly provided for by the national legislation, is protected in several international conventions including, among others, the Migrant Workers Convention (Art. 43-1)⁴¹.

As compared to immigration, emigration is a less significant phenomenon. However, in 2008 the emigration rate was the highest of all the EU Member-States in relation to the size of the resident population: there were 17.8 emigrants per 1,000 inhabitants⁴².

³⁶ STATEC – Immigration et migrations, 2013, p. 1. See fig. 19 (Part of certain nationalities in the total population of Luxembourg) and 20 (Main nationalities of non-Luxembourgians living in Luxembourg). See fig. 63 (Population per citizenship).

³⁷ Lord & Gerber – Immigration et intégration, 2009, pp. 89 and 97. See fig. 21 (Location of the groups according to the type of municipality).

³⁸ Lord & Gerber – Immigration et intégration, 2009, pp. 95-97.

³⁹ See fig. 22 (Characteristics of the residential models according to the groups in 2001).

⁴⁰ CEPS/Instead – L'exclusion liée au logement, 2007, pp. 32-33.

⁴¹ Thorpe – Le rôle du logement, 2008, p. 11.

⁴² Eurostat – Europe in Figures, 2012, p. 144. See fig. 23 (“Immigration, emigration and net migration”).

Fig. 10

Tableau 1 : Population du Luxembourg par nationalités, 1961-2011 (en milliers)

	1961	1966	1970	1981	*1991	2001	2011
Population totale (x1000)	314.9	334.8	339.8	364.6	384.6	439.5	512.3
Luxembourgeois	273.4	278.1	277.3	268.8	269.3	277.2	291.8
Étrangers (x1000)	41.5	56.7	62.5	95.8	114.1	162.3	220.5
dont: - Portugais	0.0	1.1	5.8	29.3	39.1	58.7	82.4
- Italiens	15.7	24.9	23.5	22.3	19.5	19.0	18.1
- Français	5.0	7.2	8.5	11.9	13.0	20.0	31.5
- Belges	5.2	6.0	6.5	7.9	10.1	14.8	16.9
- Allemands	7.9	8.0	7.8	8.9	8.8	10.1	12.0
- Autres	7.7	9.5	10.4	15.5	23.6	39.7	59.7
Étrangers (en %)	13.2	16.9	18.4	26.3	29.4	36.9	43.0

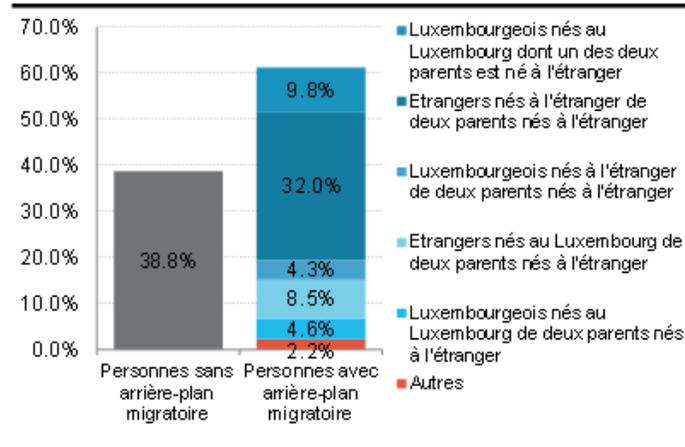
Source : STATEC (recensements)

*en 1991, pour 1213 personnes la nationalité n'est pas connue

Population of Luxembourg in nationalities
Source: Zahlen – Le Luxembourg 1960-2010, 2012, p. 2.

Fig. 11

Graphique 1 : Arrière-plan migratoire de la population



Source : STATEC – RP 2011

Migratory background of the population
Source: STATEC – Immigration et migrations, 2013, p. 1.

Fig. 12

Recent trends in migrants' flows and stocks

LUXEMBOURG

Migration flows (foreigners)	2000	2005	2008	2009	Average		Level ('000)	
					2000-04	2005-09	2009	
<i>National definition</i>								
<i>Per 1 000 inhabitants</i>								
Inflows	24.7	29.8	34.7	29.7	25.8	31.3	14.6	
Outflows	16.1	15.5	16.4	14.7	16.7	16.2	7.3	
Migration inflows (foreigners) by type	Thousands			% distribution		Inflows of top 10 nationalities as a % of total inflows of foreigners 		
<i>Permit based statistics (standardised)</i>	2008	2009	2008	2009				
Work	..	..	..	..
Family (incl. accompanying family)	..	..	..	..
Humanitarian	..	..	..	..
Free movements	..	..	..	..
Others	..	..	..	..
Total	..	..	..	..
Temporary migration	2005	2008	2009	Average				
<i>Thousands</i>				2005-09				
International students	..	..	..	..
Trainees	..	..	..	..
Working holiday makers	..	..	..	..
Seasonal workers	..	..	..	..
Intra-company transfers	..	..	..	..
Other temporary workers	..	..	..	..
Inflows of asylum seekers	2000	2005	2008	2009	Average	Level		
<i>Per 1 000 inhabitants</i>	1.4	1.7	1.0	1.0	2.4	1.1	477	
Components of population growth	2000	2005	2008	2009	Average	Level ('000)		
<i>Per 1 000 inhabitants</i>								
Total	12.8	17.0	19.9	17.1	11.4	17.0	9	
Natural increase	4.3	3.9	4.1	3.8	3.7	3.7	2	
Net migration	8.2	13.1	15.8	13.3	7.6	13.2	7	
Stocks of immigrants	2000	2005	2008	2009	Average	Level ('000)		
<i>Percentage of the total population</i>								
Foreign-born population	33.2	35.0	37.3	36.9	33.4	36.2	182	
Foreign population	37.7	41.5	44.5	43.8	38.7	43.1	216	
Naturalisations	2000	2005	2008	2009	Average	Level		
<i>Percentage of the foreign population</i>	0.4	0.5	0.6	1.9	0.4	0.8	4 022	
Labour market outcomes	2000	2005	2008	2009	Average	Level		
<i>Employment/population ratio</i>								
Native-born men	73.2	68.8	68.2	69.2	70.8	68.3		
Foreign-born men	78.1	80.1	75.9	78.1	79.9	78.5		
Native-born women	46.5	50.5	50.4	54.5	47.7	51.7		
Foreign-born women	55.3	58.3	61.8	59.7	56.2	60.3		
<i>Unemployment rate</i>								
Native-born men	1.4	3.0	2.5	2.8	1.9	2.8		
Foreign-born men	2.5	4.2	6.4	6.1	3.1	5.1		
Native-born women	3.0	4.5	5.4	3.8	3.0	4.4		
Foreign-born women	3.3	7.5	6.8	8.8	5.6	7.4		
Macroeconomic indicators	2000	2005	2008	2009	Average	Level		
<i>Annual growth in %</i>								
Real GDP	8.4	5.4	1.4	-3.7	4.2	3.0		
GDP/capita (level in USD)	7.0	3.8	-0.3	-5.4	2.9	1.3	61 422	
Employment (level in thousands)	4.2	1.7	3.2	1.3	2.2	2.1	220	
<i>Percentage of the labour force</i>								
Unemployment	2.6	4.7	4.4	5.7	3.2	4.7		

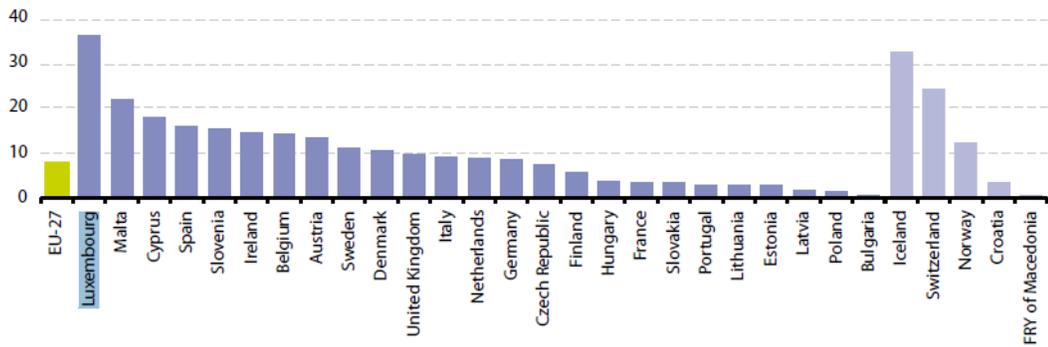
Notes and sources are at the end of the chapter.

StatLink <http://dx.doi.org/10.1787/888932441477>

“Recent trends in migrants' flows and stocks”
 Source: OECD – International Migration Outlook, 2011, p. 301.

Fig. 13

Figure 2.21: Immigrants, 2008 ⁽¹⁾
(per 1 000 inhabitants)

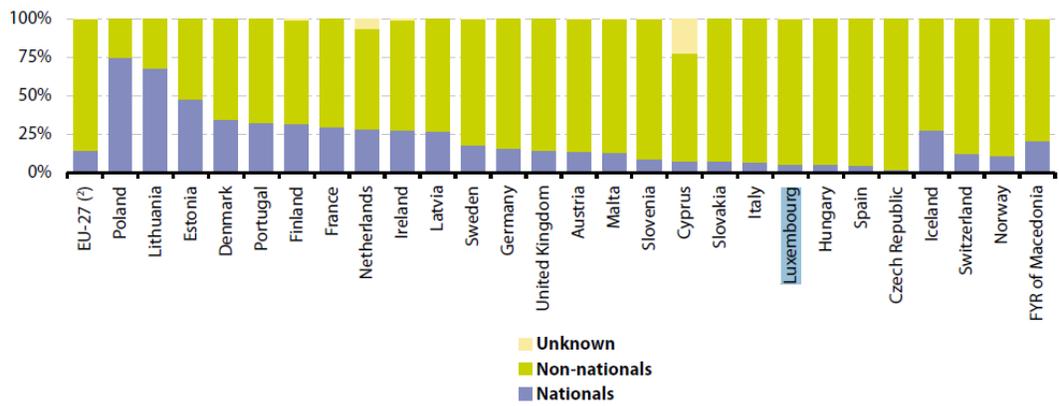


⁽¹⁾ Data for the number of inhabitants refers to 1 January 2009; Greece and Romania, not available.
Source: Eurostat ([migr_imm1ctz](#) and [migr_pop1ctz](#))

Number of immigrants per 1000 inhabitants
Source: Eurostat – Europe in Figures, 2012, p. 151, emphasis added.

Fig. 14

Figure 2.22: Share of nationals and non-nationals among immigrants, 2008 ⁽¹⁾
(%)

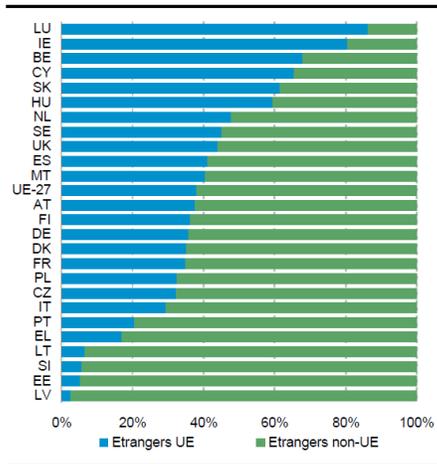


⁽¹⁾ Belgium, Greece and Romania, not available; Bulgaria, unreliable.
⁽²⁾ Estimate.
Source: Eurostat ([migr_imm1ctz](#))

Share of nationals and non-nationals among immigrants
Source: Eurostat – Europe in Figures, 2012, p. 153, emphasis added.

Fig. 15

Graphique 5 : Distribution des étrangers selon le groupe de nationalité (UE et non-UE) en Europe, 1^{er} janvier 2010 (en % de la population de nationalité étrangère)



Source : STATEC, EUROSTAT

Distribution of non-Luxembourgiens according to their nationality in Europe
Source: Zahlen – Le Luxembourg 1960-2010, 2012, p. 5.

Fig. 16

Table 2.18: Total population and resident non-national population by group of citizenship, 2009

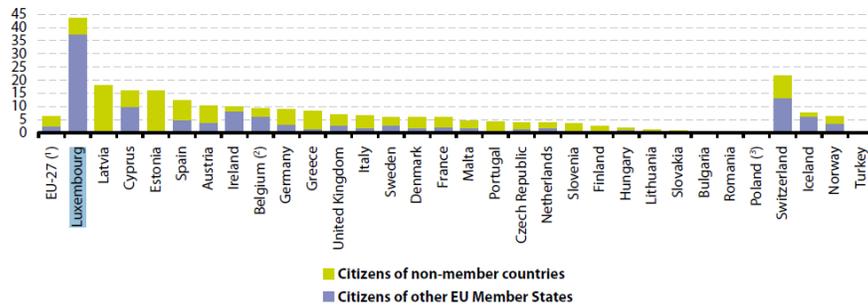
	Total population (1 000)	Non-nationals					
		Total		Citizens of other EU Member States		Citizens of non-member countries	
		(1 000)	(%)	(1 000)	(%)	(1 000)	(%)
EU-27	499 432.2	31 779.9	6.4	11 937.2	2.4	19 842.7	4.0
Belgium	10 750.0	:	:	:	:	:	:
Bulgaria	7 606.6	23.8	0.3	3.5	0.1	20.3	0.3
Czech Republic	10 467.5	407.5	3.9	145.8	1.4	261.7	2.5
Denmark	5 511.5	320.0	5.8	108.7	2.0	211.4	3.8
Germany	82 002.4	7 185.9	8.8	2 530.7	3.1	4 655.2	5.7
Estonia	1 340.4	214.4	16.0	9.6	0.7	204.8	15.3
Ireland	4 450.0	441.1	9.9	364.8	8.2	76.2	1.7
Greece	11 260.4	929.5	8.3	161.6	1.4	767.9	6.8
Spain	45 828.2	5 651.0	12.3	2 274.2	5.0	3 376.8	7.4
France	64 366.9	3 737.5	5.8	1 302.4	2.0	2 435.2	3.8
Italy	60 045.1	3 891.3	6.5	1 131.8	1.9	2 759.5	4.6
Cyprus	796.9	128.2	16.1	78.2	9.8	50.0	6.3
Latvia	2 261.3	404.0	17.9	9.4	0.4	394.6	17.5
Lithuania	3 349.9	41.5	1.2	2.5	0.1	39.0	1.2
Luxembourg	493.5	214.8	43.5	185.4	37.6	29.5	6.0
Hungary	10 031.0	186.4	1.9	109.8	1.1	76.6	0.8
Malta	413.6	18.1	4.4	8.2	2.0	9.9	2.4
Netherlands	16 485.8	637.1	3.9	290.4	1.8	346.7	2.1
Austria	8 355.3	864.4	10.3	317.0	3.8	547.4	6.6
Poland	37 867.9	35.9	0.1	10.3	0.0	25.6	0.1
Portugal	10 627.3	443.1	4.2	84.7	0.8	358.4	3.4
Romania	21 498.6	31.4	0.1	6.0	0.0	25.3	0.1
Slovenia	2 032.4	70.6	3.5	4.2	0.2	66.4	3.3
Slovakia	5 412.3	52.5	1.0	32.7	0.6	19.8	0.4
Finland	5 326.3	142.3	2.7	51.9	1.0	90.4	1.7
Sweden	9 256.3	547.7	5.9	255.6	2.8	292.1	3.2
United Kingdom	61 595.1	4 184.0	6.8	1 793.2	2.9	2 390.8	3.9
Iceland	319.4	24.4	7.6	19.4	6.1	5.0	1.6
Norway	4 799.3	302.9	6.3	165.4	3.4	137.6	2.9
Switzerland	7 701.9	1 669.7	21.7	1 033.4	13.4	636.3	8.3
Croatia	4 435.1	:	:	:	:	:	:
FYR of Macedonia	2 048.6	:	:	:	:	:	:
Turkey	71 517.1	103.8	0.1	45.3	0.1	58.4	0.1

Source: Eurostat (migr_pop1ctz)

“Total population and resident non-national population by group of citizenship”
Source: Eurostat – Europe in Figures, 2012, p. 152, emphasis added.

Fig. 17

Figure 2.23: Share of non-nationals in the resident population, 2009 (%)



(1) Estimate.
(2) 2008.
(3) Provisional.

Source: Eurostat (migr_pop1ctz)

“Share of non-nationals in the resident population”
Source: Eurostat – Europe in Figures, 2012, p. 153, emphasis added.

Fig. 18

Table 2.17: Immigration by main citizenship group, 2008

	Total immigrants (1 000)	Nationals		Non-nationals					
		(1 000)	(%)	Total		Citizens of other EU Member States		Citizens of non-member countries	
				(1 000)	(%)	(1 000)	(%)	(1 000)	(%)
EU-27	3 800.0	600.0	15.8	3 200.0	84.2	1 400.0	36.8	1 800.0	47.4
Belgium	150.8	:	:	:	:	:	:	:	:
Bulgaria	1.2	1.1	92.9	0.1	7.0	0.0	0.1	0.1	7.0
Czech Republic	77.8	1.7	2.1	76.2	97.9	17.6	22.7	58.5	75.2
Denmark	57.4	19.9	34.6	37.5	65.4	20.0	34.8	17.5	30.5
Germany	682.1	108.3	15.9	573.8	84.1	335.9	49.2	237.9	34.9
Estonia	3.7	1.7	47.5	1.9	52.5	1.0	27.0	0.9	25.6
Ireland	63.9	17.9	27.9	45.6	71.4	32.1	50.3	13.5	21.1
Greece	:	:	:	74.7	:	25.7	:	49.0	:
Spain	726.0	33.8	4.7	692.2	95.3	193.3	26.6	498.9	68.7
France	216.9	64.1	29.5	152.9	70.5	63.9	29.5	89.0	41.0
Italy	534.7	38.2	7.1	496.5	92.9	212.9	39.8	283.7	53.1
Cyprus	14.1	1.1	7.8	9.8	69.7	6.5	46.0	3.4	23.8
Latvia	3.5	0.9	27.1	2.5	72.9	1.6	46.0	0.9	26.9
Lithuania	9.3	6.3	68.2	3.0	31.8	0.4	4.0	2.6	27.8
Luxembourg	17.8	1.0	5.4	16.7	94.2	13.9	78.3	2.8	15.9
Hungary	37.5	2.0	5.3	35.5	94.7	17.7	47.1	17.9	47.7
Malta	9.0	1.2	13.0	7.8	86.9	4.5	49.8	3.3	37.1
Netherlands	143.5	40.2	28.0	94.3	65.7	55.4	38.6	38.9	27.1
Austria	110.1	15.3	13.9	94.4	85.7	55.3	50.3	39.1	35.5
Poland	47.9	35.9	75.0	12.0	25.0	3.1	6.4	8.9	18.6
Portugal	29.7	9.6	32.3	20.1	67.7	4.1	13.7	16.1	54.0
Romania	:	:	:	10.0	:	:	:	:	:
Slovenia	30.7	2.6	8.6	28.0	91.1	2.1	6.7	25.9	84.4
Slovakia	17.8	1.4	7.6	16.5	92.4	8.5	47.8	7.9	44.6
Finland	29.1	9.2	31.6	19.7	67.6	7.3	25.2	12.3	42.4
Sweden	101.2	17.9	17.6	83.0	82.0	30.4	30.0	52.6	52.0
United Kingdom	590.2	85.1	14.4	505.2	85.6	197.7	33.5	307.4	52.1
Iceland	10.3	2.8	27.4	7.5	72.6	6.4	62.2	1.1	10.4
Norway	58.1	6.4	11.1	51.7	88.9	32.2	55.4	19.5	33.5
Switzerland	184.3	22.7	12.3	161.6	87.7	113.6	61.6	48.0	26.0
Croatia	14.5	12.5	86.1	2.0	13.9	0.5	3.7	1.5	10.2
FYR of Macedonia	1.1	0.2	20.8	0.8	79.1	0.1	12.0	0.7	67.1
Turkey	:	:	:	19.7	:	6.0	:	13.7	:

Source: Eurostat (migr_imm1ctz)

“Immigration by main citizenship group”
Source: Eurostat – Europe in Figures, 2012, p. 150, emphasis added.

Fig. 19**Tableau 2 : Part de certaines nationalités dans la population totale du Luxembourg, 1961-2011 (en %)**

	1961	1966	1970	1981	*1991	2001	2011
Population totale	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Étrangers	13.2	16.9	18.4	26.3	29.7	36.9	43.0
dont: - Portugais	0.0	0.3	1.7	8.0	10.2	13.4	16.1
- Italiens	5.0	7.4	6.9	6.1	5.1	4.3	3.5
- Français	1.6	2.2	2.5	3.3	3.4	4.6	6.1
- Belges	1.7	1.8	1.9	2.2	2.6	3.4	3.3
- Allemands	2.5	2.4	2.3	2.4	2.3	2.3	2.4
- Autres	2.4	2.8	3.1	4.3	6.1	9.0	11.6

Source : STATEC (recensements)

*en 1991, pour 1213 personnes la nationalité n'est pas connue

Share of nationalities in the total population of Luxembourg
Source: Zahlen – Le Luxembourg 1960-2010, 2012, p. 3.

Fig. 20**Tableau 5 : Principales nationalités des personnes étrangères résidant au Luxembourg en 2011 (en nombre)**

Nationalité	Nombre	Nationalité	Nombre
Portugal	82 363	Roumanie	1 589
France	31 456	Grèce	1 541
Italie	18 059	Irlande	1 325
Belgique	16 926	Kosovo	1 324
Allemagne	12 049	États-Unis	1 295
Royaume-Uni	5 471	Brésil	1 203
Pays-Bas	3 891	Finlande	1 077
Monténégro	3 814	Hongrie	935
Espagne	3 657	Russie	930
Pologne	2 709	Rép. tchèque	760
Cap-Vert	2 472	Autriche	757
Bosnie-Herzégovine	2 261	Bulgarie	734
Serbie	2 161	Yougoslavie	665
Danemark	1 964	Slovaquie	612
Suède	1 720	Inde	569
Chine	1 610	Lituanie	530

Source : STATEC (recensement du 1^{er} février 2011)

Main nationalities of non-Luxembourgiens living in Luxembourg
Source: Zahlen – Le Luxembourg 1960-2010, 2012, p. 5.

Fig. 21**Tableau 2. Localisation des groupes selon le type de commune (en %)**

	Luxembourgeois hautement qualifiés (n = 14 198)	Étrangers hautement qualifiés (n = 14 766)	Luxembourgeois moins qualifiés (n = 189 176)	Étrangers européens moins qualifiés (n = 85 115)	Étrangers non-européens moins qualifiés (n = 11 142)
Type de commune					
Rural / pôles secondaires	14,2	6,8	20,4	15,0	14,8
Périurbain éloigné	6,4	5,4	9,6	7,6	5,6
Ancien bassin minier	7,4	3,1	18,1	16,8	16,9
1 ^{ère} couronne	20,3	23,2	11,1	11,9	9,4
2 ^{ème} couronne	18,1	12,9	21,0	14,7	11,7
Ville dense	33,5	48,6	19,8	34,1	41,5
Total	100,0	100,0	100,0	100,0	100,0

(Selon les données à l'échelle individuelle du Statec (1991, 2001))

Location of qualified and non-qualified Luxembourgian residents according to the location
Source: Lord & Gerber – Immigration et intégration, 2009, p. 94, emphasis added.

Fig. 22

Tableau 3. Caractéristiques des modèles résidentiels selon les groupes en 2001

	Luxembourgeois hautement qualifiés (n = 14 198)	Étrangers hautement qualifiés (n = 14 766)	Luxembourgeois moins qualifiés (n = 189 176)	Étrangers européens moins qualifiés (n = 85 115)	Étrangers non-européens moins qualifiés (n = 11 142)
Statut d'occupation					
Propriétaire	82,8%	40,2%	80,9%	49,3%	42,2%
Locataire	11,7%	57,7%	15,6%	47,8%	47,3%
Autre	5,5%	2,1%	3,4%	2,9%	10,5%
Type d'habitation					
Maison unifamiliale	75,7%	51,0%	73,8%	58,6%	52,7%
Immeuble collectif	22,9%	47,6%	22,4%	38,6%	43,0%
Autre	1,3%	1,4%	3,9%	2,8%	4,4%
Modèle résidentiel occupé					
Locataire Maison	4,7%	19,4%	5,8%	19,0%	19,2%
Locataire Appartement	7,0%	38,1%	9,3%	27,5%	28,7%
Propriétaire Maison	68,6%	31,1%	66,8%	39,7%	33,0%
Propriétaire Appartement	14,8%	9,1%	12,1%	9,7%	11,0%
Autres	4,8%	2,3%	5,9%	4,1%	8,0%
Caractéristiques des logements					
Superficie moyenne en m ² (méd)	76,2 (65,0)	60,2 (50,0)	66,0 (55,0)	45,5 (36,3)	33,8 (26,0)
Pièce(s)/personne (méd)	2,9 (2,5)	2,6 (2,0)	3,0 (2,5)	2,1 (1,7)	1,6 (1,25)

Calculs : CEPS /INSTEAD - Données : Statec, 2001.

Characteristics of the residential models according to the groups in 2001
Source: Lord & Gerber – Immigration et intégration, 2009, p. 97, emphasis added.

Fig. 23

1.11 Immigration, emigration and net migration (*1,000)

	1990 ¹			1995 ²			2000			2005			2008 ³		
	I	E	Net	I	E	Net	I	E	Net	I	E	Net	I	E	Net
Austria	na	na	58.6	69.9	66.1	3.8	79.3	62.0	17.3	114.5	70.1	44.4	110.1	75.6	34.5
Belgium ⁴	na	na	30.2	na	na	29.5	na	na	25.1	132.8	86.9	45.9	146.4	91.1	55.3
Bulgaria															
Cyprus	na	na	8.7	na	na	6.0	na	na	4.0						
Czech Republic ⁵	12.4	11.8	0.6	10.5	0.5	10.0	7.8	1.3	6.5	60.3	24.1	36.2	40.0	11.6	28.4
Denmark	40.7	32.4	8.3	63.2	34.6	28.6	52.9	43.4	9.5	52.5	45.9	6.6	67.2	44.9	22.3
Estonia	91.0	na	80	106.2	na	145.1	86.7	na	na	na	na	na	na	na	na
Finland	13.6	6.5	7.1	12.2	9.0	3.3	16.9	14.3	2.6	21.4	12.4	9.0	26.7	12.2	14.5
France	91.0	na	80	106.2	na	145.1	86.7	na	na	na	na	92.2	na	na	71.0
Germany ⁶	1199.0	596.5	602.5	1096.0	698.1	397.9	841.2	674.0	167.2	707.4	628.4	79.0	682.1	737.9	55.7
Greece ⁷	na	na	63.9	na	na	77.3	na	na	29.4	na	na	39.6	74.7	51.5	23.2
Hungary	37.2	11.3	26	14.0	2.4	11.6	20.2	2.2	18.0	25.6	3.3	22.3	35.5	4.2	31.3
Ireland	33.3	56.3	-22.9	31.2	33.1	-1.9	52.6	26.6	26.0						
Italy	173.5	57.1	116.4	100.8	50.1	50.7	236.3	66.8	169.5	440.3	48.7	391.6	279.7	58.4	221.3
Latvia	2.1	15.2	-13.1	2.8	16.5	-13.7	1.6	7.1	-5.5	0.8	1.0	-0.2	1.5	2.6	-1.1
Lithuania	14.7	23.6	-8.8	2.0	25.7	-23.7	1.5	21.8	-20.3						
Luxembourg	10.2	6.3	3.9	10.3	5.7	4.6	11.7	8.1	3.6	14.4	8.3	6.1	17.8	10.1	7.7
Malta	2.4	0.4	2	0.6	0.1	0.5	1.1	0.2	1.0	2.1	1.1	1.0	9.0	6.6	2.4
Netherlands	117.4	57.4	60	96.1	63.3	32.8	132.9	61.2	71.7	92.3	83.4	8.9	143.5	90.1	53.4
Poland	2.6	18.4	-15.8	8.1	26.3	-18.2	7.3	27.0	-19.7	11.3	11.6	-0.3	11.0	11.4	-0.4
Portugal ⁸	na	na	-39	na	na	22.0	na	na	47.0				na	na	3.1
Romania	0.0	4.2	-4.2	0.2	1.1	-0.9	0.5	0.7	-0.2	0.2	0.5	-0.3	0.5	0.4	-0.1
Slovak Republic	0.9	0.8	0.1	3.0	0.2	2.8	2.3	0.8	1.5	5.2	1.8	3.4	8.7	1.7	7.0
Slovenia	7.1	4.9	2.2	5.9	3.4	2.5	6.2	3.6	2.6						
Spain ⁹	44.2	34.0	10.2	36.1	9.5	26.6	362.5	7.7	354.8	755.9	8.2	747.7	726.0	266.5	459.5
Sweden	60.0	25.2	34.8	45.9	34.0	11.9	58.7	34.1	24.6	65.2	38.1	27.1	102.3	39.2	63.1
United Kingdom ¹⁰	na	na	36	311.9	236.5	75.4	483.4	320.7	162.8	567.0	361.0	206.0	590.0	427.0	163.0

Net migration (Net) = Immigrants (I) - Emigrants (E)

“Immigration, emigration and net migration”
Source: Dol & Haffner (eds.) – Housing Statistics in the EU, 2010, p. 37, emphasis added.

1.3 Current situation

- Give an overview of the current situation.
 - In particular: What is the number of dwellings? How many of them are rented vs. owner-occupied? What would be the normal tenure structure ? What is the most recent year of information on this?

According to the last available RGP⁴³, there were 130,091 residential buildings and 208,565 private households in the Grand Duchy of Luxembourg in 2011⁴⁴.

Owner-occupied dwellings were clearly predominant: they corresponded to 69.0% of the dwellings, whereas only 28.3% were tenant-occupied⁴⁵.

The percentage of owner-occupied dwellings has been growing since the 1960s⁴⁶, and in 2001 it had already reached almost 70% of the housing stock⁴⁷. The percentage of home-ownership is, however, not uniformly distributed across the country, as most of the owners live outside the city centre⁴⁸. It varies also according to the nationality – the percentage of ownership is higher for Luxembourgiens (84.5%) and Montenegrins (82.4%)⁴⁹ – and according to age⁵⁰. Indeed, being an owner in Luxembourg is more frequent when one is under 24 years old (at this age people usually live with their parents in their owned-occupied dwelling) and when one is over 30 and purchases a house to accommodate his or her growing family. When people are about 80 years old, they generally either move in with their children or they move, instead, to retirement homes. The percentage of ownership is thus lower for this age group.

⁴³ The Luxembourg electoral law (*loi coordonnée du 18.02.2003*, with modifications inserted on 06.03.2009, available on <http://www.legilux.public.lu/leg/a/archives/2011/0031/a031.pdf>, last retrieved: 15.05.2014, together with the Regulation (EC) No. 763/2008 of the European Parliament and of the Council of 9 July 2008 on population and housing censuses, available on <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:218:0014:0020:EN:PDF>, last retrieved: 15.05.2014 -, provides that every ten years the National Institute of Statistics and Economic Studies of the Grand Duchy of Luxembourg (*Institut national de la statistique et des études économiques du Grand-Duché du Luxembourg*, STATEC) shall conduct a general census (*Récensement General de la Population*, RGP) of the population. Besides the general data (name, address, employment, etc.) of every person in the household, the census 2011 also identifies, among others, the use of languages, migratory routes, means of transport and home appliances. The data allow both municipalities and State to plan the future needs for public infrastructures. The last census took place in February 2011, and it was the 36th census since 1839, the date of Luxembourg's independence. See, for further developments, the website of the Luxembourg census, available on <http://www.statistiques.public.lu/fr/enquetes/espace-menages/recensement/index.html>, last retrieved: 15.05.2014.

⁴⁴ STATEC – Le logement, 2013, p. 1. See fig. 24 (Total number of occupied dwellings).

⁴⁵ STATEC – Le logement, 2013, pp. 1 and 3.

⁴⁶ See fig. 27 (“Size of owner-occupier sector in EC countries, 1950-90, in percentages”).

⁴⁷ Lord & Gerber – Immigration et intégration, 2009, p. 89, emphasis added. According to the CEPS/Instead, the condominiums are included within the owner-occupied dwellings.

⁴⁸ STATEC – Le logement, 2013, p. 3. See fig. 26 (Percentage of ownership per municipality (per household)).

⁴⁹ See fig. 25 (“Housing status by citizenship (individuals)”).

⁵⁰ See fig. 28 (“Housing situation by age (individuals)”).

Finally, the proportion of ownership is higher among larger households (four, five, six, or more members)⁵¹.

Among tenant-occupied dwellings, 79.9% (i.e., 22.6% of the whole housing stock) are unfurnished dwellings. Only 2.7% of the dwellings are occupied gratuitously, while a mere 0.8% is subleased. The remaining 0.5% of the dwellings corresponds to households who live in hotels or guesthouses⁵².

The single-family dwelling is the owners' preferred type of residence building, representing 83.5% of the whole housing stock⁵³. Within this type of dwelling, isolated dwellings predominate (37.9%). After isolated dwellings, the preference of the owners goes for semi-detached single-family dwellings (25.0%) and townhouses (20.6%). Multi-dwelling buildings represent a mere 12.5% of the whole housing stock; this corresponds to 16,267 dwellings, of which 10,927 are used entirely for residency purposes and 5,340 for commercial activities⁵⁴. The relatively smaller amount of multi-dwelling buildings is in line with the EU tendency⁵⁵.

⁵¹ STATEC – Le logement, 2013, p. 4. See fig. 29 (Housing situation per size of household).

⁵² STATEC – Le logement, 2013, p. 3.

⁵³ STATEC – Le logement, 2013, p. 1.

⁵⁴ STATEC – Le logement, 2013, p. 1.

⁵⁵ Rybkowska & Schneider – Housing conditions in Europe, 2011, p. 10. See fig. 24 (Total number of occupied dwellings) and 30 (“Distribution of the population by dwelling type”).

Fig. 24

Tabelle 1 : Wohngebäude und deren Bewohnerzahl

	Gebäude		Bewohner		Durchschnitt Bewohner /Gebäude
	Absolut	%	Absolut	%	
Bauernhof	2 509	1.9	7 290	1.4	2.9
Alleinstehendes					
Einfamilienhaus	49 321	37.9	141 434	27.6	2.9
Doppelhaushälfte (maison jumelée)	32 586	25.0	97 019	18.9	3.0
Reihenhaus	26 775	20.6	82 371	16.1	3.1
Einzelgebäude (nicht näher bestimmt)	1 968	1.5	5 652	1.1	2.9
Mehrfamilienhaus (nur zu Wohnzwecken)	10 927	8.4	118 927	23.2	10.9
Mehrfamilienhaus (auch gewerblich genutzt) Nicht hauptsächlich zu Wohnzwecken genutztes Gebäude	5 340	4.1	48 605	9.5	9.1
Hotel, Pension	247	0.2	790	0.2	3.2
Internat für Schüler und Studenten	79	0.1	725	0.1	9.2
Wohnheim für Kinder und Jugendliche	7	< 0.0	98	< 0.0	14.0
Wohnheim für Erwachsene	59	< 0.0	544	0.1	9.2
Wohnheim für Obdachlose	61	< 0.0	1 060	0.2	17.4
Alten-, Pflegeheim	7	< 0.0	322	0.1	46.0
Krankeneinrichtung	68	0.1	5 297	1.0	77.9
Religiöse Einrichtung/Kloster	13	< 0.0	232	< 0.0	17.8
Sonstige Gebäude*	30	< 0.0	267	0.1	8.9
Total	94	0.1	1 720	0.2	13.8
Total	130 091	100.0	512 353	100.0	3.9

Quelle : STATEC – RP 2011 ; N.B.: Sonstige Gebäude = Behelfsunterkunft (Bau-, Wohnwagen o.ä.); Kaserne; Gefängnis; Erziehungsanstalt; andere Gebäude

Total number of occupied dwellings
Source: STATEC – Le logement, 2013, p. 1, emphasis added.

Fig 25

Tabelle 5 : Wohnstatus nach Nationalität (Individuen)

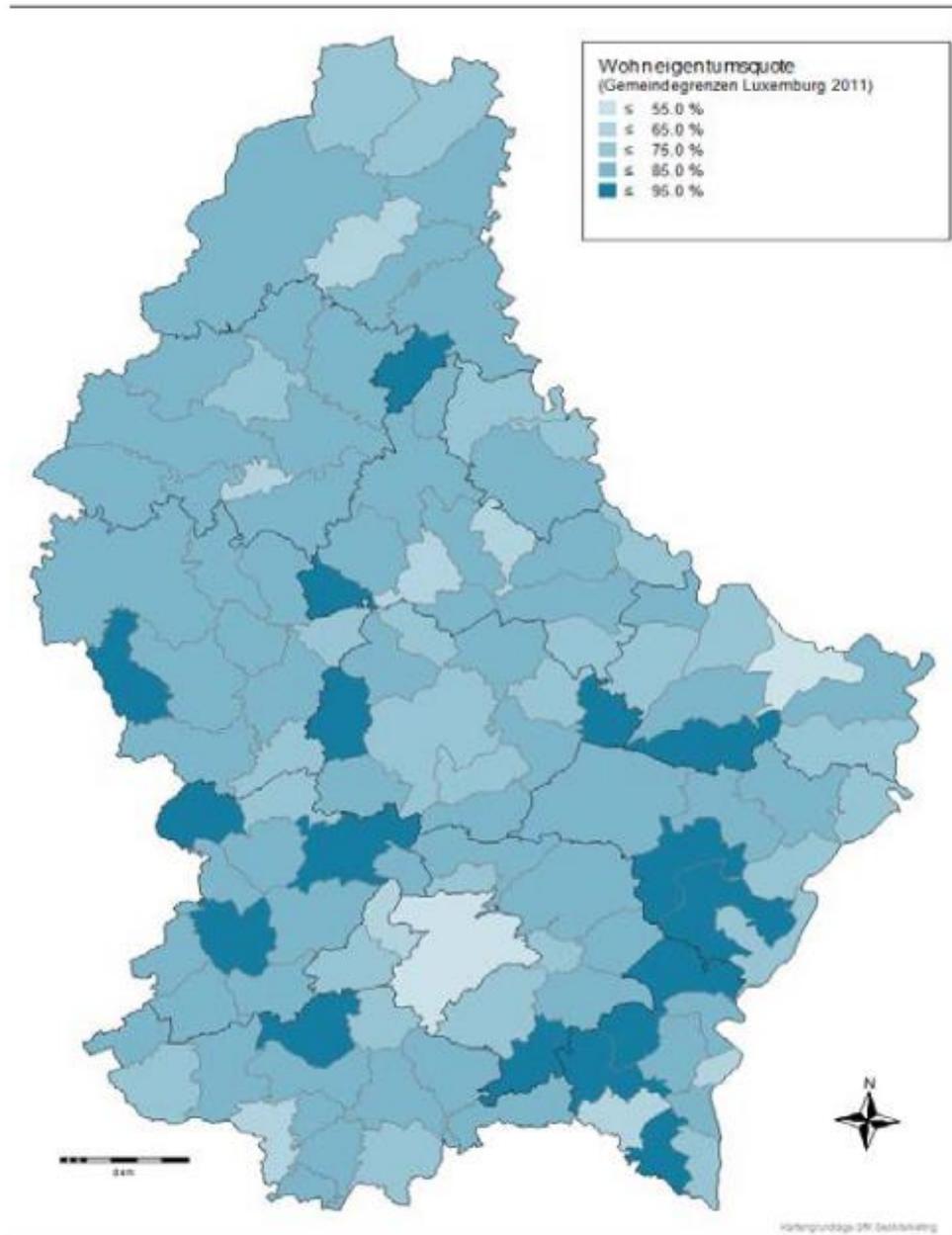
Nationalität	Wohneigentum	Mietfrei	Miete
Luxemburg	84.5%	2.5%	13.0%
Montenegro	82.4%	1.1%	16.5%
Landesdurchschnitt	73.0%	2.1%	24.9%
Italien	71.5%	2.2%	26.3%
Belgien	68.2%	2.2%	29.7%
Vereinigtes Königreich	66.4%	0.6%	33.0%
Spanien	65.5%	1.2%	33.2%
Niederlande	65.5%	1.7%	32.8%
Deutschland	57.9%	2.2%	39.9%
Portugal	54.3%	0.9%	44.8%
Frankreich	53.2%	1.6%	45.3%
andere	46.4%	2.8%	50.8%

Quelle : STATEC - RP 2011

Housing status by citizenship (individuals)
Source: STATEC – Le logement, 2013, p. 3, emphasis added.

Fig. 26

Abbildung 2 : Wohneigentumsquote nach Gemeinden (bezogen auf Haushalte)



Quelle : STATEC - RP2011

Percentage of ownership per municipality (per household)
Source: STATEC – Le logement, 2013, p. 4.

Fig. 27

Table 4. Size of owner-occupied sector in EC countries, 1950–90, in percentages

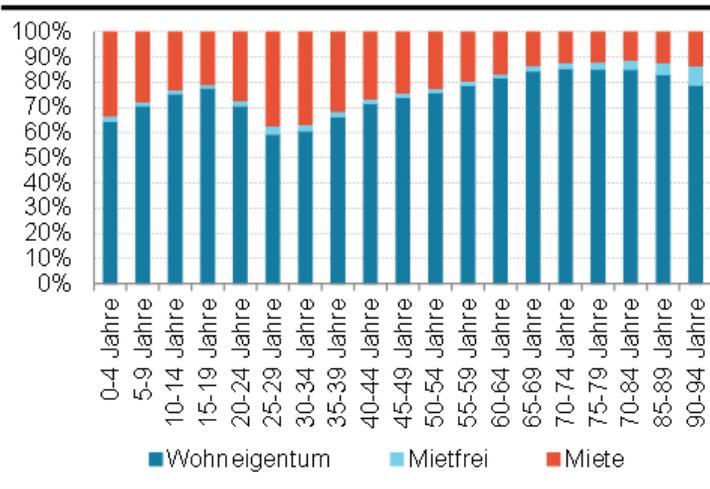
	Around 1950	Around 1960	Around 1970	Around 1980	Around 1990
Greece	–	–	–	71	79
Ireland	–	–	71	73	76
Spain	50	51	64	69	75
Italy	40	46	51	59	68
Luxembourg	–	55	56	59	68
United Kingdom	–	42	50	58	65
Belgium	39	50	54	62	65
Portugal	–	45	48	52	58
France	36	42	45	50	56
Denmark	–	45	47	52	55
The Netherlands	29	30	35	43	45
West Germany	–	35	36	40	42

Sources: Haffner, 1993; Kleinman, 1992.

“Size of owner-occupier sector in EC countries, 1950-90, in percentages”
 Source: Priemus - European housing policies, 1993, p. 238, emphasis added.

Fig. 28

Abbildung 3 : Wohnstatus nach Alter (Individuen)

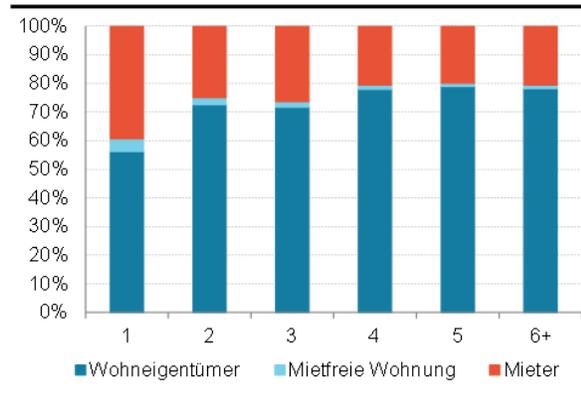


Quelle : STATEC - RP2011

Housing situation by age (individuals)
 Source: STATEC – Le logement, 2013, p. 4.

Fig. 29

Abbildung 4 : Wohnstatus nach Haushaltsgröße

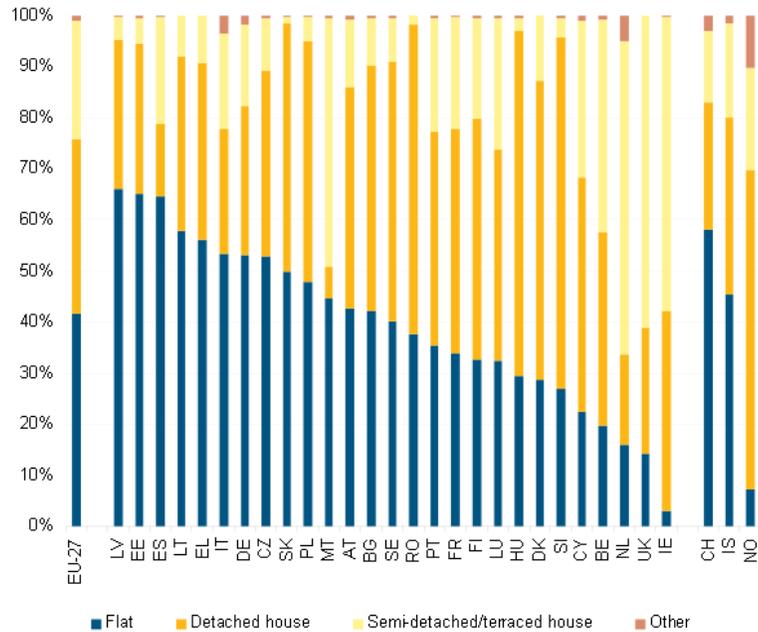


Quelle : STATEC - RP2011

Housing situation by size of household
Source: STATEC – Le logement, 2013, p. 4.

Fig. 30

Figure 7: Distribution of population by dwelling type (% of population), 2009



Source: Eurostat (online data code: [ilc_lvho01](#))

“Distribution of the population by dwelling type”
Source: Rybkowska & Schneider – Housing conditions in Europe, p. 10.

1.4 Types of housing tenures

- Describe the various types of housing tenures.
 - Home ownership
 - How is the financing for the building of homes typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)

In 2011, Luxembourg was one of the five countries that registered the highest growth rate in the residential construction price index in the EU. Still, in the same year, the number of building permits increased 11%⁵⁶, which might have been due to the vast number of options available to prospective homeowners.

Most of the time, prospective homeowners do not have enough financial sources which would allow them to finance, all at once, the dwelling's full price. Although they might have some financial resources resulting from savings, sale of immovables, products resulting from life-insurance plans, gifts (intergenerational aid) or reimbursement of the VAT, this capital (*apport personnel*) always covers a part of the price only. For the average household, only 16% of the value of the main residence is covered by own capital⁵⁷. Therefore, most households resort to a bank loan⁵⁸ (*prêt au logement*) to finance the acquisition of a dwelling or land or for the construction of a dwelling. Here, the *apport personnel* is a requirement and it should represent 15-20% of the total amount of the loan.

Bank loans for the financing of housing are usually long-term loans (*prêts à long terme*), and they are secured by a first mortgage on the immovable (*hypothèque*). The length of the loan is variable; it has been increasing⁵⁹ but it usually does not surpass 25 years. Most of the banks resort to variable interest rates.

According to the European Mortgage Federation, in 2011 the total outstanding residential loans in Luxembourg reached 20,255,000,000 EUR⁶⁰, almost four times as much as in 2000⁶¹. This corresponded to 47.3% of the GDP ratio⁶², a value only slightly lower than the EU average (51.7%). In that same year, the representative interest rates on new mortgage loans were 2.26%⁶³.

⁵⁶ European Mortgage Federation – Hypostat, 2011, p. 49.

⁵⁷ BCL – Bulletin 2013-3, 2013, p. 56.

⁵⁸ See fig. 31 (“Total Outstanding Residential Loans, EUR million”). In 2006, 63% of households were repaying a loan. See Observatoire de l’Habitat - Évolution du Poids des Remboursements, 2008, p. 2. See fig. 32 (“Percentage of the population with arrears on mortgage or rent payments (2010)”).

⁵⁹ The average length of the repayment of loans has passed from 19 years in 1996 to 21 years in 2006 for first-time new buyers. See Observatoire de l’Habitat - Évolution du Poids des Remboursements, 2008, p. 4.

⁶⁰ See fig. 31 “Total Outstanding Residential Loans, EUR million”.

⁶¹ European Mortgage Federation – Hypostat, 2011, p. 49.

⁶² European Mortgage Federation – Hypostat, 2011, pp. 10 and 49.

⁶³ European Mortgage Federation – Hypostat 2011, pp. 40 and 94. For an evolution of interest taxes for mortgages, see Ministry of Housing – Rapport d’activité, 2012, p. 29.

Fig. 31

13. Total Outstanding Residential Loans, EUR million

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Austria	n/a	29,632	35,998	39,746	48,078	53,815	60,737	65,897	72,061	73,455	80,000	83,863
Belgium	69,988	69,240	74,460	81,344	89,414	101,092	114,105	126,383	137,016	151,738	161,723	174,153
Bulgaria	54	79	120	205	510	1,006	1,745	2,868	3,960	4,292	4,453	4,503
Cyprus	584	680	870	1,162	1,487	4,140	5,450	6,989	8,584	10,492	12,033	12,658
Czech Republic	n/a	n/a	1,528	2,419	3,772	6,114	8,140	12,959	16,012	16,975	18,557	20,161
Denmark	117,517	127,406	136,649	147,782	157,079	175,992	194,866	211,381	222,403	231,263	237,313	241,996
Estonia	286	387	593	954	1,500	2,618	4,278	5,568	6,228	6,116	5,971	5,869
Finland	24,308	27,096	30,599	36,047	41,543	48,489	55,307	62,172	67,632	71,860	76,747	81,781
France	305,300	324,600	350,700	385,400	432,300	503,600	577,800	651,900	710,000	737,600	796,600	843,200
Germany	1,097,914	1,122,809	1,139,830	1,156,341	1,157,026	1,162,588	1,183,834	1,155,742	1,145,404	1,146,969	1,152,195	1,163,783
Greece	11,272	15,652	21,225	26,778	34,052	45,420	57,145	69,363	77,700	80,559	80,033	78,393
Hungary	715	1,286	3,262	5,805	7,766	10,608	13,242	17,457	22,629	22,425	24,853	22,719
Ireland	32,546	38,343	47,212	59,621	77,615	99,416	123,988	140,562	148,803	147,947	135,806	130,568
Italy	99,331	109,107	130,166	151,975	184,582	217,329	248,758	271,215	271,326	291,160	352,007	362,409
Latvia	133	220	389	722	1,311	2,486	4,677	6,647	7,135	6,808	6,498	6,020
Lithuania	146	185	337	669	1,259	2,270	2,999	4,853	6,060	6,032	5,983	5,934
Luxembourg	5,494	6,157	6,647	7,830	8,797	10,586	12,018	14,676	15,940	17,077	18,591	20,255
Malta	337	768	878	1,030	1,256	1,522	1,775	2,021	2,228	2,472	2,684	2,893
Netherlands	285,252	327,045	373,198	400,153	433,383	480,191	511,156	544,697	588,552	613,877	626,580	639,558
Poland	3,968	5,764	7,061	8,693	9,642	14,646	22,795	35,966	56,539	56,630	67,669	72,501
Portugal	50,735	57,365	64,838	66,425	71,101	79,452	91,896	101,094	105,209	110,685	114,515	113,926
Romania	n/a	n/a	n/a	n/a	294	766	2,176	3,932	5,199	5,718	6,800	7,600
Slovakia	n/a	n/a	1,011	1,415	2,196	3,078	4,212	6,773	8,536	9,469	10,849	11,751
Slovenia	65	99	201	263	800	1,368	1,956	2,670	3,398	3,933	4,844	5,164
Spain	188,165	220,913	261,921	312,916	384,631	475,571	571,803	646,676	674,434	678,872	680,208	666,946
Sweden	118,828	115,918	124,159	133,794	163,905	174,974	203,085	221,434	219,111	236,167	283,845	302,457
UK	894,105	952,408	1,061,408	1,110,477	1,262,443	1,422,172	1,602,576	1,745,907	1,459,856	1,372,861	1,442,453	1,453,859
EU27	3,307,043	3,553,159	3,875,260	4,139,964	4,577,743	5,101,309	5,682,520	6,137,803	6,061,955	6,113,451	6,410,285	6,534,919
Iceland	5,333	5,233	5,759	6,412	7,551	10,553	9,828	17,710	n/a	n/a	n/a	n/a
Norway	71,416	80,370	97,129	103,460	110,967	135,287	154,937	173,954	186,577	206,491	216,379	239,313
Russia	n/a	n/a	n/a	n/a	600	1,548	6,825	17,124	29,760	23,199	27,071	35,152
Turkey	n/a	n/a	320	464	1,481	7,772	12,929	18,142	20,593	20,624	30,435	31,894
Ukraine	n/a	n/a	n/a	n/a	n/a	1,787	4,101	7,716	10,133	9,148	8,778	7,005
USA	6,344,121	6,811,698	6,900,440	6,569,050	6,850,428	8,468,782	8,664,701	8,256,662	9,035,508	7,990,104	8,366,856	8,242,397

Sources: European Mortgage Federation National Experts, European Central Bank, National Central Banks, Federal Reserve

“Total Outstanding Residential Loans, EUR million”
Source: European Mortgage Federation – Hypostat, 2011, p. 89.

According to the last quarterly bulletin of the BCL, about one third of the credits granted by the national banks of Luxembourg were provided to households for the purchase of real estate⁶⁴.

The Luxembourg Household Finance and Consumption Survey revealed that 39% of the households in Luxembourg are burdened with a mortgage debt, against only 23% in average in the Eurozone. This represents a potential risk for Luxembourg banks in the real estate market. Therefore, the Financial Sector Supervisory Commission (*Commission de Surveillance du Secteur Financier*)

⁶⁴ BCL – Bulletin 2013-3, 2013, pp. 47-51.

introduced new prudential standards in 2012 aimed at better framing risk taking in the residential real estate sector⁶⁵.

As for the public aid, there are direct and indirect state aids to those who intend to construct or improve their own dwelling.

As far as direct aids are concerned, the Luxembourg Housing Ministry makes currently available⁶⁶ a vast number of financial subsidies in capital or interest, namely: financial subsidies for construction (*primes de construction*); financial subsidies for architect or engineer fees (*compléments de prime pour frais d'architecte et d'ingénieur-conseil*) and general homebuyer savings subsidies (*aides d'épargne-logement généralisées*)⁶⁷.

As for indirect state aids, the National Company for Affordable Housing (*Société Nationale des Habitations à Bon Marché*, hereinafter SNHBM) and the Fund for the Development of Housing and Habitat (*Fonds pour le développement du logement et de l'habitat*, hereinafter *Fonds du Logement*)⁶⁸, both public housing developers, are subsidized by the State, which assumes between 70 and 100% of the construction price⁶⁹.

- **Restituted and privatized ownership in Eastern Europe**

This is not applicable in Luxembourg.

- **Intermediate tenures:**

- **Are there intermediate forms of tenure classified between ownership and renting? e.g.**

- **Condominiums (if existing: different regulatory types of condominiums)**

Extensive construction of condominiums (*propriété en indivision, copropriété*) has been taking place in Luxembourg since the mid-1980s and, nowadays, they are a very widespread form of tenure.

The regulation of this legal matrix dates back from the 1970s (Law 16 May 1975) and – as happened for many other legal regimes – the Luxembourg legislator was largely inspired by French law, in particular by Law 10 July 1965 and the Decree-law 17 March 1967 on the legal regime on condominiums.

According to Art. 1 of the coordinated Law 16 May 1975, the legal regime of condominiums applies to every immovable or group of immovables whose ownership is divided into lots and shared among several persons. In a building with several apartments, each apartment, together with the respective basement

⁶⁵ BCL – Bulletin 2013-3, 2013, p. 51.

⁶⁶ It is foreseen that some aids will be abolished or exchanged in the near future.

⁶⁷ For further developments, see *infra*, “Subsidization”.

⁶⁸ See <http://www.fondsdulogement.lu> (last retrieved: 15.05.2014).

⁶⁹ For further developments, see *infra* “How is the financing for the building of rental housing typically arranged?”.

and/or garage and/or parking place, represents a “lot” which can be owned by different owners: for example, a *société civile immobilière* (real estate company, SCI) can own an apartment, several apartments or even the whole building). The notion of ‘lot’ is the key element of the legal structure of the condominium. Besides the lots, there are the “*parties communes*” or common areas (e.g. corridor, stairs, roof, swimming pool, garden, etc.)⁷⁰, which are also owned by each of the owners of the lots, but in shares. Each building regulated by the legal regime of condominium has its own private “regulation” (*règlement de copropriété*), which includes rules on the functioning of the particular condominium.

A building which is regulated by the legal regime of condominium has a management body which is composed by the group of co-owners. The co-owner has different rights concerning the lots and the common parts. As for the first, the co-owner benefits from an exclusive and practically unlimited right to ownership and enjoyment; as for the second, the co-owner must share the respective co-ownership and enjoyment with the peers and holders of other rights over the dwelling (namely, tenants)⁷¹.

There are a few restrictions imposed on co-owners justified by the fact that they live in a building with other co-owners. Art. 2 reads that ‘the co-owner can dispose of the respective lot and burden it with rights *in rem* even before any accommodation or construction. The co-owner uses and enjoys freely both the particular and the common parts *under the condition of not infringing the rights of other co-owners nor disrespecting the destination of the immovable*’ (emphasis added). Art. 5 goes further providing that the co-owner cannot sell or purchase particular parts without the common parts and the rights which are accessory to them and vice versa⁷².

However, property right of co-owners concerning the particular parts is fundamentally identical to the immovable property right of single owners and could, thus, hardly be characterized as an intermediate tenure. As previously mentioned, for statistical purposes condominiums are included among the owner-occupied dwellings.

Joint ownership, either independent for possession by an SCI or by several physical persons, is still a form of ownership and not an intermediate tenure.

- **Company law schemes: tenants buying shares of housing companies**

In Luxembourg, every entity with legal personality may buy, own or sell housing companies’ shares. One example are the SCIs.

These consist of real estate civil businesses, i.e., businesses integrated by people and which, in the absence of a specific regime, are regulated by the general rules of the CC. The SCIs are companies aimed at creating or owning property and saving part of the imposition or taxes. Even though they are subject

⁷⁰ Krieger – La copropriété, 2011, p. 25.

⁷¹ Krieger – La copropriété, 2011, p. 31.

⁷² Krieger – La copropriété, 2011, p. 87.

to a classic tax regime, they consist of a very flexible legal instrument. They are used for management of private (family) real estate, particularly for successions⁷³, management of condominiums⁷⁴ and management of the real estate of enterprises⁷⁵.

Every person can sell immovable property to a society, including when that person is one of the SCI's partners: it consists of the so-called "sale to oneself" (*vente à soi-même*). An exception is made, however, in the case where this transference is used by a debtor to fraudulently transfer the respective assets to avoid losing them through an execution procedure (*fraude paulienne*)⁷⁶.

There are other legal matrixes that could be envisaged as "intermediate tenures".

The **long leasehold** (*bail emphytéotique*) and the **surface right** (*droit de superficie*) were introduced in 1824 by the *Loi du 10 janvier concernant de droit d'emphytéose* and the *Loi du 10 janvier 1824 sur le droit de superficie*, which have been abolished and replaced by the provisions of the Law 22 October 2008⁷⁷ (the so-called Law *Pacte Logement*). They limit the basic investment necessary for construction, given that the land is financed in the end through the payment of an annual royalty⁷⁸.

Art. 13-1 of the Law 22 October 2008 defines 'emphytéose' as a right *in rem* which consists in having the full enjoyment of an immovable, through the payment of a charge to the owner and the long-term leaseholder (*emphytéote*) according to the constitutive title. Art. 13-6 provides that 'the long-term leaseholder exercises every right connected to ownership of the immovable without ever being authorized to decrease its value'. The same article reads, in para. 5, that the long-term leaseholder may alienate the respective right and subject it to easements (*servitudes*), improve the immovable through constructions (para. 6) and that the same is obliged to maintain the immovable (para. 7). At the time that this right *in rem* expires, every construction belongs to the owner without compensation, unless the contract provides otherwise⁷⁹.

The surface right (*droit de superficie*) is defined by Art. 14-1 as 'a right in rem conferred by the owner of an immovable to its holder (*superficiaire*)], through the payment of a financial contribution to be agreed upon between owner and holder, pursuant to a constitutive title, which authorizes the latter to build constructions which will belong to the same until the expiry of the surface right'. This special rule derogated Art. 552 of the Luxembourg *Code Civil* (hereinafter, CC). The rights and obligations of the holder are provided for in Arts 14-5 to 14-9 of the Law 22 October 2008. Similar to the long-term leaseholder in the long leasehold, the holder of the immovable 'disposes fully, in the respective quality of owner, of constructions made by him during the length of the surface right' (Art. 14-6). The constructed buildings belong to the owner, but he or she, contrary to

⁷³ See, in the French scholarship Cozian, Viandier & Deboissy – Droit des sociétés, 2011, p. 623.

⁷⁴ See previous sub-section.

⁷⁵ See *La Voix*, 2009, p. 24.

⁷⁶ Cozian, Viandier & Deboissy – Droit des sociétés, 2011, p. 627.

⁷⁷ Published in *Mémorial* (No. 159), 27 October 2008.

⁷⁸ In http://www.gouvernement.lu/dossiers/logement/pacte_logement/ (last retrieved: 31.05.2013).

⁷⁹ In http://www.gouvernement.lu/dossiers/logement/pacte_logement/ (last retrieved: 31.05.2013).

what happens in the long leasehold, must pay the current value of the constructions to the owner⁸⁰.

Both a long leaseholder and a holder of a surface right must bear the taxes on the immovable; however, they benefit from a right of pre-emption (*droit de préemption*) in case the owner of the land intends to sell it (Arts 3 to 12 of the Law 22 October 2008).⁸¹

The public promoter Housing Fund⁸² has been resorting to these two rights *in rem*: it remains owner of the land where the house is built, and the acquirer will have a long leasehold right or a surface right over the same land. This means that the acquirer will be owner of the construction only, thus not needing to pay the price of the land⁸³.

Both the long leasehold and the surface right are considered forms of lease agreement and not intermediate tenures.

The **lease-sale** (*crédit-bail*), **land piggybacking** (*portage foncier*) and **shares in cooperative housing companies** correspond to measures foreseen by the *Paquet Logement*⁸⁴.

The lease-sale consists of a financial instrument which is aimed at young households that do not have enough resources to purchase a dwelling⁸⁵. Within a lease-sale contract, the household – which is neither tenant nor owner, but rather a *tertium genus* – pays about one-third of its revenues every month. This payment is composed of a ‘rental part’ and of an ‘acquisitive part’. The acquisitive part is transferred, every month and during the whole length of the contract, to a savings account and will serve as instalment for the purchase of the dwelling. The length of the contract and the amount of the acquisitive part are fixed in advance and according to the needs and profile of the household⁸⁶. Due to practical difficulties (e.g., only theoretically is this measure adoptable in Luxembourg in case of public promoters), and albeit it already exists, in a very simple form, in Arts 36 and 37 of the amended RGD 16 November 1998 setting the execution measures concerning rental dwellings, collective subsidies and immovable transferred on the grounds of an emphytheusis right and surface right provided for by amended Law 25 February 1979 concerning subsidies to housing, hereinafter, RGD 16 November 1998, this measure never really gave rise to positive outcomes.

Land piggybacking is also aimed at reducing the monthly burden of young households who intend to purchase a dwelling. It provides for the acquisition of a dwelling in two stages. Initially, the household deals exclusively with the costs of reimbursement of the dwelling; the cost of land is supported by a third. On the second stage – which starts when the household finishes reimbursing the costs of

⁸⁰ In http://www.gouvernement.lu/dossiers/logement/pacte_logement/ (last retrieved: 31.05.2013).

⁸¹ In <http://www.pacte-logement.lu/IMG/pdf/flyer.pdf> (last retrieved: 15.05.2014).

⁸² For further developments, see *infra* “Regulatory types of tenures with a public task”.

⁸³ In <http://www.fondsdulogement.lu> (last retrieved: 15.05.2014).

⁸⁴ In http://www.gouvernement.lu/salle_presse/actualite/2011/04-avril/08-schank/ (last retrieved: 15.05.2014). The *Paquet Logement* was presented by the Housing Minister and approved by the Government Council, but due to the lack of housing, not every measure was effectively implemented, as one will see throughout this report.

⁸⁵ Ministry of Housing – Le guide de la construction, 2012, p. 47.

⁸⁶ <http://www.athome.lu/services/conseils/2011/04/14/le-paquet-logement-21-mesures-pour-ameliorer-le-logement-2/> (last retrieved: 15.05.2014).

the dwelling – the household starts paying the land⁸⁷; after the land is paid, the household becomes full-owner of the dwelling.

Any of these forms of tenure could be envisaged as an intermediate tenure, but it seems that, on the one hand, the lease-sale is closer to a lease agreement and, on the other hand, land piggybacking can be envisaged as a form of ownership.

▪ Cooperatives

So far, no cooperative housing sector exists⁸⁸. However, since the presentation of the *Paquet Logement*, the Housing Ministry wants to give natural persons who wish to become owners the possibility of participating in a cooperative (e.g. *Baugruppen*).

Cooperative housing companies are allowed to act in the market in the same way a property developer does. One of the explanations for this change is related to the fact that, since the international real estate market crisis of 2008, and taking into account the investor-friendly Luxembourg tax policy, it became financially appealing to create SCI companies and invest abroad through these legal schemes.

Through these legal entities, members of such cooperatives are permitted to purchase the land, to use it and to construct their homes there. It is foreseen that these entities shall, in a near future, benefit from the same state aids that public and private promoters benefit from⁸⁹.

The so-called *rente viagère* (life interest in property, *Leibrente*) (Art. 1968 CC) should also be mentioned. Here, an immovable is sold to a person at a low price. This price is divided into a low capital payment and a capital amount which shall be paid every month (*rente viagère*) until the death of the seller. The seller maintains the right to live in the dwelling after signing the contract, but this right lasts only for as long as that person lives and is not transferable. The nature of this right of possession (namely, whether it is a real right or a personal right) is disputed. When the seller dies, the purchaser becomes the owner of the immovable. The right of the new owner is likewise not transferable.

This agreement may still be characterized as an ownership agreement, instead of an intermediate tenure, because upon the death of the seller the purchaser becomes the owner of the real estate.

There is also a specific case of **co-ownership** that concerns inheritance or donation *inter vivos*. According to this legal matrix, *abusus* and *fructus* of the immovable are provided to two different persons: one will be in possession of the

⁸⁷ Ministry of Housing – Le guide de la construction, 2012, p. 48.

⁸⁸ Dol & Haffner (eds.) – Housing Statistics in the EU, 2010, p. 64; Pittini – Housing Affordability in the EU, 2012, p. 6. See fig. 33 (“Tenure Split in the 27 EU Member States as a Percentage of the Total Housing Stock”).

⁸⁹ <http://www.athome.lu/services/conseils/2011/04/14/le-paquet-logement-21-mesures-pour-ameliorer-le-logement-2/> (last retrieved: 15.05.2014); Ministry of Housing – Le guide de la construction, 2012, p. 48. The biggest public promoters are: the municipalities (or associations of municipalities), the SNHBM and the *Fonds du Logement*. Other promoters are, e.g., the Fund of sanitation of the city of Syrdall (*Fonds d'assainissement de La Cité Syrdall*), non-profit associations and foundations (Ministry of Housing – Le guide de la construction, 2012, p. 9).

dwelling itself, the other will have the right to live in the building. This legal figure is regulated in Arts 587 ff. CC and seems to be closer to a form of ownership than to an intermediate tenure.

The only scheme which could be better framed within the category of “intermediate tenure” is **employment housing** (*logement de service*). Employment housing ‘is provided, also gratuitously, to a person solely due to the respective employment contract’ (Art. 12, 4 LBUH and Art. 24 of the amended Law providing for the treatment of public officers⁹⁰). Case law has also been considering it as a ‘*sui generis* rental agreement’⁹¹.

- **Rental tenures**

- **Are rental tenures with and without a public task distinguished? If so, how are they called and what is their share in the housing stock?**

In Luxembourg, housing with a public task (*logements sociaux*) consists mostly of dwellings provided both for rent and for sale to people with low income⁹². There is also a subject-based subsidization, but it is clearly less representative than the object-based subsidization⁹³.

The dwellings with a public task provided by public promoters have good housing quality. However, the social housing park of Luxembourg is very recent and very small⁹⁴: it represents only 2% of the total housing stock⁹⁵ in the country, being thus considered a mere residual housing system⁹⁶.

⁹⁰ *Loi modifiée du 22 juin 1963 fixant le traitement des fonctionnaires de l'Etat* http://www.legilux.public.lu/leg/textescoordonnes/compilation/code_administratif/VOL_6/FONCTIONNAIRES/B_TRAITEMENTS.pdf, 47 (last retrieved 15.05.2014).

⁹¹ Tr.Arr.Lux. 14 March 1991, no. 49/91; J.P.Esch, 30 May 1990, no. 791/90. For further developments, see *infra* “Apartments made available by employer at special conditions”. See also Luxembourg Ministry of Housing, “Le guide de la construction 2012/2013”, 2012, 48.

⁹² CECODHAS – Housing Europe Review, 2012, p. 62.

⁹³ See fig. 35 (No. of social tenants who have a personalized subsidy for housing).

⁹⁴ Thorpe – *Le rôle du logement*, 2008, p. 28; BIPE – *Les politiques publiques*, 2000, p. 19; Andrews; Caldera Sánchez & Johansson – *Housing Markets*, 2011, p. 16.

⁹⁵ See fig 34 (“Social housing in the EU”). It shall be noted that the reason why in fig. 36 the percentage is 4% is related to the fact that dwellings rented by employers to some of the employees (banks or companies renting to accommodate the respective employees), but also the cases of “*logements de service*” (e.g. *conciierge* dwellings) are included.

⁹⁶ Lord & Gerber – *Immigration et intégration*, 2009, p. 39.

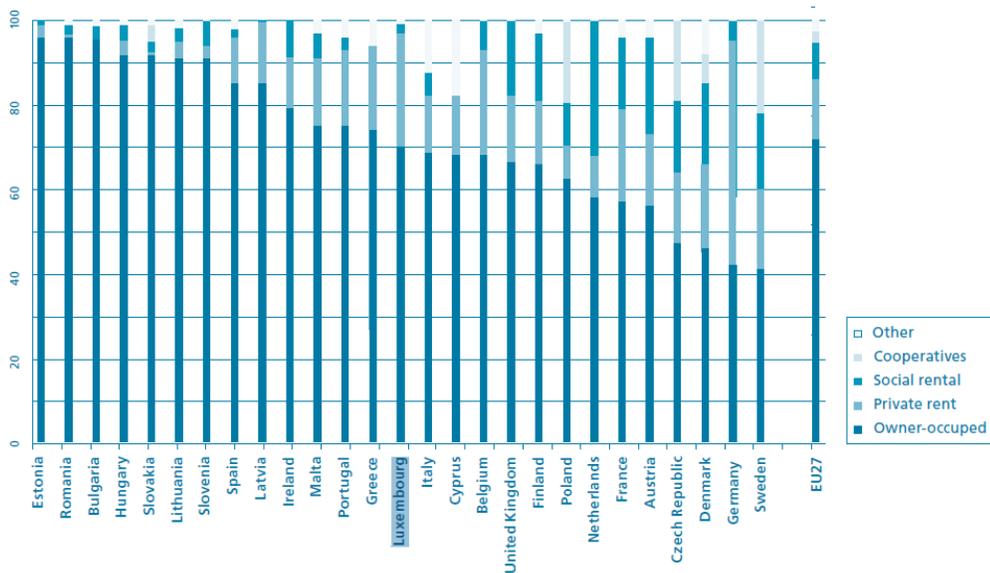
Fig. 32

<i>En milliers</i>	Nombre de logements sociaux	% du parc total de logements
Allemagne	2 460	6%
Autriche	756	20%
Belgique	266	7%
Danemark	500	20%
Espagne	120	1%
Finlande	350	14%
France	HLM : 3 700 / SEM : 434	14%
Grèce	0	0%
Irlande	100	8%
Italie	900	3%
Luxembourg	4	4%
Pays-Bas	2 370	36%
Portugal	122	3%
Royaume-Uni	5 513	22%
Suède	930	22%
Union Européenne	18 525	11%

Number and percentage of social dwellings
 Source: BIPE – Les politiques publiques, 2000, p. 19 (emphasis added).

Fig. 33

CHART 1: TENURE SPLIT IN THE 27 EU MEMBER STATES AS A PERCENTAGE OF THE TOTAL HOUSING STOCK



Source: Housing statistics in the European Union 2010, updated by national correspondents

“Tenure Split in the 27 EU Member States as a Percentage of the Total Housing Stock”
 Source: CECODHAS – Housing Europe Review, 2012, p. 62, emphasis added.

Fig. 34

TABLE 4 SOCIAL HOUSING STOCK IN THE EU				
COUNTRIES	SOCIAL RENTAL STOCK AS % OF TOTAL HOUSING STOCK	SOCIAL RENTAL STOCK AS % OF RENTAL STOCK	NUMBER OF SOCIAL RENTAL DWELLINGS PER 1000 INHABITANTS	SOCIAL HOUSING AS % OF NEW COMPLETIONS
Austria	23	56	100	27.5
Belgium	7	24	32	6
Bulgaria	3.1	na	na	na
Cyprus	0	na	na	na
Czech Republic	17	na	na	na
Denmark	19	51	95	22
Estonia	1	25	5	na
Finland	16	53	85	13
France	17	44	86.5	12
Germany	4.6	7.8	22.6	15
Greece	0	0	0	1
Hungary	3.7	53	15.9	na
Ireland	8.7	41	na	7
Italy	5.3	28	29	na
Latvia	0.4	2.5	na	1
Lithuania	3	43	11.7	na
Luxembourg	2	7	7.8	na
Malta	6	na	na	na
Netherlands	32	75	138	19
Poland	10	64	34.9	5
Portugal	3.3	16	na	na
Romania	2.3	na	8.9	4
Slovakia	2.6	87	8.5	12
Slovenia	6	na	na	na
Spain	2	15	10.9	16
Sweden	18	48	84	13
United Kingdom	18	54	80	na

“Social housing in the EU”

Source: CECODHAS – Housing Europe Review, 2012, p. 24, emphasis added.

Fig. 35

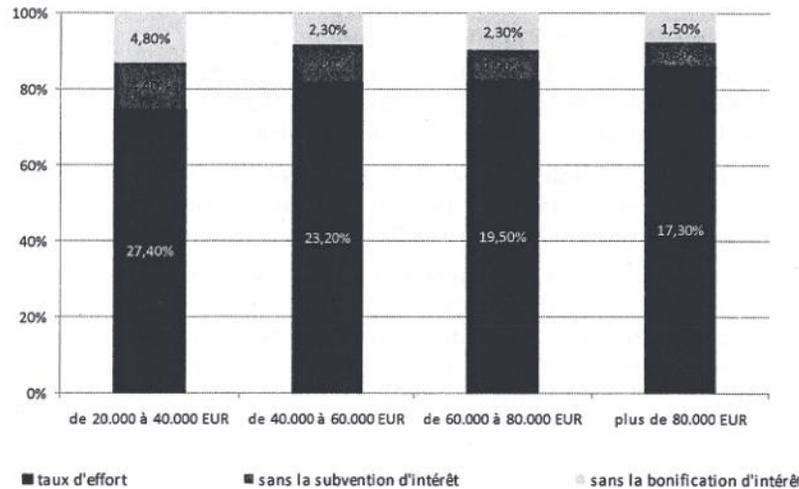
<i>En milliers</i>	Nombre des logements sociaux	Nombre de locataires bénéficiaires d'une aide	%
Allemagne	2 460	575	25%
Autriche	756	100	13%
Belgique	266	NR	NR
Danemark	500	300	60%
Espagne	120	0	0%
Finlande	350	105	30%
France	4 134	2 067	50%
Grèce	0	0	0%
Irlande	100	NR	NR
Italie	900	NR	NR
Luxembourg	4	2	50%
Pays-Bas	2 370	763	32%
Portugal	122	122	100%
Royaume-Uni	5 513	3 859	70%
Suède	930	344	37%
Union Européenne	18 525	8 237	44%

NR : non renseigné

No. of social tenants who have a personalized subsidy for housing
Source: BIPE – Les politiques publiques, 2000, p. 21, emphasis added

Fig. 36

Taux d'effort des ménages bénéficiaires d'une subvention et/ou d'une bonification d'intérêt selon leur revenu disponible annuel net, en % du revenu disponible annuel net des ménages



Source: CEPS/INSTEAD, PSELL/EU-SILC (2007-2008)

Scale of effort of the households receiving subsidies according to their annual net available income in % of the annual net available income of the households

Source: Law Project 6583 on the promotion of sustained housing and habitat, p. 9.

▪ How is the financing for the building of rental housing typically arranged?

As for the private housing market, it is apparent that people who buy dwellings for renting resort to the same types of financing as those who intend to purchase a dwelling for own use. As for the housing market with a public task, however, the financing is dramatically distinct.

Indeed, the State subsidizes the initiative of public or private promoters for low-cost construction of dwellings, provided that at least 10% of the dwellings are aimed at renting (Art. 15 and Art. 17-2 of the amended Law 25 February 1979 concerning housing subsidies).

The financial contribution of the State may go up to 70% of the construction or purchase price⁹⁷ paid by public promoters – in particular, the Housing Fund – of rental dwellings to be occupied by households with modest revenues and senior or handicapped people. In case the public promoter is a municipality and it projects to construct dwellings exclusively for renting, the State can contribute up to 75% of the construction price (Art. 27 Law 25 February 1979). A special case is the construction of buildings aimed at foreign workers, asylum seekers or students, interns, scientists, apprentices, people on on-going

⁹⁷ CECODHAS – Housing Europe Review, 2012, p. 63.

training or experts on temporary missions, where the State can contribute up to 100% of the construction price⁹⁸.

From 1990 to 2011 state subsidization of housing construction (*aides à la pierre*)⁹⁹ reached the 513 million EUR. The CIGDL charged a student of the Luxembourg Business Academy of the University of Luxembourg to create an alternative model of funding the real estate stock by the private sector¹⁰⁰.

- **What is the market share (% of stock) of each type of tenure and what can be said in general on the quality of housing provided? Please consider the following criteria: type of building (single family versus multifamily versus high-rise; plus definition); construction period; number of rooms, number of square metres or average number of rooms or average useful floor area per dwelling and per person, availability of bath/shower, hot running water and/or central heating, etc.)**

In the Luxembourg housing stock, as we have referred, owner-occupied dwellings clearly prevail¹⁰¹.

Single-family dwellings represent 83.5% of the total stock of residential buildings. Multifamily buildings do not surpass 12.5% of the total housing stock in the country¹⁰², although they are more frequent in the southern part of the country¹⁰³, where there are more private households¹⁰⁴.

The division of dwellings is identical among them, and the oldest constructions have approximately the same size.

For a household of four persons, the average surface area available per dwelling is 161.0 m², which corresponds to 40.3 m² per capita. The average dwelling contains 1.9 rooms per capita, slightly over the OECD average (1.6 rooms)¹⁰⁵.

⁹⁸ Ministry of Housing – Le guide de la construction, 2012, p. 27.

⁹⁹ This includes financial aid for constructing buildings both for sale and for renting. It also includes the creation of building lots (Ministry of Housing – Le guide de la construction, 2012, p. 27).

¹⁰⁰ Poujol - Le juste prix, 2012.

¹⁰¹ See *supra* “1.3. Current situation”.

¹⁰² See fig. 37 (Dwellings and inhabitants).

¹⁰³ Figs 44 (Types of residential buildings and regional distribution (I)) and 46 (Types of residential buildings and regional distribution (II)).

¹⁰⁴ Private households per region, 1981-2001.

¹⁰⁵ Cf. <http://oecdbetterlifeindex.org/countries/Luxembourg> (last retrieved: 15.05.2014).

Fig. 37

Tableau 1 : Immeubles et habitants

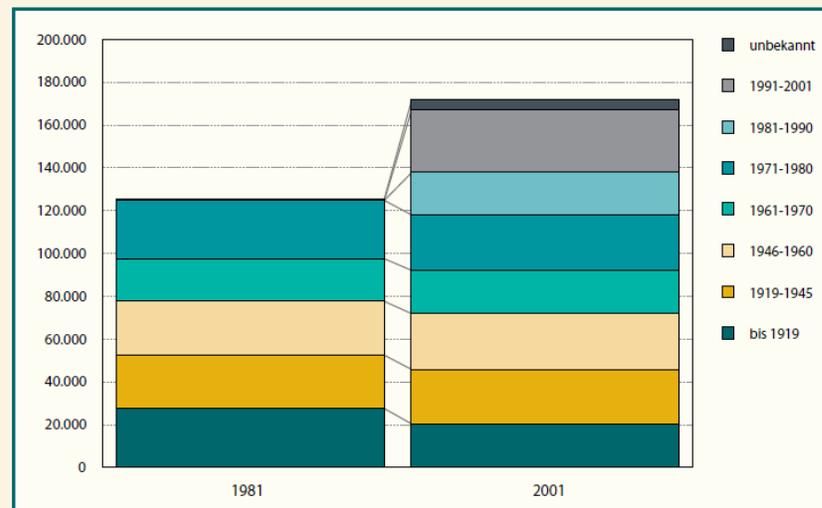
	Immeubles		Habitants		Moyenne habitants /immeuble
	Nombre	%	Nombre	%	
Ferme, bâtiment agricole	2 509	1.9	7 290	1.4	2.9
Maison isolée (4 façades)	49 321	37.9	141 434	27.6	2.9
Maison jumelée (3 façades)	32 586	25.0	97 019	18.9	3.0
Maison en rangée (2 façades)	26 775	20.6	82 371	16.1	3.1
Autres maison individuelle	1 968	1.5	5 652	1.1	2.9
Immeuble collectif entièrement destiné à l'habitation	10 927	8.4	118 927	23.2	10.9
Immeuble collectif à usage mixte	5 340	4.1	48 605	9.5	9.1
Immeuble collectif principalement à usage non résidentiel	247	0.2	790	0.2	3.2
Hôtel, pension de famille	79	0.1	725	0.1	9.2
Internat pour élèves et étudiants	7	< 0.0	98	< 0.0	14.0
Foyer pour enfants et jeunes gens	59	< 0.0	544	0.1	9.2
Foyer pour adultes	61	< 0.0	1 060	0.2	17.4
Foyer pour sans-abris	7	< 0.0	322	0.1	46.0
Maison de retraite, maison de soins	68	0.1	5 297	1.0	77.9
Institution pour malades	13	< 0.0	232	< 0.0	17.8
Institution religieuse	30	< 0.0	267	0.1	8.9
Autres immeubles*	94	0.1	1 720	0.2	13.8
Total	130 091	100.0	512 353	100.0	3.9

Source : STATEC – RP 2011 ; N.B.: Autres immeubles = habitations de fortune, casernes, prisons

Dwellings and inhabitants
Source: STATEC – Le logement, 2013, p. 1.

Fig. 38

Abb 2.11 Privathaushalte nach Bauperiode der Wohnung, 1981 und 2001



Quelle: STATEC

Private households per period of construction of dwelling, 1981 and 2001
Source: Ministry of Housing - Wohnungsbedarfprognose, 2008, p. 17.

More than 50,000 dwellings were rebuilt between 1981 and 2001. This corresponds to 40% of the total housing stock in 1981¹⁰⁶.

11.5% of the current total housing stock is composed of buildings which were constructed between 2001 and 2011. Most of them (21.2%) concern exclusively residential multifamily buildings (*immeuble collectif entièrement destiné à l'habitation*)¹⁰⁷.

Fig. 39

Tableau 2 : Année de construction de l'immeuble d'habitation

Année de construction	Total	Maison isolée	Maison jumelée	Maison en rangée	Immeuble collectif entièrement destiné à l'habitation
avant 1919	13.6%	9.0%	13.8%	18.3%	7.0%
1919-1945	15.1%	5.9%	16.7%	30.3%	11.5%
1946-1960	13.5%	8.4%	16.3%	19.3%	14.4%
1961-1970	9.7%	10.0%	10.5%	8.5%	11.6%
1971-1980	12.9%	18.0%	11.8%	7.4%	11.3%
1981-1990	11.1%	18.0%	8.5%	4.5%	7.8%
1991-2000	12.5%	19.0%	9.6%	4.8%	15.3%
2001-2010	11.5%	11.7%	12.8%	6.7%	21.2%

Source : STATEC - RP2011

Year of construction of dwelling

Source: STATEC – Le logement, 2013, p. 1.

Residential construction has an important supply function. It also ensures that the housing stock is renewed and that it meets the current living standards, as well as ecological and energy-saving concerns¹⁰⁸.

The housing facilities in Luxembourg are remarkable. As far as the average available living space is concerned, in 2001 40% of the dwellings had a surface area superior to 132m² and only 20% of the dwellings had a surface area smaller than 80m².¹⁰⁹ Only in the Centre-South of the country are surface areas smaller; this is due to the biggest share of multi-family dwellings¹¹⁰. When we compare Luxembourg to other European countries, we realize that only Germany and the United Kingdom have a higher average surface area per household¹¹¹.

¹⁰⁶ See fig. 38 (Private households per period of construction of dwelling, 1981 and 2001).

¹⁰⁷ See fig. 39 (Year of construction of dwelling).

¹⁰⁸ See *supra* "Historical evolution of the national housing situation and housing policy".

¹⁰⁹ See figs 41 (Inhabitable surface of private household, comparison 1991-2001).

¹¹⁰ See fig. 44 (Types of residential buildings and regional distribution (I)).

¹¹¹ See fig. 40 (Surface of dwelling per household, size of households and surface per capita according to the citizenship the reference person).

Fig. 40

Tableau 2 : Surface de logement par ménage, taille des ménages et surface par tête selon la nationalité de la personne de référence (moyennes)

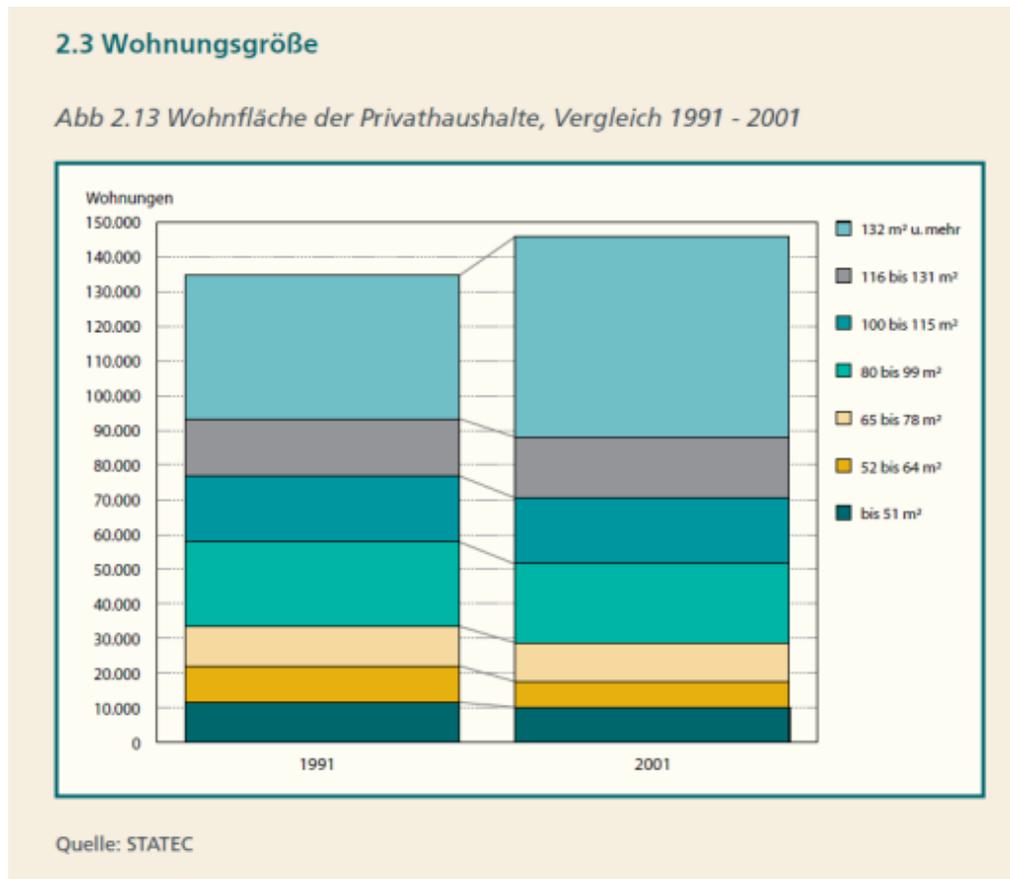
Nationalité	Surface de logement par ménage	Taille moyenne du ménage	Surface par tête
Royaume-Uni	158.7 m ²	2.39	70.2 m ²
Pays-Bas	153.6 m ²	2.43	71.5 m ²
Luxembourg	140.9 m ²	2.32	73.0 m ²
Moyenne du pays	129.9 m²	2.41	64.1 m²
Belgique	128.1 m ²	2.23	63.2 m ²
Allemagne	124.2 m ²	2.10	65.4 m ²
Italie	120.3 m ²	2.30	58.4 m ²
Espagne	120.1 m ²	2.36	54.7 m ²
Monténégro	110.0 m ²	4.25	28.5 m ²
France	109.7 m ²	2.09	54.3 m ²
Autres	106.7 m ²	2.48	45.9 m ²
Portugal	97.9 m ²	3.00	35.4 m ²

Source : STATEC - RP2011

Surface of dwelling per household, size of households and surface per capita according to the citizenship of the reference person

Source: STATEC – Surface et équipement, 2013, p. 4.

Fig. 41



Inhabitable surface of private household, comparison 1991-2001
Source: Ministry of Housing – Wohnungsbedarfprognose, 2008, p. 18.

One can analyse the comfort of the dwellings in Luxembourg through one of two perspectives: a minimalist perspective – i.e., analysing whether the dwelling has a bathroom or an interior WC, running warm water and heating – or a larger perspective, which includes also the quality and environment of housing.

As far as the minimalist perspective is concerned, according to the PSELL 3/03 CEPS survey¹¹² 97% of the dwellings had the required comfort¹¹³. The census 2011 confirms these values¹¹⁴. This number has been increasing to such point that it already surpassed the OECD average of 97.8%¹¹⁵.

Fig. 42

Tableau 4: Équipement des ménages avec le « standard minimum »

WC	99.5 %
Salle de bains	99.1 %
Chauffage central	98.0 %
Standard minimum atteint (WC + sdb + chauff. centr.)	97.0 %

Source : STATEC - RP2011

Equipment of households with “minimum standard”
Source: STATEC – Surface et équipement, 2013, p. 1.

When we take the larger perspective of comfort, we realize that in 2008 only about 43% of the dwellings qualified as ‘comfortable’¹¹⁶. Despite this, in the same year 79% of the households considered that the size of their dwelling was adapted to their needs¹¹⁷. The level of equipment and durable consumable goods (*biens de consommation durables*) is also very satisfactory and reflects the high living standard in the country¹¹⁸.

¹¹² The PSELL-3 (*Panel Socio-Economique Liewen zu Lëtzebuerg*) is an annual survey pursued by CEPS/Instead in collaboration with STATEC. It is elaborated with a sample of about 3500 households (9500 individuals), thus constituting precise estimates concerning the overall population (Lanchy – Le confort des logements, 2010, p. 2).

¹¹³ STATEC – La situation du logement, 2013, p. 1.

¹¹⁴ See fig. 42 (Equipment of households with “minimum standards”).

¹¹⁵ Cf. <http://oecdbetterlifeindex.org/countries/Luxembourg>, last retrieved: 15.05.2014 (Lanchy – Le confort des logements, 2010, p. 1). See figs 52 (“Bath/shower, hot running water and central heating in total dwelling stock (as % of dwelling stock)” and 53 (“Housing quality in European Countries, various years”).

¹¹⁶ Lanchy – Le confort des logements, 2010, p. 1

¹¹⁷ Lanchy – Le confort des logements, 2010, p. 1.

¹¹⁸ See fig. 43 (Equipment of households: durable consumption goods).

Fig 43

Tableau 5 : Équipement des ménages en biens de consommation durables

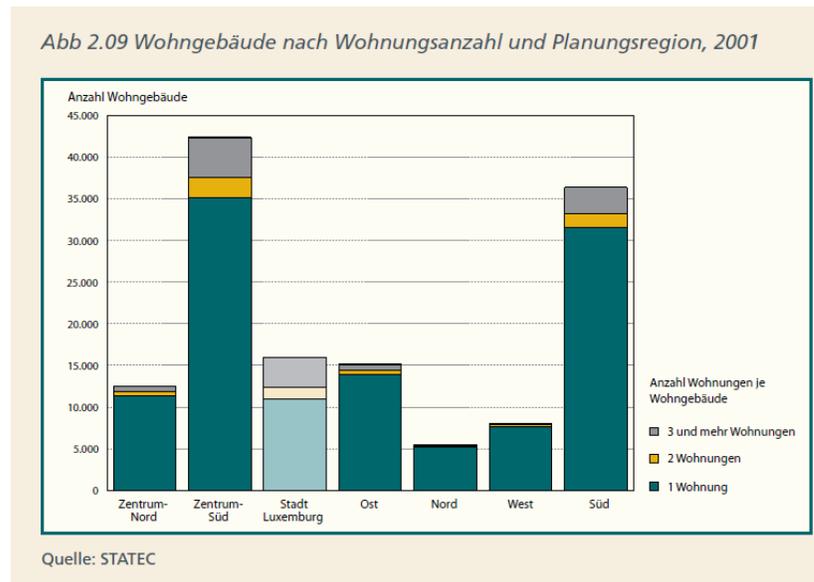
	Taux d'équipement (en %)	Degré d'équipement
Réfrigérateur	98.1	1.21
Télévision	95.8	1.48
Machine à laver	94.9	0.98
Téléphone portable	92.4	1.78
Téléphone fixe	84.1	1.02
Lave-vaisselle	79.2	0.80
Voiture	78.4	1.26
Lecteur DVD	74.8	0.94
Congélateur	73.8	0.83
Sèche-linge	60.4	0.61

Source : STATEC - RP2011

¹ Ce standard est utilisé couramment au niveau européen et a été introduit par Atkinson, T. et al. (2002): Social Indicators – The EU and Social Inclusion, Oxford.

Equipment of households: durable consumption goods
Source: STATEC – Surface et équipement, 2013, p. 4.

Fig. 44

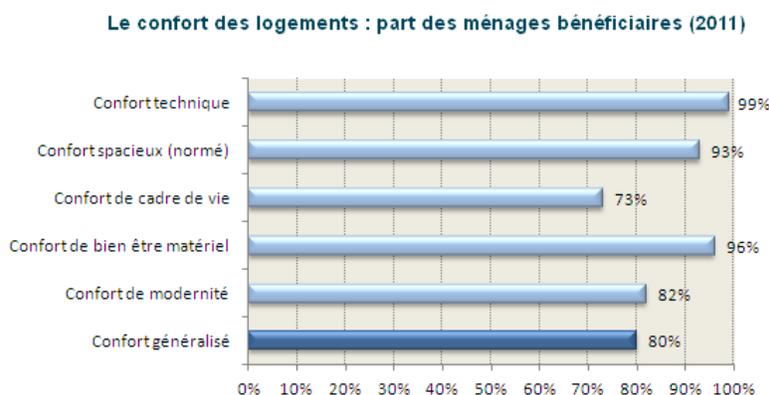


Types of residential buildings and regional distribution (I)
Source: Ministry of Housing – Wohnungsbedarfprognose, 2008, p. 14.

The *Observatoire de l'Habitat* analyses the level of comfort of the dwellings in Luxembourg through six different criteria: technical comfort, spatial comfort, comfort in terms of living environment, material comfort, modern comfort and generalized comfort. It is considered that a dwelling has “technical comfort” when it has, cumulatively: at least an independent bathroom; at least an interior toilet; running hot water and heating. “Spatial comfort” relates to the relationship between the number of persons who integrate the household and the number of

rooms in the dwelling. “Living comfort” exists only when the dwelling does not have any of the following problems: insufficient light; noise from the neighbours or from the street provoking great discomfort; location in a polluted neighbourhood or a neighbourhood with environmental issues caused by traffic or industries or in a neighbourhood with violence, delinquency or vandalism. A dwelling presents “material comfort” when, at the most, one of the following problems is present: on the one hand, a leaky roof, humidity in the walls, soil or foundations, mould in the window frame or doors or, on the other hand, problems of impermeability in the windows or doors. “Modern comfort” implies that there is no dilapidation as far as electrical installation, sanitary installation, windows and interior walls are concerned. Finally, “generalized comfort” exists when the dwelling has, at least, three of the preceding categories of comfort, i.e., technical comfort, spatial comfort, comfort in terms of living environment, material comfort, modern comfort. In 2011, 80% of the dwellings in Luxembourg had generalized comfort¹¹⁹.

Fig. 45



Source : EU-SILC/PSELL3, 2010 – CEPS/INSTEAD, STATEC

Comfort of dwellings (2011)

In <http://observatoire.ceps.lu/index.cfm?pageKw=indicconfort> (last retrieved: 15.05.2014).

There are apparently a few differences on the overall quality of dwellings between rented and owner-occupied dwellings.

Indeed, in 2008 47% of the owners declared they did not experience any problem concerning housing. This happened with only 34% of tenants. In the same year, 78% of tenants lived in apartments, against only 20% of owner-occupiers. Living in apartments, as opposed to living in single-home dwellings, generally involves a greater exposure of one’s private life. In that sense, owner-occupiers seem to be better-off.

As far as the available living area is concerned, 81% of owners consider they have spatial comfort, against only 73% of tenants¹²⁰. Statistically, owners do

¹¹⁹ See fig. 45 (Comfort of dwellings (2011)).

¹²⁰ See fig. 48 (Evolution of the main indicators of comfort between 2003 and 2008 according to the tenure status).

have more inhabitable surface at their disposal¹²¹. In general, 8% of residents live in an overcrowded dwelling: there is about 0.73 rooms per person. Of this number, less than 4% are owner-occupied dwellings, 23% are dwellings occupied by tenants in the rental market without a public task, 17% are dwellings occupied by tenants in the rental market with a public task and the remaining 12% are dwellings which are occupied without obligation of paying rent¹²². The dwelling's surface area per capita in an owner-occupied dwelling is 69.9 m². For a tenant-occupied dwelling, it is 47.2 m²¹²³. Moreover, 71% of tenants live in urban municipalities where the noise nuisance is more frequent, against only 62% of owners¹²⁴.

Fig. 46

Tabelle 2.4 Wohngebäude nach Wohnungsanzahl und Planungsregion, 2001

Anzahl	1 Wohnung	2 Wohnungen	3 und mehr Wohnungen	unbekannt	Gesamt
Zentrum-Nord	11.374	496	646	10	12.526
Zentrum-Süd	35.186	2.404	4.773	63	42.426
davon:					
Stadt Luxemburg	10.942	1.374	3.604	23	15.943
Ost	13.879	573	624	69	15.145
Nord	5.149	172	114	6	5.441
West	7.625	200	133	10	7.968
Süd	31.600	1.666	3.141	48	36.455
Gesamt	104.813	5.511	9.431	206	119.961
Relative Verteilung der Gebäude je Region nach Anzahl Whg	1 Wohnung	2 Wohnungen	3 und mehr Wohnungen	unbekannt	Gesamt
Zentrum-Nord	90,8%	4,0%	5,2%	0,1%	100,0%
Zentrum-Süd	82,9%	5,7%	11,3%	0,1%	100,0%
Ost	91,6%	3,8%	4,1%	0,5%	100,0%
Nord	94,6%	3,2%	2,1%	0,1%	100,0%
West	95,7%	2,5%	1,7%	0,1%	100,0%
Süd	86,7%	4,6%	8,6%	0,1%	100,0%
Gesamt	87,4%	4,6%	7,9%	0,2%	100,0%
Relative Verteilung je Gebäudetyp (Anzahl der Whg) nach Region	1 Wohnung	2 Wohnungen	3 und mehr Wohnungen	unbekannt	Gesamt
Zentrum-Nord	10,9%	9,0%	6,8%	4,9%	10,4%
Zentrum-Süd	33,6%	43,6%	50,6%	30,6%	35,4%
Ost	13,2%	10,4%	6,6%	33,5%	12,6%
Nord	4,9%	3,1%	1,2%	2,9%	4,5%
West	7,3%	3,6%	1,4%	4,9%	6,6%
Süd	30,1%	30,2%	33,3%	23,3%	30,4%
Gesamt	100,0%	100,0%	100,0%	100,0%	100,0%

Quelle: STATEC

Types of residential buildings and regional distribution (II)
Source: Ministry of Housing – Wohnungsbedarfprognose, 2008, p. 15.

¹²¹ See fig. 49 (Surface of dwelling per household according to the tenure status).

¹²² Fusco & Haag – Des logements surpeuplés, 2009, pp. 1-2. See fig. 53 (Overcrowding). For house deprivation see fig. 54 (“Between effects and fixed-effects estimates of housing deprivation”).

¹²³ STATEC – Surface et équipement, 2013, p. 1.

¹²⁴ Lanchy – Le confort des logements, 2010, p. 2.

Fig. 47

Tabelle 2.5 Privathaushalte nach Planungsregion, 1981 bis 2001

	1981	1991	2001	relative Verteilung 2001	absolute Veränderung 1981-2001	relative Veränderung 1981-2001	Verteilung der Veränderung 1981-2001 nach Regionen
Centre-Nord	10.833	13.101	16.528	9,6%	5.695	152,5%	18,1%
Centre-Sud	54.100	61.003	69.186	40,2%	15.086	127,9%	47,9%
Est	12.541	14.949	18.796	10,9%	6.255	149,9%	19,9%
Nord	4.220	4.860	6.029	3,5%	1.809	142,9%	5,7%
Ouest	6.017	6.931	8.682	5,0%	2.665	144,3%	8,5%
Sud	40.570	43.840	52.732	30,7%	12.162	130,0%	38,6%
Total	128.281	144.684	171.953	100%	31.510	134,0%	100%

Quelle: STATEC

Private households per region, 1981-2001

Source: Ministry of Housing – Wohnungsbedarfprognose, 2008, p. 15.

Finally, 76% of the dwellings occupied by tenants correspond to old constructions, against only 53% of the owner-occupied homes. Old constructions tend to be less soundproof than new ones and they involve a higher probability of maintenance problems, such as leakages. Indeed, insalubrity and dilapidation of housing is more frequent for tenants than owners, thereby affecting the housing quality of the former.

Nevertheless, the improvements registered in the last years have been more significant for tenants¹²⁵. Most great renovation works are the responsibility of the landlords¹²⁶, and they usually have an income which allows them to execute such works.

Nowadays, dwellings are equipped with complete and modern sanitary facilities¹²⁷. While in the *Dwellings' Needs Prognosis 2001-2021* poorly equipped apartments were still available to face pressing housing demand, this seems to be no longer the case: the few remaining insufficiently equipped dwellings are either inapt for housing purposes (due to construction requirements), or were, for any reason, intentionally not renovated by the respective owners and left unoccupied¹²⁸.

All in all, we may conclude that the comfort of housing has been improved, but owners still benefit from a higher level of comfort than tenants.

¹²⁵ Lanchy – Le confort des logements, p. 2.

¹²⁶ Lanchy – Le confort des logements, 2010, p. 2.

¹²⁷ See figs 42 (Equipment of households with “minimum standard”) and 43 (Equipment of households: durable consumption goods). For further developments, see Ministry of Housing – Wohnungsbedarfprognose, 2008, p. 19.

¹²⁸ Ministry of Housing – Wohnungsbedarfprognose, 2008, p. 20.

Fig. 48

Indicateurs de confort des logements	2003			2008		
	Propriétaires	Locataires	Ensemble	Propriétaires	Locataires	Ensemble
Confort général, version minimaliste	98%	97%	98%	99%	95%	98%
Confort général, version élargie	33%	27%	32%	47%	34%	43%
Confort de cadre de vie	52%	52%	52%	68%	62%	66%
Confort spacieux	77%	72%	70%	81%	73%	79%
Confort de vétusté	80%	62%	78%	86%	72%	82%
Confort d'insalubrité	94%	92%	94%	96%	92%	95%

Source : EU-SILC/PSELL-3, 2008, CEPS/INSTEAD, STATEC
 Guide de lecture : En 2003, 32% des ménages sont satisfaits du confort de leur logement, c'est-à-dire qu'ils n'ont aucun désagrément sur les quatre indicateurs de confort concernant le cadre de vie, l'espace, la vétusté et l'insalubrité. En 2008, ils sont 43%.

Evolution of the main indicators of comfort between 2003 and 2008 according to the tenure status. Source: Lanchy – Le confort des logements, 2010, p. 2

Fig. 49

Statut d'occupation	Surface de logement		Surface par tête
	par ménage	Taille moyenne du ménage	
Propriétaire	147.7 m ²	2.64	69.9 m ²
Logé à titre gratuit	117.0 m ²	1.94	76.2 m ²
Locataire	83.6 m ²	2.19	47.2 m ²
Locataire d'un logement non meublé	89.6 m ²	2.31	49.0 m ²
Locataire d'un logement meublé	52.9 m ²	1.64	37.1 m ²
Sous-locataire	68.4 m ²	1.92	42.4 m ²

Source : STATEC - RP2011

Surface of dwelling per household according to the tenure status, Source: STATEC – Surface et équipement, 2013, p. 4

Fig. 50

Caractéristiques	Surpeuplement
Type de logement	
Maison	2
Appartement	22
Mode d'occupation	
Propriétaires	2
Accédants	4
Locataires au prix du marché	23
Locataires en dessous du prix du marché	17
Logé à titre gratuit	12
Nationalité du chef du ménage	
Luxembourgeois	3
Portugais	21
Autre UE-15	8
Hors UE-15	26
Age du chef du ménage	
16-24	29
25-49	9
>49	5
Statut de risque de pauvreté monétaire*	
Pauvreté	26
Non pauvreté	5
Ensemble	8

Source : EU-SILC/PSELL3-2007, CEPS/INSTEAD, STATEC
 Guide de lecture : 29% des résidents vivant dans des ménages dont le chef a entre 16 et 24 ans habitent un logement surpeuplé. Cette proportion est de 5% parmi les individus vivant dans des ménages dont le chef a au moins 50 ans.
 * le seuil de pauvreté monétaire est égal à 60% du revenu disponible médian par unité de consommation.

Percentage of individuals in situation of overcrowding Source: Fusco & Haag – Des logements surpeuplés, 2009, p. 2

Fig. 51

Table 2: Between effects and fixed-effects estimates of housing deprivation

	between effects	fixed effects
Log of real income	-3.51***	-0.65
Lagged log of real income	-2.82***	-0.23
Main income earner		
Age	-0.02	-0.02
Female	2.16***	0.15
Portuguese	4.72***	1.53
Other EU15	0.98***	2.08
Non EU15	2.13***	-1.53
Lower education	0.38	0.99
Secondary education	0.11	1.08
Bad health	3.72***	1.21*
Married	-2.46***	1.21
Divorced	-1.52**	2.34*
Widow	-2.91***	1.07
Part time	0.07	0.69
Unemployed	7.52***	-1.90
Self-employed	1.11*	0.05
Retired	-0.12	-0.69
Other	0.11	0.54
Household		
Number of children	1.48***	0.33
Number of adults	2.45***	0.20
Number of individuals at work	-0.57*	-0.09
Acceding to property	0.73*	-1.48**
Tenant or rent-free	8.42***	3.37**
Year 2005	-3.37***	-0.46
Year 2006	-2.83***	-1.04**
Year 2007	0.56	-1.61***
Year 2008	-3.82***	-1.54***
Year 20089	-3.19***	-2.04***
Constant	73.01***	18.08**

Source: PSELL3, CEPS/INSTEAD, Statec, 2003-2009; author's computations;
 ***: p < 0.001; **: p < 0.01; *: p < 0.05; N = 47985

Note: Dependent variable: prevalence weighted housing deprivation index (0-100; see Section 3). The reference individual lives in a household who owns its accommodation and whose main income earner works full time, is a Luxembourgish single man with higher education and good health. Robust standards errors are computed. Original sampled households are treated as clusters.

“Between effects and fixed-effects estimates of housing deprivation”
 Source: Fusco & Haag – Des logements surpeuplés, 2009, p. 14, emphasis added

Fig. 52

2.3 Bath/shower, hot running water and central heating in total dwelling stock (as % of dwelling stock)

	Year	Bath/shower	Year	Hot running water	Year	Central heating
Austria ¹	2009	99.2	-	na	2009	92.0
Belgium	2009	96.8	2009		2009	83.1
Bulgaria						
Cyprus ²	2001	99.0	-	na	2001	27.3
Czech Republic ²	2001	95.5	2001	95.1	2001	81.7
Denmark	2009	96.0	-	na	2009	98.0
Estonia	2002	67.1	-	68.0	2002	59.0
Finland	2009	99.1	2009	97.1	2009	93.4
France	2006	98.5	2006	98.5	2006	93.0
Germany	-	na	-	na	2006	92.3 ³
Greece ²	2001	97.8	-	na	2001	62.0
Hungary	2005	91.3	2005	91.5	2005	56.7
Ireland	2002	94.0	-	na	2002	59.0
Italy	2008	99.4	2004	99.6	2004	94.7
Latvia	2008	60.3	2008	61.6	2008	61.2
Lithuania	2008	71.1	2008	61.6	2008	73.5
Luxembourg	2008	99.0	2008	99.7	2008	72.8
Malta ²	2005	98.2	2005	97.1 ⁴	2005	1.2 ⁵
Netherlands	2009	100.0	2009	100.0	2009	94.0 ¹
Poland ²	2008	86.9	2002	83.0	2008	78.0
Portugal	2001	65.6	-	na	2001	3.8
Romania	2008	58.9	2008	57.2	2008	51.9
Slovak Republic ²	2001	92.8	2001	90.5	2001	74.3
Slovenia	2004	92.3	-	na	2004	79.1
Spain	2008	na	2008	99.5	2008	63.8
Sweden	2008	100.0	2008	100.0	2008	100.0
United Kingdom ⁶	2001	99.0	2001	100.0	2001	94.0

“Bath/shower, hot running water and central heating in total dwelling stock (as % of dwelling stock)” Source: Dol & Haffner (eds.) – Housing Statistics in the EU, 2010, p. 53, emphasis added

Fig. 53

Country		Date of Construction (DC) (%)				Available Facilities (AF) (%)				Average Number of Rooms (AR)	Floor Area (FA) (in m ²)	Notes
Year to which data refer	Pre-1945	1945-1970	1970-1990	1990-Present	Running Water	Lavatory	Bath/ Shower	Central Heating				
Austria	2002	26.6	26	26.7	16.4	99.9	96.7	97.5	67.3	4.3	60-90	* in these cases the data on date of construction supplied by housing ministries was not originally organised into the categories utilised above. These data were therefore reclassified for the purpose of including it in this table. See Section 1 of this report for the original data.
Belgium	1996	31.6	29.6	34.1	4.2	Nav	Nav	Nav	Nav	Nav	Nav	
Bulgaria	2000	24.3	48.2	24.5	1.9	97.6	82.5	Nav	12.7	2.6	65.2	** these data only cover the period to 1990.
Cyprus*	DC, AR, FA=2000; AF=1999	2.3*	10.7	38.1	28.2	99.2	97.7	94.8	50	5.8	144.8	
Czech Republic	DC=1991; AF, FA=2001; AR=2000	41.9	24.6	33.5	0**	96.5	95.4	95.5	61.7	2.7	49.3	*** 23.8% of the housing stock in Estonia is categorised as unknown in terms of age. The information on the average age of dwellings in each housing tenure is skewed by missing data for some countries. As a result the average values in the four age categories exceeds 100%. Where floor space data refer to a range (e.g. 80-100 m ²) the interval figure was used to calculate the mean.
Denmark	DC, FA=2000; AF=2003	36.9	29.9	25.9	5.3	99.9	99.9	94.3	99.9	Nav	106.3	
Estonia***	DC, AF=2002; AR, FA=2000	18.9	22.8	31.5	4.1	82	72	68	59	3.8	68.9	
Finland	DC=1996; AF=2002; AR, FA=2000	12	32.9	46.2	7.9	99	96	99	92	3.8	85.7	
France*	2002	29.4*	15.1	32.2	5.7	99.9	99.2	99.2	96.3	4	50	
Germany*	DC=2002; FA=1996	27.9*	6.1		11.1	Nav	Nav	Nav	Nav	Nav	66.4	
Greece	NA	Nav	Nav	Nav	Nav	Nav	Nav	Nav	Nav	Nav	Nav	
Hungary*	DC, AF=1996; AR, FA=2000	29.5	27.2	39.9	4	84.4	75.6	79.6	49.2	4.1	52	
Ireland*	2002	20.5	17.6	36.2	25.7	99.7	Nav	Nav	66.6	5.2	70.2	
Italy	DC=1991; AF=1995; FA=1996	29.5	40.7	29.8		99	99	99	79	Nav	86.3	
Latvia	2000	25	28	43	4	83.2	77.8	67	64.9	2.3	40-60	
Lithuania	DC, AF, AR=2001; FA=2000	27	34	32	7	78.9	76.3	71.8	72	2.3	70.9	
Luxembourg	DC, AR=2001; FA=1999	27.8	22.7	43.1	9.1	100	100	100	100	Nav	63.1	
Malta	1996	25.5	22.2	43.1	9.1	99	97.7	96.6	0.7	5	Nav	
Netherlands	DC, AF=2002; AR=2000	20	27	53		100	100	100	90	4.2	Nav	
Poland	DC, AF, AR=2002; FA=1991	23.2	26.9	37	11.6	92.5	80.6	80.8	71.4	3.7	49	
Portugal	1991	24.4	31.2	44.2	0	67.2	66.6	82.2	Nav	Nav	Nav	
Romania	2002	Nav	Nav	Nav	Nav	53	53	Nav	Nav	2.6	Nav	
Slovakia	2001	11.5	35.2	46.6	6.7	94.7	80.2	62.2	76.3	3	40-60	
Slovenia	2002	23.4	39.8	29.9	7.8	98.5	93	92	78.6	3	74.6	
Spain	2001	22	29.8	34.3	13.6	96.6	96.6	Nav	53.2	5	76-90	
Sweden	DC=2002; AF=2000; AR=1990; FA=1996	21	43	26	6	100	100	100	100	4.2	71	
Turkey	AR=2000	Nav	Nav	Nav	Nav	94.7	88	94.9	100	Nav	80-100	
United Kingdom*	1991	41	22	39	0***	Nav	Nav	Nav	Nav	Nav	Nav	
Mean (S)	N/A	28.8	34.8	37.6	8.2	93.3	88.2	88.7	72.7	3.6	76.5	

Source: additional information was sourced in the United Nations Economic Commission for Europe (2002).

“Housing Quality in European Countries, Various Years” Source: Norris & Shields – Housing Developments, 2004, p. 7, emphasis added

- **Which actors own these dwellings (private persons, profit or non-profit organizations, etc.)?**

In 2012 the 2,701 hectares available for residential purposes (corresponding to about the half of the surface of the city of Luxembourg) were shared by different kinds of owners. Natural persons (individuals) owned 2,047 hectares, i.e., 3/4 of the available land for habitat in the perimeters of the municipalities, which belong to individuals¹²⁹. Legal persons (enterprises, businesses, associations, promoters, etc.) were the second most predominant owners at the national level, and they owned 15% of the available land (399 hectares). The State owned 21 hectares, and the municipal administrations (and municipal or intermunicipal unions) were owners of 5% of the land potentially available for habitat (137 hectares of land). Finally, the SNHBM¹³⁰ and the different *Fonds* (the *Fonds du Logement*, the *Fonds d'Urbanisation et d'Aménagement du Plateau de Kirchberg* and the *Fonds d'assainissement de la Cité Syrdall*) were owners of 40 hectares of the land available in 2010 (respectively, 19 and 21 hectares).

Natural persons by far own the most land in Luxembourg. They concern mostly '*petits bailleurs*' (small landlords, small investors), i.e., they usually rent only one or two dwellings, which they inherited or acquired with great effort during working life. These landlords generally use the rents they receive as a supplement to their retirement.

1.5. Other general aspects

- **Are there lobby groups or umbrella groups active in any of the tenure types? If so, what are they called, how many members, etc.?**

There are several lobby and umbrella groups active in the different types of tenure.

The Luxembourg Union of Owners (*Union des Propriétaires du Grand-Duché de Luxembourg, A.S.B.L.*), headquartered in the city of Luxembourg, represents the group of homeowners, but it has not been showing signs of activity for the last 15 years.

The Luxembourg Group of Real Estate Management Professionals (*Groupement des Syndics Professionels du Luxembourg A.S.B.L., GSPL*) is active in the field of joint ownership (condominiums)¹³¹. This association also has its headquarters in the city of Luxembourg, more specifically, in the building of the Luxembourg Trade Confederation (*Confédération Luxembourgeoise du Commerce*).

¹²⁹ The sale from private to private (*vente de gré à gré*), with or without intervention of a real estate agent, represents 96% of the total of housing sales (Observatoire de l'Habitat - Ventes de biens, s.d., p. 6).

¹³⁰ <http://www.snhbm.lu/> (last retrieved: 15.05.2014).

¹³¹ <http://www.clc.lu> (last retrieved: 15.05.2014).

The “Real Estate Chamber of the Grand-Duchy of Luxembourg” (*Chambre Immobilière du Grand-Duché du Luxembourg A.S.B.L*, CIGDL) was created in 1971, and it is a private, professional non-profit association representing the different real estate disciplines, namely, real estate agents, real estate administrators, promoters and real estate associations. It includes approximately one hundred associations and individual members, and its main aim is to promote the material and moral interests of the respective members. The CIGDL is a founding member of the Luxembourg Association of Constructors Associations (*Association Luxembourgeoise des Organisations de Constructeurs*). It has a close relationship with the Luxembourg Trade Chamber, with which it organizes internships providing access to the real estate professions. The association established as its main objective to constantly improve the professionalism of the represented trades and the quality of service provided to the clients of its members¹³². It also provides to its members and respective clients an informational telephone service on the legislation and practices within the Luxembourg real estate market.

The most active group in the field of tenancy is the Luxembourg Union of Consumers (*Union Luxembourgeoise des Consommateurs, ULC*). It consists of a non-profit association whose social object is to protect, defend, inform and train Luxembourg consumers. This association also represents the consumers before public and political authorities, and it is partially financed by the Grand-Duchy in exchange for the fulfilment of a determined number of tasks (determined by the Ministry of Economy and Foreign Trade) in favour of consumers. The remaining funding is achieved through the annual contributions of its members. The ULC has currently about 43,000 members¹³³.

- **What is the number (and percentage) of vacant dwellings?**

‘Vacant dwellings’ are defined in Luxembourg as dwelling units which were unoccupied when the survey was carried out. This definition also includes dwellings ‘that are awaiting the repair, reconversion or completion of the construction work’¹³⁴. As this same definition can be used to describe secondary residences, the statistical data on vacant dwellings in Luxembourg is often unclear¹³⁵.

According to the RGP of 2001, the total number of vacant dwellings was 37,448, i.e., 7.5% of the rental stock. 61% of these were apartments, and 39% were single-family dwellings¹³⁶. In the same year, one third of the vacant dwellings were located in the city of Luxembourg, whereas the remaining two thirds were located in the urban municipalities and the biggest municipalities in the country¹³⁷.

¹³² Luxemburger Wort, 2013, p. 50.

¹³³ <http://www.ulc.lu/fr> (last retrieved: 15.05.2014).

¹³⁴ Dol & Haffner (eds.) – Housing Statistics in the EU, 2010, p. 125.

¹³⁵ BIPE – Les politiques publiques, 2000, p. 14.

¹³⁶ Ministry of Housing – Bail à loyer, 2006, p. 2.

¹³⁷ Ministry of Housing – Bail à loyer, 2006, p. 2.

The percentage of vacant dwellings in Luxembourg is now 5.3% (about 12,000 dwellings), and in the city of Luxembourg, it is 3.6% (1700 dwellings)¹³⁸.

The decrease of the number of vacant dwellings might be a consequence of the practice, implemented in some cantons, of applying a tax to the owners of vacant dwellings. This decrease might become progressively more significant in the future, as the *Pacte Logement* provides for a municipal tax (fixed individually by each municipality) which applies to dwellings that have been vacant for more than 18 months and to land for construction where no construction has been made for at least three years. Despite this, some lawyers consider that, in many cases, the amount of the tax is not a sufficient deterrent for owners who continue to keep their dwellings vacant.

There are allegations that the significant number of vacant dwellings is connected with financial interests¹³⁹.

- **Are there important black market or otherwise irregular phenomena and practices on the housing market (especially the rental market)?**

There seems to be no black market as far as the sale of dwellings is concerned. So far, there are no statistics available on tax fraud, but apparently some property owners offer their tenants unofficial rental agreements to avoid declaring the real price paid for the immovable¹⁴⁰. In April 2013 the Luxembourg Government decided to introduce, with effect from 1 January 2015 onward, the automatic exchange of information for the payment interests in favour of natural persons living in other EU Member States, with the aim of fighting fraud and tax evasion.

There is a practice concerning condominiums, where land owner and property developer (*promoteur*) are different people (*vente en état future d'achèvement*). The practice, which consists of a very usual way of selling a building, could be described as follows: the property developer creates a land company (*société immobilière*) to acquire the land. The transaction involves two authentic instruments: one of the property developers and one of the land companies. After the construction is accomplished, one or two lots remain with the property developer, whereas the land company owns its share of the land, which is considered a common part. This situation sometimes lasts for years¹⁴¹, although this practice is considered by some lawyers as irregular¹⁴².

There seems to be another irregular practice concerning vacant dwellings. There are allegations that the significant amount of vacant dwellings is a phenomenon intentionally furthered by real estate owners to artificially increase the price of land¹⁴³.

¹³⁸ Le Quotidien, 2013.

¹³⁹ For further developments, see *infra*.

¹⁴⁰ Information provided by the ULC.

¹⁴¹ Krieger – La copropriété, 2011, pp. 32-33.

¹⁴² Krieger – La copropriété, 2011, p. 33.

¹⁴³ Norris & Shields – Housing Developments, 2012, p. 68.

Summary table 1 Tenure structure in Luxembourg, 1 February 2011

Home ownership*	Renting 28,3%		Intermediate tenure (or other)
69,0%	Renting with a public task, if distinguished	Renting without a public task, if distinguished	2,7%
	2%*	98%	

* Includes condominiums

2. Economic urban and social factors

2.1 Current situation of the housing market

- **What is the current situation of the housing market? Is the supply of housing sufficient/ insufficient and where is this the case (possibly in terms of areas of scarcity of dwellings in growth areas versus shrinkage areas)? What have been the effects of the current crisis since 2007?**

In Luxembourg the demand of housing – particularly of rental housing¹⁴⁴ – considerably surpasses the offer¹⁴⁵. Demand arises from the population growth¹⁴⁶ (which was notably the case in the generation of 1970, the baby-boom generation¹⁴⁷, and especially since 1990), but also from a rising number of households¹⁴⁸ (particularly, single-family households¹⁴⁹), a higher average lifespan, and from immigration, which increased very significantly during the last two decades¹⁵⁰.

At the same time, there is a lack of appropriate offers. There has been an almost permanent lack of dwellings since the Second World War, and the

¹⁴⁴ Ministry of Housing – Le guide de la construction, 2012, p. 27.

¹⁴⁵ BIPE – Les politiques publiques, 2000, pp. 54 and 59; Norris & Shields – Housing Developments, 2012, p. 91.

¹⁴⁶ Norris & Shields – Housing Developments, 2012, p. 14.

¹⁴⁷ Blot – Peut-on parler de bulle, 2006, p. 23.

¹⁴⁸ Ministry of Housing – Wohnungsbedarfprognose, 2008, p. 55; Norris & Shields – Housing Developments, 2012, p. 14.

¹⁴⁹ This results from young people moving alone to a dwelling (separate living or *décohabitation*); Blot – Peut-on parler de bulle, 2006, p. 23 or from elderly people whose spouses passed away and decide to stay living in their dwellings.

¹⁵⁰ See generally CES/LOGEMENT – Logement abordable, 2013, p. 23 ff.

municipalities more affected are located in the industrial region 'Minette'¹⁵¹, in the south of the country, and the city of Luxembourg¹⁵². Supply has been restricted by the high price of land for construction and the construction costs¹⁵³.

This disequilibrium translates into the fact that more and more households find it difficult to find an adequate and financially accessible dwelling in the country¹⁵⁴. This imbalance is worsened by dysfunctions (e.g. changes in the use of accommodation) and by the phenomenon of vacant dwellings¹⁵⁵. Meeting the housing demand has been a main concern of policy makers in Luxembourg¹⁵⁶ since the 1970s. The government has been approving financial measures to foster construction by privates, public promoters and municipalities¹⁵⁷. The *Pacte Logement* is worth particular mention¹⁵⁸. The State has also been attempting to meet the need of housing through taxation benefits, particularly for those who are willing to sell land for construction or apartment blocks.

The crisis which the Grand-Duchy of Luxembourg faced after the summer of 2008 deeply affected the state of affairs of the Luxembourg housing market, particularly at the beginning of the crisis. Indeed, sales of dwellings decreased, and thus sellers had to lower prices of new dwellings, while the owners of older dwellings withdrew from the market, awaiting better days. As a result, both the construction market and the real estate sales market suffered a significant decline. The rental market, however, registered a significant increase: instead of purchasing a dwelling, people decided to start renting. Therefore, investors seized this opportunity to start investing in rental dwellings¹⁵⁹.

¹⁵¹ Locally called "De Minett".

¹⁵² Observatoire de l'Habitat – Ventes de biens, s.d., p. 7.

¹⁵³ Norris & Shields – Housing Developments, 2004, p. 14.

¹⁵⁴ Possibly due to the high demand of dwellings, the overcrowding rate is higher in the two largest cities of Luxembourg: Luxembourg-city and Esch-sur-Alzette (15% against 5% in the rest of the country).

¹⁵⁵ For further developments, see *supra* "What is the number (and percentage) of vacant dwellings?".

¹⁵⁶ Norris & Shields – Housing Developments, 2004, pp. 10-11.

¹⁵⁷ http://www.ml.public.lu/fr/promoteurs/cadre_legislatif/index.htm (last retrieved: 29.05.2013) and Ministry of Housing – Rapport d'activité, 2012, p. 25. For further developments, see *infra*.

¹⁵⁸ For further developments Ministry of Housing – Le guide de la construction, 2012, p. 38 ff.

¹⁵⁹ Krieger – Le bail d'habitation, 2009, p. 19.

Fig. 54

1.1 Population (*1,000), 1 January

	1980	1985	1990	1995	2000	2005	2009	Change (%) 1980-2009
Austria	7,546	7,563	7,645	7,944	8,002	8,201	8,355 ^P	10.7%
Belgium	9,855	9,858	9,948	10,131	10,239	10,446	10,750	9.1%
Bulgaria					8,191	7,761	7,607 ^P	
Cyprus	510	538	573	645	690	749	797	56.3%
Czech Republic	10,316	10,334	10,362	10,333	10,278	10,221	10,468	1.5%
Denmark	5,122	5,111	5,135	5,216	5,330	5,411	5,511	7.6%
Estonia	1,472	1,523	1,571	1,448	1,372	1,348	1,340	-8.9%
Finland	4,771	4,894	4,974	5,099	5,171	5,237	5,326 ^P	11.6%
France	53,731	55,157	56,577	57,753	60,545	62,773	64,351 ^P	19.8%
Germany	78,180	77,709	79,113	81,539	82,163	82,501	82,002 ^P	4.9%
Greece	9,584	9,920	10,121	10,595	10,904	11,083	11,260 ^P	17.5%
Hungary	10,709	10,657	10,375	10,337	10,222	10,098	10,031 ^P	-6.3%
Ireland	3,393	3,544	3,507	3,601	3,778	4,109	4,450 ^P	31.2%
Italy	56,388	56,588	56,694	56,844	56,924	58,462	60,045	6.5%
Latvia	2,509	2,570	2,668	2,501	2,382	2,306	2,261	-9.9%
Lithuania	3,404	3,529	3,694	3,643	3,512	3,425	3,350	-1.6%
Luxembourg	363	366	379	406	434	461	494	36.0%
Malta	323	338	352	370	380	403	414 ^P	28.1%
Netherlands	14,091	14,454	14,893	15,424	15,864	16,306	16,486	17.0%
Poland	35,413	37,063	38,038	38,581	38,654	38,174	38,136 ^P	7.7%
Portugal	9,714	10,009	9,920	10,018	10,195	10,529	10,627	9.4%
Romania	22,133	22,687	23,211	22,712	22,455	21,659	21,499	-2.9%
Slovak Republic	4,963	5,145	5,288	5,356	5,399	5,385	5,412	9.1%
Slovenia	1,893	1,949	1,996	1,990	1,988	1,998	2,032	7.4%
Spain	37,242	38,353	38,826	39,343	40,050	43,038	45,828	23.1%
Sweden	8,303	8,343	8,527	8,816	8,861	9,011	9,256 ^P	11.5%
United Kingdom	56,285	56,596	57,459	57,944	58,785	60,060	61,635	9.5%
EU-27					482,768	491,154	499,724 ^P	

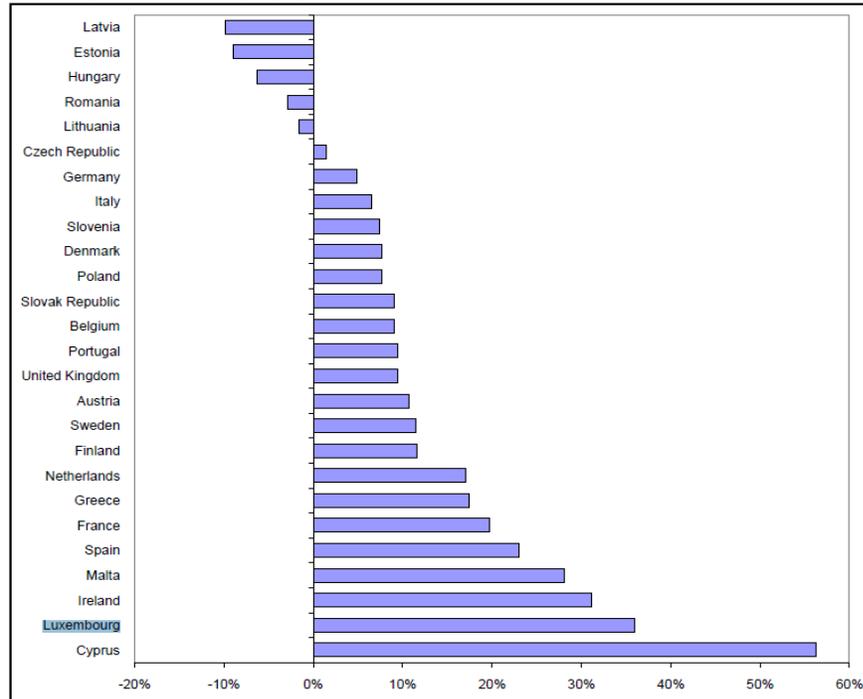
For definitions see Appendix 1

Source: Eurostat (tps00001)

“Population (*1,000), 1 January”
 Source: Dol & Haffner (eds.) – Housing Statistics in the EU, 2010, p. 17
 emphasis added

Fig. 55

1.1F Population change (%), 1980-2009



Source: Eurostat

“Population change (%), 1980-2009”

Source: Dol & Haffner (eds.) – Housing Statistics in the EU, 2010, p. 17, emphasis added.

Fig. 56

Table 2.18.3 Demographic Trends in Luxembourg, 1980-2004					
Year	Population on 1 January (R) No.	Natural balance No.	Migratory balance No.	Total growth (R) No.	% Variation
1980	363,500	N/a	N/a	N/a	N/a
1985	366,200	+ 708	+ 1,992	+ 2,700	+ 0.74
1989	375,800	+ 2,086	+ 7,514	+ 9,600	+ 2.62
1990	379,300	+ 681	+ 2,857	+ 3,500	+ 0.93
1991	384,400	+ 1,163	+ 3,942	+ 5,100	+ 1.35
1992	389,800	+ 1,241	+ 4,173	+ 5,400	+ 1.40
1993	395,200	+ 1,128	+ 4,255	+ 5,400	+ 1.38
1994	400,900	+ 1,438	+ 4,243	+ 5,700	+ 1.44
1995	406,600	+ 1,651	+ 4,004	+ 5,700	+ 1.42
1996	412,800	+ 1,624	+ 4,610	+ 6,200	+ 1.52
1997	418,300	+ 1,828	+ 3,672	+ 5,500	+ 1.33
1998	423,700	+ 1,566	+ 3,832	+ 5,400	+ 1.29
1999	429,200	+ 1,485	+ 4,056	+ 5,500	+ 1.30
2000	435,700	+ 1,789	+ 4,719	+ 6,300	+ 1.50
2001	439,000	+ 1,969	+ 3,644	+ 3,300	+ 0.75
2002	444,050	+ 1,740	+ 3,311	+ 5,050	+ 1.15
2003	448,300	+ 1,601	+ 2,650	+ 4,250	+ 0.96
2004	451,600	N/a	N/a	+ 3,300	+ 0.74

“Demographic Trends in Luxembourg, 1980-2004”

Source: Norris & Shields – Housing Developments, 2004, p. 60.

Fig. 57

1.3 Population projection (*1,000) and change (%)

	2010	2015	2020	2030	2040	2050	Change (%) 2010-2050
Austria	8,405	8,570	8,723	8,988	9,122	9,127	9%
Belgium	10,784	11,070	11,322	11,745	12,033	12,194	13%
Bulgaria	7,564	7,382	7,188	6,753	6,330	5,923	-22%
Cyprus	821	888	955	1,072	1,167	1,251	52%
Czech Republic	10,394	10,497	10,543	10,420	10,158	9,892	-5%
Denmark	5,512	5,591	5,661	5,808	5,882	5,895	7%
Estonia	1,333	1,323	1,311	1,267	1,221	1,181	-11%
Finland	5,337	5,429	5,501	5,569	5,521	5,448	2%
France	62,583	64,203	65,607	67,982	69,898	71,044	14%
Germany	82,145	81,858	81,472	80,152	77,821	74,491	-9%
Greece	11,307	11,476	11,556	11,573	11,567	11,445	1%
Hungary	10,023	9,964	9,893	9,651	9,352	9,061	-10%
Ireland	4,614	5,052	5,404	5,881	6,221	6,531	42%
Italy	60,017	60,929	61,421	61,868	62,002	61,240	2%
Latvia	2,247	2,200	2,151	2,033	1,913	1,804	-20%
Lithuania	3,337	3,275	3,220	3,083	2,912	2,737	-18%
Luxembourg	494	523	551	607	657	697	41%
Malta	414	421	427	432	424	415	0%
Netherlands	16,503	16,717	16,896	17,208	17,226	16,909	2%
Poland	38,092	38,068	37,960	36,975	35,219	33,275	-13%
Portugal	10,723	10,947	11,108	11,317	11,452	11,449	7%
Romania	21,334	21,103	20,834	20,049	19,161	18,149	-15%
Slovak Republic	5,407	5,427	5,432	5,332	5,115	4,859	-10%
Slovenia	2,034	2,053	2,058	2,023	1,958	1,878	-8%
Spain	46,673	49,381	51,109	52,661	53,290	53,229	14%
Sweden	9,306	9,588	9,853	10,270	10,470	10,672	15%
United Kingdom	61,984	63,792	65,683	69,224	72,009	74,506	20%
EU-27	499,389	507,727	513,838	519,942	520,103	515,303	3%

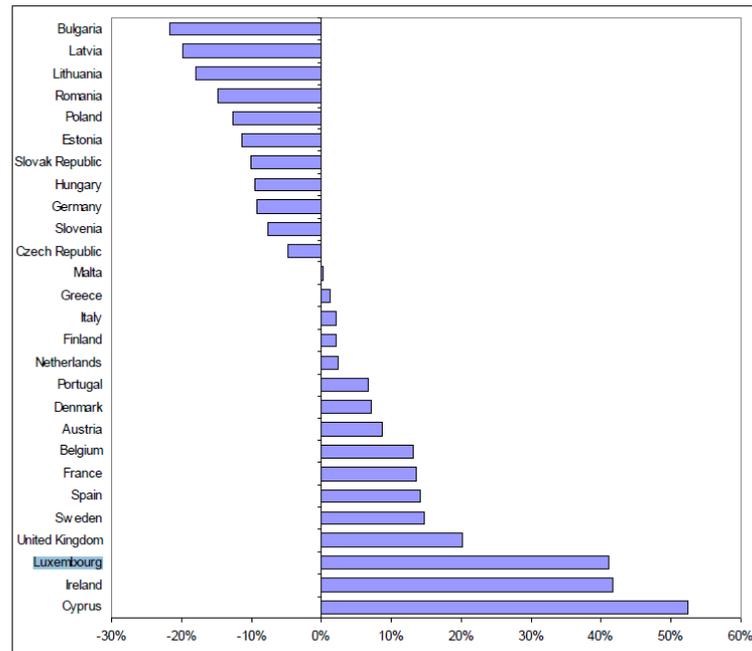
Source: Eurostat Europop 2008

“Population projection (*1,000) and change (%)

Source: Dol & Haffner (eds.) – Housing Statistics in the EU, 2010, p. 21, emphasis added.

Fig. 58

1.3F Forecasted population change (%), 2010-2050



Source: Eurostat

“Forecasted population change (%), 2010-2050”

Source: Dol & Haffner (eds.) – Housing Statistics in the EU, 2010, p. 22, emphasis added.

- **How is the demand for housing expected to develop? What is the expectation about the growth and decline in number of households in the future in a scenario of average economic development? Is there a year forecasted where growth in number of households will stabilize or will start declining?**

According to STATEC, during 2012 the population of the Grand Duchy of Luxembourg increased by 2,186 inhabitants. This means that on the 1 January 2013, 537,039 persons were living in Luxembourg¹⁶⁰. As for the international migration flows, a positive net migration of 10,036 people (20,478 arrivals and 10,442 departures) was registered¹⁶¹. Based upon these data, it is expected that between 2010 and 2050 the population will increase by 41%, which means that it is increasing sustainably.

Fig. 59

Mouvement de la population en 2012

Population au 1er janvier 2012	524 853
+ Naissances	6 026
- Décès	3 876
+ Arrivées	20 478
- Départs	10 442
Population au 1er janvier 2013	537 039

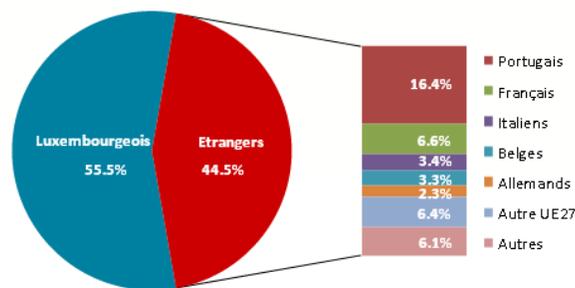
Source: STATEC

Movement of the population in 2012

Source: STATEC – Communiqué de Presse, 2013, p. 1.

Fig. 60

Population par nationalité au 1^{er} janvier 2013



Source: STATEC

Population per citizenship in 1 January 2013

Source: STATEC – Communiqué de Presse, 2013, p. 2.

¹⁶⁰ STATEC – Communiqué de Presse, 2013, p. 1. See fig. 62 (Movement of the population in 2012).

¹⁶¹ STATEC – Communiqué de Presse, 2013, p. 1. See fig. 62 (Evolution of the population: natural and migratory balance between 2002-2011).

Fig. 61

Tableau 1: Evolution de la population entre 1990 et 2012

Année ⁽¹⁾	Population au 1er janvier ⁽²⁾	Solde naturel	Solde migratoire	Accroissement total	Variation en %
1990	379.300				
1995	406.600				
2000	434.300				
2001	439.500	1.800	3.400	+5.200	+1,40
2002	444.100	1.500	3.100	+4.600	+1,00
2003	448.300	1.600	2.600	+4.200	+1,00
2004	455.000	1.300	5.400	+6.700	+1,50
2005	461.200	1.800	4.400	+6.200	+1,40
2006	469.100	1.750	6.110	+7.860	+1,70
2007	476.200	1.610	6.000	+7.610	+1,70
2008	483.800	2.000	7.700	+9.700	+1,60
2009	493.500	1.980	6.580	+8.560	+2,00
2010	502.100	2.110	7.660	+9.770	+1,75
2011	512.400	1.820	11.000	+12.800	+2,05
2012	524.900				+2,44

Source: STATEC

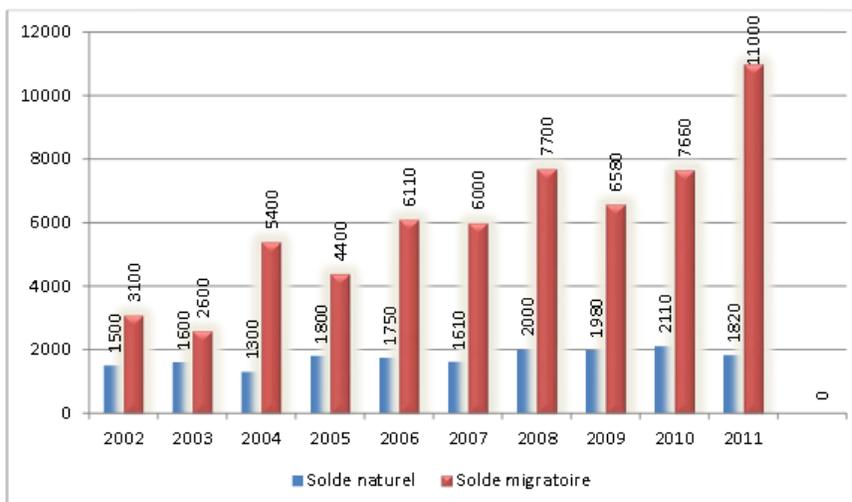
⁽¹⁾ (situation au 1. 1. de chaque année)

⁽²⁾ chiffres arrondis

Evolution of the population between 1990-2012
Source: Ministry of Housing – Rapport d'activité, 2012, p. 19.

Fig. 62

Graphique 1: Evolution de la population: solde naturel et solde migratoire entre 2002 et 2011



Source: STATEC

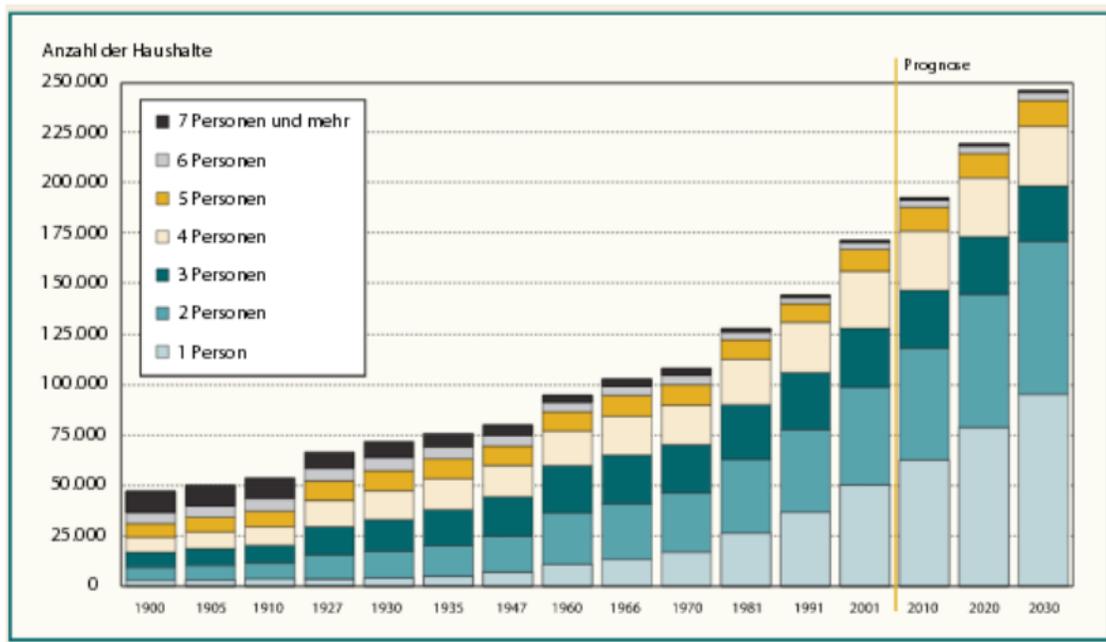
Graphique: Ministère du Logement

Evolution of the population: natural and migratory balance between 2002-2011
Source: Ministry of Housing – Rapport d'activité, 2012, p. 20.

The rate of population growth in Luxembourg is the second highest in Europe¹⁶².

According to estimates, Luxembourg will have about 700,000 inhabitants in 2050, i.e., practically the double of what it had in 2006¹⁶³. For 2030, there are estimates that point out to a total of 250,000 households (545,000 persons), the double of the number of households there were in 1981. It is expected that in 2030 about one third of the dwellings needed would be for people who currently are already living in a dwelling. When we consider the backlog demand (*Nachholbedarf*), this number increases to about 40 to 50%¹⁶⁴.

Fig. 63



Private households per size, 1900-2030

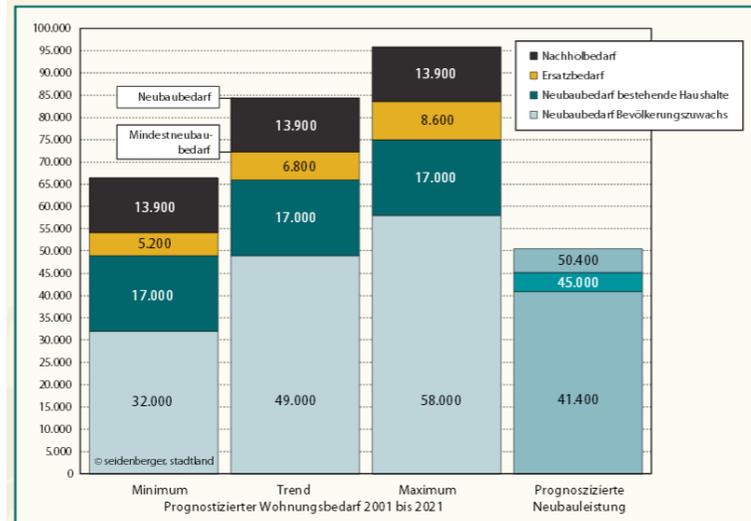
Source: Ministry of Housing – Wohnungsbedarfprognose, 2008, p. 56.

¹⁶² Norris & Shields – Housing Developments, 2004, p. 59. See figs 54 (“Population (*1,000), 1 January”) and 55 (“Population change (%), 1980-2009”). Compare with Ministry of Housing – Le guide de la construction, 2012, p. 12.

¹⁶³ See figs 57 (“Population projection (*1,000) and change (%)”) and 58 (“Forecasted population change (%), 2010-2050”).

¹⁶⁴ See fig. 64 (Estimated need of dwellings 2001-2021).

Fig 64



Quelle: eigene Berechnungen stadtländ
Anmerkung: die Komponenten werden nicht addiert, sondern zu Szenarien kombiniert (vgl Tab 5.2)

Estimated need of dwellings 2001-2021

Source: Ministry of Housing – Wohnungsbedarfprognose, 2008, p. 61.

This consists of an unparalleled demographic development¹⁶⁵, which has a significant impact in the demand of dwellings.

To face the sustainable demand which is expected in the next years, the Housing Ministry has recently suggested a set of measures called *Paquet Logement*, with which it intends to construct 9,000 new dwellings¹⁶⁶.

However, according to the CIGDL, public financial subsidization will not be enough to overcome the lack of affordable, adequate dwellings. According to the CIGDL, there is a need for about 12,000 “social dwellings”¹⁶⁷. Provided that each dwelling costs 300,000€ in average, the State would have to pay 4.5 billion EUR to provide such amount of dwellings. For this reason, the CIGDL has been advocating the involvement of the private sector in the construction of low-cost housing. This idea apparently had the Grand-Duchy support initially: One of the measures foreseen by the *Paquet Logement* consists of the creation of a National Company of Urban Development (*Société nationale de développement urbain*) for the enhancement of the supply of dwellings¹⁶⁸. It would consist of a single legal entity, which would put together different actors in the field of housing, as well as the know-how and financial resources necessary to accomplish its missions¹⁶⁹. However, it was later considered that it would be more effective to keep the different public housing providers as autonomous entities. The *Fonds du Logement* is currently, by far, the biggest provider of housing with a public task.

¹⁶⁵ See, also, figs 56 (“Demographic Trends in Luxembourg”) and 61 (Evolution of the population between 1990-2012).

¹⁶⁶ Pujol – Le juste prix, 2012.

¹⁶⁷ CIGDL – Logement social locatif, 2009.

¹⁶⁸ For further developments, see *infra* “4.3. Regulatory types of tenures with a public task”.

¹⁶⁹ Ministry of Housing – Le Paquet Logement, 2011, p. 28.

- **What is the number/percentage of families/households depending on rental housing (vs. owner-occupancy and other forms of tenure)? What is the number/percentage of immigrants among them?**

According to the last data available, 69% of the households are homeowners, while 28.3% are tenants¹⁷⁰. The remaining percentages correspond to: households who gratuitously use their dwelling (2.7%), subtenants (0.8%) and households who live in hotels or pensions (0.5%). Within the households which rent, 22.6% pay a rent over a non-furnished dwelling, whereas only 4.5% live in furnished dwellings¹⁷¹.

Fig. 65

Tableau 4 : Statut d'occupation du logement

Statut d'occupation	Ménages	Personnes
Propriétaire	69,0%	73,0%
Logé à titre gratuit	2,7%	2,1%
Locataire	28,3%	24,7%
Locataire d'un logement non meublé	22,6%	20,9%
Locataire d'un logement meublé	4,5%	2,9%
Sous-locataire	0,8%	0,6%

Source : STATEC - RP2011

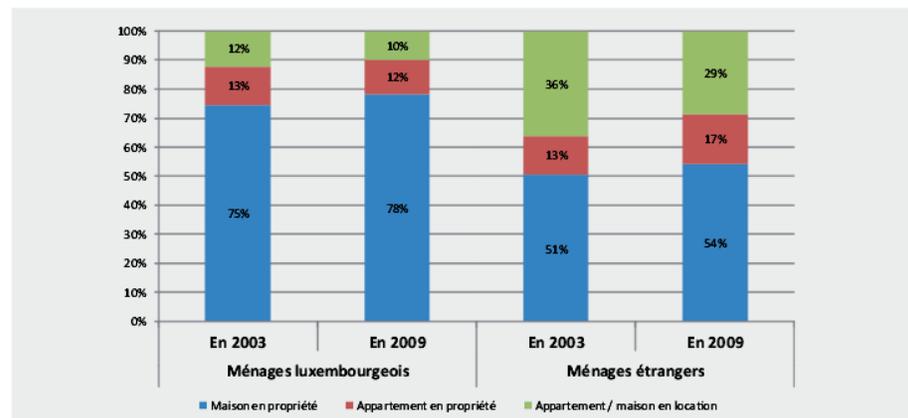
Status of occupation of the dwelling

Source: STATEC – La situation du logement, 2013, p. 3.

Possibly as result of public policies which favour home-ownership, a general aim of the people living in Luxembourg is to become homeowners¹⁷².

Fig. 66

Figure 5. Segments de marché occupés par les ménages en 2003 et en 2009



Source : EUSILC, PSELL-3 (2003, 2009), CEPS/INSTEAD, STATEC

Segments of the market occupied by households in 2003 and 2009

Source: Observatoire de l'Habitat – Quels choix de logement, 2011, p. 4.

¹⁷⁰ See fig. 65 (Status of occupation of the dwelling).

¹⁷¹ STATEC – La situation du logement, 2013, p. 3.

¹⁷² Observatoire de l'Habitat – Quels choix de logement, 2011, p. 4.

The access to different segments of the real estate market in Luxembourg seems to be egalitarian for both Luxembourgian and foreign households¹⁷³.

Nevertheless, the percentages of homeownership are higher for the Luxembourgian and for the Montenegrins (respectively, 84.5% and 82.4%). For every other citizenship, the percentage of owners is lower than the national average¹⁷⁴.

Fig. 67

Tableau 5 : Statut d'occupation selon la nationalité (individus)

Nationalité	Logé à titre		
	Propriétaire	gratuit	Locataire
Luxembourg	84.5%	2.5%	13.0%
Monténégro	82.4%	1.1%	16.5%
<i>Moyenne du pays</i>	<i>73.0%</i>	<i>2.1%</i>	<i>24.9%</i>
Italie	71.5%	2.2%	26.3%
Belgique	68.2%	2.2%	29.7%
Royaume-Uni	66.4%	0.6%	33.0%
Espagne	65.5%	1.2%	33.2%
Pays-Bas	65.5%	1.7%	32.8%
Allemagne	57.9%	2.2%	39.9%
Portugal	54.3%	0.9%	44.8%
France	53.2%	1.6%	45.3%
Autres	46.4%	2.8%	50.8%

Source : STATEC - RP2011

Status of occupation according to the citizenship (individuals)
Source: STATEC – La situation du logement, 2013, p. 3.

The fact that a significant part of non-Luxembourgiens live in Luxembourg only temporarily, the fact that the attribution of a financial subsidy to access homeownership requires a certain length of residency and the fact that cultural differences exist can limit the option for purchasing a house, in particular because renting is a more flexible alternative than homeownership.

2.2 Issues of price and affordability

- **Prices and affordability:**
 - **What is the typical cost of rents and its relation to average disposable income (rent-income ratio per household)? (Explanation: If rent is 300€ per month and disposable household income 1000€ per month, the rent-to-income ratio is 30%).**

In the third quarter of 2013, the announced average rent for a house was 2,314€ per month, i.e., 12.40€ per m² a month, while apartments cost on average

¹⁷³ See fig. 66 (Segments of the market occupied by households in 2003 and 2009).

¹⁷⁴ See fig. 67 (Status of occupation according to the nationality (individuals)).

1,204€ per month, i.e., 18.13€ per m² a month¹⁷⁵. On average rented houses measured about 187 m², while apartments had on average about 66 m²¹⁷⁶.

Fig. 68

Segments	Rappel : Offre et loyer moyen au 3 ^e trimestre 2012			Offre et loyer moyen au 3 ^e trimestre 2013		
	Nombre d'annonces	Loyer moyen (€)*	Loyer moyen au m ² (€)*	Nombre d'annonces	Loyer moyen (€)*	Loyer moyen au m ² (€)*
Maisons	987	2 247	11,90	241	2 314	12,40
Appartements	6 512	1 147	16,40	1 511	1 204	18,13

* Ces loyers sont affichés avant toute négociation.

Number of announcements, average rent and average rent per m² (houses and apartments)
Source: Observatoire de l'Habitat – Prix location, 2013, p. 2.

Fig 69

	Types	3 ^e trimestre 2012			3 ^e trimestre 2013			Variation sur un an	
		Nombre d'annonces	Part des annonces	Loyer moyen (€)*	Nombre d'annonces	Part des annonces	Loyer moyen (€)*	Nombre d'annonces (en %)	Loyer moyen (en %)
Maisons	2 chambres	95	10%	1 352	31	13%	1 215	-67,37	-10,13
	3 chambres	316	32%	1 872	87	36%	1 908	-72,47	+1,92
	4 chambres	314	32%	2 344	60	25%	2 675	-80,89	+14,12
	5 chambres	187	19%	2 802	42	17%	3 138	-77,54	+11,99
	6 chambres et +	75	7%	3 168	21	9%	2 938	-72,00	-7,26
	Total	987	100%	2 247	241	100%	2 314	-75,58	+2,98
Appartements	Studio	1 191	18%	797	270	18%	846	-77,33	+6,15
	1 chambre	2 303	35%	1 006	583	38%	1 102	-74,69	+9,54
	2 chambres	2 362	36%	1 296	511	34%	1 372	-78,37	+5,86
	3 chambres	557	9%	1 668	140	9%	1 673	-74,87	+0,30
	4 chambres et +	99	2%	2 144	7	1%	-	-	-
	Total	6 512	100%	1 147	1 511	100%	1 204	-76,80	+4,97

* Ces loyers sont affichés avant toute négociation.

Ministère du Logement – Observatoire de l'Habitat

Number of announcements, average rent and average rent per m² (houses and apartments, according to the number of rooms)

Source: Observatoire de l'Habitat – Prix location, 2013, p. 2.

The city of Luxembourg is the main core business of the rental market: in the third quarter of 2013, the capital city concentrated 12% of the rental offers in the country. The announced average rents were also the highest in the country. The average announced rent for a house was 3,013€ per month, i.e., 15.80€ per

¹⁷⁵ Fig. 68 (Number of announcements, average rent and average rent per m² (houses and apartments).

¹⁷⁶ Observatoire de l'Habitat – Prix location, 2013, p. 2.

m². Renting apartments was cheaper; still, the average announced rent was 1,411€ (that is to say, 21.96€ per m²) in the same period¹⁷⁷.

Fig. 70

Segments	Rappel : Offre et loyer moyen au 3 ^e trimestre 2012			Offre et loyer moyen au 3 ^e trimestre 2013		
	Nombre d'annonces	Loyer moyen (€)*	Loyer moyen au m ² (€)*	Nombre d'annonces	Loyer moyen (€)*	Loyer moyen au m ² (€)*
Maisons	158	3 097	14,75	28	3 013	15,80
Appartements	2 631	1 295	19,00	637	1 411	21,96

* Ces loyers sont affichés avant toute négociation.

Number of announcements, average rent and average rent per m²
 (comparison between third quarter of 2012 and third quarter of 2013)
 Source: Observatoire de l'Habitat – Prix location, 2013, p. 2.

A study carried by the CECODHAS Housing Europe showed that almost 9 in 10 respondents in Luxembourg strongly or somehow disagreed that it was easy to find good housing at a reasonable price¹⁷⁸.

Indeed, housing costs represent the largest single expenditure for many individuals and families¹⁷⁹, if one includes elements such as rent (or loan repayments for homebuyers), gas, electricity, water, furniture and repairs. In 2009, most households spent about 2,000-3,999 EUR/month on housing¹⁸⁰.

The housing cost overburden rate – i.e., the share of population living in households where housing costs account for more than 40% of the household's disposable income – is lower than 4% in Luxembourg¹⁸¹, although it is clearly higher for tenants (13.3%) than for owners, particularly those who are not burdened with a mortgage or loan (0.2%, as opposed to 0.8% for the owners who are¹⁸²). Only for households at risk of poverty is the share of housing costs in disposable income (i.e., the expenditure on housing compared to the household's income) slightly above the EU 27 average (30%, as compared to 22.5%)¹⁸³.

¹⁷⁷ Observatoire de l'Habitat – Prix location, 2013, p. 2. See fig. 70 (Number of announcements, average rent and average rent per m² (comparison between third quarter of 2012 and third quarter of 2013)).

¹⁷⁸ Pittini – Housing Affordability in the EU, 2012, p. 3; Just Arrived s.à.r.l - Just arrived, 2013, p. 20.

¹⁷⁹ See fig. 71 (“Share of housing costs as a percentage of disposable income in the EU by poverty status (2010)”).

¹⁸⁰ See fig. 76 (Distribution of monthly consumption expenses in 2009).

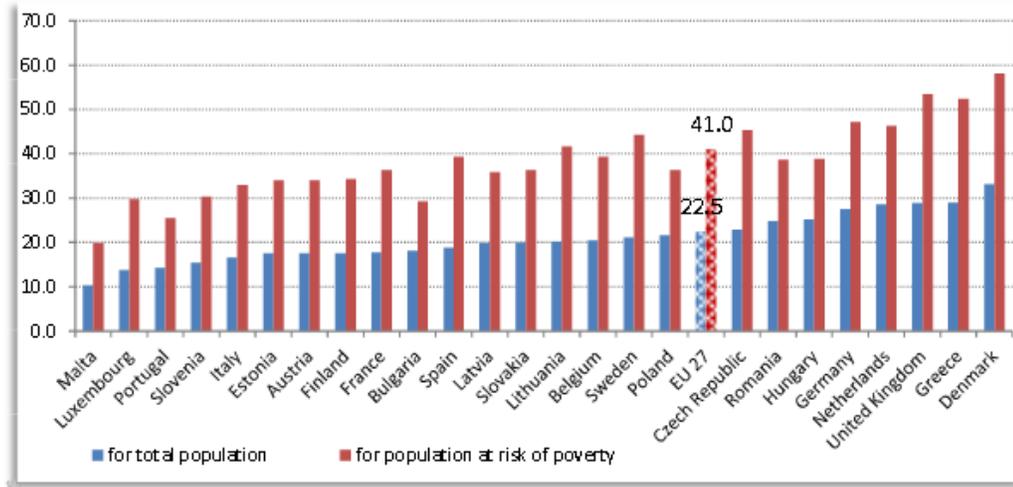
¹⁸¹ See fig. 75 (“Share of households that perceive housing costs as a heavy burden”).

¹⁸² For statistics over a complete year see http://observatoire.ceps.lu/pdfs/Rapport_2012.pdf (last retrieved: 15.05.2014).

¹⁸³ Pittini – Housing Affordability in the EU, 2012, p. 3. The CIGDL speaks of a number close to 50% (Wunnen Luxembourg, 2013, p. 38).

Fig. 71

Chart 1: Share of housing costs as a percentage of disposable income in the EU 27 by poverty status (2010)

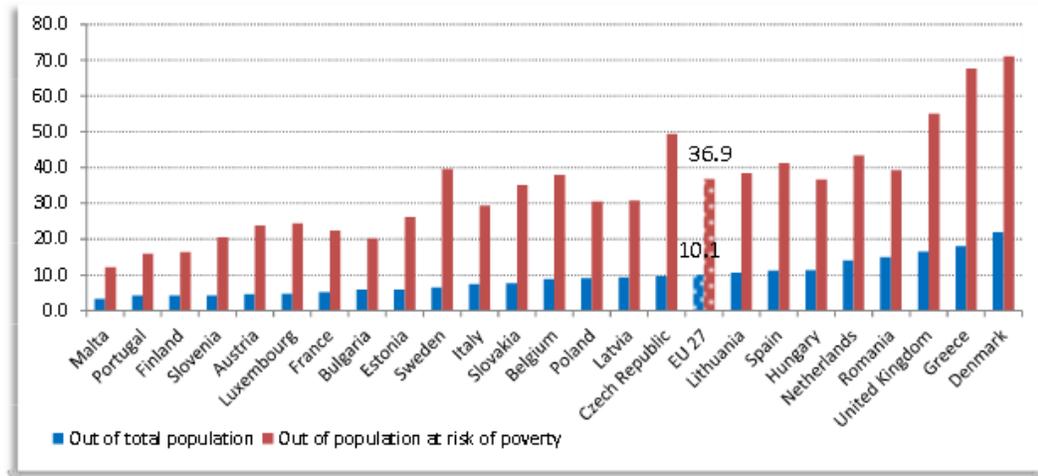


Source: SILC [ik_mdcd01]. Data not available for Ireland

“Share of housing costs as a percentage of disposable income in the EU by poverty status (2010)”
 Source: Pittini – Housing Affordability in the EU, 2012, p. 3.

Fig. 72

Chart 3: Housing costs overburden rate in the EU 27 as a percentage of population, by poverty status (2010)



Source: SILC [ik_lvho07a]. Data not available for Germany and Ireland.

“Housing costs overburden rate in the EU 27 as a percentage of population, by poverty status (2010)”

Source: Pittini – Housing Affordability in the EU, 2012, p. 4.

Fig. 73

4.8 Comparative price level indices for housing costs (gross rent, fuel and power) (EU-27 = 100)

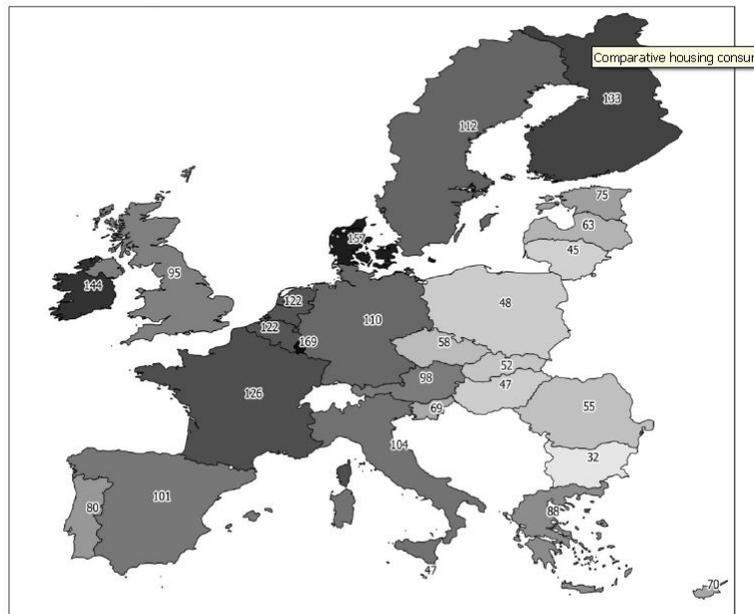
	2000	2005	2006	2007	2008
Austria	95.7	96.7	96.2	95.6	97.5
Belgium	111.5	119.1	120.3	119.1	121.9
Bulgaria	26.0	28.9	28.6	29.6	32.4
Cyprus	63.0	68.0	69.2	66.7	69.5
Czech Republic	34.9	43.3	46.8	48.1	58.0
Denmark	140.0	149.7	149.5	154.4	157.4
Estonia	43.9	55.8	61.6	72.0	74.7
Finland	130.1	130.5	128.0	128.3	133.3
France	117.6	122.2	122.7	124.3	125.8
Germany	128.1	115.0	111.8	109.3	110.2
Greece	75.6	81.3	82.2	84.7	87.5
Hungary	35.2	42.6	40.8	45.4	46.5
Ireland	130.8	134.5	135.4	140.6	144.4
Italy	100.8	105.4	107.0	103.0	104.3
Latvia	36.0	42.1	46.0	53.4	62.9
Lithuania	31.1	35.9	38.3	42.3	45.3
Luxembourg	134.1	149.9	150.2	161.3	169.3
Malta	42.9	43.5	44.5	43.8	47.0
Netherlands	113.6	123.7	121.3	119.5	121.5
Poland	39.6	42.4	42.3	41.9	47.6
Portugal	75.9	78.3	78.1	79.4	80.3
Romania	28.4	46.5	48.9	57.9	55.1
Slovak Republic	26.0	39.6	42.8	47.4	52.4
Slovenia	66.4	66.3	64.5	65.5	69.3
Spain	82.4	94.3	96.1	97.3	100.8
Sweden	136.2	118.4	117.5	112.9	112.0
United Kingdom	103.2	99.6	102.4	105.9	94.8
EU-27	100.0	100.0	100.0	100.0	100.0

Source: Eurostat (prc_ppp_ind A0104)

“Comparative price level indices for housing costs (gross rent, fuel and power) (EU-27= 100)”
 Source: Dol & Haffner (eds.) – Housing Statistics in the EU, 2010, p. 93, emphasis added.

Fig. 74

4.8F Comparative price level indices for housing costs (gross rent, fuel and power), 2008 (EU-27 = 100)



Source: Eurostat tables prc_ppp_ind A0104 (rounded)

“Comparative price level indices for housing costs (gross rent, fuel and power)
 Source: Dol & Haffner (eds.) – Housing Statistics in the EU, 2010, p. 9.

Fig. 75

4.9 Share of households that perceive housing costs as a heavy burden (%)

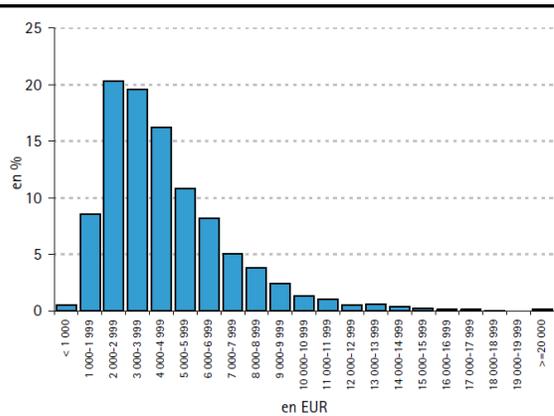
	2005			2008		
	Households with heavy financial burden	With financial burden	Without financial burden	Households with heavy financial burden	With financial burden	Without financial burden
Austria	14.1	61.4	24.5	15.6	59.0	25.5
Belgium	31.2	34.8	34.0	31.0	35.3	33.6
Bulgaria	na	na	na	42.6	49.8	7.6
Cyprus	63.2	30.9	5.9	66.4	30.4	3.3
Czech Republic	24.4	64.3	11.3	22.3	68.7	9.0
Denmark	6.3	20.5	73.2	7.4	23.0	69.6
Estonia	26.9	53.7	19.4	14.3	61.0	24.7
Finland	19.7	56.3	24.1	20.1	56.8	23.1
France	20.9	30.8	48.4	29.5	25.2	45.3
Germany	24.1	59.3	16.6	23.8	59.8	16.4
Greece	23.7	69.4	7.0	30.7	64.7	4.5
Hungary	24.8	62.4	12.8	34.8	56.9	8.3
Ireland	23.1	52.1	24.8	24.0	54.9	21.1
Italy	53.7	45.0	1.3	58.6	40.4	1.1
Latvia	33.0	49.7	17.3	25.0	54.9	20.0
Lithuania	36.7	48.3	14.9	27.9	55.6	16.5
Luxembourg	28.6	46.4	25.0	35.6	45.3	19.1
Malta	37.9	43.8	18.3	30.2	51.9	17.8
Netherlands	17.7	47.1	35.1	11.7	47.1	41.2
Poland	46.4	42.4	11.2	37.7	51.4	10.9
Portugal	23.5	58.2	18.3	37.8	48.6	13.6
Romania	na	na	na	38.1	58.4	3.5
Slovak Republic	40.3	53.3	6.5	32.5	58.1	9.4
Slovenia	32.5	58.2	9.3	33.6	54.0	12.4
Spain	46.4	50.1	3.5	51.5	45.3	3.3
Sweden	13.3	36.4	50.4	10.4	36.9	52.7
United Kingdom	na	na	na	28.5	45.2	26.3

Source: Eurostat (ilc_mdcd04)

“Share of households that perceive housing costs as a heavy burden”
 Source: Dol & Haffner (eds.) – Housing Statistics in the EU, 2010, p. 95, emphasis added.

Fig. 76

Graphique 1: Répartition des dépenses de consommation mensuelles en 2009



Source: STATEC; EBM

Distribution of monthly consumption expenses in 2009
 Source: Frising & Osier – Enquête Permanente, 2011, p. 5

- **To what extent is home ownership attractive as an alternative to rental housing**

Several studies reveal that purchasing a dwelling is, in the long run, financially more attractive than renting.

Indeed, on the one hand, the costs incurred by tenant households during the active labour phase of the household's head (when he or she is between 25 and 60 years-old) consists of between 15% and 20% of the household income. With the retirement of the household head (when he or she is between 60 and 65 year-old), the burden increases due to the decrease of the household's income (pensions) and, simultaneously, the continuous increase of rents¹⁸⁴. On the other hand, when a household decides to buy a dwelling, the costs during the active labour phase of the household's head range are 35% at the most and can be as low as 10%. With the retirement of the household's head, the house or apartment is usually burden-free. Housing costs then decrease to about 7% of the household's income. Moreover, the dwellings represent assets which, in case of need (e.g. continuous nursing care), may be sold.

Despite these studies, a decline in homeownership has been registered in Luxembourg¹⁸⁵. The aggregate homeownership rate declined by around 2 percentage points over the decade to the mid-2000s¹⁸⁶, and it would have declined even more had it not been for changes in the age structure¹⁸⁷. A possible reason for this is the high price of dwellings (as compared with other European countries), which has been continuously increasing in recent years.

Currently, most Luxembourgiens consider it to be more beneficial to be an owner than a tenant¹⁸⁸ because rents are usually higher than the monthly credit payments.

- **What were the effects of the crisis since 2007?**

The financial and economic crisis had significant effects on the housing market in the city of Luxembourg but also in the municipalities in its outskirts, where 35% of housing sales are concentrated¹⁸⁹.

In the recent housing system, one usually identifies three phases.

From the first quarter of 2007 until the second quarter of 2008, there was relative stability in the sale of apartments, both the old and new ones. Only in the last quarter of 2007 was there a sudden drop of sales, which can be explained by the expiration of taxation benefits aimed at encouraging the sale of land for construction of residential buildings (*loi du 30 juillet 2002*).

From the third quarter of 2008 until the end of the first quarter of 2009, still under the effects of the economic crisis, the number of sales slightly decreased, especially as far as new apartments are concerned. The fact that sales decreased 40% can be explained by a certain 'wait-and-see' attitude from the

¹⁸⁴ Ministry of Housing – Wohnungsbedarfprognose, 2008, p. 35.

¹⁸⁵ Andrews; Caldera Sánchez & Johansson – Housing Markets, 2011, p. 8.

¹⁸⁶ Andrews; Caldera Sánchez & Johansson – Housing Markets, 2011, p. 18.

¹⁸⁷ Andrews; Caldera Sánchez & Johansson – Housing Markets, 2011, p. 19.

¹⁸⁸ Le Quotidien, 2013.

¹⁸⁹ Observatoire de l'Habitat – Analyse de l'évolution des prix, 2005, p. 8.

purchasers and by difficulties in access to credit, which made potential first-time buyers reluctant in purchasing a dwelling.

The third and final phase, which began at the second quarter of 2009 and lasted until the second quarter of 2010, corresponded to a progressive take-off and, subsequently, to the normalization of activity¹⁹⁰. However, there was a strong increase in sales in the last quarter 2009 followed by a significant decrease in the following semester. This brutal evolution was due to a rebalance of the market and to a transitory effect associated with the obligation of providing the required energy certificate (*certificat de performance énergétique*, CPE) for every house and apartment put on sale from 1 January 2010 on¹⁹¹.

When we analyse the evolution of apartment sales between the third quarter of 2011 and the third quarter of 2012, we realize that the appraised apartment values increased by 7.0% and that the increase was more significant for newly-built apartments¹⁹².

When we compare the third quarter of 2012 with the third quarter of 2013 we realize that sales increased by 12.5%¹⁹³.

All in all, it can be said that during the crisis rents remained stable and property prices diminished¹⁹⁴. Currently, prices are already back to their pre-crisis levels or even higher. More precisely, prices are stabilized but growing consistently¹⁹⁵. This consistent growth is attributed to: an insufficient offer of dwellings and land for property development; the presence of a minority of households which have a high purchasing power; the excessive administrative slowness in enabling land for property development as well, the high price of construction, the regulations in force¹⁹⁶ and the economic and demographic evolution of the Grand-Duchy of Luxembourg. The prices of land for property development are the main reason for the fast evolution of the housing prices.

2.3. Tenancy contracts and investment

- **Is the return (or Return on Investment (RoI)) for rental dwellings attractive for landlords-investors?**

Luxembourg has a long standing tradition as a financial and business centre. Its attractive tax framework has been one of the key factors for its establishment as a hub for international trade in, among others, the financial sector¹⁹⁷.

¹⁹⁰ ID, *ibid.*, p. 2.

¹⁹¹ ID, *ibid.*

¹⁹²

<http://www.statistiques.public.lu/fr/actualites/entreprises/construction/2012/12/20121213/20121213.3.pdf> (last retrieved: 15.05.2014).

¹⁹³ Observatoire de l'Habitat – Prix de vente des appartements, 2003, p. 1.

¹⁹⁴ Despite the importance of the crisis, according to the President of the CIGDL there was no rise in the prices (Poujol – Le juste prix, 2012).

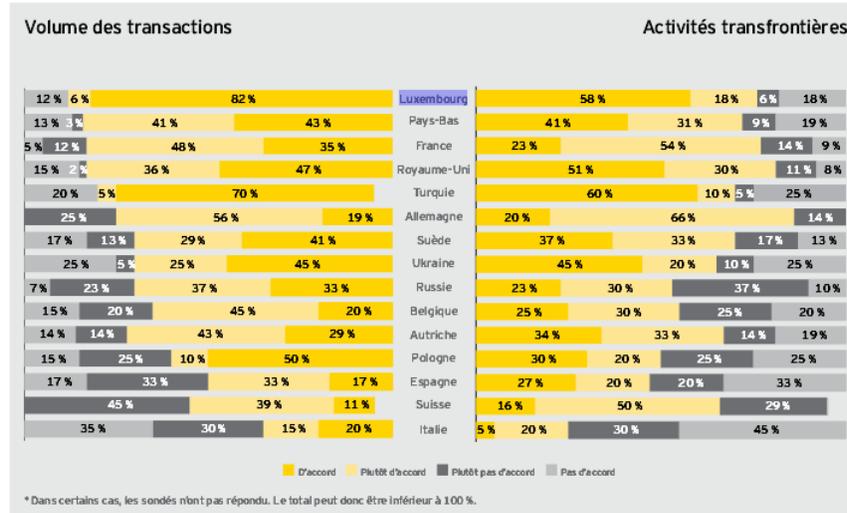
¹⁹⁵ Wunnen Luxembourg, 2013, p. 38.

¹⁹⁶ Blot – Peut-on parler de bulle, 2006, p. 24.

¹⁹⁷ Deloitte – Taxation and Investment, 2012, p. 1. See fig 78 (Prevision of increase of the volume of transactions, in part due to international investments).

Fig. 77

Prévision d'une augmentation du volume des transactions, en partie due aux investissements internationaux



Estimates of increase of the volume of transactions, in part due to international investments
 Source: Ernst & Young – Baromètre du marché de l'investissement, 2013, emphasis added

As far as investment in housing is concerned, Luxembourg's rental market is said to be 'strongly pro-tenant'. Indeed, rent control limits the amount of returns a landlord can receive (rent can only be increased every two years), and, if illegally evicted, the tenant is usually awarded a generous compensation.

Moreover, investors are subject to different types of taxation. First, rental income is taxed at progressive income tax rates ranging from 8% for net annual income exceeding 11,265€ to 39% on income above 41,793€¹⁹⁸. Municipalities in Luxembourg impose a land tax (real estate tax) of 0.7%-1% on the unitary value of real property. This tax, which varies according to the type of real property, is multiplied by coefficients fixed by each municipality. In addition to real estate tax, the transfer of immovable property is subject to a transfer tax of 6%, plus a 1% transcription tax. An additional charge (*surtaxe communale*) amounting to 50% of the due transfer tax (*droit d'enregistrement*) is imposed in case the real estate is located in the municipality of Luxembourg. The transfer tax is paid by the buyer¹⁹⁹.

Despite the above, Luxembourg investors are uniformly positive about the attractiveness of their market as a location for real estate investment²⁰⁰.

Indeed, provided that the dwelling is rented for private aims, the owners are allowed to amortize the dwelling, i.e., they benefit from a tax reduction

¹⁹⁸ In <http://www.globalpropertyguide.com/Europe/Luxembourg> (last retrieved: 15.05.2014).

¹⁹⁹ Deloitte – Taxation and Investment, 2012, p. 14.

²⁰⁰ Ernst & Young – European real estate assets, 2013, p. 24.

connected to the depletion caused by normal use. In case the normal amortization amounts to 2%, it can, under specific conditions, be accelerated during six years up to 6% per year. Luxembourg is one of the countries which allow compensation with other types of revenues: the rental losses are deductible from professional revenues.²⁰¹

▪ **In particular: What were the effects of the crisis since 2007?**

In 2012 the economic growth of Luxembourg registered a decrease, with real GDP expanding by just 0.11%, according to the International Monetary Fund. Real GDP growth is expected to slow further to 0.05% in 2013, amidst the on-going Eurozone debt crisis.

This slowdown of the economy, registered particularly since the beginning of the financial crisis in Europe, affected the housing market as well.

According to OECD, Luxembourg has one of the highest GDP per capita in the world. Nevertheless, it fell 3.6% QoQ in the last quarter of 2008, mainly due to the global crisis. In 2007 the majority of Luxembourg investors believed that the crisis would reduce the investment in real estate assets; however, the economic downturn continued beyond that date²⁰².

• **To what extent are tenancy contracts relevant to professional and institutional investors?**

As far as the private sector is concerned, most landlords consist of individuals who own and exploit one or two dwellings.

The CIGDL points out three particular reasons which might make investment of private, professionals and institutions particularly unattractive.

First, regulations in force (including those concerning energy efficiency) and complex administrative procedures may make it more difficult for those who are inclined to invest in the rental private market. Second, as for the investment in construction, allotment projects last on average five to ten years; this length makes it impossible for investors to foresee the state of the market by the time they are expected to collect profits from their investment. Third, the taxes imposed, which are owed by developers, are also a potential disincentive for investing in this field²⁰³. Moreover, the development of speculative bubbles may be a concern for investors: a sudden decrease of the value of their assets may effectively be disadvantageous to economic agents, as it reduces their consumption, but also their capacity of lending²⁰⁴.

However, the CIGDL considers that investors still see the investment in real estate as a safe one, and they keep on investing, particularly in apartments.

²⁰¹ <http://www.femmesetpatrimoine.lu/femmes/entry/optimisation-fiscale-ce-que-vous> (last retrieved: 15.05.2014).

²⁰² For further impacts of the crisis in Luxembourg housing market see *supra* "What were the effects of the crisis since 2007?".

²⁰³ Wunnen Luxembourg, 2013, p. 37.

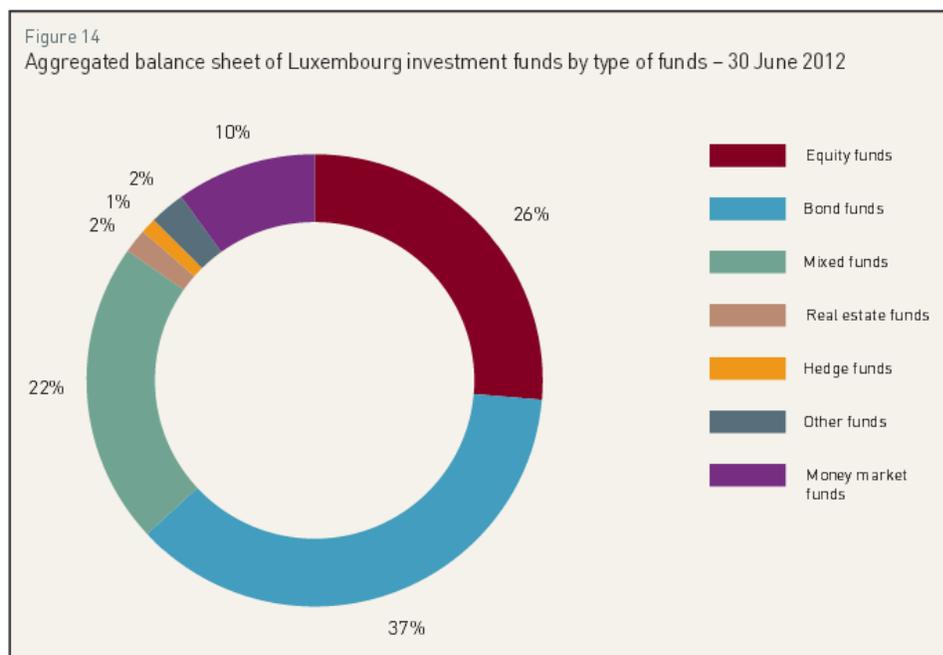
²⁰⁴ Blot – Peut-on parler de bulle, 2006, p. 3.

This is facilitated by low interest rates, which were boosted with the crisis and are expected to keep stable in the next few years. All in all, the CIGDL characterized the Luxembourg market as “satisfactory, sustained and interesting”²⁰⁵.

- **In particular: may a bundle of tenancy contracts be included in Real Estate Investment Trusts (REITS) or similar instruments?**

Luxembourg adopted a REIT-like structure²⁰⁶. Based on aggregated data of Luxembourg investment funds in June 2012, fig. 79 (“Aggregated balance sheet of Luxembourg investment funds by type of funds – 30 June 2012”) shows that real estate funds represent only 2% of the aggregated balance sheet of Luxembourg investment funds, while bond funds amount to 36%²⁰⁷.

Fig. 78



Source: BCL

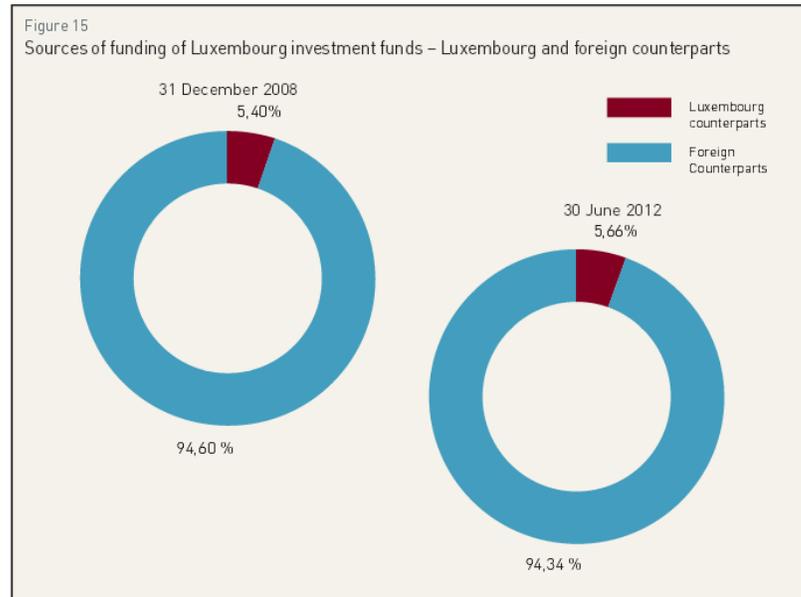
“Aggregated balance sheet of Luxembourg investment funds by type of funds – 30 June 2012”
Source: BCL – Bulletin 2013-3, 2013, p. 115

²⁰⁵ Dönschdeg, 2013, p. 6.

²⁰⁶ Price Waterhouse and Coopers – European Real Estate Fund Regimes, 2010, p. 18 ff.

²⁰⁷ BCL – Bulletin 2013-3, 2013, p. 115.

Fig. 79



Source: BCL - Sources of funding cover debt and shares issued by Luxembourg investment funds. Investment funds cover money market funds, equity funds, bonds funds, mixed funds, real-estate funds, hedge funds and other funds. Not allocated amounts of investment funds' sources of funding have been split between Luxembourg and foreign counterparts as 5% and 95% respectively, approximated according to several indicators from different BCL databases.

“Sources of funding of Luxembourg investment funds – Luxembourg and foreign counterparts”
Source: BCL – Bulletin 2013-3, 2013, p. 115

Fig. 79 shows that, for the aggregate balance sheet of Luxembourg investment funds, the three primary components by type of fund are bond funds, equity funds and mixed funds. Money market funds correspond to approximately 10% of the total balance sheet; hedge funds, real estate funds and other funds make up the remaining funds but are not significant in the whole picture²⁰⁸.

- **Is the securitization system related to tenancies in your country? Are commercial (or other) landlords allowed to securitize their rental incomes? If yes: Is this usual and frequent?**

The securitization system is related to tenancies in Luxembourg, in particular, because the securitization of immovables and activities is allowed in this country.

Indeed, the Securitization Act (*Loi sur la Titrisation, Loi du 22 mars 2004*) – which permits the securitization of several types of actives through different structures – allows securitizing an immovable by a commercial company or by a physical or legal person. This means that if a person (or several, for example, a family) owns a dwelling (or has a right of usufruct over it), this person can transfer

²⁰⁸ BCL – Bulletin 2013-3, 2013, p. 115. See fig. 79 for sources of funding of Luxembourg investment funds.

their property right to a securitization body and/or reserve themselves the right to inhabit the dwelling until the respective death, or for a certain period. The securitization body will be given the right of legal ownership over the dwelling while it will issue bearer shares representing the right and the potential income which results from it. These shares will be provided first to the owner of the immovable; they will be freely accessible. The simple tradition is enough for the transfer of ownership. The bearer will be able to donate, transfer, hand over, transfer or sell these shares to other bearers and the latter will cash the income resulting from their rights (e.g., rental agreements) and, in the term, from other products concerning this right resulting from the immovable.

This technique allows a group of private investors to acquire, through the securitization body, an important immovable without having to solely assume the total investment cost.

The Securitization Act also allows securitizing activities, as well as the risks or incomes connected to those activities. Therefore, a commercial landlord can securitize the respective activity of renting of dwellings. He or she shall transfer the ownership of the future income which derives from the respective rental activity to a securitization body. The commercial landlord will obtain a price which varies with the value of the asset given up and the update of the potential income generated by the activity connected to the management of the asset. External investors then finance this activity and receive stocks in return for their investment. Every income resulting from the rental activity net of charges will be cashed by the securitization body, and net from such operating costs form the benefit of the activity²⁰⁹.

2.4. Other economic factors

- **What kind of insurances play a role in respect to the dwelling (e.g. insurance of the building, the furniture by the landlord; third party liability insurance of the tenant)?**

One of the most important clauses which may be included in the tenancy contract is the obligation of obtaining insurance.

The insurance contracts most frequently found in tenancy contracts are: fire insurance (*l'assurance incendie*), insurance against losses caused by floods (*l'assurance dégâts des eaux*) and insurance of tenancy losses (*l'assurance dégâts locatifs*).

Fire insurance (Art. 1733 CC) is important both for the landlord and the tenant because the CC provides that, in principle, the tenant is responsible when a fire is set in the dwelling. The tenant will be exempted from liability only if it can be proven that the fire did not result from the respective *faute*; however, it is very difficult for the tenant to render this proof²¹⁰. The tenant is not obliged by law to contract this insurance. However, most of the tenancy contracts establish that he or she has the obligation of insuring himself or herself against the insurance

²⁰⁹ In <http://www.securitisation.lu> (last retrieved: 15.05.2014).

²¹⁰ Krieger – Le bail d'habitation, 2009, p. 60.

'rental risk' (*risque locatif*), which covers the risk of fire. Even when such term is not present at the tenancy agreement, it is in the tenant's best interest to pay the insurance premium.

The insurance against losses caused by floods is an insurance of less utility for the tenant: In joint ownerships, the losses caused by floods always correspond to losses in common areas, unless the regulations of joint ownership characterize the sewer pipes (*canalisation*) and the water pipes (*tuyaux d'eau*) as private areas. Therefore, these harmful events are, in principle, covered by the insurance of the joint ownership (*co-propriété*). In the context of a house which is rented, there is no statutory provision presuming that the tenant is liable in case of water damage.

The insurance of tenancy losses is often misunderstood. This insurance covers every loss for which the tenant may be responsible: deteriorated bathtub or washroom due to objects which are found inside of them, broken glass, losses caused to doors or furnished kitchen, etc.

Case law has regularly confirmed that, in case the tenancy contract specifies concluding such an insurance contract, that term is lawful and the defaulting tenant is in breach. The landlord may also require that the tenant delivers a copy of the insurance as well as a copy of the payment receipt of the insurance premium. If the tenant does not comply with this obligation after one or several warnings through registered mail (*lettre recommandée*), the landlord can resort to legal action for termination of the tenancy agreement. However, the judge has full discretion to evaluate the seriousness of the infringement. In most cases, the landlords invoke this cause of termination together with other causes²¹¹.

In the recently approved set of measures *Paquet Logement*, the Government approved the so-called "*assurance responsabilité décennale/biennale*" (decennial/biennial liability insurance). This insurance, which has not yet been put into a law (it is "*en suspens*"), will protect the purchasers of dwellings in case of loss of the decennial or biennial guarantee, as enshrined in the CC, during the liquidation of a *société de promotion juste* after the construction is completed. Indeed, such a liquidation, which is often done by certain promoters, leads to the total loss of the decennial or biennial guarantee²¹².

As far as social rental housing is concerned, within the renting by the *Fonds du Logement*, the refusal of the tenant of insuring at his or her own expense the dwelling against fire, water and other rental risks with an insurance company consists of a serious and legitimate reason for termination of the contract.

- **What is the role of estate agents? Are their performance and fees regarded as fair and efficient?**

²¹¹ Krieger – Le bail d'habitation, 2009, pp. 60-61. On the *assurance responsabilité décennale/biennale*, brought by the *Paquet Logement*, see Ministry of Housing – Le guide de la construction, 2012, p. 50.

²¹² Ministry of Housing – Le guide de la construction, 2012, p. 50.

The role of estate agents in Luxembourg varies considerably according to the determination of the parties to a lease contract. However, the parties rarely determine in the contract the role of the real estate agent: most often, they only provide a description of the immovable and the length of the contract²¹³. In such cases the contract concluded with the estate agents should be classified as a service contract (*contrat d'entreprise*), with regard to which the real estate agent does not have the power of representing the respective client²¹⁴. In this case the estate agent shall assume the usual responsibilities of the respective profession, which consist of obtaining information and actively providing advice to a person, so that this person can take an informed decision²¹⁵.

In Luxembourg the category of real estate agent comprises any person who, on behalf of and in the interest of another, acts as an intermediary for the sale, exchange, rent or cession of real estate, real estate rights or retail fund, providing information to potentially interested parties.

The fees charged by real estate agencies in Luxembourg usually amount to one month's rent, to which VAT (15%) is added. It is recommended that an appointment is made in advance – instead of going directly to an agency – so that the agency can prepare a programme of visits that suits the candidate's needs²¹⁶.

The real estate agent is to be distinguished from the real estate developer and the administrator of real estate or real estate management firm.

The real estate developer – subdivider (*lotisseur*) and builder of single-family houses (*constructeur de maisons individuelles*) – is any person who, as a principal or subsidiary occupation, habitually promotes and accomplishes real estate projects with the objective of selling or renting the real estate.

Finally, the administrator of real estate or real estate management firm is any person who, as a primary or secondary occupation, habitually acts as an authorized representative or intermediary on behalf of others and manages real estate, real estate rights or real estate co-ownership.

The real estate agents, the real estate developers and the administrators of real estate are considered real estate professionals (*professionnel de l'immobilier*) who, in the exercise of their profession, must prove their qualifications²¹⁷. As we have mentioned, the CIGDL is a Luxembourg non-profit association which represents the different professions of the real estate sector: real estate agent (*agent immobilier*), real estate developer (*promoteur*), administrator of real estate or real estate management firms (*administrateur de biens/syndic de copropriété*).

Landlords generally accept real estate agents' fees. However, they dislike that it usually takes real estate agents a long time to find tenants, which most of the time is due to the high rents landlord are aiming at.²¹⁸

²¹³ Thewes – L'Agent Immobilier, 1991, p. 220.

²¹⁴ Thewes – L'Agent Immobilier, 1991, p. 221.

²¹⁵ Tr.Arr.Lux 13 July 1929, Pas. Lux., t. XII, pp. 10 and 221.

²¹⁶ Just Arrived s.à.r.l – Just arrived, 2012, pp.19-20.

²¹⁷ Available on the website of the CIGDL (<http://www.cigdl.lu>).

²¹⁸ Information provided by the ULC.

2.5 Effects of the current crisis

- **Has mortgage credit been restricted? What are the effects for renting?**

As far as the evolution of the real estate credits granted to households living in Luxembourg is concerned, loans have been continuously increasing, in spite of the crisis²¹⁹. Since the beginning of 2008, outstanding loans (*encours de credits*) have increased as much as 50%²²⁰, although the overall credit provided for housing purposes is still lower than the European average²²¹. In part, this increase reflects the population increase, combined with an access rate to ownership through bank financing which has been sustainably higher than the EU average since mid-2012²²². A decrease was registered in mid-2011, but from the third quarter of 2012 on, it stabilized: in July 2013 it was at 7.8%²²³.

Indeed, the Luxembourg Household Finance and Consumption Survey revealed that 39% of Luxembourg households have a mortgage debt (against only 23%, in average, in the euro zone). This places the question of a potentially risky exposition of the Luxembourg monetary financial institutions in the real estate market. In 2012, the Financial Sector Supervisory Commission introduced new prudential rules, which are aimed at better managing the risk in the residential real estate sector. These measures foresee a limitation of the quantity of loan (“loan-to-value-ratio”), i.e., the relationship between the amounts of credit provided to the value of the underlying good, estimated or appreciated at its market value²²⁴.

As far as the offer is concerned, the attribution criteria were slightly strengthened in the second quarter of 2013, in particular as far as margins of loans, demands of guarantees and amount of loans are concerned. According to the banks, this evolution is particularly due to a deterioration of the perspectives concerning the general economic activity, as well as the new prudential rules introduced by the Commission²²⁵.

However, the inquiry on the distribution of bank loans indicates that the attribution criteria for housing loans have not changed significantly with the emergence of financial turbulences²²⁶.

²¹⁹ See fig. 82 (The real estate credits granted to Luxembourg’s residents).

²²⁰ BCL – Bulletin 2013-3, 2013, p. 51.

²²¹ See fig. 80 (Share of the loan per percentile and according to the country of the euro zone).

²²² BCL – Bulletin 2013-3, 2013, p. 55 *passim*. See fig. 81 (The credits attributed to the private non-MFI sector).

²²³ BCL – Bulletin 2013-3, 2013, p. 51.

²²⁴ BCL – Bulletin 2013-3, 2013, p. 51.

²²⁵ BCL – Bulletin 2013-3, 2013, pp. 52-53.

²²⁶ BCL – Bulletin 2013-3, 2013, p. 50.

Fig. 80

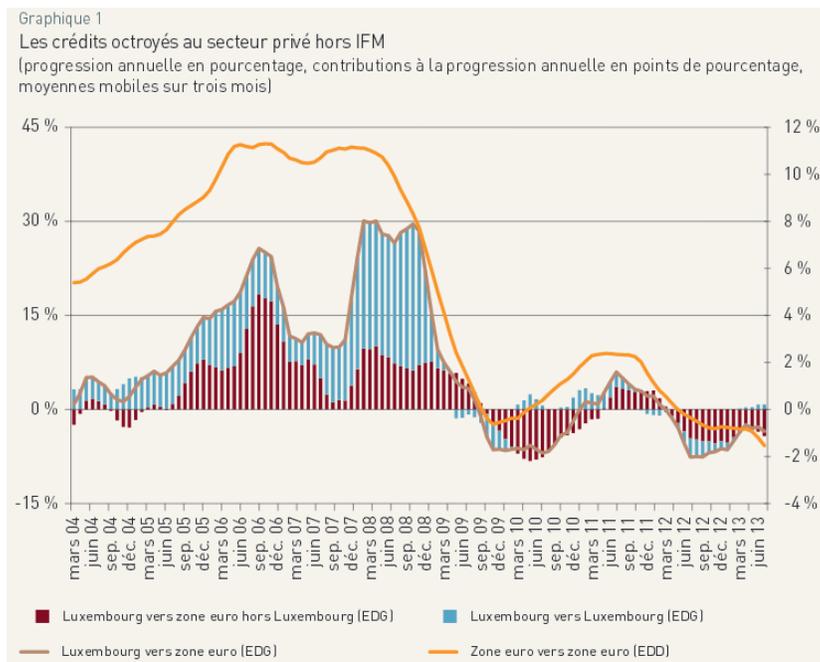
Quotité d'emprunt par percentile et selon le pays de la zone euro

PAYS	P25	P50	P75
AT	26 %	53 %	93 %
BE	59 %	87 %	107 %
CY	52 %	81 %	106 %
DE	50 %	76 %	100 %
ES	74 %	99 %	105 %
GR	56 %	87 %	100 %
IT	50 %	78 %	100 %
LU	55 %	84 %	100 %
NL	75 %	100 %	112 %
PT	67 %	97 %	100 %
SK	50 %	78 %	100 %
zone euro*	58 %	88 %	105 %

Source: Calculs basés sur données HFCS (BCL, BCE); données pondérées.
* y compris Malte et la Slovaquie.

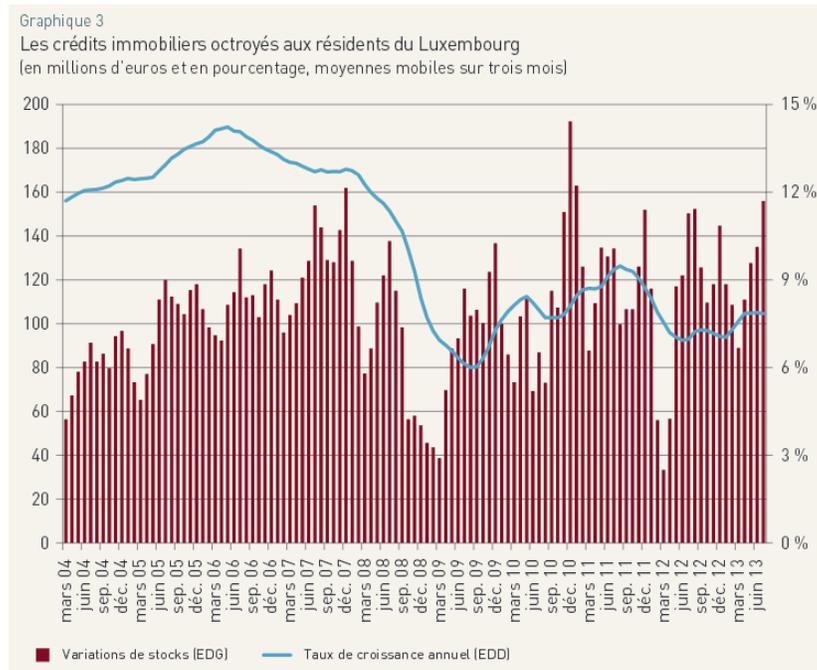
Share of the loan per percentile and according to the country of the euro zone
Source: BCL – Bulletin 2013-3, 2013, p. 51.

Fig. 81



The credits attributed to the private non-MFI sector
Source: BCL – Bulletin 2013-3, 2013, p. 48

Fig. 82



The real estate credits granted to Luxembourg's residents
Source: BCL – Bulletin 2013-3, 2013, p. 49

- **Indicate the current figures on repossession (seizures of houses in case of mortgage credit default of the buyer)? Have repossessions affected the rental market?**

Repossession is not a frequent phenomenon in Luxembourg. The temporary breach of the duty to repay housing loans is usually dealt with through the suspension of payments, financial help granted by social bodies, etc.²²⁷. Nevertheless, banks have been asking for more guarantees than in the past. According to statistics, 82% of Luxembourg respondents said they expect banks to extend the repayment period for distressed loans²²⁸.

- **Has new housing or housing related legislation been introduced in response to the crisis?**

As we have explained, the crisis affected the housing sector in Luxembourg particularly between 2007 and 2009 and it translated into a decrease in the real estate sales market, as well as in the real estate construction market.

²²⁷ Information provided by the ULC.

²²⁸ Ernst & Young – European real estate assets, 2013, p. 25. No further official sources on repossession have been found so far.

The Housing Ministry enacted legislation to respond to these developments and foster the housing sector.

In October 2008 it enacted the PL aimed at promoting the construction of dwellings and homeownership. Land and housing costs can thus be lowered and new legal matrixes, such as emphyteusis and surface right, were regulated.

The RGD 5 May 2011 (as amended by the RGD 30 December 2011) was also aimed at fostering homeownership. It fixed execution measures of individual financial subsidies for decreasing the amount of monthly mortgage loan instalments. Soon after, the RGD 12 May 2011 also fixed execution measures concerning subsidies for access to homeownership.

The RGD 24 March 2010 (as amended by the RGD 22 January 2011) developed a program of construction of blocks of subsidized dwellings, thereby helping fighting the chronic need of affordable housing in Luxembourg.

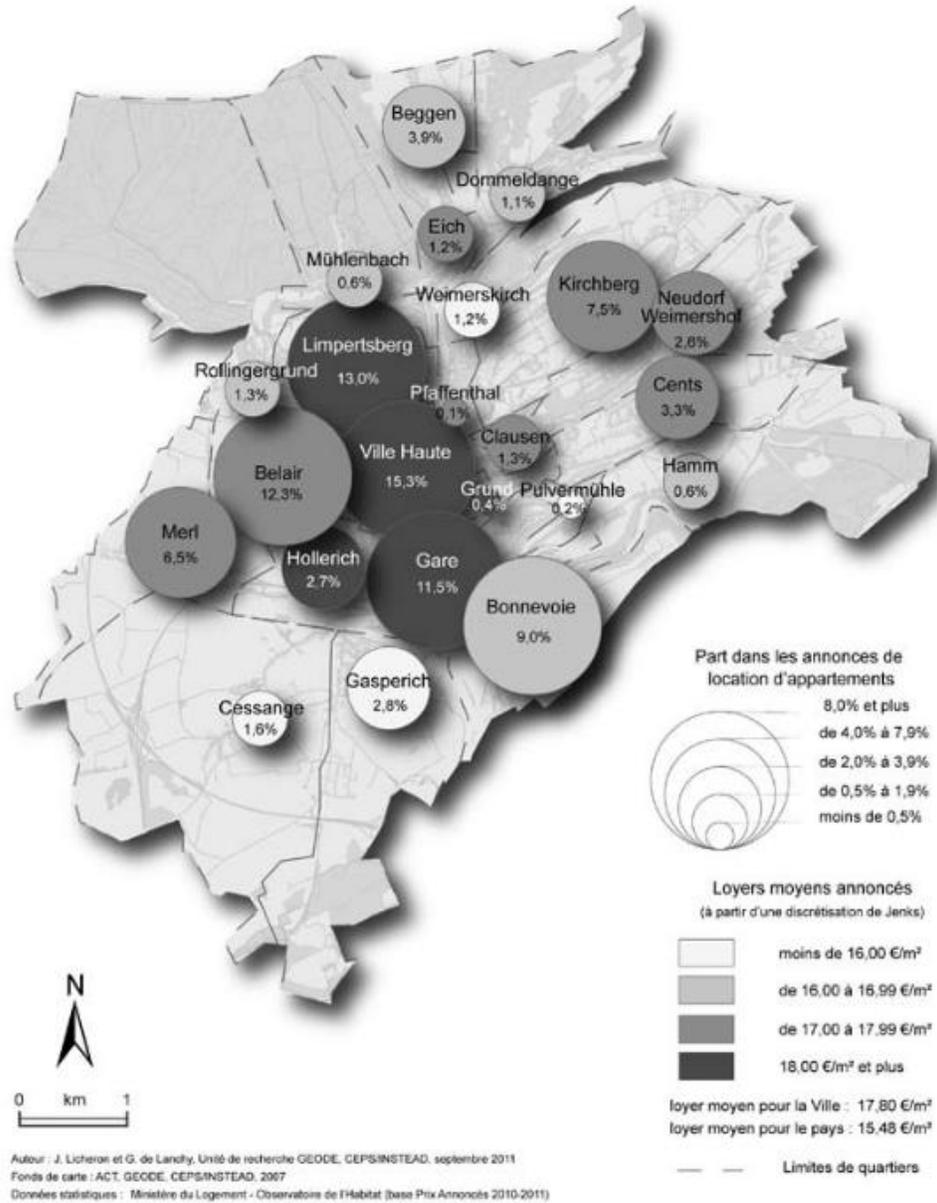
2.6 Urban aspects of the housing situation

- **What is the distribution of housing types in the city scale (e.g.: are rented houses mainly in the city centres and owner occupied in the suburbs?) vs. the region scale (e.g.: more rented houses in the big cities, less in the villages?)**

As we have referred, there are about three times more owner-occupied dwellings in Luxembourg than there are tenant-occupied dwellings. However, rental dwellings are predominant in the municipalities situated in the periphery of the capital city of Luxembourg²²⁹, and the more distant the municipality is from that city, the lower the rents are.

²²⁹ See fig. 67 (Status of occupation according to the nationality (individuals)).

Fig. 83



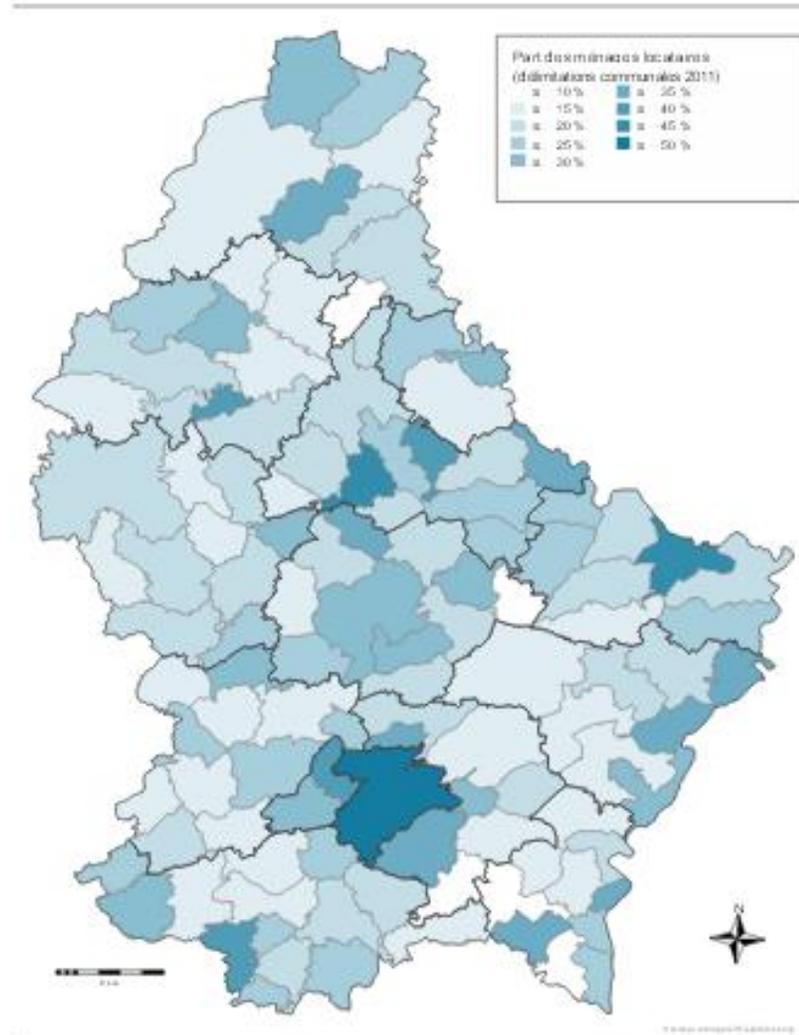
Carte 2 - Loyers annoncés moyens des appartements par quartier de Luxembourg-Ville, du 1^{er} juillet 2010 au 30 juin 2011

Average announced rents of apartments by neighbourhood of the city of Luxembourg, from 01.07.2010 to 30.06.2011

Source: Licheron – Le coût du logement, 2011, p. 24

Fig. 84

Carte 1 : Part des ménages locataires selon les communes



Source : STATEC – RP 2011

Households who rent according to the municipalities
Source: STATEC – Location: surfaces et loyers, 2013, p. 1

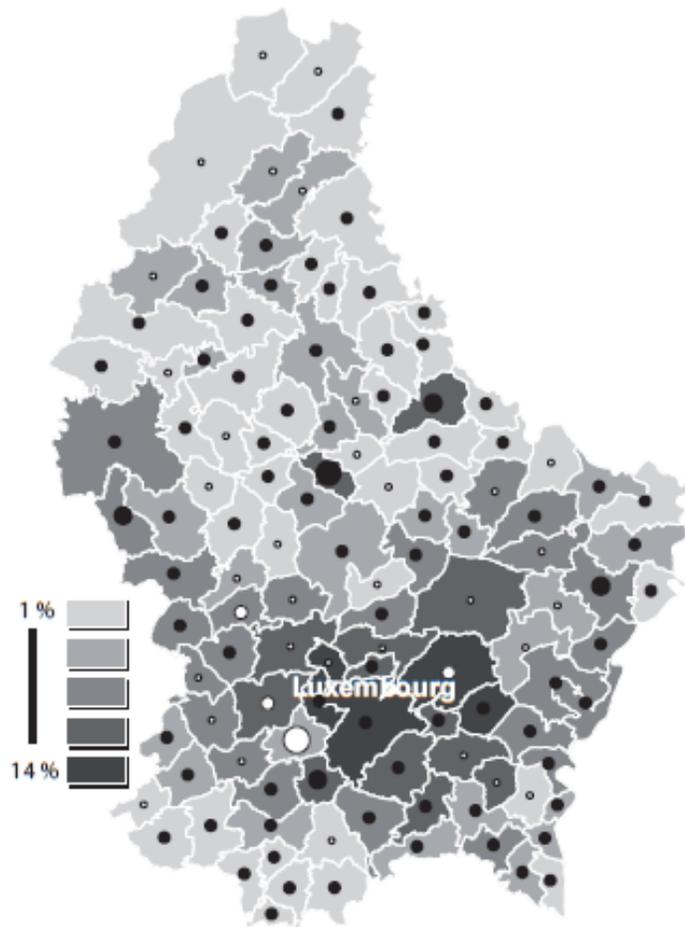
As we have mentioned, the numbers of homeowners vary according to several factors. Fig. 84, for example, shows that the number of homeowners also varies according to the municipality. Indeed, in general the percentage of owner-occupied dwellings is higher in the municipalities at the outskirts of the city centre. In the city of Luxembourg only 47.9% are homeowners²³⁰.

²³⁰ STATEC – Le logement, 2013, p. 1.

- **Are the different types of housing regarded as contributing to specific, mostly critical, “socio-urban” phenomena, in particular ghettoization and gentrification**

The distribution of Luxembourg nationals and non-Luxembourgiens, qualified and less qualified, in the country is heterogeneous²³¹.

Fig. 85



Distribution of high qualified migrants through the municipalities of Luxembourg
Source: Lord & Gerber – Immigration et intégration, 2009, p. 96

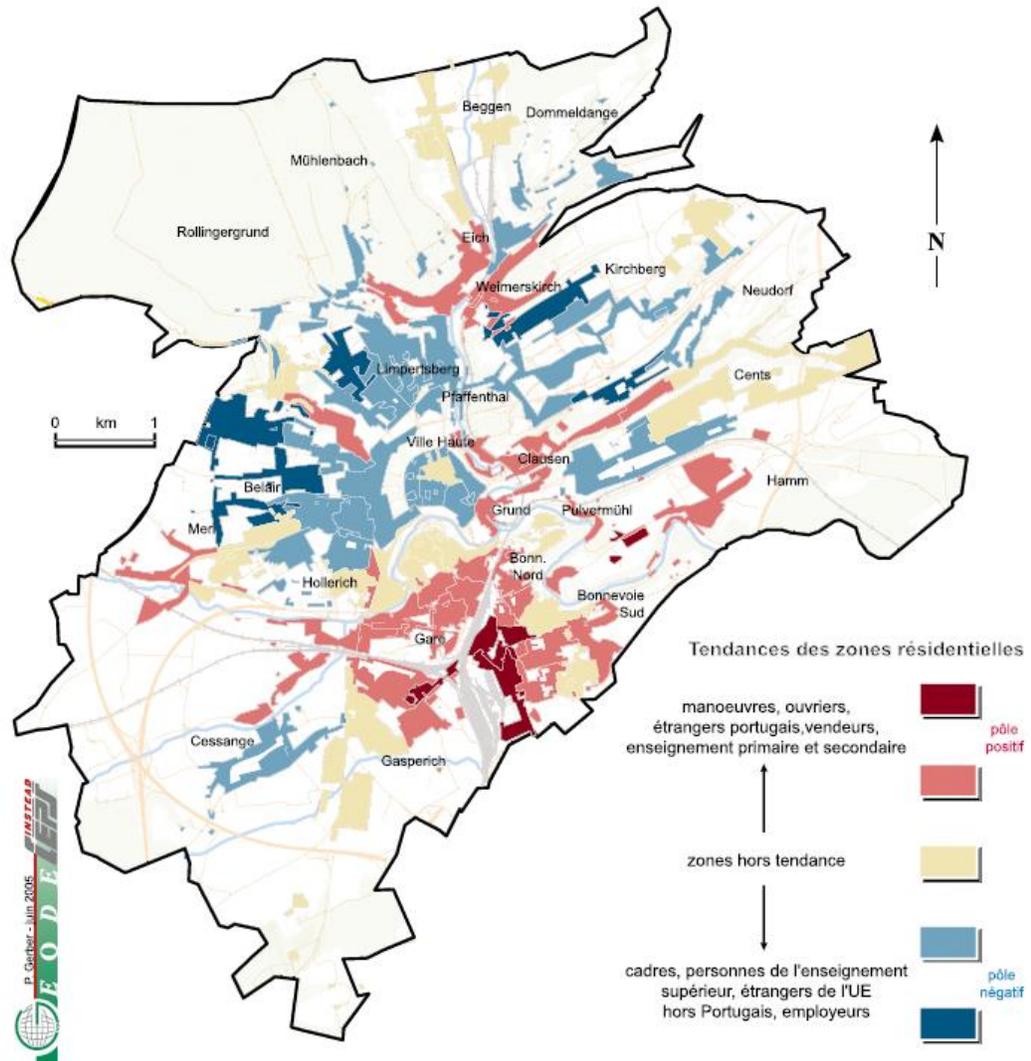
Indeed, on the one hand, there is a certain concentration of the highly qualified migrants in prestigious neighbourhoods, in particular in the city of Luxembourg²³². On the other hand, there is a ‘residential segregation’ of the less qualified (Luxembourgiens and non-Luxembourgiens) in some expensive quarters

²³¹ See fig. 86 (Tendencies in residential areas).

²³² Lord & Gerber – Immigration et intégration, 2009, pp. 86, 89, 93 and 101. See fig 85 (Distribution of high qualified migrants through the municipalities of Luxembourg). Senior executives and other liberal professionals are concentrated in the neighbourhoods of Belair, Merl, Limpertsberg, Neudorf, Kirchberg, Ville Haute and Cessange.

of the city of Luxembourg. The latter currently amount to about 70% of the inhabitants of the city. Sellers, manual labourers, people with primary or secondary education live in the less affluent neighbourhoods (Gasperich, Benevoie Sud); along the Alzette valley and in the old central quarters of Eich, Weimerskirch, Grund, Clausen, Hamm and Pulvermühl²³³.

Fig. 86



Source : Administration du Cadastre et de la Topographie (1999), CEPS/INSTEAD (2003), Ponts et Chaussées (2002), Ville de Luxembourg (Service de la Topographie, 1997), STATEC (RGP 2001).
Méthode : Analyse en composantes principales, cartographie des scores factoriels standardisés (logiciel SPSS)

Tendencies in residential areas
Source: Gerber – La ville de Luxembourg, 2005, p. 6

²³³ Lord & Gerber – Immigration et intégration, 2009, pp. 88, 91, 93 and 94. See fig. 86 (Tendencies in residential areas).

The government has been acting towards the promotion of a more diverse social mix of different housing tenures across the country. Moreover, dwellings with a public task cannot be easily identifiable from the outside, which also contributes to prevent stigmatization. There is a concentration of Portuguese and Cape Verdean citizens in the south of the country, but this seems to result more from historical and socio-economic reasons than from a specific policy. All in all, it can be said that there is no ghettoization in Luxembourg.

The same cannot be said about gentrification.

In the last years, the geographic distribution of dwellings for sale and rent in the city of Luxembourg changed significantly. Since the 1990s, the most central neighbourhoods in the city centre have been losing inhabitants. Simultaneously, the construction of dwellings in peripheral municipalities has been intensified²³⁴. This seems to point out to an on-going process of gentrification, i.e., the reoccupation of the city's central areas by the wealthiest classes, after renovations and rehabilitations²³⁵.

Gentrification has been accompanied by changes in the morphology and functions of renovated neighbourhoods, as new commercial and third-sector activities emerge to meet the demands of the new inhabitants. Thereby, gentrification very often reflects the economic, cultural and symbolic investment of the few elites who came to live in the city.

- **Do phenomena of squatting exist? What are their – legal and real world – consequences?**

'Freespace' was an initiative launched in 2011 for the creation of a free space in Luxembourg²³⁶. The group protests against the fact that there are several buildings which have long stood empty, causing real estate speculation to thrive. According to the members of this movement, envisaged by some as "a marginal group", 'purchase and rent prices are artificially increased', 'the city centre is fully conceived within a capitalist exploitation logic' and 'there is no place for non-profit oriented events nor for people with less purchasing capacity or dissenters who do not want to follow social rules'. They consider that Luxembourg is the only European country where such 'free space' does not exist.

Squatting seems to be, however, an unimportant phenomenon in Luxembourg. Indeed, this movement has no impact in the public opinion, which seems to consider squatters not as political or social protestors but simply as criminal offenders. Indeed, squatting is prohibited in the Luxembourg Criminal Code. Art. 442 of the *Code pénal* provides that "the person who enters in the premises named in Art. 439 [residence of individuals, a house, an apartment or dwelling inhabited by someone or the respective outbuildings] without the consent of their owner or tenant and is found during the night will be punished with imprisonment from 15 days to two years and a fine of 251€ to 3,000€.

²³⁴ Licheron – Le coût du logement, 2011, pp. 23-24.

²³⁵ ID, *ibid.*, p. 24.

²³⁶ Their blog is <http://freespacelux.blogspot.de/> (last retrieved: 15.05.2014).

2.7 Social aspects of the housing situation

- **What is (are) the dominant public opinion(s) towards certain forms of rental types or tenure forms? (e.g. is renting considered as socially inferior or economically unsound in the sense of a “rental trap”?) In particular: Is only home ownership regarded as a safe protection after retirement?**

Public opinion in Luxembourg is traditionally conservative. Twenty to thirty years ago, renting was considered socially inferior to being homeowner. Nowadays it became too common to be stigmatized. Nevertheless, home ownership is clearly perceived as a source of safety after retirement.

There are two kinds of tenants in Luxembourg: those who belong to social categories where it is difficult to accede to ownership and where the payment of rent consumes a large part of the monthly budget and those who have a comfortable financial position and who could easily acquire their own dwelling if they wanted, but prefer to rent. To the latter category belong, particularly, bankers and foreign high-skilled workers²³⁷.

- **What is the typical attitude of tenants towards different forms of tenure (e.g. owners of privatized apartments in former Eastern Europe not feeling and behaving as full owners)**

Most tenants consider that renting an apartment in the private market is a flexible solution. Nevertheless, there is a general perception that it is relatively difficult to find an affordable and yet qualitative dwelling. Renting in the social market is the wish of households with the lowest incomes, but the stock is extremely small (2% of the total housing stock) and thereby most of these households stay in the waiting lists for a long time.

Many tenants are satisfied with their status as tenants, but the predominant idea in Luxembourg society is that homeownership is the *ideal* form of tenure, not only because instalments are often lower than monthly rents for an equivalent dwelling, but also because having one's own dwelling is still seen as a “financial safety” for retirement days.

²³⁷ Krieger – Le bail d'habitation, 2009, pp. 18-19. See, also, <http://www.statistiques.public.lu/catalogue-publications/RP2011-premiers-resultats/2013/08-13-fr.pdf> (last retrieved: 15.05.2014).

Summary table 3

	Home ownership	Renting with a public task (municipalities <i>Fonds du Logement</i> and SNHBM)	Renting with a public task (AIS)	Renting without a public task
Dominant public opinion	More available to the wealthiest	Mainly aimed at lower-income households (priority = social mix) Good quality of the construction	Lower rents when compared to the private sector	Progressively expensive
Tenant opinion	Usually perceived as the ideal tenure	Mainly aimed at lower-income households (priority = social mix) Good quality of the construction	Flexible instrument to meet accommodation needs (for AIS)	Progressively expensive Sometimes bad relationship quality/price Often prefers renting across the borders
Contribution to gentrification?	Yes (many unaffordable rents in Luxembourg city and Esch-sur-Alzette)	No	No	No
Contribution to ghettoization?	No	No	No	No
Squatting?	Unrepresentative	Unknown	Unknown	Unknown

3 Housing policies and related policies

3.1 Introduction

- **How is housing policy related to the structure and concept of the (national) welfare state, to other welfare policies and the tax system?**

In the last few years, particularly since the enactment of the LBUH, the Housing Ministry has been promoting the rental sector. Due to high price of land, high demand (due e.g. to the demographic increase and the increase of single-households), insufficient offer of dwellings, or insufficient savings to contract for banking loans, home-ownership has progressively become a prerogative of the wealthiest.

Currently, many households are still not properly accommodated, either because they are on the waiting list for obtaining a social dwelling or because they are not entitled to social housing. The Government is particularly concerned with this specific social segment, and so it has been promoting the involvement of the private sector in the construction of housing and the creation of social rental agencies.

The already existent AIS has a characteristic which seems to be original in the European panorama. It involves cooperation with social security services, which are responsible for drafting a personal and professional development plan of the tenant. When signing the agreement with the AIS, the tenant agrees to cope with such individual program. This shall allow him or her to gather sufficient financial autonomy to be able to enter the private rental sector after three years, which is the fixed and non-extendable length of the contract with the AIS.

The new rent subsidy (*subvention de loyer*) provided for in the Law Project 6542 (introducing a rent subsidy and amending Law 25 February 1979) will assist households in risk of poverty to cope with the payment of rents 'without actually creating a general rise in rents'²³⁸.

The Law Project 6583 provides for a significant public subsidization of land for development and of immovables aimed at accommodating particular parts of the population, among which 'the households with modest revenues, large families, elderly people, persons with handicap, people to be re-socialized, households in precarious situations and households living in intergenerational accommodation structures' (Art. 41), 'students, interns, apprentices in training (...)' (Art. 42) and, particularly 'persons seeking international protection' (Art. 43). The Law project foresees the enlargement of the circle of beneficiaries including, among others, ex-prisoners and ex-detainees.

As far as elderly persons are concerned, they benefit from priority access to social housing (Art. 10 *in fine* of the amended RGD 16 November 1998), and minor children of low age have special treatment in eviction procedures²³⁹.

Nowadays, there are practically no homeless people in Luxembourg, and those who live in the street are promptly assisted by specific public services, which direct them to urgent, exceptional and temporary accommodation premises (*hébergement temporaire, foyers*)²⁴⁰. Young adults in social difficulties are the main target of services which provide the so-called "*logements encadrés*", where tenants are expected to pay rent and associated costs²⁴¹.

²³⁸ Ministry of Housing – Rapport d'activité, 2012, p. 10.

²³⁹ Thewes – Le nouveau droit du bail, 2007, p. 104.

²⁴⁰ See, for example, <http://www.caritas.lu/Besoin-d%27aide/Avoir-un-toit> (last retrieved: 15.05.2014).

²⁴¹ See, for example, <http://www.croix-rouge.lu/fonctionnement-des-logements-encadres/> (last retrieved: 15.05.2014).

- **What is the role of the constitutional framework of housing? (in particular: does a fundamental right to housing exist?)**

The right to housing is not contemplated by the Luxembourg Constitution, nor is a definition of ‘decent housing’ found in Luxembourg legislation. However, amended Law 25 February 1979 and the policy of housing which was put in place to take action in this field are instruments aimed at facilitating access to housing in the Grand-Duchy of Luxembourg. Therefore, it is considered that, in practical terms, there is a certain guarantee to access to housing²⁴².

Due to the absence of a proper constitutional and legal framework of the right to housing, Ed Thorpe considered that Luxembourg should follow the example of France, where, since 2007, those citizens who do not manage to find housing may resort to legal action²⁴³. Nevertheless, it must be highlighted that the 2% of social housing in Luxembourg is significantly smaller than with the percentage of social housing in France, which is close to 20%²⁴⁴. Due to the residual percentage of social housing in Luxembourg, the introduction of a “right to housing” in the Luxembourg Constitution is currently not an issue.

3.2 Governmental actors

- **Which levels of government are involved in housing policy (national, regional, local); what are they called; how many are there of each?**
- **Which level(s) of government is/are responsible for designing which housing policy (instruments)?**
- **Which level(s) of government is/are responsible for which housing laws and policies?**

The Housing Ministry²⁴⁵ is the competent Ministry on housing issues. Its attributions are defined by the *Arrêté grand-ducal du 23 décembre 2013*, and they are five-fold. They concern: 1. Housing policies (*Politique générale du logement*) & Housing Observatory (*Observatoire de l’Habitat*); 2. Legislation on rents (*Législation sur le bail à loyer*); 3. State subsidies for the construction of housing units & public housing promoters (*Aides à la pierre – promoteurs publics*); 4. State subsidies for individuals, the Service for Housing Aids & Commission for individual housing aids (*Aides à la personne – Services des aides au logement – Commission en matière d’aides individuelles au logement*) and 5. Housing Pact – Sectorial Housing Plan (*plan sectoriel logement*).

Therefore, the Ministry of Housing is responsible for general housing policies, the PL, the Sectorial Housing Plan, the legislation on rent agreements (*bail à loyer*), the affordable construction of complexes of housing units (*aides à la pierre*), the *Fonds du Logement*, the Funds for rehabilitation of the city of Syrdall,

²⁴² BIPE – Les politiques publiques, 2000, pp. 6-7; Ministry of Housing – Le Logement, 2005, p. 7.

²⁴³ Thorpe – Le rôle du logement, 2008.

²⁴⁴ CECODHAS - Housing Europe, 2007, p. 90.

²⁴⁵ Official website: <http://www.ml.public.lu/fr/index.html> (last retrieved: 15.05.2014).

the National Company for Affordable Housing (*Société National des Habitations à Bon Marché*)²⁴⁶ and social affairs.

The Service for Housing Aids provides information on housing at the legislative, administrative and technical levels. It also provides individual help in housing issues, construction techniques, ecological construction and energy saving.

The *Observatoire de l'Habitat*²⁴⁷ was set up at the beginning of 2003 for the planning of a coherent and efficient policy in the short, middle and long term, concerning housing in particular and habitat in general. Within this context, the Housing Observatory has three main missions, namely: 1. to collect and centralize data to promote the involvement of its partners; 2. to analyse the supply of dwellings, the potential land available for housing construction, the comfort of housing, the advertised prices of dwellings contained in sale or rent real estate ads, and the registered prices of dwellings for sale (prices on notary acts); and 3. to disseminate the publication of the *Notes de l'Observatoire* and indicators of prices of dwellings proposed to sell.

3.3 Housing policies

- **What are the main functions and objectives of housing policies pursued at different levels of governance?**
 - **In particular: Does the national policy favour certain types of tenure (e.g. rented housing or home ownership (owner-occupation))?**

The most recent statement on housing policy, issued in 2013, commits the Government to get the evolution of the prices in the real estate market under control, by increasing the offer of dwellings and land for property development and by simplifying and shortening the administrative procedures concerning the construction of housing. For this purpose, the Government is committed to: a) mobilize land for property development (particularly to families with lower revenues); b) boost the creation of social housing and affordable housing (through mobilization of funds, the creation of an advisory council for support of municipalities in the execution projects of construction and allotment and the involvement of the private sector in the construction of housing); c) revise the *Pacte Logement* and the measures put forward in the *Paquet Logement*, encouraging the centralization of the management and payment of every subsidy in relation to housing in a single public service and d) reform of the land tax (which shall contribute to a stable revenue to municipal collective bodies, necessary for the financing of local infrastructures) and the housing subsidies.

Within the promotion of the creation of social and affordable housing, the Government is also committed to reform the *Fonds du Logement* and to promote

²⁴⁶ Official website: <http://www.snhbm.lu> (last retrieved: 15.05.2014).

²⁴⁷ Official website: <http://observatoire.ceps.lu/> (last retrieved: 15.05.2014).

and enlarge the activities of the AIS and the accountability of the municipalities. As far as the first is concerned, it is intended that the *Fonds du Logement* will start being responsible for: the priority construction of rental social dwellings; priority construction of social dwellings for sale; administrative and technical management of the real estate stock possibly by regional offices; insurance of a social follow-up adapted to the clients of the *Fonds du Logement*, namely in collaboration with other social authorities and social offices; creation of real estate reserves. As far as the second is concerned, the Government intends to actively support the AIS and to promote the creation of more social rental agencies at the local and regional level. The Government will create a legal framework pertaining to the social rental management and will favour the creation of synergies between the AIS and the social offices.

Within the aim of extinguishing the system of deposits (*cautions de loyer*) while maintaining the principle of protection of the owners against the potential danger of tenants being in arrears, the Government will study the possibilities of introducing a non-commercial rent security (*garantie de loyer*).

In order to better control the rules on the LBUH, particularly Art. 3, reliable statistics on the real rents paid (*Mietspiegel*) will be established. Within this context, the Government will execute a reform of the municipal rent commissions.

Finally, the law on co-ownership will be revised, in order to simplify the renovations and energy efficiency of immovables²⁴⁸.

- **Are there measures against vacancies (e.g. fines or forced assignments of vacant houses)?**

Art. 27-2 of the LBUH provides that “The municipal executive [*collège de bourgmestre et échevins*] may oblige the owners of unoccupied immovables or parts of immovables aimed at serving as housing in the territory of the municipality to declare them to the municipal administration within the lapse of time fixed by that municipal executive. The declaration shall specify the non-occupied volume, the number of rooms and the amount of rent”. The no. 3 of the same article provides that “the infringements to the rules in paragraph (1) will be punished with a fine of 251€ to 50,000€ and a restoration of the transformed site in their original state or one of these penalties only”.

The *Pacte Logement* put forward the project of burdening the owners of vacant dwellings with the payment of a special municipal tax. However, these provisions have so far gone nearly unheeded²⁴⁹.

- **Are there special housing policies targeted at certain groups of the population (e.g. elderly people, migrants, Sinti and Roma etc)?**

Amended Law 25 February 1979 granted a significant amount of state grants to people who had lower incomes and families with children. With a new

²⁴⁸ See governmental program in <http://www.gouvernement.lu/3322796/Programme-gouvernemental.pdf> (last retrieved: 15.05.2014).

²⁴⁹ BIPE - Les politiques publiques, 2000, p. 17.

Law Project submitted in June 2013 to the Luxembourg Parliament (*Chambre des Députés*), the Law Project 6583, the Government intends to enlarge the beneficiaries of these individual aids; namely, also the people living at a detention centre or prison could apply to these grants in the context of renting²⁵⁰.

The *Service des Aides au Logement*²⁵¹ (Service for Housing Aids) provides advice and information on housing subsidies to seniors (people with 65 years or more) and people in need of handicapped-adapted dwellings. These persons shall subsequently make an application for a rental dwelling next to the public promoters. The access criteria to a social rental dwelling are mainly provided by Arts 13 and 19 of the amended RGD 16 November 1998.

All in all, one should keep in mind that those situations are unrepresentative of the overall average household living in Luxembourg, who usually belongs to a middle-class or upper-class and thus does not meet significant financial difficulties in the access to housing.

3.4 Urban policies

- **Are there any measures/ incentives to prevent ghettoization, in particular**
- **mixed tenure type estates**²⁵²

As we have described, the Grand-Duchy of Luxembourg provides subsidies for the purchase and management of land for construction, as well as for the construction of low-cost housing for sale or rent. One of the conditions that housing promoters must meet to accede to a grant is that the project presented is comprised of at least 10% renting dwellings²⁵³, provided that the surface area of the project is bigger than 1 ha (hectare). The existence of this requirement leads one to think that the State aims at mixed tenure type estates in the country.

- **“pepper potting”**²⁵⁴

This practice is present at least within the sector of renting with a public task. Indeed, since the Law 8 November 2002 came in force, the *Fonds du*

²⁵⁰ See Art. 41 of the Law Project 6583 on the promotion of sustained housing and habitat (deposit: 20.06.2013) in <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6583> (last retrieved: 15.05.2014). See also Ministry of Housing – Le Paquet Logement, 2011, p. 9.

²⁵¹ <http://www.ml.public.lu/fr/aides-logement/index.html> (last retrieved: 15.05.2014).

²⁵² Mixed tenure means that flats of different tenure types: rented, owner-occupied, social, etc. are mixed in one estate, it is the simplest way of avoiding homogenized communities, and to strengthen diversification of housing supply.

²⁵³ See http://www.ml.public.lu/fr/promoteurs/aides_etatiques/principes_conditions_octroi/index.html (last retrieved 15.05.2014).

²⁵⁴ This mechanism is locating social housing flats among open market ones, so as not to gather lowest income families in one place. The concept is quite controversial, however in English affordable housing system was used for a long time to minimize the modern city ghettos problem.

Logement, the biggest provider of housing with a public task, was entitled to locate up to 25% of the respective rental stock in the private market, i.e., in accordance to the rules of the LBUH and, thus, under the normal conditions of the national private rental market²⁵⁵.

Also, the SNHBM allows a certain mix between social housing flats and open market ones by providing location surfaces for offices and medical services²⁵⁶.

- **“tenure blind”**²⁵⁷

Before granting a building permit, the mayor (*Bourgmestre*) analyses whether the particular project respects the architectural design of the surrounding buildings. This obligation is generally provided for by the Plan for land use of each municipality (*PAG: plan d’aménagement general de la commune*). Therefore, in Luxembourg one cannot find high rise residential buildings, for example.

- **public authorities “seizing” apartments to be rented to certain social groups**

There is no such practice in Luxembourg.

Other “anti-ghettoization” measures could be: lower taxes, building permit easier to obtain or requirement of especially attractive localization as a condition to obtain building permit, condition of city contribution in technical infrastructure.

Every capital grant, indirect grant, tax grant, state guarantee and municipal grant which has been explained under the sub-section “subsidization” can be considered anti-ghettoization measures.²⁵⁸

The activity of the AIS fights ghettoization in the sense that it makes available to vulnerable households dwellings from the private market which would otherwise be accessed only by households of a higher economic status.

- **Are there policies to counteract gentrification?**

Although we may consider that a certain process of gentrification has been taking place in Luxembourg, with the reoccupation of central areas of a city by the wealthier classes, after renovations and rehabilitations²⁵⁹, there are no policies to

²⁵⁵ For further developments, see http://www.fondsdulogement.lu/jcms/c_5250/fr/louer-sur-le-marche-libre (last retrieved: 15.05.2014).

²⁵⁶ See <http://www.snhbm.lu/index.php?p=3> (last retrieved: 15.05.2014).

²⁵⁷ This is a mechanism for providing social housing in a way that the financial status of the inhabitants is not readily identifiable from outside. It is used to avoid/minimize stigmatization and social exclusion which could be caused by living in a (openly identifiable) social stock.

²⁵⁸ See <http://www.france-immo-express.eu/index.php?cat=achat-immobilier-luxembourg> (last retrieved: 15.05.2015).

²⁵⁹ See *supra* sub-chapter 2.6.

counteract gentrification, as this phenomenon is not considered of particular relevance in Luxembourg.

- **Are there any means of control and regulation of the quality of private rented housing or is quality determined only by free market mechanisms? (does a flat have to fulfil any standards so that it may be rented? E.g.: minimum floor area, equipment, access to technical and/or social infrastructure and/or public transport, parameters such as energy efficiency, power/water consumption, access to communal services such as garbage collection. If so: how are these factors verified and controlled?)**

Art. 34 of the amended *loi du 25 février 1979* concerning state financial subsidy to housing, reads that 'without prejudice to the attributions and competencies of the public medical health inspectors and general and police, the municipal authorities are responsible for controlling dwellings (...) The mayor may give orders to close the sites in case the dwellings do not correspond to the established criteria'. Pursuant to this provision, the competent municipal service, in collaboration with the Police, executes regular controls of immovables with furnished rooms.

Art. 33 of the same Act reads that any person or body which rents or makes available furnished dwellings and collective dwellings must previously declare it to the mayor of the municipality, indicating the maximum number of persons who can be simultaneously accommodated and the amount of the rent, and annexing to the declaration a detailed description of the state of the sites. According to Art. 35, the infringement of Arts 32 and 33 involves the payment of a fine and imprisonment.

Every dwelling for renting must meet requirements of hygiene and habitability defined by RGD 23 March 1979, e.g.: the ceilings cannot be lower than 2.20m; dwellings shall have windows which can be opened and close hermetically and which measure at least 1/10 of the surface of the floor; the tenant shall have the possibility of drying the respective laundry outside his or her bedroom; the sites shall have installed kitchen equipment. The right to freely cook cannot be refused to the tenant; every operator of an inn (*garni, chambres meublées*) must provide for sufficient furniture in the rented rooms, namely: an individual bed; an individual wardrobe which could be closed with a key; one table; one chair; one mattress, one cover in summer and two covers in winter; one pillow.

The LBUH (Art. 32) also provides that the soil surface cannot be inferior to 9m² for the first inhabitant, 18m² for two inhabitants, 24m² for three inhabitants and 30 m² for four inhabitants.

The inns which can accommodate at least six people are considered collective dwellings. No room can be occupied by more than four people. The collective dwellings shall include: a toilet with flush water for six persons; a sink

for two persons; a heated shower with cold and warm water for six persons; a communal living space with a surface of 12m², increased by 1.5 m² per extra person after the 6th; an equipped kitchen with at least ten burners; a laundry-room and a place to dry the laundry; a storage area.

The landlord must have an updated registry of the tenants and rents paid.

In order to verify the conformity of the furnished rooms subject to control, the service for housing of the city of Luxembourg and the Police revisited some of these dwellings and concluded that these measures have been leading to a significant improvement of the degree of comfort of the furnished rooms.

The tenant is authorized to ask the landlord for the CPE of the house. This is usually neglected by the tenant, although it could help him or her him negotiating the rent price.

Garbage disposal is a community matter which functions well, and it has no particularity in the rental market.

- **Does a regional housing policy exist? (in particular: are there any tools to regulate housing at regional level, e.g.: in order to prevent suburbanization and periurbanization? Is it possible to distribute local taxes so that villages can afford the limitation of housing areas?)**

The Luxembourg Government has tools with which it regulates housing at a regional level. One of the concerns relates the relationship between housing and displacement. Indeed, the government has been analysing whether the current transportation routes conveniently serve the inhabited areas of the country, particularly the most densely inhabited.²⁶⁰

3.5 Energy policies

- **To what extent do European, national and or local energy policies affect housing?**

'Myenergy'²⁶¹ is the Luxembourg structure for information and advice as far energy efficiency and removable sources are concerned. It was created as an economic interest group²⁶², and it is highly engaged in explaining the principles and advantages of passive constructions²⁶³ to every public and private party involved. Through this information service, it aims at demystifying this standard of

²⁶⁰ CEPS/Instead & GEODE – Survi du développement territorial, 2008, p. 37.

²⁶¹ <http://www.myenergy.lu/> (last retrieved: 15.05.2014).

²⁶² Ministry of Housing – Le guide de la construction, 2012, p. 76.

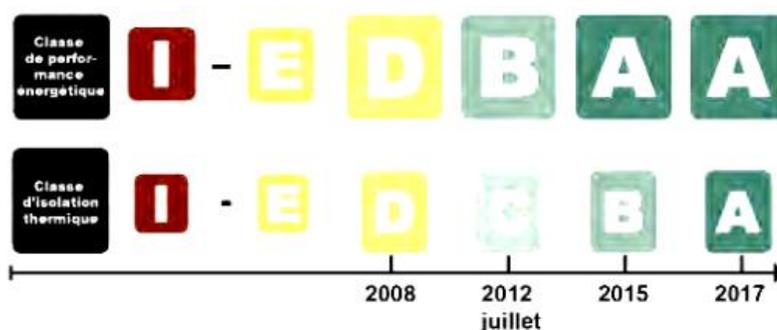
²⁶³ In the CPE a 'passive house' is defined as the one where: all the energy classes are A; the ventilation is controlled with heat recovery systems; tightness test n50 < 0.6/h; there is no fix air-conditioning (Ministry of Housing – Le guide de la construction, 2012, p. 77). For further developments, see Ministry of Housing – Le guide de la construction, 2012, p. 78 ff.

construction and also to draw attention to the national and European regulatory framework.

Following Directive 2010/31/UE the Luxembourg Government decided to fix a timetable for the continuous and consistent improvement of the demand in this area and, from 2017 on, every construction of residential buildings shall be in passive standard²⁶⁴.

Very recently, a regulation on state aids for energy performance and renewable energies came into force²⁶⁵. From then on, the new residential buildings, for which the request of authorization for construction is introduced from 1 July on, must correspond in general to the current energy classes “C” for the class of heat insulation (*classe d’isolation thermique*) and “B” for the class of energy performance (*classe de performance énergétique*).

Fig. 87



Evolution of the class of energetic performance and of the class of heat insulation
Source: Ministry of Housing – Le guide de la construction, 2012, p. 87

The regulations impose an establishment of an energy passport in the cases of change of owner and tenant and of modification of technical installations²⁶⁶.

The regulation provides a rule concerning the real estate sector and the information which is disclosed in advertisements. After 1 July 2011, the announcements of sale and rental of residential buildings must necessarily indicate class of heat insulation of the building (according to the heating energy cost ratio) and the class of energy performance of the building (according to the primary energy cost ratio)²⁶⁷.

²⁶⁴ Ministry of Housing – Le guide de la construction, 2012, pp. 14 and 77.

²⁶⁵ See <http://eli.legilux.public.lu/eli/etat/leg/rgd/2011/05/05/n2> (last retrieved: 15.05.2014).

²⁶⁶ Ministry of Housing – Le guide de la construction, 2012, p. 88.

²⁶⁷ See fig. 88 (Example of an announcement).

Fig 88



Example of an announcement (emphasis added)

The publication of the energy performance classes shall, in principle, be made through one of two methods (to be chosen by the seller or tenant): indication of graphics concerning the two pre-mentioned classes; simplified indication of the classes by simple letters, like “C-C”, where the first letter relates to the energy performance of the building and the second to the class heat insulation of the building²⁶⁸.

The CPE is a regulatory obligation; consequently, there is no subsidy which was agreed upon for its establishment.

The passport is done according to the rules concerning the energy performance of the residential buildings. It is valid for ten years counted from the day it was provided²⁶⁹.

A residential building is defined as a surface of energy reference of which at least 90% is used for residential purposes. Every other building is under the regulation of functional buildings; for these, there is another, special approach to the CPE²⁷⁰.

None of the costs involved by this certificate shall be assumed by the tenant²⁷¹.

The *Paquet Logement* contained several new features in the energy field, e.g. changes in the conditions of access to a grant for construction of a dwelling with high energy performance: it established a new requirement of seniority concerning the grants for technical installations, which prioritizes the renewable sources of energy; and it provided that the most disadvantaged households eligible to the zero-rated loan for energy consolidation of their dwelling shall benefit from gratuitous assistance from a licensed energy advisor made available by the Housing Ministry. This is foreseen by the Law Project on the promotion of sustained housing and habitat²⁷².

²⁶⁸ Ministry of Housing – Le guide de la construction, 2012, p. 89.

²⁶⁹ Ministry of Housing – Le guide de la construction, 2012, p. 99.

²⁷⁰ ID, *ibid*.

²⁷¹ For further developments, see Ministry of Housing – Le guide de la construction, 2012, p. 92.

²⁷² See supra “3. Housing policies and related policies”.

Summary table 4

	National level	Aim	Actors
Policy aims	Government program for the parliamentary term 2013-2018 ²⁷³	Control of the evolution of the prices in the real estate market by increasing the offer of dwellings and land for construction: - Increase of the stock of housing with a public task, reform of public promoters and promotion of social rental agency activities - reform of housing subsidies, land tax, rent commissions, municipal planning, <i>Pacte Logement</i> and <i>Paquet Logement</i>	Government Municipalities Public promoters
Laws	Amended Law 25 February 1979 (<i>Pacte Logement</i>) ²⁷⁴	Housing subsidization – the current main law of Housing Ministry and thus the housing policy in Luxembourg Promotion of the construction of dwellings, the decrease on land and housing costs and of home-ownership (through emphyteusis and surface right)	Government
	Amended ²⁷⁵ RGD 4 March 2010	9th program of construction of blocks of subsidized dwellings	Government
	Amended RGD 5 May 2011 ²⁷⁶	Fixation of execution measures of the individual financial subsidies to housing Fixation of a special rate (<i>'taux de reference social'</i>) for decreasing the amount of monthly mortgage loan instalments Fixation of the ceiling rate (<i>'taux-plafond'</i>) of 3.00%, to avoid subsidization of exaggerated rates	Government
Instruments	<i>Agence Immobilière Sociale</i> (2009)	To help socially-excluded and unemployed people; to serve as an intermediary between landlords and tenants, as well as a guarantor of the payment of the rent and the deposit; to transform vacant dwellings into 'social dwellings' for an undetermined time	Convention AIS/ Ministry of Family, Integration and to the Great region / Housing Ministry; new status foreseen: Law Project 6583 on the promotion of housing and habitat
	<i>Bail emphytéotique</i> (long-term lease)	Neutralization of the cost of land	Government (<i>Pacte Logement</i> 2011)
	<i>Droit de superficie</i> (surface right)	Neutralization of the cost of land	Government (<i>Pacte Logement</i> 2011)

²⁷³ *Programme gouvernemental pour la législature 2013-2018* in <http://www.gouvernement.lu/3322796/Programme-gouvernemental.pdf> (last retrieved: 15.05.2014).

²⁷⁴ Published at the *Mémorial* no. 159, 27 October 2008.

²⁷⁵ As amended by RGD 22 February 2011, RGD 28 June 2012 and RGD 27 August 2013.

²⁷⁶ Published at the *Mémorial* no. 204, 30 September 2011, pp. 3646 and 3647.

3.6 Subsidization

- **Are different types of housing subsidized in general, and if so, to what extent? (give overview)**
- **Explain the different forms of subsidies for tenants, (certain) landlords and, if relevant, housing associations or similar entities acting as intermediaries (e.g. direct, by means of investment loans, tax privileges). Which level of government is competent to assign the subsidies? Is there a subjective right to certain subsidies or does the public administration have discretion in whom to assign the subsidy?**

A broad range of state financial subsidies (in the form of capital or interest subsidies) has been launched in Luxembourg for encouraging individuals to construct dwellings and thereby build-up private assets.

The Housing Ministry provides for most of the state aids, namely: the construction subsidy (*prime de construction*), the interest subsidy (*subvention d'intérêt*), the state's guarantee (*garantie de l'Etat*), the saving subsidy (*prime d'épargne*) and the complementary subsidy for paying the architect and engineer consulting fees (*complément de prime pour frais d'architecte et d'ingénieur-conseil*). It shall be highlighted that this complementary subsidy will be soon abolished and exchanged by another subsidy foreseen by the Law Project 6583 on the promotion of sustained housing and habitat.

The **construction grant** consists of a state aid in the form of capital which may be obtained through the construction of a single-family dwelling or apartment. To be able to accede to this aid, one has to fulfil a few requirements. First, one must conclude a mortgage with a financial institution in order to construct a dwelling. The dwellings must be situated in the Grand Duchy of Luxembourg and must be the effective, main and permanent dwelling of the household for at least ten years counted from the date of occupation of the dwelling. This means that the dwelling cannot be rented during the same period, not even only partially. Moreover, the applicant cannot be owner nor user (*usufruitier*) of another dwelling in the Grand-Duchy or abroad. Finally, there are requirements concerning the surface area of the dwelling: in case it is a single-family dwelling, it must have between 65 m² and 140 m²; if it is an apartment, it must have between 45 m² and 120 m². The amount of this aid varies between 250€ and 9,700€, and it is fixed according to one's income, one's family situation and, also, according to the type of construction of one's dwelling: in case it is a co-owned apartment or a townhouse, the agreed premium is increased by 30%; in case it is a semi-detached house, the supplement is 15%. The construction premium will be refused if any of the above-mentioned criteria is not cumulatively present or if the applicant/beneficiary donated the respective fortune to a third, if the dwelling can be fully financed through personal financial means, or if one has

applied to the premium of construction at least one year after having occupied the dwelling for the first time²⁷⁷.

The **interest subsidy** (*'bonification d'intérêt'*) consists of aid that can be agreed upon to reduce the monthly charges of the persons who contracted a mortgage for, among other things, the construction of their house.

In applying for the interest rate subsidy, the applicant must: be authorized to legally reside in Luxembourg; be domiciled there and effectively reside there; inhabit the dwelling for which the subsidy was required; have had contracted a mortgage through a credit establishment registered in the EU and the EEE or a relevant pension body of the social security in order to, among others, construct a dwelling located in Luxembourg which will serve as a permanent, effective habitation of the household of the applicant; not be an owner, co-owner, or user (*usufruitier*) of another dwelling, in Luxembourg or abroad; have at least a dependent child; produce a certificate of registration of mortgages duly registered, on first request; be the single holder of the mortgage; provide proof that he or she is the owner of the dwelling; prove that, in case of construction, the works of construction had started; and finally, provide the proof that the mortgage has been used.

For obtaining a real estate loan, the banks demand guarantees (personal contribution, mortgage, etc.). If an individual is not in a condition to furnish sufficient guarantees in order to borrow the necessary money required for construction, the Luxembourg State may, under certain conditions, help guarantee the loan. For that purpose, the applicant must: possess a home savings plan (*compte d'épargne-logement*) at a single bank for three years or less, and have deposited into the plan every year during at least three years with, at least 290€, having as a point of departure of this period the day where the sum in the plan was at least of 240€; ensure that the amount of the monthly payment of the loan does not surpass 40% of the applicant's available income; and contract a loan with a borrowing rate of at least 60% of the land cost and of the construction costs or of the price of acquisition²⁷⁸.

Finally, the **complementary grant for paying the architect and engineer consulting fees** is a financial subsidy that the State grants as a complement to the construction grant. It allows one to benefit from the services from an architect of the Grand-Duchy of Luxembourg who is duly authorized to exercise the respective duties and capable of drafting an architectural or technical plan for the construction of a new dwelling.²⁷⁹

²⁷⁷ <http://www.ml.public.lu/fr/aides-logement/aides-individuelles-logement/construction/index.html> (last retrieved: 15.05.2014).

²⁷⁸ In <http://www.quichet.public.lu/citoyens/fr/logement/acquisition/aides-capital/garantie-etat/index.html> (last retrieved: 15.05.2014).

²⁷⁹ These aids are supported by the following legal regulations: *Loi modifiée du 25 février 1979 concernant l'aide au logement; Règlement grand-ducal modifié du 5 mai 2011 fixant les mesures d'exécution relatives aux aides individuelles au logement; Règlement grand-ducal modifié du 16 février 1998 fixant les mesures d'exécution relatives aux logements locatifs, aux aides à la pierre ainsi qu'aux immeubles cédés sur la base d'un droit d'emphytéose et d'un droit de superficie.*

Individuals who are **public workers** may also benefit from a rate grant allocated by the Ministry of the Public Service and of the administrative reform (*Ministère de la Fonction publique et de la Réforme administrative*)²⁸⁰.

Subsidization concerning the energy field

The Government of the Grand-Duchy of Luxembourg is strongly committed to ensure the energy efficiency of its housing stock and has thus been granting a significant set of financial measures to motivate owners to adapt to the energy efficiency requirements.

The *Paquet Logement* has foreseen several new measures in this domain, which have been contemplated in the Law Project 6583: the change of conditions to accede to a grant for construction of a dwelling with high energy performance (Art. 13); new condition of seniority concerning the grants for technical installations which prioritize the renewable sources of energy (Art. 16); availability of free advice by a licensed energy advisor to the most disadvantaged households eligible for the zero-rated loan for the energy consolidation of their dwelling (Art. 19)²⁸¹.

- **Have certain subsidies been challenged on legal grounds (in particular: on the basis of competition law or budget law)?**

There are no known cases of such claims.

- **Summarize these findings in tables as follows:**

²⁸⁰ For the grants to state workers see <http://www.guichet.public.lu/citoyens/fr/logement/acquisition/aides-interet/subvention-interet-fonctionnaires-employes-etat1/index.html> (last retrieved: 15.05.2014).

²⁸¹ For further developments concerning tenants, see <http://www.guichet.public.lu/citoyens/fr/logement/location/index.html> ("Aides au logement") (last retrieved: 15.05.2014).

Summary table 5

Subsidization of homeowner	Name and aim of subsidy	
Subsidy before start of contract (e.g. savings scheme) * sale contract or contract for the construction of the dwelling	Private market homeowner	Social market homeowner
	Individual housing aids (“ <i>aides à la personne</i> ”): <i>prime de construction, prime d’épargne, subvention d’intérêt, bonification d’intérêt</i> , etc.).	Individual housing aids (“ <i>aides à la personne</i> ”): <i>prime de construction, prime d’épargne, subvention d’intérêt, bonification d’intérêt</i> , etc. – to new social market homeowners. Collective housing aids (“ <i>Aides à la pierre</i> ”): prefinancement of the purchase-interest costs, acquisition/construction costs, etc. – to public promoters.
Subsidy at start of contract (e.g. grant)	<i>Garantie de l’État</i> (guarantee from the State): allows people without possibilities of offering guarantees to be granted a loan to accede to ownership.	
Subsidy during residency in the dwelling (e.g. below market interest rate for investment loan, subsidized loan guarantee)	<i>Subvention d’intérêt</i> (interest subsidy): reduction of the household monthly expenditures with the repayment of the mortgage loan contracted for the construction of a dwelling. <i>Prime individuelle pour frais d’infrastructures et d’honoraires</i> (individual subsidy for costs of infrastructures and fees) – Art. 7 Law Project 6583. <i>Prime d’amélioration de logements anciens</i> (subsidy of improvement of old buildings) - Art. 9 Law Project 6583. <i>Aides pour aménagements spéciaux aux profit de personnes handicapées physiques</i> (subsidies for the construction of special installations for the benefit of handicapped people) - Art. 10 Law Project 6583.	

Summary table 6

Subsidization of tenant	Name and aim of subsidy
Subsidy before start of contract (e.g. voucher allocated before find a rental dwelling)	<i>Aide au financement de la garantie locative</i> (subsidy for the financing of the rental guarantee)
Subsidy at start of contract (e.g. subsidy to move)	-
Subsidy during tenancy (in e.g. housing allowances, rent regulation)	<i>Subvention de loyer</i> (rent subsidy), for tenants with very low income, paying more than 1/3 of their income for the rent (law project 6542 introducing a rent subsidy and amending law of 25.02.1979 on the subsidy to housing) ²⁸²

Summary table 7

Subsidization of owner-occupier	Private market owner-occupier	Social market owner-occupier
Subsidy before purchase of the house (e.g. savings scheme)	Individual housing aids (“ <i>aides à la personne</i> ”): <i>prime de construction, prime d’épargne, subvention d’intérêt, bonification d’intérêt, etc.</i>)	Individual housing aids (“ <i>aides à la personne</i> ”): <i>prime de construction, prime d’épargne, subvention d’intérêt, bonification d’intérêt, etc.</i> – to NEW social market homeowners Collective housing aids (“ <i>Aides à la pierre</i> ”): prefinancing of the purchase-interest costs, acquisition/construction costs, etc. – to public promoters
Subsidy at start of contract (e.g. grant)	<i>Garantie de l’État</i> (guarantee from the State): allows people without possibilities of offering guarantees to be granted a loan to accede to ownership	
Subsidy during tenure (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee, housing allowances)	<i>Subvention d’intérêt</i> (interest subsidy): reduction of the household monthly expenditures with the repayment of the mortgage loan contracted for the construction of a dwelling <i>Prime individuelle pour frais d’infrastructures et d’honoraires</i> (individual subsidy for costs of infrastructures and fees) – Art. 7 of the law project no. 6583 <i>Prime d’amélioration de logements anciens</i> (subsidy of improvement of old buildings) - Art. 9 of the law project no. 6583 <i>Aides pour aménagements spéciaux aux profit de personnes handicapées physiques</i> (subsidies for the construction of special installations for the benefit of handicapped people) - Art. 10 of the law project no. 6583	

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<http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6542> (last retrieved: 15.05.2014).

3.7 Taxation

- **What taxes apply to the various types of tenure (ranging from ownership to rentals)? In particular:**

Whenever a dwelling (apartment or house) which makes part of the private real estate of the taxpayer is rented, the rents perceived during the year of taxation are taxed under the category of net income arising from the rental of goods²⁸³.

The occupation of the dwelling by the owner gives rise to the fixation of a rental value of this dwelling. This rental value acquires, in terms of taxes, the character of location income from the moment that it is effectively occupied by the taxpayer or, at least, is continuously at their respective disposition²⁸⁴.

- **Tenants: Do tenants also pay taxes on their rental tenancies? If so, which ones?**

According to Art. 5-3 of the LBUH, only “the costs incurred for energy consumption, for routine maintenance of the dwelling and common parts, for reparations as well as the taxes connected to the use of the dwelling” may be imposed on the tenant. That is the case of municipal taxes connected to the use of the dwelling²⁸⁵. This includes the tax for household refuse collection.

- **Homeowners:**
 - **Income tax of homeowners: is the value of occupying a house considered as a taxable income?**

Whenever a building (apartment or single-family dwelling) which is part of the private patrimony of the taxpayer is rented, the rents received during the taxation year are taxed in the category of net income arising from leasing of goods (*revenus nets provenant de la location de biens*).

The income arising from the rental of a building is calculated according to the surplus of revenues in relation to the costs of acquisition (*frais d'obtention*).

Subject to particular rules, the revenues of obtention are to be attributed in the taxation year during which they were made available to the landlord. This means that the rents received in the current year, as well as those received in the previous or subsequent years are to be included in the gross revenues (*recettes brutes*) of that year. In the absence of a subsequent settlement between landlord and tenant, the advances of costs (*advances sur frais*) provided by the tenant are also income.

The deposit paid by the tenant is not to be considered income at the moment it is provided; it will be considered income if, due to damage to the

²⁸³ http://www.impotsdirects.public.lu/az/l/logem_loc/index.html (last retrieved: 15.05.2014).

²⁸⁴ http://www.impotsdirects.public.lu/az/h/habit_pers/index.html (last retrieved: 15.05.2014).

²⁸⁵ Ministry of Housing – Bail à loyer, 2006, p. 43.

premises, it is kept effectively by the landlord at the time of the termination of the rental agreement²⁸⁶.

- **Is the profit derived from the sale of a residential home taxed?**

As far as taxes to natural persons are concerned, the gain (or loss) arising from the sale of a private real estate is imposable as net diverse income, i.e., as speculation or added value. The same applies to an exchange. The sale of the main residency of the taxpayer is an exception to this rule. It is not submitted to the tax over income if the ceded dwelling is not in accordance to article 102bis of LIR; the sale is taxed:

- as speculation (article 99bis LIR²⁸⁷), as long as the interval between the acquisition (or constitution) and the sale does not surpass two years. The net income taxed is the same as the difference between the price of realization (sale) and the price of acquisition. The maximal tax increases up to 39% (normal tariff);

- as excess of added value (article 99bis LIR), as long as the interval between the acquisition (or constitution) and the sale surpasses two years. The added value is the same as the difference between the price of realization and the price of revaluated acquisition. The maximal tax increases up to 19.5% (half global tax).

The inheritance or donation does not trigger income: the goods are registered as having been acquired gratuitously. However, the sale of an inherited good or a good received through donation is taxable as net diverse income²⁸⁸.

- **Is there any subsidization via the tax system? If so, how is it organized? (for instance, tenants being able to deduct rent from taxable income; landlords being able to deduct special costs; homeowners being treated favourably via the tax system)**

There is no subsidization via the tax system, i.e., there is no possibility of private tenants deducting against their taxable incomes. However, in case the tenants are renting the immovable within a commercial rental agreement (*bail commercial*) frame, either in full or only partially, through a mixed rental agreement (*bail mixte*), for the practice of a commercial activity, it is possible to make a deduction on the tax on business profit. Moreover, tenants may, as well, deduct the insurance cost to that same tax.

²⁸⁶ http://www.impotsdirects.public.lu/az/l/logem_loc/index.html (last retrieved: 15.05.2014).

²⁸⁷ Loi modifiée du 4 décembre 1967 concernant l'impôt sur le revenu (available on <http://www.impotsdirects.public.lu/legislation/LIR/index.html>, last retrieved: 15.05.2014).

²⁸⁸ For further developments, see http://www.impotsdirects.public.lu/az/v/vente_resid_principale/index.html (last retrieved: 15.05.2014).

- **In what way do tax subsidies influence the rental markets?**

This kind of tax subsidy is not considered as having a negative impact on the Luxembourg rental market.

Despite the fact that there are less taxes in Luxembourg than in other countries (and these are comparatively lower as well, for example when compared to the neighbouring country France), taxation plays a significant role in Luxembourg as far as housing policies are concerned.

The different incentives and measures concerning real estate tax aim at promoting the stability of the real estate market and, in particular, access to an approachable habitat. They relate to: the reimbursement of the VAT Housing or direct application of the super-reduced rate; the tax credit over notary deeds (*Bëllegen Akt*); home-buyer housing saving plans; interest expenses; mortgages; balance insurance; property value tax.

1) Reimbursement of the VAT Housing or direct application of the super-reduced rate

The normal VAT rate in Luxembourg is 15%. In order to stimulate the construction of dwellings, the State submits the construction and renovation works of a dwelling to the reduced VAT rate of 3% provided that the dwelling will be used as the principal dwelling. This will take place, either through the direct application of the super-reduced rate or through the reimbursement of the difference between the normal VAT rate and the reduced rate.

The total amount of the tax benefit resultant from the application of the super reduced rate cannot exceed 60,000€ per constructed or renovated dwelling. Every right of reimbursement of the VAT prescribes in five years, counted from the 31 December of the calendar year to which the tax to be paid back relates.

2) Tax credit over notary deeds (*Bëllegen Akt*)

The normal rate for acquisitions for valuable consideration (i.e., through payment) of an immovable property (house, apartment, land for construction) is elevated to 7%; 6% of each is for registration rights and the remaining 1% for the recording rights.

In order to diminish the accessory expenses related to the purchase of a dwelling, the Government introduced a reduction, called tax credit, regarding the rights of registration and recording for every person wishing to purchase an immovable (and certain built-up dependencies) for personal occupation

This tax credit is limited to 20,000€ per purchaser. For a couple, the amount is doubled once this credit is applicable to each purchaser individually, and it can be used for other purchases until the limit is reached. Nevertheless, a minimum amount of 100€ will always be due to the Land Registration and Real Estate Department.

3) Home-buyer housing savings plans

In order to be eligible to benefit from tax reduction within the frame of a home-buyer savings plan, a home-buyer housing savings plan can be used to transform or modernize a dwelling or to accede to the real estate ownership.

The annual instalments of home-buyer housing saving plans are tax deductible up to 672€ per household member. The contributions to the housing saving plan which can be deducted during the savings stage are: the contributions previewed in the contract; the eventual supplementary contributions; the costs incurred with the elaboration of the contract and the bonus interests on the saving on 31 December of each year. The tax benefits must be returned in case, within ten years after concluding the contract, the saving plan is terminated and given back or in case the saving plan did not affect directly a real estate investment after attribution.

The tax advantages shall not be reimbursed if the death or permanent invalidity of the contract party lead to termination of the home savings plan or if the savings plan was terminated after the ten-year commitment period expired.

4) Interest expenses

The interest expenses paid over a mortgage loan (housing credit) consist of costs of obtaining and are deductible in the category of income of the net income derived from the lease of property. Interest expenses are deductible differently, according to whether one has a dwelling for rental, a dwelling for owner-occupation or land for construction.

In the first case, the interest expenses are 100% deductible. As for the owner-occupied dwelling, it is deductible according to the composition of the household and the length of the occupation. Finally, as for land for construction, two situations must be distinguished: if the construction takes place within the four years after the purchase of the land, it will be 100% deductible; if the construction takes place more than two years after the purchase of the land, it will be deductible in the amount of special expenses which had to be assumed and up to 672€ per person making part of the household.

5) Mortgage

The commissions and costs to be paid within the framework of registry of the mortgage of our housing credit are entirely deductible, provided that the dwelling is not being occupied at the time such costs are paid. Notary costs are not deductible.

6) Balance insurance

This consists of the payment of a unique premium under a temporary insurance for decreasing payments (*assurance temporaire au décès à capital décroissant*) for the guarantee of the repayment of a loan for the purchase, enlargement, transformation or restoration of a house or an apartment in a condominium to meet the personal needs of the household who lives there.

7) Property value tax

The property value tax is a municipal tax to which every owner of (constructed or not) real estate in the Grand-Duchy of Luxembourg is subject. The basis for calculation of the real estate tax derives from the unitary value attributed to each real estate owner and results from the following calculation: basis for calculation = unitary value x tax base.

The owner of an immovable subject to property value tax does not become debtor of this real tax through a bulletin of property value tax which is notified to him or her by the municipality territorially competent to withhold the tax.

The amount of property value tax results from the following calculation: property value tax = basis for calculation x municipal tax.

The competencies concerning property value tax are shared in the following way:

- The Service of Real Estate Evaluations determines the basis for calculation of the property value tax. Complaints on this basis or on the unitary value must be directed to the Director of Administration of the direct contributions;
- Each municipal administration is competent for determining the municipal tax and the property value tax on the real estate situated in the respective territory. Every complaint on the property value tax bulletin shall be presented to the Board of the Mayor and Aldermen of the creditor municipality.

Energy-related renovations have also been subsidized via the tax system: the *Paquet Logement* has foreseen an accelerated amortization of taxes for investments in energy-related renovations of their rental dwellings, but no legal measure has been taken in this context so far²⁸⁹.

▪ **Is tax evasion a problem? If yes, does it affect the rental markets in any way?**

There seems to be no evasion in relation to rental contracts in Luxembourg. Several SCI companies are created in Luxembourg for the purchase of real estate abroad for a tax optimization purpose. There are fewer taxes in Luxembourg than in other European countries, and the ones which exist are usually relatively lower. So, if an SCI registered in Luxembourg owns buildings in France, the profits arising from the sale of these SCI shares will not be taxed abroad, but in Luxembourg, and in Luxembourg there is no tax over the sale of SCI companies' shares.

²⁸⁹ Ministry of Housing – Le guide de la construction, 2012, p. 51.

Summary table 8

	Home-owner		Private landlord		Tenant	
	Tax	Subsidy	Tax	Subsidy	Tax	Subsidy
Taxation at point of acquisition	VAT housing (15%)	Reimbursement of the VAT Housing or direct application of the super-reduced rate (3%)	VAT housing (15%)	Reimbursement of the VAT Housing or direct application of the super-reduced rate (3%)	None	-
	Tax on acquisition for value (7% : 6% for registry, 1% for transcription)	Tax credit on notary deeds	Tax on acquisition for value (7% : 6% for registry, 1% for transcription)	None		
	Income tax	Deductible home-buyer saving plans	Income tax	Deductible home-buyer saving plans		
	Income tax from owner-occupancy	Deduction of debt interests over mortgage	Income tax from renting activity			
	Income tax from owner-occupancy	Deduction of mortgage registration costs	Income tax from renting activity	Deduction of mortgage registration costs		
	-	Subsidy for insurance of payment of remaining instalment of mortgage loan	-	Accelerated capital cost allowance for energy-related renovations of rental dwelling*		
	Property value tax*	None	Property value tax*	None		
Taxation during tenure	Household Waste removal tax	Not applicable	None	-	Household Waste removal tax	-
Taxation at the end of tenure	Not applicable	Not applicable	None	-	None	-

* Are still not implemented (under discussion by the Government of Xavier Battel)

4. Regulatory types of rental and intermediate tenures²⁹⁰

4.1 Classifications of different types of regulatory tenures

- **Which different regulatory types of tenure (different regulation about contracts and tenant security) do you classify within the rental sector? What are their shares in dwelling stock (compare summary table 1)?**

Within the rental sector, we may distinguish four types of regulatory rental tenures: private sector with unregulated rent; private sector with regulated rent; public sector with unregulated rent²⁹¹ and public sector with regulated rent. The latter of the above is unrepresentative of the ones we have mentioned²⁹². Rents on the private unregulated market are usually relatively high for medium-average households, and the scarce public housing available does not meet the need for dwellings with lower rents. In this context, the role of the AIS has been of most importance. By serving as an intermediary between owners of dwellings available in the private market and households who can neither afford “normal” private rents nor (or wish not to) accede to social housing; they consist of what we may consider “private rent sector with regulated rent”. Indeed, as one will see *infra*, these publicly financed agencies agree upon lower, regulated rents with landlords in exchange for maintenance of the dwelling and security of regular payment.

4.2 Regulatory types of tenures without a public task

- **Please describe the regulatory types in the rental sector in your country that do not have a public task. This category may be called private or market rental housing.²⁹³**

Renting in the private rental market in Luxembourg is expensive, particularly in the most appealing areas, such as the city of Luxembourg and its surrounding areas. The unavailability of rental dwellings (either because they are not affordable, or because they are unavailable in the market), leads several households to search for a dwelling across borders. This phenomenon may be considered as a regulatory failure of the private rental sector, because if people

²⁹⁰ I.e. all types of tenure apart from full and unconditional ownership.

²⁹¹ Since 2002, the *Fonds du Logement* is authorized to rent 25% of its stock at a normal rent. See http://www.fondsdulogement.lu/fdl/louer/louer-sur-le-marche-libre-fr-c_5250 (last retrieved: 15.05.2014).

²⁹² See *supra* “Rental tenures. Are rental tenures with and without a public task distinguished? If so, how are they called and what is their share in the housing stock?”.

²⁹³ Market rental housing means housing for which the rent price determines the conclusion of contracts and not some social rules of allocation based on need.

need to live outside the country, the rental market is not meeting the needs of its population.

- **Different types of private rental tenures and equivalents:**
 - **Rental contracts**
 - **Are there different intertemporal tenancy law regimes in general and systems of rent regulation in particular?**

There are no intertemporal schemes of rent regulations.

- **Are there regulatory differences between professional/commercial and private landlords?**

The LBUH and Arts 1713 to 1762-2 of the CC relate to private rentals. The distinction made by the law relates to the nature of the rental agreement: the LBUH regulates only rental agreements for residential purposes and not rental agreements for commercial purposes (Art. 1-3).

There are only small regulatory differences between professional or commercial landlords on the one hand and private landlords on the other.

Art. 28 of the LBUH reads that “each municipality is authorized to annually ask landlords who rent one or several dwellings located within the territory of the municipality, and then respectively the tenants of a dwelling located within the territory of the municipality, for information concerning the amount of the rent and rental costs to be paid to the landlord, as well as the type and surface in m² of the rented dwelling”.

Briefly: How is the financing of private and professional/commercial landlords typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)

The aim of investors – for this purpose, real estate investors – consists of attaining profits; therefore, landlords rather resort to mortgages or to loans, to deduct interest on their income taxes.

- **Apartments made available by employer at special conditions**

There is significant housing²⁹⁴ made available to employees (both public servants and private employees) by employers (including the so-called *logement de service*). They are defined as those which are placed – gratuitously or not – at the availability of a person only because of the respective labour contract’ (Art. 12-4 LBUH and Art. 24 of the *loi modifiée du 22 juin 1963 fixant le traitement des fonctionnaires de l’État*). The dwelling placed at the availability of the worker integrates the headquarters (*siège*) of the company; in this matter, the employer has assumed a part of the rent due to the landlord²⁹⁵.

According to case law, one is in the presence of a *logement de service* whenever the rental agreement is a simple accessory of the labour contract. Here, the dwelling is an element of the remuneration²⁹⁶.

- **Mix of private and commercial renting (e.g. the flat above the shop)**

According to Luxembourg law, if a dwelling contains a room which is used for commercial purposes (for example, a doctor’s office), but this use is secondary in relation to the residential use, this contract consists of a mixed lease (“*bail mixte*”), to which the LBUH applies. These mixed tenancies are possible, as far as the lease contract authorizes the exercise of a professional activity within the dwelling²⁹⁷.

However, if the ground floor of the dwelling is used for commercial purposes and the tenant lives in the first floor, one may question whether the residential use is not secondary in relation to the commercial use. In this case, two different lease contracts must be signed with the same landlord: a residential lease agreement in relation to the first floor and a commercial lease agreement in relation to the ground floor.

Professional or commercial rental agreements are regulated, especially since the LBUH (Art. 31), by Arts 1762-3 to 1762-8 of the CC (and Art. 1736-3 since the LBUH). Here, the duration of the contract will be 3, 6 or 9 years being that, in each of these cases, there is the possibility of renewal, through tacit agreement, for one year or more.

One shall, nevertheless, notice that even if, in practice, commercial rent agreements contain a clause which prohibits a sublease or an assignment (“*cession*”), it is possible to circumvent the prohibition pursuant to Art. 1762-3 of the CC. This rule stipulates that despite such a clause, it is still possible to sublet a lease if the following conditions are met: a) the business goodwill shall be transferred simultaneously with the sublease; and b) the commercial activity shall be identical to the one which existed before the sublease.

²⁹⁴ Nevertheless, there are no known official reports on the number of these dwellings.

²⁹⁵ J.P.Lux, 4 October 1983, *Comptoir Foncier du Luxembourg c/Hobscheit*, Krieger – Le bail d’habitation, 2009, p. 123.

²⁹⁶ J.P.Lux, 24 October 1991, no. 3248/91.

²⁹⁷ Thewes - Le nouveau droit du bail, 2007, pp. 8, para. 23 and 10, para. 5.

- **Cooperatives**

Real estate cooperatives were established in Luxembourg by the Act of 10 August 1915 concerning commercial companies. The members of real estate cooperatives will – through intermediation of this legal entity – purchase the real estate and provide for the planning and construction of their dwellings. In the future, housing cooperatives may act in the real estate market in equal terms as real estate promoters. This means that they will be eligible for state financial aid.²⁹⁸

- **Company law schemes**

There are no known private rental tenures involving company law schemes in the housing field.

- **Real rights of habitation**

In Luxembourg, a time-share agreement allows a right to occupy a dwelling for a determined, limited, regular period of time. These agreements are generally signed for a long period of time, which can reach 10, 20 or even 50 years.

A time-share agreement is to be distinguished from a long-term holiday product (“*contrat de produits de vacances à long terme*”). The latter occurs whenever the occupier stays in the dwelling, in a continuous manner, for more than one year (e.g. a long stay at a hotel-club).

Despite their differences, both contracts involve a professional-consumer relationship and are thus regulated by the *Règlement grand-ducal modifié du 19 mai 2011* which transposes Directive 2008/122/EC, Directive 2005/29/EC and Directive 1993/13/CE.

The consumer may buy or sell both a right of occupancy and a long-term product contract by mandating a “re-sale company” and signing a re-sale agreement. The consumer may also exchange a right of occupancy; for that he must engage a notary and sign an “exchange agreement”, which will allow him or her to occupy another place.

- **Any other relevant type of tenure**

There are three types of tenures: *bail d’habitation* (residential tenancy agreements); *bail commercial* (commercial tenancy agreements) and *bail emphytéotique* (emphyteutic tenancy agreements).

The commercial tenancy is the one which must be concluded for developing a commercial activity. Such contracts shall, in principle, be registered, either by the landlord or by the tenant. The registry of a private tenancy agreement provides to it a certain date, which makes it opposable to third parties who do not intervene in the contract. In this case, neither the owner who sells the

²⁹⁸ On *sociétés cooperatives* in Luxembourg, see http://www.eurogroup.lu/downloads/doks/commerciales_FR.pdf, 3 (last retrieved: 25.11.2013).

dwelling nor the purchaser and new owner have the right of expulsion of the occupier (*preneur*) that has a rental contract the date of which is certain.

At the expiry date of the agreement, the tenant has a right of preference to renewal under certain conditions. The tenant can ask for two successive suspensions (*sursis*), each with the maximum of six months; the justice of the peace may, however, refuse this delay under certain circumstances²⁹⁹.

The *bail emphytéotique*, also still called *emphytéose*, is a tenancy agreement of very long length, of a minimum length of 27 years and a maximum length of 99 years. It consists of a property right for the person under the *emphyteusis* (the tenant), the constitution title of which must respect the legal prescriptions for its form or substance, being otherwise void.

The law on the *Pacte Logement* (PL) of 2008 modified the regime of the right of *emphyteusis*; it imposed that this right, when regarding a dwelling for residential purposes, may not be established for a length of less than 50 years. The *Fonds du Logement*, for example, concludes these emphyteutic tenancy agreements for housing with a public task (*logements sociaux*): the tenant under the *emphyteusis* acquires the dwelling for a maximum length of 99 years, but it is renewable; at the end of this period, the *Fonds du Logement* may recover the full enjoyment of the dwelling.

The person under the *emphyteusis* may sell the respective right, mortgage it and even constitute easements over the real estate during the time the *emphyteusis* endures. This person is obliged to do all the necessary reparations and constructions, and to pay all the taxes and charges concerning those constructions. The tenant also has, under certain conditions, pre-emptive rights in case of a planned sale of the real estate by the owner³⁰⁰.

4.3 Regulatory types of tenures with a public task

- **Please describe the regulatory types of rental and intermediary tenures with public task (typically non-profit or social housing allocated to need) such as**
 - **Municipal tenancies**
 - **Housing association tenancies**
 - **Social tenancies**

Housing with a public task is ruled by general law (LBUH), except as far as rents (e.g. fixation of the rent and charges and pre-emption right of the tenant) and rental expenses are concerned. These are regulated by the law of 25 February 1979 concerning housing aids (*aide au logement*).

Housing with a public task is provided by public promoters, housing associations and the AIS. We may say that all the three provide housing with

²⁹⁹ <http://www.cdm.lu/creation-entreprise/creer-entreprise/bail-commercial> (last retrieved: 15.05.2014).

³⁰⁰ See generally http://www.immotop.lu/lexicon/b/bail_emphyteotique.html (last retrieved: 15.05.2014).

regulated rents; the first two relate to housing from the public sector and the AIS, as one will see *infra*³⁰¹, to housing from the private sector.

The one which manages the largest social rental stock in Luxembourg is the Fund for the Development of Housing and Habitat (*Fonds pour le développement du logement et l'habitat*), commonly referred to as Housing Fund (*Fonds du Logement*), as we have mentioned. The Fund, established by a law on housing aid introduced on 25 February 1979³⁰², is an autonomous public body (*établissement public*) whose competences include the construction of low-cost housing, the purchase and development of building sites, and the renovation of housing buildings. It acts under the supervision of the Housing Minister.

The second provider is the National Company for Affordable Housing (SNHBM). It consists of a joint stock company created in 1919 whose activities include construction, land purchase, the elaboration of development plans and drawing up and realization of infrastructures for land development. Its main aim is to provide affordable housing for home ownership. Its shareholders are the State, some municipalities and some public institutions.

The third actor is represented by the municipalities, the main towns and cities, which provide building sites and housing for rent and ownership.

Finally, the AIS also provides social rental housing (getting a subsidy via ministerial decree e.g. *arête ministériel* 1 March 2011).

▪ Public renting through agencies

Art. 15.0.33.000 (“Participation de l’État aux frais de fonctionnement de l’Agence Immobilière Sociale”) is foreseen by the State Budget (200,000€ for 2014) for AIS.

The AIS, which was constituted in 2009, consists of a sort of intermediary between the private landlord and the tenant, serving as a guarantor of the payment of the rent and the deposit as well. Its main aim is to favour the supply of immovables from the public and private housing stock in order to respond to the strong demand of quality and yet affordable dwellings. Through its action, it helps providing accommodation to socially excluded (or in danger of exclusion) people, or people who, due to unemployment, face particular financial difficulties but do not apply to social housing or are in the long waiting lists. In parallel, it also has an important role in using the significant vacant available real estate stock for accommodating those in need and in renovating it, which benefits landlords and, ultimately, the whole Grand-Duchy as a whole.

Indeed, this agency ensures, *vis-à-vis* the landlord, the payment of the rent and is guarantor of maintaining the rented dwelling in a good state. In order to benefit from these guarantees and maintenance, owners – generally of dwellings which were vacant – agree to significantly lower rents in relation to rents on the private rental market.

³⁰¹ See subsequent sub-chapter “Public renting through agencies”.

³⁰² http://www.fondsdulogement.lu/upload/docs/application/pdf/2011-03/loi_25-02-1979_02.2010.pdf (last retrieved: 15.05.2014).

This agency is currently regulated by a convention between the AIS, the Family Ministry and the Housing Ministry. Its new legal status is foreseen by the new Law Project no. 6583³⁰³.

- **Privatized or restituted housing with social restrictions**

This is inapplicable in Luxembourg.

- **Public entities (e.g. municipalities) taking over private contracts, typically for poor tenants to counteract homelessness**

The “*droit de requisition*”, through which the Estate dispossesses owners of their properties, exists in France but not in Luxembourg.

The only situation which resembles this one is when social services of certain municipalities are subrogated in the position of the tenant as far as the payment of the rent is concerned. However, these situations are quite exceptional.

- **Specify for tenures with a public task:**

- **selection procedure and criteria of eligibility for tenants**

A household seeking access to social housing must meet certain social and financial requirements.

Like the majority of all European countries, Luxembourg limits access to the social housing sector to households with incomes lower than the established ceiling³⁰⁴.

However, in a first stage the rent (*loyer*) is calculated according to the cost of the construction of the housing unit, and only in a second stage is the rent adapted to the household's income³⁰⁵.

In addition to these provisions, Luxembourg is one of the European countries which has put in place a system of priority points, according to the situation and characteristics of the tenant (SDF, *sans domicile fixe*, lone-parent, youngster, elder person, handicapped, with health problems etc.) and the characteristics of the former dwelling (e.g. unhealthy dwelling).

In Luxembourg, the homeless (*personnes sans domicile*) and people who live in dwellings in poor condition can be granted a dwelling with a public task only if they are followed and accompanied by a representative from an association. This means that the number of persons who can be accepted is

³⁰³ For further developments, see www.ais.lu (last retrieved: 15.05.2014) and Santos Silva – Public renting through agencies, 2013.

³⁰⁴ BIPE – Les politiques publiques, 2000, p. 23.

³⁰⁵ BIPE – Les politiques publiques, 2000, p. 25.

limited by the personnel capacity of the associations which are active in this field³⁰⁶.

The procedure of allocating housing with a public task is largely decentralized: It is the responsibility of Luxembourg's municipalities and of the other public promoters.³⁰⁷

The *Fonds du Logement* requires that the applicant is not owner or user (*usufruitier*) of another dwelling and does not have a right to inhabit another dwelling. The *Société Nationale des Habitations à Bon Marché* prioritizes applicants with modest income and within a difficult situation of residency. Finally, the AIS is quite more demanding. It requires from candidates that they: have an income which does not surpass a certain amount; compromise to benefit from adapted social support and display efforts to become autonomous in what concerns housing; are not owners of another dwelling; have a valid residence permit; are enrolled in a health system³⁰⁸.

The president of the CIGDL considers that subsidization should be given only to those who really need it³⁰⁹. He considers that the sector of housing with a public task in Luxembourg should be targeted and residual, like in Portugal, instead of targeted and general, as it is now.

- **typical contractual arrangements, and regulatory interventions into rental contracts**

The content of the lease agreement is defined by the LBUH. Such contract has four main elements: the object of the bail; the payment of the rent; the length of the contract, and the destination of the rented dwelling.

The first of these elements is the object of the rent, i.e., the description of the rented dwelling. Such description shall be as complete and precise as possible, and if the dwelling is furnished, a description of each of the furniture elements shall be included as well³¹⁰.

The second of these elements concerns a fundamental aspect of the tenancy agreement: without the payment of a rent, the agreement can no longer be considered a tenancy agreement. The rent must not be determined, but it shall be determinable. The rent can be fully in capital, but it can also be in merchandise or in form of works to be carried in the rented dwelling (for example, renovations). The periodicity of the payment of the rent (usually monthly) or a payment in advance of the rent are not compulsory³¹¹. However, if the date the rent is due is mentioned in the rent agreement, it should be respected.

The length of the agreement is usually specified; in case it is not, there is a presumption (albeit rebuttable) that it is an agreement of unlimited length. If the

³⁰⁶ Thorpe – Le rôle du logement, 2008, p. 29.

³⁰⁷ BIPE – Les politiques publiques, 2000, p. 25.

³⁰⁸ CECODHAS – Housing Europe Review, 2012, p. 62. See http://www.ml.public.lu/fr/aides-logement/aides-individuelles-logement/location/logement_subventionne/index.html (last retrieved: 15.05.2014) and <http://www.ml.public.lu/fr/aides-logement/aides-individuelles-logement/location/ais/index.html> (last retrieved: 15.05.2014).

³⁰⁹ Poujol – Le juste prix, 2012.

³¹⁰ Thewes – Le nouveau droit du bail, 2007, p. 16.

³¹¹ Thewes – Le nouveau droit du bail, 2007, p. 17.

dwelling was rented with furniture, the law presumes (Art. 1758 CC) that the length corresponds to the periodicity of the payment, i.e., if the payment is monthly, the length of the contract will be monthly as well.

Last but not least, the fourth element is the destination of the lease good, or, in other words, the use that the tenant may make of the immovable. This is a limit which the tenant shall always respect; in case, according to the contract, the leased good is for residential use only, the tenant shall not use it for commercial purposes, without having an authorization of the landlord which allows it³¹².

A typical regulatory intervention on rent agreements is the one which takes place whenever it is considered that the rental agreement contains an unfair contractual term. One recurrent case is that of a tenancy agreement which forbids the tenant to install a satellite receiving antenna. The case law has still not decided whether such terms are legal or not. If one considers the access to information as an essential right in modern society, such term may be considered unfair if the tenant does not have other alternatives (e.g., cable television)³¹³. Another case which can lead to the same consideration has to do with the right to have pets in the rented dwelling. Although the judge shall always evaluate the legality of each case (for example, having a violent or noisy animal, might be legally forbidden), it appears to us that a term which forbids the tenant of having any kind of pets would be unfair, if the tenant has a couple of harmless goldfish or a silent, small pet (like a cat or a dog) which has been his or her only company for the last few decades, such as is the case of many elderly people³¹⁴.

- **opportunities of subsidization (if clarification is needed based on the text before)**

In Luxembourg, housing with a public task is predominately object-based, i.e., it consists of access of the most vulnerable households to low-rent or low-cost dwellings.

Nevertheless, there are still some households in the Grand-Duchy which cannot accede to an affordable dwelling in the private rental market and that cannot accede to a dwelling in the social market either (because their incomes are higher than the limit, they do not manage to contract a loan or because they are still in the waiting list to be granted a dwelling). Therefore, a recent law proposal (law project 6542 introducing a rent subsidy and amending law of 25.02.1979 on the subsidies to housing), from 26.02.2013, wants to introduce a rent subsidy “which will permit the households which rent and have a modest income to decrease their tax of effort due to the payment by the State of a monthly financial complement”.

- **from the perspective of prospective tenants: how do I proceed in order to get “housing with a public task”?**

³¹² Thewes – Le nouveau droit du bail, 2007, p. 18.

³¹³ Thewes – Le nouveau droit du bail, 2007, p. 61.

³¹⁴ For this discussion, see Krieger – Le bail d’habitation, 2009, pp. 62, 63 *passim*.

The criteria to accede to housing with a public task are provided for in Arts 8, 10 and 11 the amended RGD 16 November 1998.

According to Art. 8, “[i]n case of vacancy of a dwelling, the beneficiary household is chosen between the households which had applied for a dwelling and to those such dwelling is adapted.” Art. 10 reads that “[t]he promoter attributes an order of priority to the households retained in conformity to Art. 8, taking into account namely the following financial, hygienic and socio-familial criteria:

- the income of a household;
- the precarious situation of the household which :
 - shall leave a dwelling
 - which is unhealthy, and considered by the public officer charged of executing the laws and the police regulations in accordance to the rules of the municipal law of 13 December 1988, as amended;
 - pursuant to a expropriation procedure for public reasons ;
 - pursuant to an eviction order, provided that the household is in good faith;
 - occupies a dwelling without shower or bathroom (...);
 - occupies a dwelling which is not adapted to the criteria of Art. 8;
 - occupies a dwelling whose structure or materials are an attempt to provide for the hygiene, habitability or safety of the dwelling;
 - occupies a dwelling the rent of which surpasses 30% of the household’s net monthly available revenue;
 - the personal effort of the household in the work market and rental market to find a work or dwelling;
 - the preceding behavior of the household;
 - the age of the people which compose the household.

Art. 11 provides that the vacant dwelling is given to the household in accordance to the order of priority established in Art. 10. Whenever there is the same priority, the dwelling will be granted to the household which registered the application first.

The proceedings to accede to a dwelling with a public task provided by public promoters and AIS are distinct. Indeed – and quite surprisingly – there is no legislation which definitively defines the criteria for acceding to housing with a public task, and, therefore, in practice, the public promoters use the criteria which they consider more appropriate to each case.

Indeed, Arts 8, 10 and 11 of the RGD 16 November 1998 establish the criteria in a certain order of priority, especially since the change of the regulation. However, this regulation was changed by the *Règlement grand-ducal du 6 avril 2009*, which introduced a more flexible system without any totally fixed order or priority (see, e.g., the criteria “income”).

For that reason, the *Deputée* Claudia Dall’Agnol addressed in 2010 a question to the President of the *Chambre des Députés*³¹⁵, drawing attention to the fact that if the new way of attributing “social dwellings” allows to attend better to the complexity of the situations of different applicants, it presents “problems of transparency” and is particularly serious in face of the increase of demand for this

³¹⁵ Question parlementaire n.º 1003 du 11 novembre 2010.

kind of housing. The *Député* Dall'Agnol therefore addressed the President to ask whether the Housing Minister had, in the meantime, drawn a “catalogue of criteria of allocation aimed at being able to communicate to the applicants the motivation of the decisions”; in such case, which were the criteria and whether they were to be ordered under a certain order of priority; in case the Ministry had not yet drawn such catalogue, which were the current grounds for the acceptance and refusal of applicants. This problem had been highlighted by the *Médiateur/Ombudsman* (Lydie Err) at her annual activity report 2008-2009³¹⁶ and, pursuant to it, by the *Commission du Logement* in a report on the activity of the *Médiateur* dated of January 2010.

The Housing Minister replied that the approach of the amended RGD 16 November 1998 “provided for the attribution of dwellings with a rigorous accuracy irrespective of the socio-familiar situation of the tenant-applicants, thereby facilitating *a priori* the criterion “income” before any other which could, in a particular case, be more important”. The Minister continued: “It was therefore decided to not provide in the *règlement grand-ducal* an exhaustive list of criteria to take into account, nor a fixed order of priority of criteria of attribution, but to leave instead to the public promoters the discretion of balancing the criteria according to each case, and to approach each file in consideration of all particularities present in the current case”. The Minister declared that the services of the Housing Ministry were “in their way to materialize a catalogue of award criteria which would reflect the spirit of the set of aims provided for in the legislation concerning the housing assistance and those which are permanently applied by one or other public developers”³¹⁷.

1) SNHBM

The applicants are asked to schedule an appointment at the Rental Service to fill in an application form. The applicant shall bring to such appointment: the three last income receipts of the income of each and every member of the household; a certificate of the received family allowances; a certificate of the composition of the household; a copy of the identity card and a certificate of non-ownership in Luxembourg and abroad.

All the requests must be renewed one time per year³¹⁸.

2) *Fonds du Logement*

As far as the subsidized rent is concerned, applicants accede to dwellings based upon an application procedure which is based in the requirements of the amended RGD 16 November 1998. The applicant can never elect the exact location of the apartment which will be attributed to him or her.

³¹⁶ On this political organ see <http://www.luxembourg.public.lu/fr/politique/institutions-politiques/mediateur/> (last retrieved: 15.05.2014).

³¹⁷ This material is available on <http://www.guichet.public.lu/citoyens/fr/actualite/2010/11/29-attribution-logements-locatifs/question-parlementaire-taxes-communales.pdf> (last retrieved: 25/11/2013).

³¹⁸ <http://www.snhbm.lu>.

The candidate must always (except concerning dwellings for senior and handicapped people) fulfil the following requirements: is not an owner, nor user (*usufruitier*) of another dwelling in Luxembourg or abroad (Art. 4 of the amended RGD 16 November 1998) nor benefits from a right to occupation of another dwelling.

The applicant must provide:

- Certificates of composition of the household, issued by the municipal administration of the residency site;
- Proof of civil status, issued by the municipal administration;
- Certificates of income or pensions of the last three months of the applicant and respective spouse (whenever applicable);
- Certificates of income or pensions of all the children of the household who execute a remunerated activity;
- Certificates of revenue or pension of the last three months of any other person who integrates the household;
- Certificate of the amount of the family allowances, established by the *Caisse Nationale des Prestations Familiales, CNPF*;
- Certificate of parental leave compensation, granted by the CNPF;
- Certificate of the amount of the alimony received or paid (copy of the divorce court decision);
- Social security registration certificate, issued by the *Caisse Nationale de Santé, CNS*;
- Copy of the identity card or residence card;
- Whenever applicable, a copy of the letter of termination of the former rental agreement (or copy of the court decision) of the preceding dwelling;
- Certificate, issued by the *Service des Evaluations Immobilières* (for non-Luxembourgiens, the embassy of respective country), that the applicant and spouse are not owners, nor users (*usufruitier*) of a dwelling.

After the reception of the documents, the application is analysed. In case it is considered complete and formally rightly submitted, it is examined in order of receipt and, whenever required, are object of a confirmatory inspection.

Summary table 9:

Type of rental housing	Main characteristics
Rental housing without a public task	
Private rental housing <ul style="list-style-type: none"> - CC - <i>Loi du 21 septembre 2006 (and projet loi no. 6583 relative à la promotion du logement et de l'habitat durables (9.3.2013)</i> 	<ul style="list-style-type: none"> • 28.3% of the total housing stock • Owners are mainly individuals • Individuals are mainly small landlords • Mainly unfurnished dwellings • Rents relatively high and unaffordable to the middle class citizen
Rental housing for which a public task was defined	
Social rental housing <ul style="list-style-type: none"> - <i>Loi du 29 mai 1906 sur les habitations à bon marché</i> - <i>Loi du 25 février 1979 concernant l'aide au logement</i> 	<ul style="list-style-type: none"> • 2% of the total housing stock • Owners are public promoters, municipalities and the State • Dwellings of good quality, which cannot be distinguished from dwellings of the private rental sector. • The housing stock is clearly not enough to meet demand
Private rental housing with a public task – <i>Agence Immobilière Sociale</i> <ul style="list-style-type: none"> - <i>Projet loi no. 6583 relative à la promotion du logement et de l'habitat durables (9.3.2013)</i> 	<ul style="list-style-type: none"> • Owners are private landlords • Vacant dwellings are used to satisfy accommodation needs of financially vulnerable households and they are maintained and renewed with public funds.

- **For which of these types will you answer the questions in points 5 and following; which regulatory types are important in your country?**

I will focus particularly in residential tenancy contracts without a public task, provided that residential tenancy contracts with a public task either are residual (that is the case of rental agreements concluded with public promoters and municipalities) or are still not fully legally regulated (that is the case of rental agreements concluded between landlords and the AIS).

5. Origins and development of tenancy law

- **What are the origins of national tenancy law and where was and is it laid down (civil code, special statute, case law)?**

During the twentieth century, the rules of the CC concerning the rental agreements (*baux à loyers*) were changed due to the pressure of several dramatic situations connected to the two World Wars. The destruction caused by the wars provoked such a serious housing shortage that it was not possible to let the rents be freely established by the market forces of supply and demand³¹⁹.

To face the serious repercussions of the two World Wars on the situation of housing at the Grand-Duchy, the legislator decided to intervene several times, through special, temporary laws, to regulate rental agreements and, particularly, the amount of rents. This is the context of elaboration of the law of 1955.

Currently, rents in Luxembourg are regulated by the LBUH and Arts 1708 to 1831 of the Luxembourg CC (Title VIII – ‘*Du contrat du louage*’)³²⁰. Indeed, the CC contains a number of provisions concerning the lease of things. These provisions consist of the common law (*Droit Commun*) in this field³²¹ and are nearly identical to the provisions of the French *Code Civil*, which dates from the beginning of the nineteenth century.

The articles of the CC regulate, namely, the proof of the rental agreement, the sublease and the cession, the obligation of delivery by the landlord, the distribution of reparations to be made in the rented dwelling, the obligations of the tenant or of the landlord, the inventory upon arrival of the tenant and the one upon the respective departure (*état des lieux*), the defects, the degradations or losses, the trouble with third parties, liability in case of fire, the verbal rental agreement, the sale of the rental dwelling, the length of the rental agreement and the termination of the bail³²². Provided that most of these articles were directly inspired by the Napoleonic Code in 1804, they are inadequate in the legal reality and had thus to be completed by LBUH³²³.

- **Who was the political driving force? Was it based on a particular legal philosophy (e.g. socialism)? Is there a particular philosophy behind the rules (e.g. protection of the tenant’s home as in Scandinavia vs. just a place to live as in most other countries)**

Besides the obligation of the tenant of paying the rent under the terms both parties have arranged, the CC does not contain any other indication about the rent, particularly, on the determination of the rent. In fact, the drafters of the CC were aware that the Code should stay loyal to the *acquis* of the Revolution and to

³¹⁹ Ministry of Housing – Bail à loyer, 2006, p. 9.

³²⁰ Ministry of Housing – Bail à loyer, 2006, p. 9.

³²¹ ULC – Bail à loyer, 2009, p. 4 and Ministry of Housing – Bail à loyer, 2006, p. 9.

³²² Ministry of Housing – Bail à loyer, 2006, p. 9.

³²³ ULC – Le bail à loyer, 2009, p. 4.

Liberalism of this epoch and should, thus, abandon the fixation of rents according to the free will of the contracting parties³²⁴.

The original purpose of the law of 14 February 1955, as revised on 27 August 1987 and 18 March 1992, was to adapt rents to features of the property, such as amenities, age, living space, renovation, etc.³²⁵. Nowadays, the housing sector is considered fundamental for the integration of the citizen in society and, therefore, to fight against social exclusion, to improve the quality of life of citizens and to boost the efficiency of the socio-economic system³²⁶.

- **What were the principal reforms of tenancy law and their guiding ideas up to the present date?**

Housing policies involving leases have always been a sensitive matter, both because they involve many people (landlords and tenants) and because of the social and macro-economic implications of the construction of dwellings.

The last law on rental agreements is in force since 31 October 2006.

The project of law which gave rise to the law of 1955, has a very suggestive title, as it refers explicitly to all the laws which preceded it³²⁷. The law of 1955 distinguished between the dwellings constructed before the 10th of September 1944 – thus the official date of the liberation of the Grand-Duchy of Luxembourg – and the dwellings constructed after that date. As for the former, the rents were fixed at a flat rate; as for the latter, rents could not, altogether, surpass, on one year, 5% of the capital that the landlord had invested in the dwelling³²⁸.

Apart from a slight modification in 1987, the legislation on rental agreements remained unchanged for almost twenty years³²⁹. In accordance with what was announced in the action program '*Logement*' of 2001, the Government presented, in October 2003, a project of law which reformed the legislation on rental agreements³³⁰.

The new legislation of 2006 put an end to some abuses that the preceding law did not manage to avoid. It suppressed the difference between the housing stock before and after the war (which discriminated negatively the former) and reformed the rent commissions in order to answer more effectively to situations of conflict between landlord and tenant. This law also: revised the concept of "personal need" of the landlord; improved the situation of new owners; promoted the purchase of old dwellings; imposed on the landlord an obligation to inform the tenant of the reasons for his or her intention of terminating the contract based

³²⁴ Ministry of Housing – Bail à loyer, 2006, p. 9.

³²⁵ Bernard – Informations concernant le bail, p. 1.

³²⁶ <http://www.ml.public.lu/fr/politique-logement/index.html> (last retrieved: 15.05.2014).

³²⁷ The title of the law is *Projet de loi portant modification et coordination de l'arrêté grand-ducal du 30 septembre 1939, portant institution des tribunaux arbitraux en matière de bail à loyer, de l'arrêté grand-ducal du 24 décembre 1945 et de la loi du 21 mars 1947 concernant la fixation des loyers, de la loi du 30 octobre 1948, concernant la protection de personnes condamnées à déguerpir de leur logement et de la loi du 20 juillet 1950 portant modifications desdits arrêts et lois*.

³²⁸ Ministry of Housing – Bail à loyer, 2006, p. 10.

³²⁹ Ministry of Housing – Bail à loyer, 2006, p. 10.

³³⁰ Ministry of Housing – Bail à loyer, 2006, p. 3.

upon personal reasons; improved the judicial procedure; reinforced the participation of the tenant in the rental costs, gave the tenant the possibility of replacing the cash guarantee by a bank guarantee and changed the definition of the dwellings of modern comfort.

Nowadays, according to Georges Krieger, one assists to a change in the rental market which is 'neither due to the new law, neither to subsidies' nor to other state interventions. Only the market is allegedly to blame, and, in this context, the law of 2006 seems to answer these challenges better than its predecessor.

- **Human Rights:**

- **To what extent and in which fields was tenancy law since its origins influenced by fundamental rights enshrined in**
 - **the national constitution**
 - **international instruments, in particular the ECHR**

A right of access to housing is regulated in several treaties and conventions to which the Grand-Duchy of Luxembourg has subscribed.

The Housing Ministry refers, in its website, to the concept of "access to housing" defined in the Vancouver Declaration on Human Settlements, proclaimed at the UN Conference on Human Settlements (Habitat I), held between 31 May and 11 June 1976 in Vancouver. This declaration provides that having a dwelling and adequate services is a fundamental human right. The terms of the declaration engage the parties to protect and improve dwellings, to establish programs which encourage individual and collective action in this field and to eliminate impediments which delay the fulfilment of these objectives³³¹.

The European Convention on Human Rights was ratified by the Grand-Duchy of Luxembourg. Art.1 of the First Additional Protocol to the ECHR is fully adapted in national legislation as well: the Luxembourg Constitution strongly protects the right of property, and it only permits limitations to it in exceptional cases, such as expropriation, where public interests are in stake.

So far, there are no known ECHR decisions concerning tenancy law that involved Luxembourg directly³³².

- **Is there a constitutional (or similar) right to housing (droit au logement)?**

In Luxembourg the right to affordable housing is not a constitutional right, as it is in France. The Luxembourg Constitution refers to the legislator to address the poverty issues in general³³³. Art. 31 of the Law on rental agreements provides that the administrations have the mission of ensuring, within their capacities, that every person registered under that municipality and the people who work in public

³³¹ <http://www.ml.public.lu/fr/politique-logement/index.html> (last retrieved: 11.01.2014)

³³² http://www.mj.public.lu/jurisdictions/arrets_concernant_le_luxembourg/index.html (last retrieved: 15.05.2014).

³³³ CES/LOGEMENT – Logement abordable, 2013, p. 16.

services (as long as they exercise their functions in the territory of the municipality) is granted a house

The lack of provision of a right to housing in Luxembourg legislation has an important practical impact. It prevents citizens from invoking this right before courts, such as happens in France. Here, every person who submits an application for a dwelling and does not receive a satisfying, adapted response, may complain to a mediation commission and, sometimes, even file a case before an administrative court. According to the CES, the French solution would not effectively solve the problem of lack of decent dwellings for those in need in Luxembourg. It considers that, even if the effectiveness of the right of access to housing depends on the availability of an adequate and affordable offer, its achievement is also connected to the realization of other fundamental rights, such as the right to human dignity, the protection of private life, right to a home (*droit du domicile*) and of a family life, the right to water, to health and human treatment³³⁴.

The responsibility of the Grand-Duchy in the field of housing is shared with the municipalities. They are all engaged in a frame of conventions provided for the *Pacte Logement* of uniting their efforts to increase the offer of dwellings and to reduce the cost of land and accommodation. Granting access to a dwelling does not force the public authorities to grant a dwelling to every person who makes a demand, but these authorities shall at least assist people who, for financial or other non-voluntary reasons, do not live in a decent dwelling³³⁵.

6. Tenancy regulation and its context

6.1 General introduction

- **As an introduction to your system, give a short overview over core principles and rules governing the field (e.g. basic requirements for conclusion, conditions for termination of contracts by the landlord, for rent increase etc.; social orientation of tenancy law in force; habitability (i.e. the dwellings legally capable of being leased))**

The legislation in force for the regulation of these aspects consists of the articles of the CC, the regulation of 2006 and the court decisions of the courts of peace and appeal courts.

The “*contrat de location*” is one of the most frequent contracts in Luxembourg Law. The CC refers to “*louage de choses*” where “*choses*” shall be understood as material goods, immovable or movable.

The rules on the rental agreement are to be found in articles 1713 to 1831 of the CC. These rules consist of the general law (*droit commun*) applicable. As far as rental agreements over dwellings are concerned, the rules of the CC are

³³⁴ ID, *Ibid*, 17.

³³⁵ CES/LOGEMENT – Logement abordable, 2013, p. 16.

completed and prevailed by the special rules of the LBUH³³⁶ which, since 1 November 2006 has replaced *the loi du 14 février 1955*³³⁷.

Definition

According to the CC, '*contrat de louage*' is the contract through which a party provides the enjoyment of a thing during a certain period of time in exchange for a certain price called '*loyer*'. In case the *louage* is over an immovable, it takes the name of *bail*. A *bail* over a place of residence is called *bail à loyer*³³⁸.

Luxury residences and other residencies

The abolished law of 14 February 1955 made two main distinctions.

On the one hand, it distinguished clearly between "luxury residences" and the remaining ones. "Luxury residencies" are dwellings with modern amenities which comprise at least seven rooms – not including attics and the usual appurtenances – and which are occupied by one household only. On the other hand, it distinguished between dwellings built before the 10 September 1944 and after that date³³⁹. These distinctions do not exist since the entry into force of the LBUH.

Basic requirements for conclusion / capacity

In order to be able to sign a rental agreement, one must be able to perform a legal act (*acte juridique*). In principle, everyone is allowed to perform legal acts; the only exceptions are minors and persons who are placed under a protection regime. The contracts concluded by legally incapable people are not automatically void but can be terminated in case they are detrimental to their interests.

As long as a person is incapable of managing their own goods, they are managed by a legal guardian (*tuteur*) or administrator (*curateur*) who, according to the circumstances, is named by the law or by the judge. These representatives (e.g. parents of the minor) may valuably conclude a rental agreement. However, Art. 1718 prohibits them to conclude contracts which last for more than nine years without the agreement of the family council (*conseil de famille*).

Persons who have been declared bankrupt are also prevented from concluding a rental agreement. Indeed, Art. 444 of the Commercial Code provides that the bankrupted person is automatically divested from the right of

³³⁶ *Loi du 21 septembre 2006 sur le bail à usage d'habitation et modifiant certaines dispositions du Code civil. Mém. A, 2006, 3149.*

³³⁷ *Loi du 14 février 1955 portant modifications et coordination des dispositions légales et réglementaires en matière de baux à loyer, Mém. 1955, mod. L. 27 août 1987, Mém. 1987, 1677; L. 6 juin 1990, Mém. 1990, 377; L. 17 mars 1992, Mém. 1992, 732; L. 9 août 1993, Mém. 1993, 1409; L. 11 août 1996, Mém. 1996, 2026; L. 11 août 1996, Mém. 1996, 1660; L. 25 juin 2004, Mém. 2004, 1816. See generally Thewes – Le nouveau droit du bail, 2007, pp. 9-13.*

³³⁸ Ministry of Housing – Bail à loyer, 2006, p. 9.

³³⁹ Bernard – Informations concernant le bail, s.d., p. 1.

administration of their goods. From the moment bankruptcy is declared, this right will belong to the administrator; every act performed by the bankrupted person after the bankruptcy is automatically void and undemurrable (*inopposables à la masse*)³⁴⁰.

Habitability

The amended Law of 25 February 1979 on housing aid regulates the sanitation of dwellings. Art. 32 reads: 'The dwellings for renting or for housing must meet criteria of renting, health, hygiene, habitability, and security, to be defined by a Grand-Duchy regulation'.

Art. 1 of the RGD 23 March 1979 provides that dwellings aimed at being rented as the main and permanent habitation must meet specific conditions defined in this regulation. Art. 2 reads that dwellings shall be constructed and arranged according to the rules generally applicable in the Grand-Duchy, and they shall provide normal habitability conditions. Arts 3, 4, 6, 7 and 8 define the conditions of access that each dwelling must meet. Art. 5 reads that the surface area of the dwelling cannot be smaller than 12m² for the first occupant and shall have an additional 9m² for each remaining occupant. However, as the law of 1979 provides for the same aspect and it prevails over Grand-ducal Regulations, what applies is the following: the soil surface cannot be inferior to 9m² for the first inhabitant, 18m² for two inhabitants, 24m² for three inhabitants and 30 m² for four inhabitants (Art. 32 of the Law of 1979).

Contents of contract

A rental agreement must contain the amount of the rent, the amount of rental charges and the date that payment is due. In case the rent is not indicated, the contract cannot be considered a rental agreement³⁴¹.

In order to avoid conflicts over the contents of the rental agreement, it is recommended to the parties that they carefully write the terms of the contract and define as precisely as possible the rights and obligations of each party to the contract³⁴².

Deposit

Landlords usually request the payment of a rental guarantee³⁴³. In most cases, the payment consists of a three-month deposit. The reimbursement of this amount is due at the end of the contract and only when the landlord considers that the dwelling was delivered in the same state as it was delivered in the beginning of the contract.

³⁴⁰ Thewes – Le nouveau droit du bail, 2007, p. 20.

³⁴¹ ULC – Le bail à loyer, 2009, p. 5.

³⁴² ULC – Le bail à loyer, 2009, p. 5.

³⁴³ ULC – Le bail à loyer, 2009, p. 5.

Length of contract

The length of a rental agreement must also be defined in a rental agreement. A rental agreement on a non-furnished dwelling normally lasts two or three years, and it is automatically renewed each year in case there is not a three-month notice period. As far as furnished dwellings are concerned, the rental agreement is renewed for a year every 12 months. The legal notice period is three months. The payment of the three-month rent is due when the tenant leaves the dwelling before the end of that period. The tenant can avoid this inconvenience by finding another tenant, provided that the landlord approves his or her choice or a shorter notice period.

Conditions for rent increase

Landlords have an interest in increasing rents at every opportunity that the law allows them to. Indeed, they might want to increase their profits or at least maintain them, given the increase of the cost of living and the devaluation of money. However, there are legal limits to the increase of rents by landlords.

First of all, rents cannot be automatically increased: the LBUH maintains the prohibition of automatic indexation terms (*clauses d'indexation automatique*) of the rent which goes back to the *Loi du 14 février 1955*. The increase of rents must go through a specific process. The landlord must notify in written form the respective intention to the tenant. If the tenant wants to ask for a decrease of the rent, he or she must do in the same way to the landlord, or a relevant request before the competent rent assessment commission of the municipality will be inadmissible. After this notification, if no agreement is found between the parties within one month, the tenant or landlord may present its case to the rent commission. When one of the parties does so, this commission shall address a letter to the municipal council of the municipality where the dwelling is situated. This council summons the parties and attempts conciliation. If an agreement is reached, a protocol is written and signed by the parties; otherwise, the commission determines the amount of rent (or the amount of advances for charges)³⁴⁴.

Secondly, the landlord cannot increase the rent during the first six months at the beginning of the rental agreement³⁴⁵ and afterwards only after every two years³⁴⁶ according to ratios of adaptation³⁴⁷ or, in some rare cases, within a procedure before a rent assessment commission.

³⁴⁴ Thewes – Le nouveau droit du bail, 2007, pp. 32-33.

³⁴⁵ Krieger – Le bail d'habitation, 2009, pp. 88-89.

³⁴⁶ Under the law which was in force before the *Loi 2006*, this period was of three years. Krieger – Le bail d'habitation, 2009, p. 89. Cf. J.P.Esch., 16 May 2009, process no. 1089/2009.

³⁴⁷ However, in case there is a change of tenants, the landlord can proceed immediately to an increase of the rent.

Conditions for termination of contracts by the landlord

To terminate the contract, the landlord must either prove³⁴⁸: a) a personal need or the need of a member of the respective family; b) that the tenant is not fulfilling his or her obligations (no payment or irregular payment of rent, repeated night-time noise, inadequate insurance, etc.) and c) there are serious legitimate reasons to terminate the contract. In all cases, the contractually agreed period of notice must, nevertheless, be respected³⁴⁹. In case of no agreement between the parties (when the contractually fixed period of notice is shorter than the legal periods of notice), the legal period of notice (three or six months) must be respected.

- **To what extent is current tenancy law state law or infra-national law (if legislative jurisdiction is divided: what is the allocation of competencies and for which subject matters)**

Tenancy law is both state law and infra-national law.

National level

At the national level, the ministerial competencies are established by the Grand-ducal decision of 27 December 2013. They consist of defining the general politics of housing, issuing statutes on rents and state financial subsidies as far as housing is concerned.

The amended Act of 25 February 1979 concerning aid to housing consists of the legal basis of the housing politics and provides the following instruments:

- individual housing subsidies (*aides à la personne*), such as the financial subsidy for construction (*prime de construction*), financial subsidy for acquisition (*prime d'acquisition*), interest grant (*subvention d'intérêt*), etc., a system of subsidization of private homeowners and owner-occupiers and some public promoters;
- collective housing subsidies (*aides à la pierre*), a system of subsidization in benefit of the public and private promoters;
- renovation of old dwellings (municipalities are given the possibility of declaring zones of renovation which will be object of restructuring operations through financial assistance);
- creation of land for construction (*réserves foncières*) and incentives to construction by real estate owners);
- creation of a public institution called *Fonds du Logement* (public promoter), which shall construct dwellings at moderate cost for sale or renting.

³⁴⁸ Courts usually take the landlord's word in case he or she invokes personal need.

³⁴⁹ Bernard – Informations concernant le bail, s.d., p. 2.

Municipal level

The competences of municipal authorities concerning housing are defined by the amended law of 19 July 2004 on municipal land management and urban development. Within the frame of the LBUH on rental agreements, municipalities are obliged, within the limits of their possibilities, to ensure housing to the population and are responsible for controlling the conversion of dwellings in places for commercial or crafts use. In municipalities where offer does not meet demand, local authorities can also theoretically seize dwellings for residential purposes.

In accordance with the amended Act of 25 February 1979 concerning aid to housing (chapter 5), municipalities may create zones of reserved land. They also have the possibility of demanding that sites are affected for construction, if they are located in the constructible areas defined by the management plan of municipalities. This same act allows municipalities to declare as renovation areas a part of the urban territory situated in the interior of the certain boundary³⁵⁰.

- **Is the position of the tenant also considered as a real property right (and therefore also governed by property law) or (only) as a personal (obligatory) right?**

The position of the tenant consists of a personal right (*droit personnel*) and not a property right (*droit réel*). Indeed, as we have referred, the lease of things (*louage de choses*) is defined as ‘a contract through which one of the parties engages itself to provide to another the enjoyment of a thing, in exchange for a price’. Only the landlord has both a personal and a property right (namely, the right to property). In relation to a sub-tenant, the landlord does not have any personal right: the tenant (landlord, for that purpose) will do.

- **To what extent is the legislation divided up into general private law and special statutes? To what extent are these rules mandatory and dispositive? Does the relationship between general and special rules work properly so as to create legal certainty?**

As we have seen, tenancy law is regulated by the LBUH and the rules of the CC.

The rules of LBUH are specific rules which derogate the general rules provided by the CC. They are imperative and of public order, and thus prevail over the general rules in the CC³⁵¹. The different special laws have tried to establish an adequate social protection of the tenant without causing damage to the rental market³⁵².

³⁵⁰ <http://www.ml.public.lu/fr/politique-logement/niveau-national-communal/index.html> (last retrieved: 11.01.2014).

³⁵¹ ULC – Le bail à loyer, 2009, p. 4.

³⁵² Krieger – Le bail d’habitation, 2009, p. 17.

It is considered that there is legal certainty as far rental agreements are concerned, but neither tenants nor landlords would hesitate to go to court to resolve eventual disputes.

- **What is the court structure in tenancy law? Is there a special jurisdiction or is the ordinary one competent? What are the possibilities of appeal?**

There are three courts of peace in the Grand-Duchy of Luxembourg: the *tribunal de paix* of Luxembourg, the one from Esch-sur-Alzette and the one from Diekirch. The court of peace of the municipality where the rented dwelling is located is competent for every dispute that concerns the existence and the execution of the tenancy agreement (Art. 19 of the LBUH). Also, disputes of simple occupation without entitlement fall within the competence of the justice of the peace.

On a municipal level, the Rents Commission is competent for disputes on the determination of the rent. The justice of the peace may intervene in these disputes, but as an appeal body and only if the value of the matter is not lower than 1,250€. If the dispute concerns the amount of the rent, the termination of the contract or eviction of the tenant³⁵³, an appeal is always possible, irrespective of the value of the matter.

In case of a decision by the justice of peace, there is a possibility of then filing an appeal against such judgment to the District Court (*tribunal d'arrondissement*) within 40 days counted from the notification of the judgment through registered letter (Art. 25 of the LBUH). In case it is a judgement by default, the 40 days start to be counted only after the period for the expression of objections, i.e., 15 days after notification.

When it comes to a claim for damages arising from an abusive termination of the lease, the justice of the peace is not exclusively competent because it is no longer a question of existence of the lease or a question of its execution. In principle, it is the district court (*tribunal d'arrondissement*) which is competent, and then a lawyer is compulsory. The justice of the peace will only be competent if the value of the dispute does not surpass 10,000€. The justice of the peace is also competent if the tenant claims damages arising from a violation of the respective pre-emptive right³⁵⁴. If the landlord decides to sue the bank on the basis of the bank guarantee, he or she shall also resort to the normal procedure (district court or justice of the peace, whenever it comes to a claim under 10,000€), because the bank in itself is not in a tenancy relationship with the landlord³⁵⁵.

The court of appeal for the justice of the peace of Esch-sur-Alzette and for the court of peace of Luxembourg is the district court of Luxembourg, whereas for the justice of the peace of Diekirch the competent appeal court is the district court of Diekirch³⁵⁶.

³⁵³ Krieger – Le bail d'habitation, 2009, p. 141

³⁵⁴ Krieger – Le bail d'habitation, 2009, p. 139.

³⁵⁵ Krieger – Le bail d'habitation, 2009, p. 140.

³⁵⁶ Krieger – Le bail d'habitation, 2009, p. 141, n. 184.

- **Are there regulatory law requirements influencing tenancy contracts**
 - **E.g. a duty to register contracts; personal registration of tenants in Eastern European states (left over of soviet system)**

In cases where the rental agreement is in writing, it shall be, in principle, registered within the three months that follow its conclusion. In order to accomplish this formality, an original contract shall be presented to the Luxembourg Registry Administration (*Administration de l'enregistrement et des domaines - AED*). This institution is entitled to a right to 0.6% of the cumulative amount of the rents. If, as means of example, the contract is concluded for 3-6-9 years, the right of registry is calculated over the maximum length of nine years. If the contract is concluded for an undetermined length, the calculation will be based over the equivalent of 20 years of rent³⁵⁷.

In practice, few rental agreements are registered. Many people, including some real estate professionals, are wrongly convinced that rental agreements do not need to be registered³⁵⁸.

However, in case where a rental agreement is not registered, it does not mean that it will be invalid *inter partes*. In ordinary law, the fact of not having registered a rental agreement affects only the opposability of the contract to third parties. Under the CC, the tenant in relation to whom the rental agreement was not registered runs the risk of being expelled by the new purchaser of the dwelling, in case the dwelling was sold (Art. 1743 CC). However, for the rental agreements to be regulated by the LBUH, there is no such risk because this law provides a right to oppose the rental agreement against a potential purchaser³⁵⁹.

- **Regulatory law requirements on - new and/or old - habitable dwellings capable of being rented - e.g. on minimum size, number of bathrooms, other mandatory fittings etc.**

The law which provides on these matters is the amended RGD, determining the criteria of renting, health and hygiene that dwellings aimed at being rented must fulfil (hereinafter, RGD 25 March 1979)³⁶⁰.

Art 33 of this law provides that 'every person or organization which locates or makes available furnished dwellings and collective dwellings must previously declare them to the Mayor of the municipality, indicating the maximum number of accommodated people, the amount of the rent and attaching to the declaration a detailed state of the sites'. In case the dwellings do not fulfil the criteria provided for in this regulation, the Mayor is entitled to prevent that such dwelling is provided for renting.

³⁵⁷ Thewes – Le nouveau droit du bail, 2007, p. 19.

³⁵⁸ Thewes – Le nouveau droit du bail, 2007, p. 19.

³⁵⁹ Thewes – Le nouveau droit du bail, 2007, p. 20.

³⁶⁰ See generally, *infra*, "Public law impediments to handover to the tenant".

- **Regulation on energy saving**

The amended Grand-ducal Regulation of 30 November 2007 concerning the energy performance of residential buildings imposes new rules concerning heat insulation and is aimed at raising awareness of homeowners to the energy behaviour of their existing or future dwelling³⁶¹. According to the directive which it transposed, the main idea is to provide each dwelling with a document which certifies that it follows the expected energy performance³⁶².

Therefore, from 1 January 2010, as soon as a dwelling is occupied by a new tenant, the landlord is obliged to immediately provide him or her with an authentic copy of the certificate, even though he or she is not obliged to pursue works of heat insulation³⁶³. It is thus the change of tenant that gives rise to the obligation of communication: the landlord does not have such obligation towards a tenant with whom he or she concluded a rental agreement before that date.

Such obligation of communication does also not exist in relation to a sub-tenant, whenever he or she changes. Whenever the landlord has such obligation and does not comply with it, he or she will be violating the law, but the tenant cannot claim the right to refuse payment of total rent. Indeed, the tenant's right to peaceful enjoyment of the dwelling will not be affected if the landlord does not comply with the respective obligation of communication. Nevertheless, the tenant might be able to justify termination of the contract based upon the circumstance that the energetic consumption became too high. Moreover, the tenant can file a suit given that every violation to the regulation of 30 November 2007 is a criminal offense punishable by a correctional court³⁶⁴.

³⁶¹ Krieger – Le bail d'habitation, 2009, p. 41.

³⁶² Krieger – Le bail d'habitation, 2009, p. 41.

³⁶³ Krieger – Le bail d'habitation, 2009, pp. 42 and 45.

³⁶⁴ Krieger – Le bail d'habitation, 2009, p. 45.

6.2 Preparation and negotiation of tenancy contracts

Example of table for 6.2. Preparation and negotiation of tenancy contracts

	Private rental agreement	Social rental agreement (<i>Fonds du Logement</i> , SNHBM, municipalities)	Private rental agreements with public task (AIS)
Choice of tenant	Landlord usually chooses tenant who is able to ensure that he or she has an income that allows him or her to pay regularly the rent and remaining costs	Public developer analyses the application of the candidate, who must observe certain requirements ³⁶⁵ and sometimes carries a confirmatory inspection (<i>enquête social</i>) ³⁶⁶ . It decides according to criteria which are in a certain order of priority ³⁶⁷ .	AIS analysis the application of the candidate, who must observe certain requirements (among which, having a residence permit and health insurance).
Ancillary duties	<ul style="list-style-type: none"> - duties of care as far as the dwelling is concerned (<i>occupation paisible des lieux</i>) - respect of the internal regulations of the building where the dwelling is located 		
	<ul style="list-style-type: none"> - duty of informing landlord of problems with the dwelling 	<ul style="list-style-type: none"> - duty of informing of a change in the household (marriage, divorce, birth of child, etc.) - duty of contracting an insurance against rental risk (<i>risques locatives</i>) 	The applicant must commit, with the social security services, to a project aimed at reaching his or her autonomy as far as housing is concerned.

³⁶⁵ See Art. 4 of the *Règlement grand-ducal modifié du 16 novembre 1998 fixant les mesures d'exécution relatives aux logements locatifs*.

³⁶⁶ See Art. 6 of the *Règlement grand-ducal modifié du 16 novembre 1998 fixant les mesures d'exécution relatives aux logements locatifs*. The *enquête social* consists of an interview of the social housing provider with the applicant followed by a visit to his or her current place of residency.

³⁶⁷ See Arts 10-13 of the *Règlement grand-ducal modifié du 16 novembre 1998 fixant les mesures d'exécution relatives aux logements locatifs*.

Freedom of contract

- **Are there cases in which there is an obligation for a landlord to enter into a rental contract?**

The buyer of a dwelling which was rented by the seller must continue to perform the rental agreement in the quality of landlord. Indeed, the sale of a dwelling is not valid grounds for termination³⁶⁸. The new acquirer (new landlord) can take profit from the termination of the contract by the former landlord (seller of the house)³⁶⁹; however, he or she must always invoke the reasons for termination provided in Art. 12 LBUH³⁷⁰. If the new owner wants to live in the dwelling, he or she must accomplish the special termination procedure provided by Art. 12-6 LBUH.

- **Matching the parties**

- **How does the landlord normally proceed to find a tenant?**

In the private rental sector, landlords generally advertise the vacant, available dwellings in newspapers or, instead or simultaneously, engage a real estate agency to help them finding a tenant. In small municipalities, spreading the news by word-of-mouth is usually enough.

In the social rental sector (in the broad sense, i.e., including public rental agencies), it is the tenant which shall file an application. As far as the *Fonds du Logement*, the *SNHBM* and the municipalities are concerned, the application should be made directly before these; in the case of AIS, the tenant shall contact the social services and these will contact the AIS.

- **What checks on the personal and financial status are lawful and usual? In particular: May the landlord ask for a salary statement? May he resort to a credit reference agency and is doing so usual?**

In the social sector, the checks on the personal and financial status which are lawful and usual are the request of a certificate of non-ownership and the request of a copy of the identity card or residency certificate. A certificate of composition of housing, a proof of gravity of the current accommodation situation, the proof of revenue of every member of household and a certificate of the amount of family allowances are required by the *SNHBM* and the *AIS*, but not by the *Fonds du Logement*. Every document required by each of the social housing provider is described in the table *infra*:

³⁶⁸ Tr. Arr. Lux, 10 January 1991, 41411; J.P. Lux, 9 December 2008, 4105/08; J.P. Diek., 15 June 2009, 606/2009.

³⁶⁹ Tr. Arr. Lux, 7 July 1998, 147/88 BL.

³⁷⁰ Krieger – Le bail d’habitation, 2009, p. 133.

	<i>Fonds du Logement</i> (subsidized dwellings) 371	<i>Fonds du Logement</i> (non-subsidized dwellings) 372	SNHBM ³⁷³ (subsidized dwellings)	<i>Agence Immobilière Social</i> 374
Certificate of non-ownership	X	X	X	X
Identity card /residency certificate	X	X	X	X
Certificate of composition of household	X		X	X
Revenue of main tenant and spouse		X		
Revenue of every member of household	X		X	X
Letter of termination of previous rental agreement	X			X
Certificate of amount of family allowances	X		X	X
Alimony (perceived or paid)	X			
Certificate of civil state	X			
Parental allowance	X			
Affiliation	X			
Work authorization for citizens from non EU-members				X
Gravity of situation of housing	X		X	X
Health insurance				x

³⁷¹ http://www.fondsdulogement.lu/fdl/louer/louer-un-bien-subventionne/demarche-a-suivre-fr-c_6429 (last retrieved: 15.05.2014).

³⁷² http://www.fondsdulogement.lu/fdl/louer-sur-le-marche-libre/demarche-a-suivre-fr-c_6433 (last retrieved: 15.05.2014).

³⁷³ <http://www.snhbm.lu/index.php?p=3> (last retrieved: 15.05.2014).

³⁷⁴ <http://www.ais.lu/> (last retrieved: 15.05.2014).

- **How can information on the potential tenant be gathered lawfully? In particular: Are there blacklists of “bad tenants”? If yes, by whom are they compiled? Are they subject to legal limitations e.g. on data protections grounds?**

A blacklist of “bad tenants” does not exist and it would have to be provided for in detail in a specific regulation containing aspects such as: the definition of a “bad tenant”; the conditions that a tenant must fulfil to be on that list; the authority which would be authorized to place the tenant in that same list; the possibility for the tenant to argue; if the access to this list would be restricted or open; the time lapse for which the tenant would have to stay in the same list, etc. Moreover, to create such a list, sufficient guarantees about the protection of personal data would have to be given to the National Commission for Data Protection (*Commission nationale pour la protection des données*)³⁷⁵.

However, landlords can “opt out” some tenants by asking for high rents. This discrimination based upon the financial status of the tenant is one of the few which is allowed in Luxembourg (contrarily, for example, to discrimination based upon sexual orientation, national origin, etc. which are clearly prohibited).

- **What checks may and does the tenant carry out on the landlord (e.g. to avoid being trapped by a swindler landlord)**

There are several legitimate ways for tenants to check the profile of their (prospective) landlords. One of them is to ask the tenants they are substituting for their general opinion and experience with that landlord, ask for the assistance of their employers (big employers, as European institutions, have some specific personnel for advising as far as the rental private market is concerned) or otherwise ask the Luxembourg Union of Consumers for assistance.

Luxembourg is a small country and swindler landlords would easily be quickly identified and spotted by tenants, by way of word-of-mouth communication.

- **Services of estate agents**
 - **What services are usually provided by estate agents?**

The role of real estate agents in Luxembourg varies according to what the parties established in the contract.

In case the parties do not provide for the role of the real estate agent in the contract, this should be classified as a service contract (*contrat d’entreprise*), with regard to which the real estate agent does not have the power of representing his or her client³⁷⁶. In this case, the agent shall carry the normal responsibilities of the respective profession, which consist of obtaining information and actively informing and counselling a person³⁷⁷.

³⁷⁵ See <http://www.cnpd.public.lu/fr/declarer/index.html> (last retrieved: 15.05.2014)

³⁷⁶ Thewes – L’Agent Immobilier, 1991, p. 221.

³⁷⁷ Tr.Arr.Lux 13 July 1929, Pass. Lux, t XII, pp. 10 and 221.

In Luxembourg, the category of real estate agent comprises any person who, on behalf of and in the interest of another, acts as an intermediary for the sale, exchange, rental or cession of real estate, securities or goodwill. The agent informs the client of the available real estate, for sale or location³⁷⁸.

The real estate agent should be distinguished from the real estate developer and the administrator of real estate or real estate management firm.

The real estate developer – subdivider (*lotisseur*) and builder of single-family houses (*constructeur de maisons individuelles*) – is any person who, as a principal or subsidiary occupation, habitually promotes and accomplishes real estate projects with the objective of selling or renting real estate.

Finally, the administrator of real estate or real estate management firm is any person who promotes and accomplishes real estate projects with the objective of selling or renting the real estate.

Finally, the administrator of real estate or real estate management firm is any person who, as a primary or secondary occupation, habitually acts as an authorized representative or intermediary on behalf of others and manages real estate, real estate rights or real estate co-ownership.

- **To what extent are estate agents regulated? In particular: are there rules on how an agent should present a house, i.e. on the kind of information which needs to be given?**

The real estate agents, the real estate developers and the administrators of real estate are considered real estate professionals (*professionnels de l'immobilier*) who, in the exercise of their profession, must prove their qualifications. The CIGDL represents these professions and its main goal is to constantly improve their professionalism and the quality of service provided to the clients of its members³⁷⁹. The real estate professionals who are members of the Chamber submit themselves to a Code of conduct³⁸⁰, the main principles of which are enumerated in the so-called “Quality Charter” (*Charte de qualité*)³⁸¹.

- **What is the usual commission they charge to the landlord and tenant? Are there legal limitations on the commission?**

Agency fees are normally equivalent to one month's rent, plus expenses and VAT. In 2014, the VAT corresponded to 15%.

Agency fees are usually paid directly by the tenant to the agency which provided the dwelling. It is recommended that one makes an appointment in advance, so that the agency can prepare a program of visits that suits the candidate's needs³⁸².

³⁷⁸ See <http://www.cigdl.lu/fr/mission/metiers-representes/> (last retrieved: 15.05.2014).

³⁷⁹ Luxemburger Wort, 2013, p. 50.

³⁸⁰ Available on www.cigdl.lu.

³⁸¹ Available on http://www.cigdl.lu/files/7/11/document_id128.pdf (last retrieved: 15.05.2014).

³⁸² Just Arrived s.à.r.l – Just arrived, 2012, pp. 19-20.

Whenever it is the landlord who pays the real estate agent's fees, they usually do not complain about the amount. However, they frequently express their disapproval of the amount of time it takes them to find a tenant, even though most of the time it takes is due to the high price the landlords are aiming to receive³⁸³.

- **Ancillary duties of both parties in the phase of contract preparation and negotiation (“culpa in contrahendo” kind of situations)**

According to Art. 5-1 of the LBUH, the conclusion of the rental agreement cannot be connected to the payment of amounts other than the rent and, if applicable, the deposit. So far, however, there is no case law concerning this kind of situation.

Arts 1719 ff. of the CC regulate the obligations of landlords and tenants as far as rental agreements are concerned³⁸⁴. One of the obligations of landlords consists of making the dwelling available in such a state that the tenant can use it for the aim for which he or she rented it³⁸⁵. Indeed, Art. 1721 provides that the tenant should be protected against the vices and defects of the rented dwelling which prevent the tenant from enjoying the dwelling. This protection is also due when the landlord did not know of the existence of the vices or defects when the rental agreement started being executed. If the vices or defects cause losses to the tenant, the landlord shall compensate him or her for such losses³⁸⁶. However, if the non-conformity of the dwelling existed before the contract was concluded, and the problem was known by both tenant and landlord, there is an apparent vice, which discharges the landlord from the guarantee provided by Art. 1721 of the CC³⁸⁷.

As far as housing with a public task is concerned, specifically within the housing provided by the AIS, future tenants are obliged to commit, with the social security services, to a project (e.g. education and or professional one) aimed at reaching the respective autonomy as far as housing is concerned. The contract lasts for three years with no possibility of renewal, and tenants are expected to be able to rent a dwelling in the private housing sector by then.

6.3 Conclusion of tenancy contracts

Example of table for 6.3. Conclusion of tenancy contracts

³⁸³ Information provided by the ULC.

³⁸⁴ Krieger – Le bail d’habitation, 2009, pp. 60 ff.

³⁸⁵ ID, *ibid.*, p. 72. J.P.Lux., 21 November 2000, process no. 4579/00.

³⁸⁶ Thewes – Le nouveau droit du bail, 2007, p. 60.

³⁸⁷ J.P.Lux. 21 November 2000, process no. 4579/00.

	Private rental agreement	Social rental agreement (<i>Fonds du Logement</i> , SNHBM, municipalities)	Private rental agreement with a public task (AIS)
Requirements for valid conclusion	<ul style="list-style-type: none"> - Fulfilling general requirements for concluding rental agreements according to Luxembourg Civil Law 	<ul style="list-style-type: none"> - Fulfilling requirements provided by law - Filling in form and presenting documents 	<ul style="list-style-type: none"> - Fulfilling requirements provided by the AIS - Filling in form and presenting documents
Regulations limiting freedom of contract	<ul style="list-style-type: none"> - Discrimination of tenants based on race, ethnical origin, religion, citizenship, etc. not admitted - Maximum limits of rents - General prohibition of unfair contract terms applicable 	<ul style="list-style-type: none"> - Maximum limits of rents - Clause that obliges household to accept another dwelling in case the provided dwelling becomes inadapated due to a change in the composition of the household - If promoter is a municipality, it might select only tenants with a personal or professional connection with it - Obligation to conclude certain insurances 	<ul style="list-style-type: none"> - Tenant cannot chose the dwelling which is allocated to him or her by the AIS - Tenant must leave after three years (does not have option of purchasing the dwelling)

- **Tenancy contracts**

- **distinguished from functionally similar arrangements (e.g. licence; real right of habitation; *Leihe, comodato*)**

The usufruct, the right of use and habitation and the loan are regulated in the Luxembourg CC, which, as we have mentioned, is adapted from the French Code.

According to Art. 578, the usufruct is the right of enjoying a thing which is owned by someone else as if one were the owner, but with the obligation of retaining the substance of the thing. This right may be established over movable and immovable goods (Art. 581), and the holder of a usufruct may enjoy any kind of civil fruits, namely, the rents of the dwelling, the interests of the amounts due, arrears, prices of farm rents, etc. (Arts 582 and 584).

According to Art. 625 “the rights of use and of habitation are established and lost in the same way as the usufruct”.

Finally, for the contract of loan (*prêt*), Art. 1874 provides that there are two sorts of loans: the loans over things which we may use without destroying and the loans over things which are destroyed after being consumed. The first kind is called “*prêt à usage*” (loan for use) or “*commodat*” and it is defined as a contract through which one of the parties delivers one thing to another who enjoys it and shall return it to the owner after (Art. 1875). This loan is gratuitous (Art. 1876) and the provider of the loan remains owner of the good (Art. 1877). The second is called “*prêt de consommation*” (or, simply, “*prêt*”) and, according to Art. 1892, it “is a contract through which one of the parties delivers to the other a certain quantity of things that are consumed by the use, and the latter is obliged to deliver the same quantity of what was delivered, of the same kind and quantity”.

The precarious occupation agreement (*convention d’occupation précaire*) or accommodation (*hébergement*) consists of an agreement between the parties on the occupation of a dwelling without legal title until the subsequent revocation of that right (e.g., if the owner of the dwelling receives a guest). According to the jurisprudence, accommodation differs from rental agreements because it is gratuitous, it involves a personal need of the occupier, it is a precarious relationship and it implies the pre-existence of a relationship of parenthood or authority between parties. In case one of the parties unilaterally intends to qualify it as an accommodation agreement, the judge will analyse the will of the parties involved and conclude whether it is, indeed, a rental agreement or not³⁸⁸.

- **specific tenancy contracts, e.g. contracts on furnished apartments; student apartments; contracts over room(s) only (e.g. student rooms); contracts over rooms or apartments located in the house in which the landlord lives himself as well. Please describe the legal specificities in these cases.**

Art. 33 of the *loi du 25 février 1979 concernant l’aide au logement* provides that every person or organization who rents or makes available furnished dwellings (*logements garnis*) and multiple dwellings (*logements collectifs*) must previously declare it to the mayor of the municipality, indicating the maximum number of people living there, the amount of the rent and a detailed description of the premises³⁸⁹. Art. 35 of the same law provides that “the infringements or attempts of infringement to Arts 32 and 33 and the regulations of execution provided are punished with a fine of 251€ to 125,000€ and imprisonment from eight days to three years or only one of these penalties”. Every dwelling for

³⁸⁸ The Gouvernement du Grand-Duché du Luxembourg, 2006, 18-19. For “*real right of habitation*” see *supra* “tenancy contracts distinguished from functionally similar arrangements (e.g. licence; real right of habitation; Leihe, comodato)”.

³⁸⁹ The declaration is available on http://www.vdl.lu/vdl_multimedia/Citoyens+et+r%C3%A9sidents/Logement/D%C3%A9claration+des+logements+garnis+et+des+logement+collectifs.pdf (last retrieved: 15.05.2014). An informative brochure for citizens is available on http://www.vdl.lu/vdl_multimedia/Publications/Citoyens+et+r%C3%A9sidents/Logement/Chambre+s+meubl%C3%A9es+%28FR%29.pdf (last retrieved: 15.05.2014).

renting must meet hygiene and habitability criteria, defined by Grand-ducal Regulation. In order to verify the conformity of the furnished rooms, the city of Luxembourg and the police have been visiting and are revisiting those dwellings after fixing deadlines. These actions have led to a significant improvement of the degree of comfort of the furnished rooms³⁹⁰.

The so-called “*hébergement privé*” relates to contracts over rooms or parts in the house of the landlord, where he or she also lives. It is, thus, a case of sublease. Usually, the configuration of the premises allows the subtenants to enjoy certain autonomy. They have access, as a general rule, to a bathroom and individual kitchenette. This model is particularly used for students³⁹¹.

There are some specific rules for rental agreements concluded with students.

Indeed, the student can direct a request for housing to the Students Housing Unity (*Unité Logements étudiants*). If and after being selected, the student must pay a deposit of 350€ together with the first rent. These amounts can be paid at the moment of enrolment at the University of Luxembourg through bank transfer.

The student tenant must conclude a contract of civil liability. The insurance, which covers the rental risks (losses caused by water, fire and electricity), is paid by the University of Luxembourg.

The length of the contract is different from the length of conventional rental agreements. Indeed, the Students Housing Unity provides rental agreements for the winter or summer semester. The contract lasts, thus, five months. It is possible to extend the contract in the beginning of each semester or for the summer period between two semesters, provided every rent payment has been done and the student is re-enrolled for the next semester. The stay must not surpass the length of the studies. If the departure coincides with a period of exams, the stay can be extended through a written request by the tenant. Every condition of stay is established in a rental agreement signed between the tenant and the University of Luxembourg.

Finally, conditions for termination of the contract are also partially different from the general rules. Indeed, the agreement can be terminated by the landlord, by non-payment of rents, by the “unacceptable behaviour of the tenant or any person occupying the premises”, sub-location of the dwelling to another person, disrespect of the internal rules of procedure or by the modification of the academic situation of the tenant as compared to the situation where the tenant was at the moment the contract was concluded³⁹².

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<http://www.vdl.lu/Citoyens+et+r%C3%A9sidents/Logement/Contr%C3%B4le+des+chambres+meubl%C3%A9es.html> (last retrieved: 15.05.2014).

³⁹¹ Ministry of Housing – Studentisches Wohnen, 2010, p. 4.

³⁹² <http://www.guichet.public.lu/citoyens/fr/enseignement-formation/etudes-superieures/aides-logement/location-etudiant/index.html> (last retrieved: 15.05.2014). For further developments on the housing of students see: <http://www.luxembourg.public.lu/fr/societe/education-formation/etudier/logements-etudiants/index.html> (last retrieved: 15.05.2014). For insights on temporary accommodation, see http://cij.lu/wp-content/uploads/L_hebergement_temporaire_au_Luxembourg.pdf (last retrieved: 15.05.2014).

In some cities of the country, there are the so-called “*parrainages de logements*” (sponsored housing). They refer to people who own a house (generally elderly people) and make a room available for an affordable price to a student, who is “expected” to provide some minor services and assistance in daily life.

A kind of tenancy agreement which is excluded from the application of the LBUH is that concerning hotel rooms. It is often difficult to determine whether a room is used for private accommodation or hotel accommodation. Some judges characterize the situation based upon whether or not the provider is authorized to provide commercial services as a hotel³⁹³. For Georges Krieger, the decisive aspect consists of whether the landlord offers the tenant other services besides the mere renting of the room (cleaning, change of sheets, etc.)³⁹⁴.

- **Requirements for a valid conclusion of the contract**

- **formal requirements**

In Luxembourg, there is no standard rental agreement³⁹⁵. Indeed, landlords and tenants have almost total freedom while negotiating the contents of a rental agreement and they may even agree on clauses which conflict with the CC.

According to Art. 1714 of the CC, rental agreements can be written or verbal. However, the written form is preferred, for provisions will be clearer, which could be of help in the event of a dispute. Both landlord and tenant are strongly advised to set out their respective obligations in written form. Each party shall receive a signed, dated copy, where the expressions “*lu et appouvé*” or “*gelesen und gebilligt*” (“seen and approved”) are not necessary³⁹⁶.

Unlike in neighbouring countries, Luxembourg law does not lay down expressly the rights and obligations of the parties to a rental agreement.

If the owner demands a bank guarantee or another guarantee, the owner can only do it if it was done in written form³⁹⁷.

- **is there a fee for the conclusion and how does it have to be paid? (e.g. “fee stamp” on the contract etc.)**

There is no such fee.

- **registration requirements; legal consequences in the absence of registration**

Both commercial and tenancy agreements shall be registered³⁹⁸. However, a private rental contract will still be valid between parties if it was not registered; therefore, a tenant cannot invoke that fact to stop paying rents. The lack of a

³⁹³ Against this position, Krieger – Le bail d’habitation, 2009, p. 29.

³⁹⁴ Krieger – Le bail d’habitation, 2009, pp. 28-29.

³⁹⁵ Bernard – Informations utiles concernant le bail, s.d., p. 1.

³⁹⁶ Bernard – Informations utiles concernant le bail, s.d., p. 3.

³⁹⁷ Krieger – Le bail d’habitation, 2009, p. 40.

³⁹⁸ CLC – Bail commercial, 2006, p. 1.

proper sanction for the non-registration of contracts leads to the fact, in practice; few contracts will be indeed registered³⁹⁹.

If the landlord decides to register the contract agreement, he shall do it within the three months which follow the conclusion of the contract. If the contract is not presented for registry within the three months subsequent to its conclusion, a double penalty might be perceived as sanction.

Registration involves the payment of registration costs to the *Administration de l'enregistrement*. The costs consist of 0.6% of the total amount of rents due for the whole length of the contract.

- **Restrictions on choice of tenant – antidiscrimination issues**

There is discrimination when a rule, a criterion or practice comes as a disadvantage, in a disproportionate way, to certain people due to their religion or beliefs, handicap, age, sexual orientation, race or ethnical background⁴⁰⁰. In Luxembourg, no discrimination exists in this context. The laws of 28 and 29 November 2006 transposed the European Directives 2000/43/CE & 2000/78/CE and thus implement the principle of equality of treatment. Art 2(1) of *Loi 29 novembre 2006* states that it applies to every person, public and private, natural and legal, including public bodies as far as: (...) h) the access to goods and services and the provision of goods and services, at public disposal, including housing⁴⁰¹.

So far, there has been no known case of discrimination in the access to housing in the jurisprudence, neither in the national courts (*tribunaux de paix*) nor in the European courts (European Court of Human Rights).

- **EU directives (see enclosed list) and national law on antidiscrimination**

Luxembourg has transposed most of the EU directives which, directly or indirectly, relate to tenancy law and the housing sector.

Both of the directives enacted in the field of **construction** were transposed into the national legal system of Luxembourg.

As far as **energy efficiency** is concerned, the Grand-Duchy of Luxembourg still has not transposed the Directive 2012/27/EU on energy efficiency. It may still do so until 5 June 2014, which is the deadline for transposition. It also still did not transpose Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings, but it is, currently (March 2014), one of the priorities of the Luxembourg Gouvernement. However, following to the transposition of the Directive 2010/31/UE, Directive 2009/72/EC and Directive 2009/28/EC, the Luxembourg Government decided to fix a timetable for the continuous and consistent improvement of the demand in this area, and, from 2017 on, every construction of

³⁹⁹ Thewes – Le nouveau droit du bail, 2007, pp. 19-20, paras 25-27.

⁴⁰⁰ <http://www.olai.public.lu/fr/lutte-discrimination/index.html> (last retrieved: 15.05.2014).

⁴⁰¹ <http://www.legilux.public.lu/leg/a/archives/2006/0207/a207.pdf#page=2#page=2> (last retrieved: 15.05.2014).

residential buildings shall be in passive standard⁴⁰². The Government is strongly committed at drawing attention to the national and European regulatory framework.

In relation to the subject of heating, hot water and refrigeration, Luxembourg transposed the Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing directive, and it did the same concerning Commission Directive 2003/66/EC of 3 July 2003, Commission Directive 2002/40/EC of 8 May 2002 and Commission Directive 96/60/EC of 19 September 1996, all three related to household appliances.

Luxembourg also transposed the only EU Directive on **lifts** enacted so far (European Parliament and Council Directive 95/16/EC of 29 June 1995) and the same happen in relation to: Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011, the only which addresses **hazardous substances** in the EU and Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC.

It transposed the Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels and, finally, it transposed Directive 2009/136/EC, Directive 2002/58/EC, Directive 97/7/EC and Council Directive 93/13/EEC of 5 April 1993, all relating **consumer services**.

As far as national law on non-discrimination is concerned, it mainly concerns the Ministry of Family, Integration and to the Great region (*Ministère de la Famille, de l'Intégration et à la Grande Région*) and, more specifically, the Luxembourg Office of Reception and Integration (*Office luxembourgeois de l'accueil et de l'intégration*, OLAI), which is an administration under the umbrella of the Ministry of Family, Integration and to the Great region, is in charge of executing the integration policy at the Grand-Duchy.

The main legislation in the field is the *Loi du 28 novembre 2006*⁴⁰³ which transposed the Directive 2000/43/CE of the Council of 29 June 2000 concerning the execution of the principle of equality of treatment between people independent from race or ethnical origin and transposed the directive 2000/78/CE of the Council of 27 November 2000, which created a general framework in favour of the equality of treatment as far as employment and work is concerned.

- **Limitations on freedom of contract through regulation**
 - **mandatory provisions in rental contracts, in particular: mandatory minimum requirements of what needs to be stated in a tenancy contract**

⁴⁰² See *supra* "3.5. Energy policies".

⁴⁰³ *Mémorial A N° 207 de 2006*.

Both parties to a rental agreement have an interest that the agreement be written as clearly as possible, to avoid problems of interpretation⁴⁰⁴.

There are several models of rental agreements available online, among them, some models elaborated by the ULC in collaboration with the Housing Minister⁴⁰⁵.

A) Description of the dwelling

The description of the immovable shall be as precise as possible, to avoid future disputes between landlord and tenant. In the description of the dwelling, the annexes (basement, attic, garage, etc.) shall be included. If the dwelling is rented with furniture, an inventory of the furniture shall be annexed to the rental agreement⁴⁰⁶. The same obligation exists whenever a deposit shall be provided by the tenant.

If the parties do not agree upon the extent of the object of the rental agreement, the proof will be done according to general contract law⁴⁰⁷.

Sometimes, the rental agreement was concluded before the construction of the dwelling was accomplished. This is the so-called *bail d'une chose future*: it is not prohibited by law, but it can lead to problems if – as is often the case – the construction does not come to an end in the data initially foreseen. If that is the case, the tenant may terminate the contract or, if he or she so wishes simply postpone the payment of rent⁴⁰⁸.

B) Rent and other payments

The payment of a specific amount is a *sine qua non* condition for the rental agreement. The contract must contain the amount of rent, the amount of advances on costs and the conditions of payment, i.e., the periodicity of payments (generally, but not necessarily, every month), the time when payment is due, and the place where it shall be performed (even though nowadays payment is done mainly through bank transfer). Where the contract was strictly verbal and started being executed, the proof of the amount of rent due is made through the payments already done⁴⁰⁹.

Although most of the rental agreements contain the exact amount of the rent that the tenant shall pay to the landlord, there is no obligation that it is so; the rent must not be necessarily determined, it must only be *determinable*⁴¹⁰. Furthermore, the rent does not have to be necessarily in capital. It might also be in commodities (*denrées*) or in merchandise (for example, in the case of a rental

⁴⁰⁴ According to Georges Krieger, many disputes arise from an imprecision in the contract (Krieger – *Le bail d'habitation*, 2009, p. 36).

⁴⁰⁵ ULC – *Le bail à loyer*, pp. 21-23. See http://www.ml.public.lu/pictures/fichiers/Bail_loyer/modele_contrat_de_bail.pdf (last retrieved: 18.03.2014).

⁴⁰⁶ ULC – *Le bail à loyer*, 2009, p. 9; Thewes – *Le nouveau droit du bail*, pp. 5 and 16.

⁴⁰⁷ Thewes – *Le nouveau droit du bail*, 2007, p. 17.

⁴⁰⁸ ID, *ibid.*, p. 16.

⁴⁰⁹ See generally Thewes – *Le nouveau droit du bail*, 2007, p. 17.

⁴¹⁰ Thewes – *Le nouveau droit du bail*, 2007, p. 17.

agreement over land, *bail à ferme*), or even in services (frequently landlords renounce some months of rent in exchange to the improvement of the dwelling by the tenant)⁴¹¹.

The tenant must be aware of the fact that, in case the payment is due on the first day of each month, the amount of the rent shall be in the account of the landlord on that same day and, therefore, it will probably have to be transferred before that day. The fact of not transferring the rent regularly is a valid reason for termination of the contract⁴¹².

C) Guarantee

Most of the time, the landlord will demand that the tenant provides a guarantee (*garantie locative*). The amount of this guarantee, as well as its modality – first demand guarantee (*garantie à première demande*), cash payment, and payment in species (*versement en espèces*) – shall be indicated in the contract⁴¹³, and is limited by law to a maximum of 3 months' rent.

D) Length of the rental contract

It is also essential that the contract contains the length of the rental agreement.

The parties are free to provide the length that they wish⁴¹⁴ (one, two years, etc.)⁴¹⁵.

If the contract gives no indication on the length of the contract, it will be qualified as rental agreement with undetermined length (Art. 12-1 of LBUH)⁴¹⁶. This is, nevertheless, a mere presumption which can be rebutted. If the rental agreement was written but the parties did not provide for the length of the agreement, the judge might consider that the common will of the parties was not in the sense of concluding a contract of undetermined length⁴¹⁷.

In the case of furnished dwellings, Art. 1758 of the CC presumes that the length of the rental agreement corresponds to the periodicity arranged for the payment of rents⁴¹⁸.

As far as housing with a public task is concerned, there is hardly freedom of contract as far as the length of the contract is concerned. Indeed, in social housing the tenants must accept that their rental agreements will be of one year, renewable, in private rental agreements with a public task (the ones concluded by the AIS), the contracts have always the same length: 3 years.

⁴¹¹ Thewes – Le nouveau droit du bail, 2007, p. 17.

⁴¹² ULC – Le bail à loyer, 2009, p. 5.

⁴¹³ ULC – Le bail à loyer, 2009, p. 5.

⁴¹⁴ Thewes – Le nouveau droit du bail, 2007, p. 17.

⁴¹⁵ ULC – Le bail à loyer, 2009, p. 5.

⁴¹⁶ Krieger – Le bail d'habitation, 2009, p. 37. Every verbal agreement is of an undetermined length (ID, *ibid.*).

⁴¹⁷ Thewes – Le nouveau droit du bail, 2007, p. 18.

⁴¹⁸ Thewes – Le nouveau droit du bail, 2007, p. 18.

E) Obligations

Moreover, it is equally recommended that both parties will define clearly their obligations, namely, who is responsible for reparations in the dwelling, if the tenant shall repaint the dwelling by the time he or she gives the dwelling back to the landlord in the end of the contract, etc.

In order to avoid conflicts concerning the contents of the contract, it is recommended that parties pay particular attention to the redaction of the terms and define, as accurately as possible, the rights and obligations of each of the parties⁴¹⁹.

F) Destination of the dwelling

In case the contract specifies the use that the tenant can make of the dwelling, the tenant does not have the right to modify it without agreement of the landlord. Sometimes, the authorization of the landlord is still not enough⁴²⁰. Indeed, Art. 27-1 of the LBUH reads that a place which is rented for residential purposes cannot be transformed into an office or shop without the express authorization of the college of the mayor and alderman of the municipality (*collège des bourgmestre et échevins*) where the rented object is located. The restoration of the premise to its original use can be judicially imposed⁴²¹.

However, this prohibition does not apply to office or public services nor to the case where the premises are to be used for professional, commercial or handcraft purposes, and residency is just an accessory use of the dwelling.

As far as social housing is concerned, it is expressly prohibited to exercise a professional activity inside the premises without express written consent from the public promoter or municipality. If this provision is not respected by the tenant the landlord can terminate the contract (Art. 35 amended RGD 16 November 1998).

- **control of contractual terms (EU directive and national law); consequences of invalidity of contractual terms**

Art. 5-5 of the LBUH: “every other provision registered in the tenancy agreement and aimed at depriving a rule in the present law of effect is null and void” (“*Toutes autres stipulations inscrites dans les contrats de bail et destinées à priver d’effet une disposition de la présente loi sont nulles de plein droit.*”)

There are no particularities concerning the control of contractual terms in rental agreements. The EU directive on unfair contract terms applies, as to any other contract. It was transposed by the *loi du 29 avril 2009 relative aux pratiques commerciales déloyales* (law of 29 April 2009 concerning unfair commercial practices)⁴²³, which amended: the amended Law of 30 July 2002, regulating certain commercial acquisitions, punishing unfair competition, transposing the

⁴¹⁹ ULC – Le bail à loyer, 2009, p. 5.

⁴²⁰ Thewes – Le nouveau droit du bail, 2007, pp. 18-19.

⁴²¹ Thewes – Le nouveau droit du bail, 2007, p. 19.

⁴²³ *Mémorial Luxembourgeois A*, no 88, 30/04/2009, 01028-01033; ref. (MNE(2009)51904).

directive 97/55/CE of the European Parliament and Council and amending the directive 84/450/CEE on deceptive advertisement in order to include comparative advertisement; the amended law of 28 December 1988, regulating the access to the professions of craftsman, trader, industrialist, as well as certain liberal professions and modifying Art. 4 of the Law of 2 July 1935 on the regulation of the conditions for obtaining the title and the master's qualification for the exercise of professions; the amended law of 16 April 2003, concerning the protection of consumers with regard to distance contracts and, finally, the amended law of 18 December 2006 on financial services at the distance.

As any other contract, rental agreements may also have an unlawful clause. Art 1133 of the CC reads that "the [contract] cause is unlawful when it is prohibited by the law or when it is contrary to good moral standards or public order". A tenancy contract will be void if it breaches a legal or administrative requirement regulating urban and spatial planning. On 29 April 2005, the Tr.Arr.Lux. decided that if the executive organ of a municipality does not accept the declaration of arrival in the apartment before the tenancy contract is concluded and the landlord ignores it, the rental agreement will be void.

Contrary to what happens in the case where the cause that gave rise to the contract is void, an error in a contract does not lead to the voidness of the overall contract unless it concerns the substance of the object of the contract (Art. 1110 of the CC). However, "the error on a substantial aspect will not lead to the voidness of the contract is case that error is not easily detectable" (J.P.Lux. 1 July 2003). Therefore, "if, by flimsiness or negligence, the party to a contract has not done certain basic verifications, the error committed is inexcusable if a normally wise man would not expose him or herself to commit that error. The inexcusable error consists of misconduct and thus the person who committed it supports the risk that the contract will be void".

- **statutory pre-emption rights of the tenant**

The new law reproduces, in Art. 15, the rules of the former law⁴²⁴ on the pre-emption right of the tenant in cases where the agreement was concluded at least 18 years ago⁴²⁵. The pre-emption right will not exist only when the dwelling is:

- object of a sale by public auction (*vente aus enchères*);
- transferred to a member of the family of the landlord, relative or related by marriage up to and including the third degree;
- gratuitously transferred by the landlord;
- sold, but the tenant only occupies a part of it (e.g., an apartment in an apartment building);
- not inhabited by the tenant him or herself in the moment the landlord decided to sell it.

⁴²⁴ Thewes – Le nouveau droit du bail, 2007, p. 67.

⁴²⁵ Thewes – Le nouveau droit du bail, 2007, p. 18

According to the same article, the landlord shall propose the sale to the tenant, indicating the price of the dwelling, by registered post⁴²⁶ and informing the tenant that he or she is allowed to make a counter-proposal. The tenant then has one month to either accept or refuse the landlord's proposal. If the tenant makes a proposal to the landlord for at least the price that the landlord suggested, he or she has another month to obtain a loan for purchasing the dwelling. If the tenant does not reply to the landlord's proposal or if the tenant does not manage to be granted a loan within that month, the right of pre-emption expires and can no longer be exercised⁴²⁷.

The practical implementation of this rule has given rise to problems. Indeed, whenever the seller would have wanted to sell an immovable as a whole and one of the dwellings in this immovable were occupied by a tenant who fulfilled the abovementioned conditions, the tenant could have exercised the respective pre-emption right, thus making the sale legally impossible.

For this reason, the law in force specifies that the right of pre-emption cannot be exercised except when the object of the rental agreement is an immovable which is totally rented to a sole tenant or in case it is an isolated apartment in an immovable within a regime of undivided co-ownership.

In case the landlord sells the dwelling in violation of a pre-emption right, the sale remains valid. The tenant who sustains losses has a claim for damages (*dédommagement*) which cannot be inferior to one year of rents⁴²⁸, but he or she must prove that the losses he or she suffered were bigger than that amount, and that the losses resulted from the disregard of the pre-emption right⁴²⁹.

However, if the landlord respects the right of pre-emption of the tenant, who then makes a counter-proposal, and the landlord refuses it and sells the dwelling for the same price or a lower price to a third, the sale will be irregular⁴³⁰.

The rules are different within housing with a public task. The AIS rejects, a priori, the right of first demand of the tenant, as he or she will only be entitled to stay in the dwelling for the length of three years. Social tenants also do not usually have such right, except for the case provided for in Art. 36 of the amended RGD 16 November 1998. According to this article, "[t]he dwellings which are twenty years or older, may be sold to the household-occupiers which have been occupying, for at least ten years at least one dwelling submitted to the present legal rules".

- **are there provisions to the effect that a mortgagor is not allowed to lease the dwelling (charged by the mortgage) or similar restrictions?**

⁴²⁶ Krieger – Le bail d'habitation, 2009, p. 132.

⁴²⁷ Krieger – Le bail d'habitation, 2009, p. 132.

⁴²⁸ ULC – Le bail à loyer, 2009, p. 15; Krieger – Le bail d'habitation, 2009, p. 133; Ministry of Housing – Bail à loyer, 2006, p. 87. C.S.J, 23 October 1990, Pas. Lux. 28, 70. See, also, http://www.immotop.lu/lexicon/b/bail_emphyteotique.html (last retrieved: 15.05.2014).

⁴²⁹ Krieger – Le bail d'habitation, 2009, p. 133.

⁴³⁰ Krieger – Le bail d'habitation, 2009, p. 132.

There are no provisions according to which a mortgagor is not allowed to lease a dwelling; a mortgage only prevents him or her from selling the estate⁴³¹. He or she can thus freely lease the dwelling charged by the mortgage.

6.4 Contents of tenancy contracts

Example of table for 6.4 Contents of tenancy contracts

	Private rental agreement	Social rental agreement	Private rental agreement with a public task
Description of dwelling	Not compulsory, unless a deposit is involved	Compulsory (obligation of giving back dwelling in the original state)	Same rules from private rental agreement apply
Parties to the tenancy contract	Landlord/tenant	Public promoter or municipality/household	Landlord/AIS
Duration	Freely determinable by parties	One year, renewable (Art 7 amended RGD 16 November 1998)	3 years
Rent	Limited by Art. 3 of the LBUH (5% of capital by landlord) / Might be determined by Rents Commission	Lower rent, as compared to private rental rents Rent and charges limits in LBUH do not apply (except for rental dwellings provided for in Art. 28-4 of amended Law 25.02.1979) Rent calculated according to the available annual net income and main surface area	Fixed between AIS and landlord (lower than private rental rent)
Deposit	Non compulsory	Compulsory (three months' rent)	If asked, AIS pays
Utilities, repairs, etc.	Minor repairs on charge of the tenant / Significant repairs on charge of the landlord, except when there is fault of the tenant	Wear and tear at expenses of landlord. Damage caused by tenant and his or her expense	Provided for by AIS

- **Description of dwelling; indication of the habitable surface (and consequences in case of the provision of wrong data)**

As a rule, tenant and landlord should provide an inventory (*état des lieux*), both in the beginning and in the end of the contractual relationship. This will allow,

⁴³¹ Further indications on law applicable to be provided.

in the end of the contract, to determine the losses for which the tenant is liable. In any case, the tenant shall never be liable for the losses resulting from the normal use of the dwelling and/or its content.

Art. 1720 of the CC provides that the rental dwelling must be delivered to the tenant in a perfect state and returned to the landlord in that same state; if no inventory is made, that can be prejudicial to the tenant because he or she may have to pay costs which will turn the dwelling into a much better state than it was in upon the delivery⁴³².

As far as the consequences for the provision of wrong data are concerned, it depends of whether the data concerns an element of the rental agreement which may be characterized as a substantial element (*élément substantiel*), i.e., an element without which the tenant would not have concluded the contract with the landlord (for example, the size of the dwelling). If the tenant manages to prove that this aspect was substantial, and that without it he or she would not have concluded the agreement (the tenant has four children and realizes the apartment has only one room), a judge is able to terminate the contract.

- **Allowed uses of the rented dwelling and their limits**

The tenant shall use the dwelling with the care which can be expected from a normally wise, prudent person. The tenant shall occupy peacefully the dwelling and respect its substance, without which the landlord is deprived of the respective real right. Regarding the respective neighbours, the tenant shall abstain from any kind of harmful behaviour⁴³³, avoid abnormal inconveniences and, in general, every abuse⁴³⁴.

The tenant is therefore obliged to provide the maintenance of the dwelling, make sure that the radiators stay warm during winter, that the garden is frequently taken care of, that the dwelling is in a good hygienic condition, that common parts are regularly cleaned (in case that is not taken care of by the landlord or by the association of co-owners), etc.⁴³⁵

In principle, the tenant can live in an unclean dwelling, up to the point that the hygienic state of the dwelling becomes an incommodity to the other inhabitants of the immovable. If the situation reaches that stage, there will be grounds for termination of the contract by the landlord⁴³⁶.

The tenant is responsible for the respective own personal behaviour, but also for the behaviour of the people that he or she introduces in the dwelling. If a

⁴³² Hengen – Savoir loger, 2011, p. 12.

⁴³³ That would be the case of: a tenant who regularly provokes noise during night and day; a tenant who is often under the influence of alcohol (J.P.Lux., 11 May 1992, proc. no. 1686/92; J.P.Esch, 29 January 2005, proc. no. 274/05) and a tenant who uses the common electricity or water for his or her own personal use (J.P.Lux., 5 October 2004, 4134/04, confirmed in appeal; Tr.Arr.Lux., 18 February 2005, 91.672). These tenants can see their contracts terminating for that reason (Krieger – Le bail d’habitation, 2009, p. 56).

⁴³⁴ J.P.Esch, 12 October 2007, 210810/2007.

⁴³⁵ Krieger – Le bail d’habitation, 2009, p. 55.

⁴³⁶ ID, *ibid.* and J.P.Lux., 1 December 2005, 4903/05 and Tr.Arr. 3 July 1987, 36165

person is providing permanent accommodation to third parties that caused trouble to the neighbours, this can lead to the termination of the contract⁴³⁷.

As far as social rental dwellings are concerned, the tenant is not allowed to accommodate, regularly and durably, guests; the violation of this rule would be a serious and legitimate reason for termination of the contract by the landlord.

- **In particular: to what extent are mixed (residence/commercial) contracts lawful and usual (e.g. having a shop, a legal office or a doctor's studio in the dwelling)**

In case a rental agreement expressly authorizes the exercise of a professional activity in the dwelling, one will not be before a tenancy contract (*bail d'habitation*) in a strict sense, but, instead, a mixed lease (*bail mixte*). However, this mixed lease will still be subject to the rules which regulate tenancy contracts, unless the commercial activity is exercised in the rented premise and residency is only an accessory use of the dwelling⁴³⁸.

Within social rental dwellings, the exercise of a professional activity is strictly forbidden, as we have previously mentioned⁴³⁹.

- **Parties to a tenancy contract**

- **Landlord: who can lawfully be a landlord?**

Any person (private, legal person – business company, SCI, administration, etc.) can lawfully be a landlord.

Even a minor, lacking legal capacity, might be a landlord, provided that he or she is represented by a *guardian*. In practice, this means that the name of the minor will appear in the contract as the landlord but the signature will be of the *guardian*.

In social rental agreements, the landlord is the public promoter or municipality; in private rental agreements with a public task, it is a private landlord who concluded an agreement with the AIS.

- **does a change of the landlord through inheritance, sale or public auction affect the position of the tenant?**

Art. 1742 of the CC provides that “the rental agreement is not terminated by death of the landlord nor that of the tenant”. Indeed, if the landlord passes away, the rental agreement continues in the heirs of the landlord and these cannot invoke his or her death to terminate such contract (Art. 12-2, c) LBUH)⁴⁴⁰.

⁴³⁷ Krieger – Le bail d'habitation, 2009, p. 57.

⁴³⁸ Thewes – Le nouveau droit du bail, 2007, p. 18.

⁴³⁹ See *supra* “In particular: to what extent are mixed (residence/commercial) contracts lawful and usual (e.g. having a shop, a legal office or a doctor's studio in the dwelling)”.

⁴⁴⁰ See generally Thewes – Le nouveau droit du bail, 2007, p. 63.

Nevertheless, the death of the landlord can bring some difficulties for the tenant, namely when the name of the heir is unknown or if there is a plurality of heirs and, because of that, the tenant does not know to whom he or she shall refer.

The law does not provide for the attitude that the tenant shall take in these cases. As a first step, as long as the tenant was not contacted by the heir(s), the former has every interest in keeping on paying the rent, as provided for in the tenancy agreement. If that becomes impossible, for example, in case the bank account no longer exists, the tenant shall transfer the rent to a special account up to the moment that he or she is contacted by the respective heir(s)⁴⁴¹.

The insolvency of one of the parties to the contract, namely the landlord, does not consist of autonomous grounds for termination of the contract. However, the rental agreement concluded during the fixed suspect period (maximum six months before insolvency) may be declared void if the value of what has been granted by the insolvent (landlord) significantly exceeds that which he has received in return (Art. 445 of the *Code de commerce*)⁴⁴².

The new law brings back the rule from the former legislation that, in case of sale of the rented dwelling, the rental agreement is opposable to the purchaser and continues with him or her as landlord (Art 12-2, c and 5 LBUH). This corresponds to the position of jurisprudence when the former law was in force. The new owner of the dwelling will only be in conditions of terminating the contract if one of the requirements in Art. 12-2 is met⁴⁴³.

However, Art. 12-6 of the LBUH authorizes the acquirer of a dwelling to, within the three months which follow the purchase, to expel the tenant before the end of the contract based on personal needs⁴⁴⁴. This consisted of an important change, in relation to the old law of 1955.

When the former legislation was in force, the jurisprudence admitted that, if the former owner (seller) had terminated the contract before the sale, the new owner (purchaser) could, not only invoke this termination, but also, if applicable, “replace the reason invoked by the previous owner by the respective personal need”⁴⁴⁵. This seems to not be possible under the law in force. When the landlord invokes a personal need, he or she must respect particular formal rules, provided for in Art. 12-6⁴⁴⁶.

**- Tenant:
- Who can lawfully be a tenant?**

The same applies as to who can lawfully be a landlord.

The tenant is almost every time the person who concludes the rental agreement with the landlord. That is so in the private rental market (private landlord/private tenant) and in the “social” rental market (public developer or

⁴⁴¹ Thewes – Le nouveau droit du bail, 2007, p. 65.

⁴⁴² See, with further references, Thewes – Le nouveau droit du bail, 2007, p. 66. On insolvency in Luxembourg, see <http://www.justice.public.lu/fr/societes-commerces/faillite/> (last retrieved: 15.05.2014).

⁴⁴³ Thewes – Le nouveau droit du bail, 2007, pp. 66-67.

⁴⁴⁴ See generally Thewes – Le nouveau droit du bail, 2007, pp. 81-82.

⁴⁴⁵ For further developments, see Thewes – Le nouveau droit du bail, 2007, p. 67.

⁴⁴⁶ See, with further references, Thewes – Le nouveau droit du bail, 2007, p. 67.

municipality as landlord/social tenant). One shall, however, highlight, that within private housing with a public task the rental agreement as such is concluded between the private landlord and the AIS. Subsequently, the latter concludes a contract with the tenant, which involves, as one of the main contractual obligations, besides the payment of the rent, the fulfilment of a personal development program. This seems to be an original solution, when we compare it with other European countries, e.g., Ireland, where the rental agreement is concluded between the social rental agency and the tenant.

- Which persons are allowed to move in an apartment together with the tenant (spouse, children etc.)?

Very often, the landlord deals with several tenants: it may be a married couple, a couple connected in a partnership pursuant to the *loi du 9 juillet 2004* concerning the legal effects of certain partnerships, or a group of persons who live, as a community, in the dwelling. Except for the cases provided for by the law or the contract, solidarity does not exist. This is why the landlord has every interest in signing a written rental agreement with the tenant. In the case of a married couple, the rented immovable is the house of the family, and the two spouses are jointly responsible by the obligations which rise from the lease of that dwelling, both when the two signed the contract but also when only one did⁴⁴⁷. If the tenant marries during the execution of the rental agreement, regardless of whether or not he or she lived together with that person, the two spouses are jointly responsible from the moment on that they marry.

For couples who signed a partnership under the law of 9 July 2004, the rule is identical: “partners are jointly responsible toward third parties, even in the end of the partnership, by debts contracted by both (...) and for the expenses concerning the common dwelling”⁴⁴⁸.

If the occupiers of the dwelling are not in such marital relationship, and independent from the type of relationship they have with each other, there is no solidarity unless the contract contains a provision such as “... which are jointly responsible for every obligation in the rental agreement” or “... who are jointly responsible in the contract”. Whenever there is no solidarity, the landlord can only ask from each party what that particular person owes, and not the total debt⁴⁴⁹.

- Changes of parties: in case of divorce (and equivalents such as separation of non-married and same sex couples); apartments shared among students (in particular: may a student moving out be replaced by motion of the other students); death of tenant

The LBUH completes the regime of Art. 1742 of the CC because it introduces, in the Luxembourg Tenancy Law, new legal rules aimed at protecting

⁴⁴⁷ J.P.Esch, 15 April 2005, 982/05.

⁴⁴⁸ *Loi du 9 juillet 2004 relative aux effets légaux de certains partenariats*, Art. 7.

⁴⁴⁹ J.P.Esch, 14 July 2006, 1914/2006.

people who live with the tenant at the time he passed away⁴⁵⁰ but were not co-tenants. The legislator could have gone further and provided for the cases where a rental agreement is signed with several tenants and one of them dies, leaving the remaining with the duty of paying the rent and without being given the chance of terminating the contract⁴⁵¹.

According to the law, in case of an abandonment of residence, “the rights of the landlord against the tenant who abandoned the dwelling are not affected by these rules” (Art. 13-3) which means that, for example, the spouse or registered partner who was left may have to pay, from that abandonment on, alone, the rent⁴⁵².

The married partner and life partner who declare it can benefit fully from this rule; that is not the case of the ascendants, descendants and cohabitants, who can only benefit from it after the period of six months and provided that they have been administratively declared in the address of the dwelling. It must be highlighted that this legal right provided to cohabitants, i.e., a man and a woman (or a woman and a woman or a man and a man who live together without being married) is exceptional in Luxembourg law.

As no priority order is established between the different beneficiaries in the rule, it may be that many persons claim the right of staying in the dwelling. In this respect, the law provides that “in case of multiple requests, the judge decides according to the interests at stake” (Art. 13-2). The judge competent for this decision will be the justice of the peace or the *tribunal d’arrondissement*, depending from the problem in presence⁴⁵³.

It is not clear what happens in cases where those entitled to stay as tenants in the dwelling intend to leave it. Providing that the agreement continues “in benefit” of the envisaged persons, it is, however, apparent that the relationship will continue only if the new tenants find it advantageous to stay⁴⁵⁴.

In case the person decided to stay and the former tenant owed rents or any amounts to the landlord, the latter can only demand these amounts to the former in the case that there is another legal rule, such as rules concerning legal succession, that the new tenant shall pay those debts⁴⁵⁵. In not establishing a solidarity liability, the tenant who abandons the dwelling to leave it to other tenants may be in a more comfortable position than the tenant who proceeds to a valid cession of the contract. Therefore, in case of abandonment of the dwelling by the former tenant, it is advisable to maintain the liability between this and the new tenant⁴⁵⁶.

The advantage for the landlord of maintaining the tenancy agreement in case of death or disappearance of the original tenant is that he or she does not lose the respective rights for the tenant, given that the agreement is transformed into a contract of undetermined length, which authorizes terminating the agreement with a notice period in the three hypothesis previewed by the law:

⁴⁵⁰ Thewes – Le nouveau droit du bail, 2007, p. 63.

⁴⁵¹ Thewes – Le nouveau droit du bail, 2007, p. 64.

⁴⁵² ID, *ibid.*

⁴⁵³ See generally Thewes – Le nouveau droit du bail, 2007, p. 65.

⁴⁵⁴ Thewes – Le nouveau droit du bail, 2007, p. 65.

⁴⁵⁵ ID, *ibid.*, p. 67.

⁴⁵⁶ Ministry of Housing – Bail à loyer, 2006, p. 77.

personal need, non-fulfilment of obligations by the tenant and serious and legitimate grounds⁴⁵⁷.

It is considered that, currently, the law does not provide answers to complex legal questions which arise in case of death or departure of the tenant and that the courts should supplement it, while the text of the law is not changed⁴⁵⁸.

As far as social rental housing is concerned, the *Fonds du Logement* requires from tenants that they communicate any change in the household's composition (birth, death, divorce, marriage, etc.), so that that the rent may be updated accordingly. The new rent applies retroactively to the first day which follows to the change in the composition of the household. The lack of communication of the new composition is a serious and legitimate ground for termination of the contract.

- Subletting: Under what conditions is subletting allowed? Is subletting being abused e.g. with the aim of circumventing the legal protection of tenants (when the tenant is offered not an ordinary lease contract but a sublease contract only)?

The law regulates the relationship between the contractual partner who makes use of the dwelling and the other party, who grants the use of the dwelling through a tenancy agreement. This relationship may be established between the landlord and the main tenant, between the main tenant and a sub-tenant or any other occupier with whom the main tenant has a contractual relationship⁴⁵⁹.

The subletting (*sous-location*⁴⁶⁰) results from the conclusion by the (main) tenant with a person (the sub-tenant) of a contract different than the one which the former concluded with the landlord⁴⁶¹, according to which he or she sublets the whole dwelling which was rented to him or her or just a part of it⁴⁶². The original contract concluded between the landlord and the tenant is maintained during the length of the subletting agreement which means, among other things, that the main tenant cannot stop paying the rent to the main landlord in case his or her tenant (the sub-tenant) does not pay the respective rent⁴⁶³. This places the main tenant in a risky situation.

However, the sub-rental agreement must be proved because a person other than the tenant can occupy the dwelling as a member of the family, instead of as a sub-tenant⁴⁶⁴.

Under Art. 1717 of the CC, the tenant has the right to sublet a dwelling which is object of a tenancy agreement, unless it is expressly prohibited in the contract⁴⁶⁵, which very often happens⁴⁶⁶.

⁴⁵⁷ Ministry of Housing – Bail à loyer, 2006, p. 77.

⁴⁵⁸ Thewes – Le nouveau droit du bail, 2007, p. 65.

⁴⁵⁹ Krieger – Le bail d'habitation, 2009, p. 63.

⁴⁶⁰ Thewes – Le nouveau droit du bail, 2007, p. 69.

⁴⁶¹ Krieger – Le bail d'habitation, 2009, p. 5.

⁴⁶² Thewes – Le nouveau droit du bail, 2007, p. 65.

⁴⁶³ ULC – Le bail à loyer, 2009, pp. 5-6.

⁴⁶⁴ Krieger – Le bail d'habitation, 2009, pp. 63-64.

According to the current jurisprudence, the infringement of the sub-rental agreement does not lead necessarily to the judicial termination of the tenancy agreement⁴⁶⁷.

In case the landlord did not want to benefit from the respective right of including a term prohibiting sub-letting in the tenancy agreement, the new landlord is obliged to tolerate the subletting, due to the general rule which provides that the new owner cannot obtain from the seller more rights than the latter had⁴⁶⁸.

The main tenant shall inform the sub-tenant of any claim for eviction. If he or she fails to do so, the subtenant will have a claim for damages against him or her⁴⁶⁹.

According to the new LBUH, Arts 3 to 11 are applicable to the tenancy relationships between the main tenant and the sub-tenant. The scholarship seems to not find a clear explanation for the fact that, contrary to the preceding law, Arts 12 ff. are omitted and the preparatory works are inconclusive.⁴⁷⁰ This situation can lead to abuses, and thus there are appeals to the legislator to clearly indicate whether the intention was to remove the protection to the tenant. In the meantime, the judge can resort to Art. 5 *in fine*; it provides that any contractual term aimed at avoiding the application of a legal rule is null and void or, alternatively, apply the theory of exploitation (*abus de droit*)⁴⁷¹⁻⁴⁷².

As far as social rental housing is concerned, subletting is a serious and legitimate reason for termination of the contract (amended RGD 16 November 1998).

b)

- Is it possible and if yes under what conditions, to conclude a contract with a multiplicity of tenants (e.g. group of students)?

It is possible, according to Luxembourg law, to conclude a contract with a multiplicity of tenants; this is called "*collocation*". For that purpose, every tenant shall be indicated in the tenancy agreement. In practice, the landlord often does not indicate the names of all tenants in the contract, considering it unnecessary to do so.

It shall also be clearly indicated in the contract whether all the co-tenants are jointly responsible for the execution of the tenancy agreement (*clause de*

⁴⁶⁵ ULC – Le bail à loyer, 2009, p. 6.

⁴⁶⁶ Krieger – Le bail d’habitation, 2009, p. 69.

⁴⁶⁷ J.P.Lux. 24 January 2004, 391/94. See generally Krieger – Le bail d’habitation, 2009, p. 63.

⁴⁶⁸ Krieger – Le bail d’habitation, 2009, p. 64.

⁴⁶⁹ ID, *ibid*.

⁴⁷⁰ A possible explanation, however, may be found in the *Projet de loi n°2961*, more specifically in the *Avis du Conseil d’Etat* 24 June 1986 (comment to Art.12-6).

⁴⁷¹ Krieger – Le bail d’habitation, 2009, p. 65, n. 63 and p. 64.

⁴⁷² ULC – Le bail à loyer, 2009, pp. 5-6. See generally Krieger – Le bail d’habitation, 2009, pp. 63-64. See also Thewes – Le nouveau droit du bail, 2007, p. 69.

solidarité), because in the absence of this clear indication, the contract will be interpreted in the way which is most favourable to the tenant⁴⁷³.

If the dwelling is occupied by several tenants, the termination by one of them might not have the effect wished for. Indeed, if a tenant terminates a contract, leaves the dwelling and leaves them still occupied by another tenant, more specifically a sub-tenant, termination does not have, in principle, any effect. This means that, despite termination, whenever the sub-tenant remains in the dwelling, the tenant is still obliged to pay the rent or a compensation of occupation⁴⁷⁴.

As far as social rental agreements are concerned, the rental agreement is concluded with the household as such.

- **Duration of contract**
 - **Open-ended vs. limited in time contracts**
 - **for limited in time contracts: is there a mandatory minimum or maximum duration?**

Within the private rental market, parties may define the length of the tenancy when drafting the tenancy agreement. If they do not – or in case the contract is only verbal – it will be qualified as a contract with an indeterminate length⁴⁷⁵. For this reason, this is considered the most important aspect that shall be regulated in the contract⁴⁷⁶. If they do so, they can provide for the length they wish: the length of the contract is left at their own discretion^{477 478}.

In the private rental market with a public task (AIS) the length is previously unilaterally defined and it is the same for every tenant, irrespectively of eventual changes (for better or worse) or the financial status of the tenant: three years, with no possibility of renewal.

In the social rental market, rental agreements have the length of one year and they are renewable upon invitation of the public promoter or municipality (Art. 7 amended RGD 16 November 1998).

- **Other agreements and legal regulations on duration and their validity: periodic tenancies (“chain contracts”, i.e. several contracts limited in time among the same parties concluded one after the other); prolongation options; contracts for life etc.**

According to Art. 12-2 of the LBUH, “every rental agreement to which the (...) [LBUH] applies, with the exception of the contract on a dwelling as defined by article 6, which has been terminated for whichever reason, is renewed unless: a. the landlord declares that he or she has need of the rented dwelling for own use or for the effective use by parents or relatives up to and including the third

⁴⁷³ Krieger – Le bail d’habitation, 2009, p. 36.

⁴⁷⁴ See generally Krieger – Le bail d’habitation, 2009, p. 104 and n. 112 *passim*.

⁴⁷⁵ Thewes – Le nouveau droit du bail, 2007, p. 18.

⁴⁷⁶ Krieger – Le bail d’habitation, 2009, p. 37.

⁴⁷⁷ ULC – Le bail à loyer, 2009, p. 5 and Thewes – Le nouveau droit du bail, 2007, p. 18.

⁴⁷⁸ See generally Ministry of Housing – Bail à loyer, 2006, p. 60.

degree; b. the tenant does not perform the respective obligations; c. there are other serious and legitimate reasons to be established by the landlord; the transfer of ownership of the dwelling is not a serious and legitimate ground for termination”.

This means that a residential rental agreement is always renewed, except when the reasons stated in Art. 12-2 apply. The scope of this rule is to protect the tenant from eviction.

For evicting a tenant the landlord must, either prove⁴⁷⁹ a personal need or the need of a member of the respective family, or that the tenant is not fulfilling his or her obligations (irregular payment of rent, or no rent payments for months, repeated night-time noise, inadequate insurance, etc. The contractually agreed period of notice must, of course, be respected⁴⁸⁰. The third and last non-renewal clause is serious legitimate reasons.

As far as personal need is concerned, it ‘is a difficult concept and is very broadly interpreted. The law makes a specific distinction between occupation and habitation, depending on the degree of kinship with the owner. Obviously, the person with the foremost right of occupation is the owner him or herself.

Both natural and legal persons may invoke a personal need; a legal person can do it when it urgently needs the premises for its operations, assuming these are in accordance with law. However, the legal entity must prove this need. The landlord, the respective children and grandchildren need simply to occupy the premises in order to demonstrate a personal need. This means that they need only to *occupy* the premises: they do not need to live, eat and sleep there. In contrast, relatives in the ascending line, parents-in-law, brothers and sisters must actually be *living* in the premises, i.e., they must live, eat and sleep there. The distinction according to the kinship with the owner thus enables the lessor to reoccupy a building on behalf of a family member in order to establish, for example, a law firm.

Finally, Art. 14 of the LBUH states that, except in the event of *force majeure*, the former lessee shall be entitled to damages if, in the month following the respective departure, the premises let are not occupied for the purposes invoked as the grounds for termination of the lease in the notice of termination, the petition instituting legal proceedings or the judgment. The injured party shall be entitled to damages of at least one year’s rent.

It is obvious that if the tenant does not fulfil the respective obligations (e.g., if he or she does not pay the rent, if he or she pays it irregularly or only partially) the landlord has the right to terminate the rental agreement.

Finally, as far as serious legitimate reasons are concerned, the damage that the landlord sustains must be greater than the one caused to the tenant. That is the case of demolition of the building aimed at the construction of an apartment block, the accommodation of a family member or a person caring for the landlord, etc. It is not, however, legitimate to terminate the contract due to the opportunity of renting the dwelling to another person who is willing to pay a higher rent, for example.

⁴⁷⁹ Courts usually take the landlord’s word in case he or she invokes personal need.

⁴⁸⁰ Bernard – Informations concernant le bail, s.d., p. 2.

If the tenant refuses to vacate the premises in the cases referred to above, the landlord must refer the matter to the Civil Court with a view to obtaining legal termination of the lease and the tenant's eviction from the property. Only a legal judgment can force the tenant to physically vacate the property; a landlord is not allowed to prevent the tenant from re-entering the property by changing the locks, for example.

Except in cases of force majeure, a former tenant who has been ordered by a court to vacate the property is entitled to damages equivalent to not less than one year's rent⁴⁸¹ if, within a month of the respective departure, the property has not been occupied for the purposes cited as the reason for termination of the lease in the notice of termination, the application to the court or the judgment.

As said above, in rental agreements concluded between landlords and the *A/S* no prorogation is admitted. The same does not happen in rental agreements concluded with social landlords, where renewal is permitted provided that the tenant is invited for that purpose by the social landlord.

- **Rent payment**

- **In general: freedom of contract vs. rent control**

The first main obligation of a tenant is to pay the rent, and he or she cannot, under any circumstance, withhold all or part of the due rent.

In case the tenant does not pay the rent and/or charges or does not pay them in full, the landlord is entitled to terminate the lease, evict the tenant and claim substantial compensation for non-payment. Therefore, it is highly inadvisable to withhold payment of rent (or charges) without first going through due legal procedure.

In every rental agreement there is a clause according to which rent must be paid to the landlord (e.g., by standing order, payment into a bank account etc.) or third party designated by the landlord⁴⁸². As a rule, the landlord has the responsibility of collecting the rent from the tenant and issuing a receipt.

Indeed, after a tenancy agreement has been signed, if the landlord considers the rent is too low, he or she may increase the rent. Normally, this is done (and *can* be done), simply, with a written letter notified to the tenant, where the reason of the rent increase should be explained.

In case the tenant does not accept the increase of the rent, the landlord may apply to the local Rents Commission for a rent increase. This can happen only after the legally fixed period of one month, during which the parties should try to find an agreement without seizing the Rents Commission (Art. 8 of the LBUH). The landlord may increase the rent at any time once the first six months of the rental agreement have elapsed.

Similarly, a tenant who considers that the rent is excessive can apply to the Commission for a rent reduction, which will hear the parties or their agents and decide on the amount of rent and charges, based on the legal criteria. This often means that the rent might be significantly low, since the provisions in the

⁴⁸¹ Bernard – Informations concernant le bail, s.d., pp.10-11.

⁴⁸² Bernard – Informations concernant le bail, s.d., p. 8.

law date from several years ago. Therefore, the tenant may achieve a significant reduction in the rent, what the landlord is unlikely to take lightly. If one of the parties to the contract does not agree with the Commission's decision, he or she can refer the matter to the competent magistrate within fifteen days of receipt. Otherwise, the decision is deemed to have been accepted by the parties.

It is understood that, once the parties have been through this ordeal, their relationship is likely to sour. The landlord may try to use every way possible of terminating the tenancy as quickly as possible, even when this means taking the tenant to court⁴⁸³.

For this purpose we may consider there are four different regimes: public housing with regulated rent; public housing with unregulated rent; private housing with unregulated rent and private housing with regulated rent. The first consists of the so-called "social housing", where rents are adapted to the lower incomes of people who entitle to live there. The second concerns the possibility which is provided to the *Fonds du Logement* of making available part of its stock (namely, 25%) at a normal private rent, with the consequence that the provisions of the LBUH are fully applicable to the rental agreements concluded under this regime. The third respects the private housing stock, where rents are at the level of the market price and which is by far the dominant, and the fourth and last consists of a regime which is expected to be more significant in the near future. It concerns the activity of the AIS which, as we have described, provides to lower-income tenants, lower rents for dwellings which belong to the private housing stock⁴⁸⁴.

In the social rental housing rent is calculated based upon two

- **Rent control: how is it legally framed; when does it apply; who carries it out; what are the consequences when the parties agree on an excessive rent**

The first main obligation of a tenant is to pay the rent and he or she cannot, under any circumstances, withhold all or part of due rent. According to the LBUH, the annual rent cannot be higher than 5% of the fully invested capital in the rent dwelling by the landlord (Art. 3-1).

In case the tenant does not pay the rent or/and charges or does not pay them in full, the landlord is entitled to terminate the lease, evict the tenant and claim substantial compensation for non-payment. Therefore, it is highly inadvisable to withhold payment of rent (or charges) without first going through due legal procedure.

Indeed, 'after a tenancy agreement has been signed, if the landlord of premises used as a dwelling considers that the rent is too low, he may apply to the local Rents Tribunal for a rent increase. He may do so at any time once the first six months of the lease have elapsed.

Similarly, a tenant who considers that the rent is excessive can apply to the Tribunal for a rent reduction.

The Tribunal will hear the parties or their agents and will rule on the rent and charges.

⁴⁸³ Bernard – Informations concernant le bail, s.d., p. 13.

⁴⁸⁴ See generally Ministry of Housing – Bail à loyer, 2006, p. 60.

The Tribunal's decision is made in writing and sent to the parties by recorded delivery.

If one of the parties does not agree with the court's decision, it can refer the matter to the competent magistrate within 15 days of receipt. Otherwise, the decision is deemed to have been accepted.

The court procedure is free of charge, unless a lawyer is charged with the case, e.g., in case of appeal, before the District Court. However, it can be a double-edged sword for the tenant. The rent is fixed by the tribunal according to criteria laid down by law. This often means that the rent is ridiculously low, since the provisions date from many years ago. Thus, the tenant may achieve a significant reduction in rent, but the landlord is unlikely to take it lightly.

It goes without saying that, once the parties have been through this ordeal, their relationship is likely to be soured. The landlord may try to use all available means to terminate the lease as quickly and painlessly as possible, even where this means taking the tenant to court⁴⁸⁵.

- **Maturity (fixed payment date); consequences in case of delayed payment**

Contractual parties may freely determine the date when the rent is due, but it usually is on the first day of the month.

A delay in the payment of the rent consists of a breach of contract. Therefore, the landlord to whom the due rent is not paid can address the court to obtain a declaration of termination of the lease and a condemnation of the tenant to pay the lease arrears and compensation to the landlord. The landlord can also deduct the due rents from the deposit, in case it was invoiced as 'upon first demand' guarantee⁴⁸⁶.

To social rental agreements and private rental agreements with a public task the same rules apply, according to Art. 1 *in fine* LBUH (*a contrario sensu*).

- **May the tenant exercise set off and retention rights over the rent payment? (i.e. the tenant withholding the rent or parts of it when the landlord does not respect his or her contractual duties, e.g. does not repair a defect);**

It might be that the tenant stops paying the rent with the aim of pressuring the landlord, for example, in case the latter did not perform works at the dwelling that the tenant considered necessary.

The tenant may, indeed, invoke the defence of non-performance (*exception d'inexécution*) in case the landlord does not perform the respective obligations, because the rental agreement is a bilateral agreement (*contrat synallagmatique*), under the terms of Arts 1102 and 1132-4 of the CC.

In doing so, the tenant takes a significant risk that the landlord retaliates by terminating the agreement. It is, thus, up to the judge to evaluate whether, taking

⁴⁸⁵ Bernard – Informations concernant le bail, s.d., p. 13.

⁴⁸⁶ Thewes – Le nouveau droit du bail, 2007, p. 52.

the circumstances of the case into consideration, the retention of the rent by the tenant is justified or not, and, in particular, if it is proportional to the gravity of the trouble sustained by the tenant⁴⁸⁷.

- **May claims from rental agreements be assigned to third parties (i.e. may the landlord assign his or her rent claim to a bank?)**

It is possible that claims from rental agreements will be assigned to third parties (*subrogation*), for example, a bank. Nevertheless, this cannot be provided for directly between the parties to the rental agreement and will necessarily have to be done through a judicial procedure, i.e., through a court decision.

- **May a rent payment be replaced by a performance in kind (e.g. reparation, renovation)?**

It is possible that a rent payment will be replaced by a performance in kind (see answer *supra*), but both parties to the contract must agree upon this.

- **Does the tenant have a statutory right to this effect? Could a lien of the “tenant-contractor” create problems in that case? (a lien is a statutory right of a contractor to ensure his or her being paid for his or her performances, e.g. improvements to the house, e.g. § 648 BGB)**

The tenant does not have a statutory right to a performance in kind.

- **Does the landlord have a lien on the tenant’s (movable) property in the house (*Vermieterpfandrecht* as in § 562 BGB, which functions as a guarantee for the payment of the rent by the tenant)? If yes, what is the scope of this right? How is it enforced?**

This legal matrix respects to the so-called “gage” or “anticrèse” and it is regulated in Book III (“*Des faillites, banqueroutes et sursis*”) of the Commercial Code.

- **Clauses on rent increase**
 - **Open-ended vs. limited in time contracts**
 - **Automatic increase clauses (e.g. 3% per year)**
 - **Index-oriented increase clauses**

The Luxembourg legislator did not prescribe a minimum length for rental agreements: the contract parties are free to determine whether they wish to conclude a fixed-term contract or an open-ended one.

⁴⁸⁷ See generally Thewes – Le nouveau droit du bail, 2007, pp. 52-53.

To both fixed-term and open-ended rental agreements (except for the rental agreements over luxurious housing, as defined by Art. 6 of the LBUH) the principle of legal extension of rental agreements applies (Art. 12-2 LBUH, Art. 1737 CC). This means that, according to Art. 12, any contract which reaches its fixed term is extended for an undetermined length or for the determined length provided in the contract, unless one party objects to the other's violation of the respective contractual obligations or if the landlord makes use of one of the reasons which allow him or her to terminate the contract. Most of the times, there is a tacit renewal ("*reconduction tacite*") of the rental agreement for one year.

The landlord can request an increase of the rent if he or she considers that the amount initially arranged should be adjusted. This situation occurs relatively often⁴⁸⁸.

However, the rent cannot be automatically adjusted because the LBUH maintains the prohibition of the terms of automatic indexation of the rent. Under Art. 5-5, "the conventional terms of value [*clauses de valeur conventionnelles*] which diverge from the regime previewed by the present law will lose their effect from the first term which follows the date of a reclamation addressed to the landlord by registered letter"⁴⁸⁹.

Art. 4 of the abolished law of 27 August 1987 reads that "indexing clauses" are void. This consists of a statutory provision, and the parties to the rental agreement may not agree otherwise. For this reason, if the landlord inserts such clause in the contract, the tenant must not respect it; he or she shall show his or her disagreement in written form, through a letter sent by registered post. Value clauses cease to have effect from the first rent payment date following the date of such letter. If the tenant does not object to that clause and carries on paying the increased amount without stating an objection or reservation, he or she has no right of refund of (undue) payments rendered.

It should be highlighted that the prohibition of indexing clauses does not apply to luxury residences, houses and apartments with modern amenities such as described above. In addition, garages, parking lots, car parks and commercial premises are expressly covered by indexing clauses⁴⁹⁰.

As we have mentioned, rents cannot be automatically adapted and index-oriented clauses are invalid. However, there is another restriction to the increase of rents, and that relates to the periodicity with which that is done.

First, the law defines a grace period (*délai de carence*). According to Art. 8-1 of the LBUH, the requests of adaptation of the rent presented during the first six months of the tenancy agreement are inadmissible⁴⁹¹.

Second, the law provides for a period of 2 years between a (possible) increase of the rent by the landlord, which is a good compromise between the interests of the two parties to the rental agreement. This period shall be counted from the determination of the amount of rent, which is agreed upon the parties or results from a procedure before the Rents Commission or a court (Art. 3-5

⁴⁸⁸ ULC – Le bail à loyer, 2009, p. 7.

⁴⁸⁹ Thewes – Le nouveau droit du bail, 2007, p. 32.

⁴⁹⁰ Bernard – Informations concernant le bail, s.d., pp. 9-10.

⁴⁹¹ ULC – Le bail à loyer, 2009, p. 7 and Krieger – Le bail d'habitation, 2009, pp. 88-89.

LBUH)⁴⁹². In case the tenant changes and provided that it was not due to abandonment or the original tenant nor his or her death, the rent can be adapted immediately before the course of those two years. The same does not happen in case of change of the landlord.

There is a procedure which shall be followed for increasing the rent and which is the same that shall be followed for its decrease.

The contractual party which wishes to increase the rent shall “notify the respective intention to the other party through written form; otherwise, the month before being able to address him or herself to the commission.

The Rents Commission is addressed through a demand aimed at the bench of the mayor and council members of the municipality where the rented dwelling is to be found. This request does not need to observe particular formalities.

The bench of mayor and council members transmits the request to the competent Rents Commission, which summons the parties through registered letter with acknowledgment of receipt. The commission shall necessarily attempt the conciliation between the parties. If such conciliation is achieved, what was decided shall be recorded in the minutes and the parties shall sign. If no conciliation was reached, the commission determines the due rent and/or the advances on costs (Art. 9-3) of the LBUH). In this case, the law establishes that “the minutes will contain the evolution of the housing in relation to the legal and regulatory criteria and the amount of the rent” (Art. 9-4).

If a party does not accept the amount of the rent determined by the Rents Commission, that party can appeal to the justice of the peace of the place where the dwelling is to be found one month dating from the notification of the minutes of the Commission. If at the end of this procedure, the rent is modified, the new rent will be retroactively applied to the date where the bench first heard the request⁴⁹³.

For certain tenants, in particular those who rent dwellings constructed before the 10 September 1944, the entry in force of the new regime may be translated into significant increases of rent. For that reason, the legislator established that if the increase surpasses 10%, it shall be by operation of the law spread over three years (Art 35-2)⁴⁹⁴.

Furthermore, the tenant will be entitled to the exceptional faculty of terminating the tenancy agreement. Indeed, according to Art. 35, “the tenant who occupies a dwelling due to a tenancy agreement concluded before the current law entered into force, has a reflexion period of three months, counting from the request of the landlord for increase of the rent in application of the rules introduced by the LBUH, to terminate the agreement. If he or she terminates the agreement, no adaptation of rent might be imposed to him or her⁴⁹⁵.

As far as the contracts concluded after the entry in force of the LBUH are concerned, this limit of 10% does not apply. The landlord will be able to increase

⁴⁹² Thewes – Le nouveau droit du bail, 2007, p. 32; Krieger – Le bail d’habitation, 2009, p. 89; ULC – Le bail à loyer, 2009, p. 7 and Ministry of Housing – Bail à loyer, 2006, p. 31.

⁴⁹³ Thewes – Le nouveau droit du bail, 2007, pp. 33-34.

⁴⁹⁴ ULC – Le bail à loyer, 2009, p. 7.

⁴⁹⁵ ULC – Le bail à loyer, 2009, p. 7.

the rent even beyond the 10%, and without that this increase has to be spread along these years. The only obligation of the landlord is to not demand more than 5% of the invested capital per year⁴⁹⁶.

The landlord shall notify the tenant of the respective intention of increasing the rent through writing. The landlord shall notify the tenant in writing of his or her intention of increasing the rent. Otherwise, the filling of the request before the Rents Commission will no longer be possible⁴⁹⁷.

It shall be specified that, independent from the fact that the tenancy agreement was concluded before or after the entry into force of the LBUH, the parties can, at any moment, by joint agreement, increase the rent. In this context, it is essential that a written document contains the agreement and it will be annexed to the tenancy contract^{498 499}.

- **Utilities**

- **Describe the usual kinds of utilities (e.g. basic utilities like the supply of water, gas and electricity vs. additional utilities, i.e. services such as waste collection) and their legal regulation**

The energy equipment in the dwelling is made available by the landlord. Indeed, it is considered that providing energy equipment (such as a heating system) makes part of the obligation of the landlord of ensuring a pleasant enjoyment of the premises (*jouissance paisible des lieux*).

Normally the agreements for supply of water, gas, electricity, etc. are dealt with by the landlord, too, but they can be dealt with by the tenant as well. In the first case, the landlord him or herself concludes the contracts for water, electricity, heating, etc. supply, and the charges are then added to the rent that the tenant shall pay regularly to him or her.

Nevertheless, if the tenant lives in a co-ownership and there is no individual counter (such as water meter), but a common counter only, the contract will be signed in the names of the co-owners and the share among co-owners will be regulated in the *règlement de copropriété*⁵⁰⁰.

- **Responsibility of and distribution among the parties:**

- **Does the landlord or the tenant have to conclude the contracts of supply?**

⁴⁹⁶ ULC – Le bail à loyer, 2009, p. 7.

⁴⁹⁷ ID, *ibid.*

⁴⁹⁸ ID, *ibid.*, p. 8.

⁴⁹⁹ See *supra* answer provided to 2.a) “Conditions for rent increase”. See generally Thewes – Le nouveau droit du bail, 2007, pp. 23-32 ; Krieger – Le bail d’habitation, 2009, p. 75.

⁵⁰⁰ See generally Ministry of Housing – Bail à loyer, 2006, p. 45 and Thewes – Le nouveau droit du bail, 2007, pp. 35-36.

As referred to above, usually it is the landlord to conclude the contracts of supply but the tenant can do it also. It will be decided between both landlord and tenant.

- **Which utilities may be charged from the tenant?**

According to the law in force the landlord can only obtain from the tenant the costs related to what he or she 'consumed' or contributed to (*charges locatives*⁵⁰¹).

Here are included: the energy consumption within the dwelling and common parts of the building (operation of elevators, lightening of stairs)⁵⁰²; the maintenance costs of the common parts (gardener, cleaning up of stairs); the costs of reparations, every time they are not due to the dilapidated condition of the dwelling or *force majeure*⁵⁰³ and the municipal taxes connected to the use of the dwelling, for example, the household waste removal tax.

The costs which cannot be placed at the expenses of the tenant are, among others: the reading fees of the calorimeters⁵⁰⁴; the replacement of floors due to deterioration caused by normal use and all the works related to the roof of the dwelling.

The question which is placed very often is whether the administrative expenses (*frais de gérance*) may be charged on the tenant. Usually, it is considered that the landlord shall support these costs. However, the technical assistance expenses (*frais de gérance technique*) may, in principle, be placed at the expenses of the tenant⁵⁰⁵.

The amount of the advances for charges that the tenant must pay is usually fixed in the contract and is thus negotiated by the parties to the contract. If that is not the case, the wording of the new Art. 5-3 seems to indicate that the landlord can unilaterally demand those pre-payments from those accounts, provided that the amount demanded is "appropriate". In case the pre-payments are insufficient or excessive, the law provides that they can be adapted to the current costs incurred by the tenant during the preceding periods⁵⁰⁶.

- **What is the standing practice?**

- **How may the increase of prices for utilities be carried out lawfully?**

The new law provides for the possibility of adaptations, by the landlord, of the amount of charges during the execution of the rental agreement (Art 5-5 LBUH)⁵⁰⁷.

⁵⁰¹ For further developments see Thewes, *Le nouveau droit du bail*, pp. 35 ff.

⁵⁰² Krieger – *Le bail d'habitation*, 2009, p. 46. Tr.Arr.Lux 11.04.1984; J.P.Esch, 17.03.1995, Process no. 605/95.

⁵⁰³ Krieger – *Le bail d'habitation*, 2009, p. 46. J.P.Esch, 17.03.1995, Process no. 60/95.

⁵⁰⁴ Krieger – *Le bail d'habitation*, 2009, p. 47. J.P.Diek, 27.06.1985, Credoc 98506793.

⁵⁰⁵ Krieger – *Le bail d'habitation*, 2009, p. 34.

⁵⁰⁶ Thewes – *Le nouveau droit du bail*, 2007, p. 36.

⁵⁰⁷ Ministry of Housing – *Bail à loyer*, 2006, p. 45.

- **Is a disruption of supply by the external provider or the landlord possible, in particular if the tenant does not pay the rent?**

Every month, the tenant pays the landlord an agreed sum by way of an advance on charges, together with the rent. At the end of each year – or at the end of the rental agreement – the landlord shall make a detailed calculation of the charges and refund the tenant any surplus, if applicable. Otherwise, the tenant shall pay the remaining balance.

The rental charges are payable in proportion to the size of the apartment. They comprise the individual charges and those common to all apartments. The latter consist particularly of the maintenance costs of common areas. The former relate to costs such as management, heating, electricity, gas, water, television, telephone, collective aerials, drains, dustbins, local taxes and rates, etc.⁵⁰⁸.

If the tenant is the contractor with the electricity company, he or she has to deal with the problem of the supply directly with the company. However, if the co-ownership is the client, the landlord has to regulate this situation, because he should guarantee the tenant the pleasant enjoyment of the premises.

- **Deposit:**

- **What is the legal concept (e.g. is the deposit an advance rent payment or a guarantee deposit to cover future claims of the landlord)?**

In Luxembourg, it is common practice that the tenant pays the owner a deposit for the whole length of the lease, to ensure its proper implementation. If such a deposit is paid, the parties must draw up a mutually agreed written description of the state of the premises.

Every time the rental agreement (*contrat de bail*) provides that the tenant shall provide a deposit (*garantie locative*) to the landlord, that provision will consist in one of the tenant's main obligations and it is to be performed upon the beginning of the contract's performance. In this case, if the tenant does not provide this guarantee, the landlord will be able to terminate the agreement based on non-fulfilment of the contract.

There are three possibilities of guaranteeing the lease.

First, the tenant can provide a bank guarantee before the contract comes into effect or, at the latest, by the date stated in the agreement (*cautionnement professionnelle*). This is not the most favourable option for the tenant, since obtaining a bank guarantee involves approaching a bank, going through its procedures and paying a commission and certain other charges.

Second, the lease can be guaranteed by a third party (e.g. a family member or friend), but the validity of this option is controversial and it is therefore not recommended (*cautionnement entre privés*).

Third, a deposit can be transferred to the landlord. The transference may be done by bank transfer or in cash, for which a receipt should be obtained. This consists of the most economical option for guaranteeing a lease.

⁵⁰⁸ Bernard – Informations concernant le bail, s.d., p. 7.

In case the rental agreement provides for the tenant's obligation to provide a deposit to the landlord, an inventory ("*état des lieux*") should necessarily be made (Art. 5-2, al. 2). The tenant can only retain the keys of the dwelling for as long as the deposit is not given back to him⁵⁰⁹.

- **What is the usual and lawful amount of a deposit?**

Art. 5-2 of the LBUH states that the deposit may not exceed three months' rent, except in the case of luxury residences, houses or apartments with at least seven rooms⁵¹⁰.

- **How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant?)**

The law does not regulate on the way that the landlord shall manage the deposit, namely whether the interests shall or not be provided to the tenant in the end of a contract, whenever the landlord has no legitimate grounds to keep the deposit. Nevertheless, the tenant does not usually benefit from the deposit's interests, although a clause to this effect could be inserted in the lease if a large amount is involved⁵¹¹.

- **What are the allowed uses of the deposit by the landlord?**

The parties can define in the contract the way that the landlord can manage the deposit during the execution of the contract⁵¹².

First of all, the landlord has the right to demand a deposit, as we have previously explained, but he or she cannot retain it for him or herself, unless the tenant does not pay the rent or to guarantee every obligation of the tenant resulting from the contract⁵¹³.

The way the landlord manages the deposit depends from which kind of deposit he or she gets from the tenant. Indeed, the deposit may consist of a payment in cash, a simple bank guarantee (*cautionnement bancaire*) or a bank guarantee payable on first demand. With a non-joint bank guarantee, the landlord cannot present himself or herself before the bank, unless the respective right is established by a judge or if it is recognized by the guarantor.⁵¹⁴

• **Repairs**

- **Who is responsible for what kinds of maintenance works and repairs? What kind of repairs or works may lawfully be assigned to the other party (especially the tenant)**

⁵⁰⁹ Krieger – Le bail d'habitation, 2009, p. 68.

⁵¹⁰ Bernard – Informations concernant le bail, p. 4.

⁵¹¹ Bernard – Informations concernant le bail, p. 4. See generally Krieger – Le bail d'habitation, 2009, p. 37.

⁵¹² Krieger – Le bail d'habitation, 2009, p. 36.

⁵¹³ Krieger – Le bail d'habitation, 2009, p. 49.

⁵¹⁴ See generally Krieger – Le bail d'habitation, 2009, pp. 40, 50-52 and 140 (para. 1).

One of the landlord's obligations provided for in Art. 1719 of the CC is to maintain the property in a condition suitable for the use for which it has been let. In practice, this obligation shall be understood restrictively, as referring to those repairs which became necessary due to the age or normal used of the dwelling⁵¹⁵ and not, for example, to aesthetic alterations.

Everyday repairs (*réparations locatives*), i.e., the repairs necessitated by the use of the property, are the tenant's responsibility⁵¹⁶. In case the tenant carries these works, he or she does not have any right of compensation for these works, unless the rental agreement expressly provides otherwise. Often the solution found is to reduce the rent during a certain period in order to compensate for the investment made by the tenant. If the works are wrongly executed, the tenant can be made responsible before the landlord.⁵¹⁷

However, unless otherwise provided for in the contract, the tenant does not have the right of carrying transformation works in the dwelling without authorization of the landlord.

As far as private rental agreements concluded by the AIS are concerned, the latter assumes the obligation of maintenance of the dwellings towards the landlord. This means that the AIS is available to do, at its own expenses, any reparation which might be needed. This is, in fact, one of the reasons why landlords are interested in agreeing upon a lower rent.

- **Connections of the contract to third parties**

- **Rights of tenants in relation to a mortgagee (before and after foreclosure)**

Title XVIII of the Luxembourg Commercial Code (enacted 19 March 1804) provides on privileges and mortgages⁵¹⁸.

Art. 2092 reads that: "Every person who has personally obliged him or herself shall fulfil the respective commitment over every movable and immovable asset, present and future". The subsequent article provides that: "The assets of the debtor are the common pledge of the respective creditors, and the price is distributed between them by contribution, unless there are among them creditors with legitimate causes of preferences". A mortgage consists of a cause of preference (Art. 2094). According to the same Code, "mortgage is a property right over the immovable that might be appropriated to pay a creditor". It "subsists entirely over each and every of the affected immovables and follows them in the hands to which they are transferred to" (Arts 2114 and 2166). Art. 2118 refers that both immovable assets and their accessories, as well as the usufruct of the same, are object to mortgage and that this extends to every improvement made to the mortgaged asset (Art. 2133).

⁵¹⁵ Thewes – Le nouveau droit du bail, 2007, p. 67.

⁵¹⁶ Bernard – Informations concernant le bail, s.d., p. 9.

⁵¹⁷ Thewes – Le nouveau droit du bail, 2007, p. 62.

⁵¹⁸ Available on http://www.legilux.public.lu/leg/textescoordonnes/codes/code_civil/L3_T18_privileges_hypothecue_s.pdf (last retrieved: 15.05.2014).

Art. 2167 reads that, if the third party holder of the asset does not fulfil the formalities necessary to purge the property, he or she remains, as holder, debtor of every mortgage debt. This means that the tenant which is occupying an immovable with has been guaranteed through a mortgage might be affected by this situation. However, the rules on sale of the rented dwelling would apply, which means that the rental agreement would not be automatically terminated.

6.5 Implementation of tenancy contracts

Example of table for 6.5 Implementation of tenancy contracts

	Private rental agreement	Social rental agreement	Private rental agreement with a public task
Breaches prior to handover	<p><u>Tenant>landlord:</u> Refusal to provide deposit, whenever the landlord requires it False statements</p> <p><u>Landlord>tenant:</u> Provision of an inhabitable dwelling</p>	<p><u>Tenant>landlord:</u> Refusal to occupy the attributed dwelling or of delivery of necessary documents for admission and calculation of rent False statements</p> <p><u>Landlord>tenant:</u> Provision of an inhabitable dwelling</p>	<p><u>Tenant>landlord:</u> Refusal to occupy the attributed dwelling or of delivery of necessary documents for admission and calculation of rent False statements</p> <p><u>Landlord>tenant:</u> Provision of an inhabitable dwelling</p>
Breaches after handover	<p><u>Tenant>landlord:</u> Rents or charges in arrears Unconsented different use of the dwelling</p> <p><u>Landlord>tenant:</u> Refusal to provide major/necessary reparations</p>	<p><u>Tenant>landlord:</u> Rents or charges in arrears Unconsented different use of the dwelling Non-delivery of documents necessary for renewal of agreement</p> <p><u>Landlord>tenant:</u> Refusal to provide major/necessary reparations</p>	<p><u>Tenant>landlord:</u> Rents or charges in arrears Unconsented different use of the dwelling</p>
Rent increases	Maximum of 5% of the invested capital (Art. 3 LBUH)	Every year the rent will be adapted according to the income of household	The rent remains the same for the whole length of the contract
Changes to the dwelling	Not admitted. Might be done in case of agreement with the landlord.	Not admitted	Not admitted
Use of the dwelling	For the use provided for in the rental agreement (further uses must be consented by landlord)	Residential use of the household	Residential use of the household

- **Disruptions of performance (in particular “breach of contract”) prior to the handover of the dwelling**
 - **In the sphere of the landlord:**
 - **Delayed completion of dwelling**

In case the dwelling is in poor condition, the tenant may not refuse, in principle, the payment of the rent. However, the tenant should ask ahead for an authorization of the court to suspend the payment of a part or the whole of the rent⁵¹⁹.

Art. 1720 of the CC imposes on the landlord the obligation of delivering the rented dwelling in a good state and with all necessary reparation done. Art. 1721 establishes that the tenant shall be protected against any defects or insufficiencies which might prevent their use when the rental agreement starts being executed. Therefore, the landlord shall provide in benefit of the tenant a dwelling which offers certain conditions of hygiene and security, unless otherwise is agreed by both parts. Landlord and tenant can agree that the tenant will engage in the rehabilitation of the dwelling, paying, respectively, a reduced rent⁵²⁰.

It shall be highlighted that, as far as rental agreements concluded between private landlords and the AIS are concerned, that the latter commits to provide for the necessary reparations even before the contract starts being executed.

- Refusal of handover of the dwelling by landlord (in particular: case of “double lease” in which the landlord has concluded two valid contracts with different tenants over the same house)

The landlord cannot prevent the tenant from enjoying the dwelling, from the moment on that a rental agreement is signed, according to Art. 1719 of the CC⁵²¹. Indeed, placing at disposal of the tenant the rental dwelling consists of the main obligation of the tenant, and, in practice, it occurs through the delivery of the keys.

The landlord must grant uncontested possession through the execution of the rental agreement. One of the aspects of this duty consists of providing to the tenant a guarantee against the actions of third parties relating to legal disputes in which a third party property rights or other rights over the dwelling. Moreover, the landlord is obliged to guarantee the tenant against joint tenants in the same building, where the latter are the landlord’s legal heirs.

- Refusal of clearing and handover by previous tenant

Every time the landlord (and, eventually, future tenant) are faced with the situation where the previous tenant refuses to clear the premises and handover

⁵¹⁹ Krieger – Le bail d’habitation, 2009, p. 73.

⁵²⁰ Thewes – Le nouveau droit du bail, 2007, pp. 16, 45.

⁵²¹ Krieger – Le bail d’habitation, 2009, p. 72.

the dwelling (which is done by the symbolic act of delivering the keys), the law provides that the landlord as such is not entitled to personally enter and expel the tenant from the dwelling. That would have to be preceded by judicial order (*jugement de déguerpissement*), through which a public officer (*huissier*) will be entitled and requested to expel the tenant by force and take out his or her furniture. In case it is necessary to saw the locks (namely, when the landlord did not keep a set of keys of his or her own), a public authority would have to be summoned by the public officer to be present⁵²².

- Public law impediments to handover to the tenant

A public law impediment to handover the dwelling to the tenant might be related with the lack of habitability conditions. Indeed, landlords are due to make available to tenants a dwelling which does not show to present risks which may threaten the physical security or safety of the tenant. More specifically, they shall provide dwellings which fulfil specific renting, health and hygiene criteria⁵²³. These are provided for in the amended *Règlement grand-ducal du 25 février 1979 déterminant les critères de location, de salubrité ou d'hygiène auxquels doivent répondre les logements destinés à la location*⁵²⁴.

Art 2. of this RGD reads that dwellings shall present a “normal habitability”. This standard is not met if a dwelling causes inconvenience to the tenants (e.g., if the roof is leaking, and the tenant has to use buckets to contain the water drops).

Art. 19 of the same RGD provides that the dwellings which were already occupied by tenants at the time the regulation entered in force, should meet the requirements of the regulation within a delay of three years after the entry in force of the regulation.

The Housing Ministry currently has a working group which has been addressing the criteria of habitability for the dwellings. A law proposal was sent to the Parliament recently, and it is expected to be discussed and approved sometime before the end of 2014. The main concern of the working group has been to address the interests of the most vulnerable, such as children or sick persons.

In case the dwellings do not meet these criteria, municipalities may act; namely, the mayor will prevent landlord from making these dwellings available in the rental market.

- **In the sphere of the tenant:**
 - **refusal of the new tenant to take possession of the house**

⁵²² Thewes – Le nouveau droit du bail, 2007, p. 104.

⁵²³ See generally supra, “Regulatory law requirements on - new and/or old - habitable dwellings capable of being rented - e.g. on minimum size, number of bathrooms, other mandatory fittings etc.”.

⁵²⁴ Available on <http://www.legilux.public.lu/leg/a/archives/1979/0016/a016.pdf> (last retrieved: 18.03.2014).

As we have described, the dwellings shall be in hygienic conditions for being rented. The unsatisfied tenants may turn to the service of hygiene and health so that: they acknowledge that a certain dwelling is not in conditions of being used as such; the landlord provides for changes to the dwelling in order that it complies with the hygiene standards or he is entitled to a termination of the rental agreement.

- **Disruptions of performance (in particular “breach of contract”) after the handover of the dwelling**

There are several situations which consist of disruption of performance of the rental agreement, either by the landlord or by the tenant. As the former is concerned, one shall highlight the refusal to make urgent, necessary repairs to the dwelling. As for the tenant, we may indicate more, namely: the continuous, unjustifiable and unreported inoccupation of the dwelling; not having taken all the measures necessary to prevent damage to the dwelling; use of the dwelling in a way other than a “*bonus pater familias*” (*bon père de famille*); an unauthorized use of the dwellings for aims other than the one previously arranged with the landlord and, last but not least, the non-payment of the rent or rents⁵²⁵.

- **Defects of the dwelling**

- **Notion of defects: is there a general definition?**

One of the aspects of the duty of the landlord to provide uncontested possession of the dwelling to the tenant is the obligation to ensure the tenant against defects of the property. This means that the landlord must guarantee the tenant against any defect or fault which makes the property unsuitable for its normal intended use or which restricts this use (a leaky tap will not be considered a “defect” for this purpose).

There is no general definition of “defect” because it would be difficult to come up with one, due to the several characteristics it may present. Usually, justices of the peace decide whether or not the dwelling presents a “defect” in a given case. Generally, however, one may consider that “defect” (*défaut*) exists whenever the rented object is not in conformity with the norms of RGD 25 February 1979 on the criteria for the health and hygiene of renting dwellings.

- **Examples: Is the exposure of the house to noise from a building site in front of the house or are noisy neighbours a defect? What about damages caused by a party or third persons? Is the occupation of the house by third parties such as squatters considered as a defect in the legal terms?**

⁵²⁵ See ‘9.2. List of cases’.

When a tenant lives in a multi-family building, within the regime of co-ownership, he or she, as well as any other persons living in the same apartment building, has a right to the peaceful enjoyment of the respective apartment (*jouissance paisible des autres occupants*). The tenant can oppose this right to another co-owner or tenant who is responsible for affecting or preventing that peaceful enjoyment and also to the management body of the co-ownership⁵²⁶. If the person who is causing the disturbance is a tenant himself or herself, the landlord can, as we have mentioned, terminate the contract based upon that reason⁵²⁷.

However, it is not only within the co-ownership regime that the tenant has such responsibility. Indeed, the tenant is always responsible for his or her behaviour and the behaviour of the people he or she introduces in the respective dwelling⁵²⁸.

- **Discuss the possible legal consequences: rent reduction; damages; “right to cure” (to repair the defect by the landlord); reparation of damages by tenant; possessory actions (in case of occupation by third parties) what are the relationships between different remedies; what are the prescription periods for these remedies**

The landlord is obliged to place the dwelling at the disposal of the tenant in a good renting state and cannot prevent him or her from enjoying the rented dwelling. It is considered that, if the dwelling suffered substantial degradations, it is no longer ensured.

In principle, the landlord is responsible only for doing big works. Nevertheless, the court may, in certain cases, impose the obligation on the landlord of providing works like repairing the roof or restoration of the dwelling in isolated state, under risk of paying a fine⁵²⁹.

The tenant must inform the landlord of the dilapidation in the dwelling and, if it is the case, of the need of making big repairs which are the responsibility of the landlord⁵³⁰; the latter cannot have access to the dwelling and thus cannot know of this situation on his or her own.

If the landlord does not answer his or her obligation, the tenant may ask for the authorization of the court to do the works at the costs of the landlord. If he or she does not ask for such authorization, he or she may respectively ask for reimbursement of the works he or she did under the condition that proves that the works were urgent and inevitable and that he or she managed to do them at the less possible cost⁵³¹. These works must necessarily be works of reparation and

⁵²⁶ See generally Krieger – Le bail d’habitation, 2009, pp. 97-98.

⁵²⁷ Bernard – Informations concernant le bail, s.d., p. 2 and Krieger – Le bail d’habitation, 2009, pp. 59-60.

⁵²⁸ Krieger – Le bail d’habitation, 2009, pp. 56-57. See, e.g., J.P.Esch, 12 October 2007, 210810/2007.

⁵²⁹ J.P.Lux, 25 February 1998, 1098/98.

⁵³⁰ J.P.Lux 2 October 1998, 2828/98.

⁵³¹ J.P.Lux, 7 November 1991, 179/91.

not works which modify the comfort of the immovable or the respective structure. In general, the courts reject such demand. In principle, the tenant cannot wait to obtain the reimbursement of such works unless he or she managed to prove the bad faith of the landlord and if he or she informed the landlord that he or she should have made the works⁵³².

- **Entering the premises and related issues**
 - **Under what conditions may the landlord enter the premises?**

The landlord has the duty of providing a full enjoyment of the rented premises by the tenant, which would be incompatible with the right of entering the premises whenever the landlord pleased. The landlord may not enter the property without permission, even though he continues to own the dwelling.

However, if, in the end of the contract, the tenant refuses to vacate the dwelling the landlord may request the court to provide him or her the right of expelling the tenant through action of a court bailiff (*huissier de justice*) who may resort to police law enforcement, namely at the moment of breaking the locks for entering the dwelling⁵³³.

- **Is the landlord allowed to keep a set of keys to the rented apartment?**

Although there are no sources which directly mention this aspect, it seems that the landlord sometimes has a set of keys for the case of an emergency. Nevertheless, with the exception of a situation of emergency (e.g., tenant is unconscious inside the dwelling, or in case of a fire), the landlord can never enter the premises without a previous authorization of the tenant.

- **Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?**

- **Rent regulation (in particular implementation of rent increases by the landlord)**

Private landlords have an understandable interest in increasing rents at every opportunity law allows them to, because thereby they increase the profit which is the main goal of the renting activity (besides interests of contributing for accommodation of those in need, which might be a strong motivation of the landlords who rent their dwellings to the AIS).

Nevertheless, the law provides for rent regulation; namely, landlords are not able to increase the rent in the amount they wish nor in the time they desire, as there are limits for both.

⁵³² Krieger – Le bail d’habitation, 2009, p. 73.

⁵³³ Thewes – Le nouveau droit du bail, 2007, p. 101.

First, the LBUH prohibits automatic indexation terms (*clauses d'indexation automatique*), under Art. 5-5 LBUH.

Second, the landlord can only increase the rent after six months (Art. 8-2 LBUG) from the beginning of performance of the contract and afterwards only after every two years (Art 3-5 LBUH).

Third, the increase of the rent cannot surpass 5% of the capital invested in the dwelling by the landlord (Art. 3 LBUH)⁵³⁴.

As far as rental agreements with the AIS are concerned, no rent increases are admitted: the tenant will pay the same rent for the whole length of the contract, irrespective of the fact of whether his or her financial situation changed or not.

- **Ordinary rent increases to compensate inflation/ increase gains**

As we have described⁵³⁵, landlords are only allowed to increase the rent in an amount which does not surpass, every year, 5% of the invested capital. According to the LBUH, it is possible to determine precisely what “invested capital” consists of. Art. 3-2 provides for the expenses provided for the landlord which are to be considered as invested capital. One of them is the cost of the land where the dwelling was built on. Due to the evolution of market prices, this determination of the value of the land can be problematic, and for this reason the law allows the owner to opt between two evaluation methods, namely, based upon the real price paid or a flat-assessment⁵³⁶.

At any case, this method of calculating the rent is only satisfactory for new dwellings. Whenever a used dwelling is at stake, the invested capital must be revaluated, on the one hand, to compensate the effects of the inflation and, on the other hand, to acknowledge the wear and tear of the premises⁵³⁷. In order to compensate inflation, the LBUH provides, in its Art. 3-3, that “[the] invested capital is revaluated on the day of conclusion of the rental agreement and in the day of the rent adaptation through multiplication with the corresponding coefficient from the table of the revaluation coefficients provided for in Art. 102-6 of the amended law of 4 December 1967 concerning income tax”.

- **Is a rent increase after renovation measures, e.g. upgrading the energy performance of the house, or similar lawful and dealt with in a special procedure?**

According to the LBUH the amount of rent over a dwelling may not surpass 5% of the capital the landlord invested in the dwelling. Scholars consider that this includes the capital which was invested initially, at the time of the purchase or construction, but also the improvement works and all other expenses in relation

⁵³⁴ See generally, *supra*, “Conditions for rent increase”.

⁵³⁵ See *supra* “Conditions for rent increase” and previous question.

⁵³⁶ See generally Thewes – Le nouveau droit du bail, 2007, p. 24.

⁵³⁷ ID, *ibid.*, 26.

with the rented dwelling⁵³⁸. This means that one can consider that the landlord has the possibility of increasing the rent in proportion with the costs he or she spent on the energetic improvement of the dwelling⁵³⁹.

- **Rent increases in “housing with public task”**

For social rental agreements, the law provides for specific rules in the amended RGD 16 November 1998.

The calculation of the rent is made based upon the available income, the composition of the household and the surface of the dwelling⁵⁴⁰.

In Art. 33, it says that the public promoter calculates the annual rent to be paid by the tenant based upon presentation, by the tenant, of certificates of the income effectively received in the previous year. Based upon this information, a settlement on the new rent is made (see Art. 18 amended RGD 16 November 1998). If the tenant does not provide such documentation, the rent which will be in force from 1 May of that year onward will be a rent calculated upon 10% of the capital which was invested in the building.

The current intention of the Housing Ministry is that only the persons who are in a particularly difficult social situation shall accede to social rental housing, and criteria will be even more demanding in the future. A tenant who in the beginning of the rental agreement with a public promoter or municipality did not have an income which would allow him or her to access to the private rental market may be able to do so a few years later. For that reason, applications shall be confirmed every year, and rent shall be updated every year as well. If a tenant is in a clearly better financial situation, it might be that a rent higher than the one available in the private rental market will be imposed to the tenant, and the latter is thus likely to leave the social rental dwelling. This method is aimed, precisely, at promoting that those who have an income which is enough to support a private rent vacate social rental dwellings for those who are really in need⁵⁴¹.

- **Procedure to be followed for rent increases**

- **Is there some orientation at the market rent; if yes, how is the market rent measured/calculated (e.g. statistical devices such as a Mietspiegel [= rent statistics for a certain area])?**

As far as private rental agreements over used dwellings are concerned, as we have referred to⁵⁴², inflation must be taken into account.

Art. 102-6 of the *loi du 4 décembre 1967 concernant l'impôt sur le revenu*, which contains a table of adaptation (*tableau des coefficients de réévaluation*), is applicable to the adaptation of the invested capital⁵⁴³. This table is normally

⁵³⁸ Krieger – Le bail d’habitation, 2009, p. 79.

⁵³⁹ See generally Krieger – Le bail d’habitation, 2009, p. 84.

⁵⁴⁰ Art 18 of the amended RGD 16 November 1998.

⁵⁴¹ Krieger – Le bail d’habitation, 2009, p. 30.

⁵⁴² See *supra* “Ordinary rent increases to compensate inflation/ increase gains”.

⁵⁴³ The table is available on Thewes – Le nouveau droit du bail, 2007, p. 27.

updated every two years through legislative process (it is foreseen in the law concerning the state budget, “*Loi concernant le budget des recettes et des dépenses de l’Etat*” or “*loi budgétaire*”), and it takes into consideration the evolution of the index of the price of construction⁵⁴⁴. The last adaptation to the table took place on 1 January 2012 (cf. Art. 3 of *Loi du 16 décembre 2011 concernant le budget des recettes et des dépenses de l’Etat pour l’exercice 2012*)⁵⁴⁵.

- **Possible objections of the tenant against the rent increase**

Every time the private rental landlord increases the rent in violation of Arts 3-5 of the LBUH, the tenant could object to such increase. That would only not be the case whenever the dwellings provided for in Art. 6 are in question (they concern, mainly, luxurious dwellings). In case the rent was determined by the Rents Commission, any of the parties to the rental agreement can resort to a justice of the peace within a month from the notification of the oral proceedings of the commission.⁵⁴⁶

As far as private rental agreements with the AIS are concerned, and as the rent is the same for the whole length of the contract, an increase of it would amount to a non-performance of the rental agreement, and thus the tenant could refuse to pay and even, potentially, be entitled to damages.

Another situation happens whenever we are before a social rental agreement.

According to Art. 28 of the Law of 20.04.1998, the rents provided for public promoters, municipalities or commonwealths of municipalities (*syndicats de communes*) are not object to Arts 1-5 of the LBUH. The same is provided for the LBUH itself, in Art. 1-3 *in fine*.

Under amended RGD 16 November 1998, the tenant shall cope with the adaptation of the rent (*décompte du loyer*) by the public promoter, which is provided for by law according to objective, expressly mentioned criteria (Arts 18 and 33). The lack of collaboration of the tenant amounts to a ground for termination of the contract (Arts 33 and 35).

• **Alterations and improvements by the tenant**

Very often the rental agreement contains a clause which prohibits the tenant of performing works in the dwelling (“every work is prohibited, except when the landlord previously authorized it”). In case of disagreement, it is the judge who shall determine the seriousness of the infringement, but everything that one makes in a dwelling may be considered as a work (painting of a premise, change of a tap, installation of a built-in wardrobe, etc.). The judge shall evaluate whether

⁵⁴⁴ See <http://www.crtib.lu/content/DE/105/C178/> (last retrieved: 11.01.2014).

⁵⁴⁵ Published at *Mémorial du 27 décembre 2007*, 3950. Krieger – Le bail d’habitation, 2009, pp. 79 ff and, especially, 83-84).

⁵⁴⁶ Krieger – Le bail d’habitation, 2009, p. 95.

the rejection of such works will lead to a loss in the enjoyment of the dwelling by the tenant or to a loss of the owner⁵⁴⁷.

- **Is the tenant allowed to make (objective) improvements on the dwelling (e.g. putting in new tiles)?**

According to the law of the Grand-Duchy of Luxembourg, the tenant is obliged to ensure the current maintenance of the dwelling (*entretien courant du logement*)⁵⁴⁸.

Many private rental agreements, if not most of them, will contain a clause according to which every work (*travail*) in the dwelling will be prohibited, unless previously authorized by the landlord. An objective improvement of the dwelling consists of a *travail* and, in case such term is present in the contract, it will be admitted in case the landlord agrees with it⁵⁴⁹.

- **Must, and if yes under what conditions, improvements of the dwelling by the tenant be compensated by the landlord?**

The tenant must inform the landlord of dilapidation in the dwelling and, if it is the case, of the need for making big repairs which are the responsibility of the landlord⁵⁵⁰; the latter cannot have access to the dwelling and thus cannot know of this situation on his or her own.

In case the landlord does not fulfil this obligation, the tenant may ask for the authorization of the court to do the works at the costs of the landlord. If he or she does not ask for such authorization, he or she may respectively ask for reimbursement of the works he or she did under the condition that proves that the works were urgent and inevitable and that he or she managed to do them at the lowest possible cost⁵⁵¹. These works must necessarily be works of reparation and not works which modify the comfort of the immovable or the respective structure. In general, the courts reject such demand. In principle, the tenant cannot wait to obtain the reimbursement of such works unless he or she managed to prove the bad faith of the landlord and if he or she informed the landlord that he or she should have made the works⁵⁵².

- **Is the tenant allowed to make other changes to the dwelling?**
 - **in particular changes needed to accommodate a handicap (e.g. building an elevator; ensuring access for wheelchairs etc)?**

⁵⁴⁷ Krieger – Le bail d’habitation, 2009, p. 61.

⁵⁴⁸ Thewes – Le nouveau droit du bail, 2007, p. 55.

⁵⁴⁹ Krieger – Le bail d’habitation, 2009, p. 61.

⁵⁵⁰ J.P.Lux 2 October 1998, 2828/98.

⁵⁵¹ J.P.Lux, 7 November 1991, 179/91.

⁵⁵² Krieger – Le bail d’habitation, 2009, p. 73.

In principle, reparations and changes to the dwelling shall be made by the landlord or at his or her expenses, unless they are small reparations (usually the tenant shall assure them) or if these were caused by negligence of the tenant.

The landlord has an obligation of ensuring that the tenant can fully enjoy the dwelling that he or she rented (*jouissance paisible des lieux*)⁵⁵³. It will, therefore, be the landlord's obligation to assure the costs of the changes needed to accommodate a handicap, although these costs may be partially ensured by third parties (Social Security or insurance schemes) or partly by the tenant himself.

In case the landlord refuses to do or allow such works, ignoring the request of the tenant, the latter can resort to a justice of the peace who, according to Art. 24, shall take provisory measures in a short amount of time. These measures can consist of an order to the landlord of executing such adaptation works or providing for a scheme where the costs are deducted from the due rents and charges⁵⁵⁴.

There is housing made available – by public promoters – for people with special needs: elderly people (over 65 years of age) and those who cannot live in a not-adapted dwelling, due to a disability.⁵⁵⁵

- **Fixing antennas, including parabolic antennas**

Very often, the installation of a parabolic antenna at the façade or the respective placement on the terrace may provoke a lively discussion. The contract term providing that such installation is prohibited is valid. The tenant must comply with this rule, also because the co-ownership regulations may provide for the same prohibition. The installation of a parabolic antenna modifies the appearance of the condominium and must be authorized by the general assembly of co-owners⁵⁵⁶.

- **Maintenance measures and improvements, in particular upgrading the energy performance of the house by the landlord**

From the 1 January 2015 onward, as soon as the landlord has a new tenant, the landlord holder of a CPE must communicate without delay a certified copy of the CPE to the new tenant. The tenant cannot demand from the landlord to do works of isolation of the dwelling because the CPE is a report on the condition of the immovable, and it was in this condition that the immovable was rented by the tenant⁵⁵⁷.

⁵⁵³ See *supra* "Describe the usual kinds of utilities (e.g. basic utilities like the supply of water, gas and electricity vs. additional utilities, i.e. services such as waste collection) and their legal regulation".

⁵⁵⁴ See generally Thewes – Le nouveau droit du bail, 2007, pp. 58 ff.

⁵⁵⁵

<http://www.vdl.lu/Citoyens+et+r%C3%A9sidents/Logement/Logements+pour+personnes+%C3%A2g%C3%A9es+ +%C3%A0+besoins+sp%C3%A9cifiques.html> (last retrieved: 15.05.2014).

⁵⁵⁶ Krieger – Le bail d'habitation, 2009, p. 61.

⁵⁵⁷ Krieger – Le bail d'habitation, 2009, pp. 44 and 45.

- **What kinds of maintenance measures and improvements does the tenant have to tolerate?**

As we have mentioned, the landlord is to abstain from any action which might disturb the tenant's enjoyment of the rented property. For this reason, the landlord may not make any alterations to the property, namely, he may not raze the building, demolish or rebuild a wall, modify the layout of the rooms or the garden etc.⁵⁵⁸, during the execution of the rental agreement, unless there is an agreement between landlord and tenant that such works shall be executed or that it is the tenant him or herself that asks the landlord to carry them during the contract⁵⁵⁹.

In case urgent works are needed (*travaux urgents*), these cannot, for their own nature, be postponed until the end of the rental agreement. The landlord is thus allowed to execute them immediately, and the tenant cannot ask for a reduction of the rent, provided that the works do not last for more than 40 days (Art. 1724 CC).

- **What conditions and procedures does a landlord who wants to make renovations need to respect (e.g. giving adequate [i.e. sufficiently long] notice; offer an alternative dwelling; offer a rent reduction to compensate for disturbances)?**

During the execution of the rental agreement, it may happen that the state of the dwelling comes to such degradation point that the landlord must necessarily carry out urgent reparations. This state may result from an act of God but also from negligence of any of the parties to the rental contract. In this case – i.e., when the works cannot be postponed until the end of the contract – the tenant must accept these works, even if they prevent the tenant from using a certain part of the dwelling for a time. If the tenant does not accept them, the landlord will have grounds for termination⁵⁶⁰.

However, if reparations last more than 40 days, the rent will be decreased in the proportion of the time and the part of the rented dwelling from which the tenant was deprived. If the reparations were such that they made the dwelling inhabitable for the tenant and the respective family, the tenant will be able to terminate the contract⁵⁶¹.

- **Uses of the dwelling**
 - **Keeping animals; producing smells; receiving guests; prostitution and commercial uses (e.g. converting one room in a medical clinic); removing an internal wall; fixing pamphlets outside.⁵⁶²**

⁵⁵⁸ Bernard – Informations concernant le bail, pp. 7-8.

⁵⁵⁹ Thewes – Le nouveau droit du bail, 2007, p. 57.

⁵⁶⁰ Krieger – Le bail d'habitation, 2009, p. 74, n. 85.

⁵⁶¹ Krieger – Le bail d'habitation, 2009, p. 74.

⁵⁶² See generally Ministry of Housing – Bail à loyer, 2006, p. 79.

Pets usually lead to disputes between landlord and tenant. In general, if the tenant has a dog and it disturbs the remaining occupants of the dwelling, this can lead to termination of the contract based on fault of the tenant⁵⁶³.

Rental agreements concerning apartments usually include a clause indicating that it is forbidden to have a cat or a dog without the landlord's agreement. This term is usually valid⁵⁶⁴, and the respective violation is evaluated by the judge.

- **Is there an obligation of the tenant to live in the dwelling?
Are there specificities for holiday homes?**

There is no obligation for the private tenant to live in the dwelling. Indeed, whenever there are several tenants that claim the right to live in a dwelling after, e.g., the death of the tenant, the judge must determine, from these, who has the greatest interest of occupying the dwelling and he or she can decide for someone who does not, in fact, occupy it.⁵⁶⁵

For social tenants, the situation is different. Indeed, they are obliged to occupy the dwelling effectively and continuously, unless the absence is legitimately motivated. The inobservance of this condition amounts to a serious and legitimate reason for termination of the rental agreement. This rule might be motivated for the fact that the social housing rental market is extremely small and that there is a great demand for these dwellings. It would thus be unfair and unacceptable that a tenant would not live in the dwelling which was allocated to him or her at a lower price.

- **Video surveillance of the building**

Is the surveillance of certain parts (e.g. corridors) of the building lawful and usual?

It is usual and lawful that there is video surveillance in the entrance, close to the post boxes.

In case the video catches people outside, i.e., in the public space, the recording must previously be authorized by the National Commission for Protection of Data (*Commission National pour la Protection des Données*). However, it is not usual.

Video recording in the corridors of the building is not so usual, but in case it covers common areas only (instead of, for example, recording the interior of individual apartments, whenever the door is opened, for example) it does not seem to cause any legal problem.

⁵⁶³ Krieger – Le bail d'habitation, 2009, pp. 55-56.

⁵⁶⁴ Tr.arr.Lux., 6 June 1985, Credoc 98507439.

⁵⁶⁵ See generally Ministry of Housing – Bail à loyer, 2006, p. 79.

6.6 Termination of tenancy contracts

Example of table for 6.6 Termination of tenancy contracts

	Private rental agreements	Social rental agreements	Private rental agreements with public task
Mutual termination	Admissible	Admissible	The rental agreements have the fix length of 3 years.
Notice by tenant	<p>FIXED TERM: Notice provided for in the contract or no notice needed whenever there was a <i>faute</i> by the landlord</p> <p>OPEN-ENDED: 2-3 months' notice or no notice needed whenever there was a <i>faute</i> by the landlord</p>	Application must be confirmed by tenant every year during the month of June (Art. 7 amended RGD 16 November)	This situation has still not been object of regulation (law project under evaluation)
Notice by landlord	<p>Personal need: at least 6 months' notice</p> <p>Breach of tenant: 3 months' notice;</p> <p>Other serious and legitimate reasons</p>	12 months' notice	This situation has still not been object of regulation (law project under evaluation)
Other reasons for termination	Automatic termination: Destruction of the good by act of God (Art. 1722 CC)	<p>By landlord: Lack of delivery of necessary documents to renew the rental agreement or to adapt the rent</p> <p>Reasons provided for in Art. 35 amended RGD 16 November 1998)</p>	By landlord: Refusal to cope with the personal development plan elaborated, with the social services, before the contract started being performed.

The ordinary and extraordinary reasons for a landlord to terminate a tenancy agreement are exposed in the following table:

		Fixed-term contract	Open-ended contract
Unfounded unilateral termination		No ⁵⁶⁶	No ³⁹⁶
Founded unilateral termination by landlord	PERSONAL NEED ⁵⁶⁷ OF LANDLORD ⁵⁶⁸ OR RELATIVE ⁵⁶⁹	Yes <u>When:</u> At the fixed term <u>Conditions:</u> 1. Give notice to the tenant ⁵⁷⁰ at least 6 months before the term is reached ⁵⁷¹ . 2. Occupy the dwelling within 3 months after the tenant vacates it (suspension of the 3 months' period if there are renovation or transformation works)	Yes <u>When:</u> 6 months before the intended end of the contract <u>Conditions:</u> Give notice to the tenant ⁴⁰⁰ at least 6 months before the intended end of the contract Occupy the dwelling within 3 months after the tenant vacates it (suspension of the 3 months' period if there are renovation or transformation works)
	BREACH OF CONTRACT BY TENANT ⁵⁷²	Yes <u>When:</u> At the end of the contract (in case of absence of agreement between the parties!); minimum of 3 months' notice <u>Conditions:</u> Invoke the general principles of contract law and immediately address to the justice of the peace a request for a judicial termination of the contract	
	OTHER SERIOUS AND LEGITIMATE REASONS ⁵⁷³	Yes <u>When:</u> At the fix term <u>Conditions:</u> 1. Give notice to tenant 3 months ⁵⁷⁴ before the term is reached ⁵⁷⁵	Yes <u>When:</u> 3 months' notice before the intended end of the contract (except when otherwise agreed with the tenant) <u>Conditions:</u> 1. Give a 3 months' notice to tenant ⁶⁰²
	END OF EMPLOYMENT CONTRACT WHENEVER ACCOMODATION IS PROVIDED	Yes	
	DEATH OF TENANT	No	
	TRANSMISSION OF OWNERSHIP	Not necessarily New owner must send letter within 3 months after the purchase and notice the tenant 6 months before the term of the contract	Not necessarily New owner must send letter within 3 months after the purchase and notice the tenant 6 months before the term of the contract

⁵⁶⁶ Except for luxurious housing.

⁵⁶⁷ For habitation or occupation.

⁵⁶⁸ Natural or legal person. It is not required that the landlord needs to occupy the dwelling *permanently*. He or she or it might as well use the dwelling for the deposit of furniture. He or she or it must however occupy it *effectively*.

⁵⁶⁹ Relative by blood or affinity until the third degree.

⁵⁷⁰ In case the dwelling is occupied by a *married couple*, the termination expressed to one of the members of the couple is enough. If the dwelling is occupied by *several persons*, the notice should be addressed to the person with whom the landlord concluded the contract; the same applies in case there is a sub-tenant.

⁵⁷¹ Art. 12-3 LBUH, in derogation of Art. 1736 CC (special provision derogates general provision). This must be done through registered letter, with acknowledgment of delivery. The letter must be in written form and contain: the intention of terminating the contract; the reasons of personal need and supporting documents and the full transcription of Art. 12-3 LBUH. In case these formalities are not observed, the termination is null and void.

⁵⁷² E.g. Non-payment or irregular payment of rent, use of dwelling for purposes not described in the contract.

⁵⁷³ E.g.: intention of demolishing dwelling, pursuing major works in the dwelling, need of accommodating a person for assisting the landlord on his or her daily needs (e.g. nurse).

⁵⁷⁴ Art. 1726 CC.

⁵⁷⁵ This must be done through registered letter with acknowledgment of delivery.

N.B.: The parties are free to reduce the length of the notice period: this will generally only apply in case no clause of the contract provides on this subject and the parties cannot agree upon such period of notice.

- **Mutual termination agreements**

The parties may, at any moment, agree upon the termination of the agreement. If both parties agree upon a date to terminate the contract, they are strongly advised to write down such agreement, for proof reasons, although there is no particular formality to proceed to such agreement⁵⁷⁶. The parties may freely decide on how much time the tenant will have at the respective disposal to leave the dwelling⁵⁷⁷.

- **Notice by the tenant**

- **Periods and deadlines to be respected**

Termination of a lease contract must observe some prerequisites. Indeed, in a contract for an indefinite period, termination implies a minimum period of notice of three months⁵⁷⁸, unless the contract provides for a longer period of notice. This might be done at any time in the contract⁵⁷⁹. If it is a fixed-term contract, it must be terminated in the last day of the contract⁵⁸⁰. If the periods of notice are not adhered to by the tenant, the latter might have to pay damages to the landlord.

- **May the tenant terminate the agreement before the agreed date of termination (in case of contracts limited in time); if yes: does the landlord then have a right to compensation (or be allowed to impose sanctions such as penalty payments)?**

In the case of a contract with a determined length, the tenant may only terminate the contract if the landlord agrees⁵⁸¹.

- **Are there preconditions such as proposing another tenant to the landlord?**

Finding another tenant does not seem to be a condition for terminating an agreement, provided that sufficient notice is given. If the tenant intends to leave the dwelling before the end of the notice period, he or she will often have to find

⁵⁷⁶ Thewes – Le nouveau droit du bail, 2007, p. 73.

⁵⁷⁷ ULC – Le bail à loyer, 2009, p. 15.

⁵⁷⁸ ULC – Le bail à loyer, 2009, p. 14. This period is only of two months in the cantons within the competence of the Justice of Peace of Esch-sur-Alzette. See Thewes – Le nouveau droit du bail, 2007, pp. 96, n. 157.

⁵⁷⁹ ULC – Le bail à loyer, 2009, pp. 14-15.

⁵⁸⁰ Krieger – Le bail d’habitation, 2009, p. 100.

⁵⁸¹ ULC – Le bail à loyer, 2009, p. 13.

another tenant and submit it to the approval of the landlord to avoid paying the amount equivalent to three months of rent, or even the rents remaining until the end of the length provided for in the rental agreement.

- **Notice by the landlord**
 - **Ordinary vs. extraordinary notice in open-ended or time-limited contracts; is such a distinction exists: definition of ordinary vs. extraordinary (= normally related to fundamental breaches of the contract, e.g. in cases of massive rent arrears or strong antisocial behaviour)**

The rental contract may be terminated by either party or by both of them.

The tenant will most of the time intend to terminate the rental agreement based on reasons of personal convenience: decision to purchase a dwelling, decision to move to a cheaper or bigger dwelling, the change of professional address, etc.). Sometimes, the tenant will want to terminate the rental agreement due to a *faute* of the landlord and, in this case, the contract may be terminated without notice.

For the landlord, termination is only legally possible in the cases foreseen by Art. 12-2 of the LBUH. The ordinary notice is provided for in Art. 1736 CC and it is of 3 months. There is an extraordinary notice for the cases where termination is motivated by a personal need of the landlord: in this case, the notice is of 6 months (Art. 12-3 LBUH).

In case the contract is terminated due to an infringement by the other party, the contract may be terminated without notice.

In the case of contract with undetermined length, the notice lasts three months or longer, if a longer period was provided for in the contract. In case of a contract with determined length, the contract shall be terminated on the last day of its execution.

There is an extraordinary notice which is often part of several rental agreements that consists of the so-called "*clause diplomatique*". A worker, clerk employer, public officer or diplomat may, at a certain moment, be called to work at a certain country in a way that he or she will not be able to pursue the rental agreement until the due date. This term allows the tenant to put an end to the contract without having to respect the usual periods of notice⁵⁸².

- **Statutory restrictions on notice:**
 - **for specific types of dwellings, e.g. public dwellings; rental dwellings recently converted into condominiums (if there exists a special form of protection in this case as in German law) etc.**

The LBUH applies, with some exceptions, both to private rental agreements, as to private rental agreements with a public task and also social

⁵⁸² Krieger – Le bail d’habitation, 2009, 99-100.

rental agreements. Therefore, there are no specific statutory restrictions on notice for specific types of dwelling.

- **in favour of certain tenants (old, ill, in risk of homelessness)**

The LBUH introduced a particular protection in benefit of the spouse, partner, cohabitee, or their members of the deceased tenant. For those people who cohabited with the deceased tenant, the contract subsists and the contractual relatives are kept with the landlord⁵⁸³.

- **Statutory restrictions on notice:**

- **for certain periods**

The usual notice period in the municipalities of the court of peace of Esch-sur-Alzette is 2 months, i.e., one month less than the period provided for generally in Art. 1736 CC (three months) and which is valid for every termination by the landlord except when a personal need is in stake.

- **after sale including public auction (“emptio non tollit locatum”), or inheritance of the dwelling**

Art. 12 of the LBUH expressly provides that “the transfer of property of dwelling does not constitute serious and legitimate reasons for the landlord to be able to terminate the contract”. The landlord must inform the potential buyer of the fact that one of the tenants occupies the dwelling and that the contract must be retaken. Indeed, the new acquirer will be obliged by the terms of the rent contract⁵⁸⁴. If the new acquirer wants to terminate the contract, he or she will have to respect the rules of the new special procedure introduced, by the LBUH, for the “sale case” (Art. 12-6).

Indeed, whenever the rented dwelling was sold and the new acquirer invoked, before the tenant, a “personal need” within the period of 6 months’ notice, the tenant can introduce a procedure for obtaining a prolongation of the notice before the justice of the peace who is competent. The judge may give a prolongation of the notice up to a maximum of 6 months starting at the end of the initial 6 months’ notice⁵⁸⁵.

- **Requirement of giving valid reasons for notice: admissible reasons**

It is perfectly conceivable that the landlord intends to enjoy his or her dwelling for professional or personal reasons, or wishes to accommodate relatives of his or her there. The procedure of termination that has been leading to

⁵⁸³ ULC – Le bail à loyer, 2009, p. 13.

⁵⁸⁴ ULC – Le bail à loyer, 2009, p. 15.

⁵⁸⁵ ULC – Le bail à loyer, 2009, p. 17.

a greater number of court decisions is the termination that is based precisely on personal needs of the landlord⁵⁸⁶.

The law allows the landlord to terminate the lease contract unilaterally e.g. in case of personal need, but it submits termination to certain legal formalities.

First of all, it is absolutely necessary that the landlord notifies the tenant of the respective intention of terminating the lease contract. This should be done through registered letter with an acknowledgement of receipt⁵⁸⁷ and the letter shall specify and make proof of the reasons of personal need to terminate the contract, as well as the full formulation of Art. 12-3 LBUH, recalling the landlord's rights to the tenant.

However, quite often the landlord terminates the rent contract without observing the legal requirements⁵⁸⁸. In most of the cases, he or she does not observe the withdrawal notice, gives no reasons or false reasons for termination, or the initiative takes place in an incorrect termination time.

In case one of the above-mentioned conditions is not met, termination is considered null and void. As consequence, the lease contract will continue according to the established terms.

- **Objections by the tenant**

The tenant might, with legitimacy, object to a termination which is strictly founded on the sale of the immovable. The tenant is entitled to stay in the premises, despite the fact that the new owner was not the landlord with whom he or she originally concluded the contract. The tenant will, however, not be able to object whenever the new acquirer intends to terminate the rental agreement in case of personal need. In this case, the tenant must leave the dwelling at the end of the notice period or, at the latest, and if that is the case, at the end of the period of prorogation fixed by the judge.

- **Does the tenancy have “prolongation rights”, i.e. the statutory right to stay for an additional period of time (outside the execution procedure)?**

The legislator previewed a particular procedure in favour of the tenant within the framework of a termination for personal need. The tenant may ask, upon reception of the termination letter, a prorogation of the notice which was given to him by the landlord (Art. 16 LBUH).

⁵⁸⁶ Tr.Arr.Lux. 9 May 2003, Appeal 20 June 2001; Tr.Arr.Lux. 11 May 2001; J.P.Lux. 20 February 2001, Tr.Arr.Lux. 31 March 2000; Tr.Arr.Lux. 28 June 2002, Tr.Arr.Lux. 12 October 2001, Tr.Arr.Lux. 16 November 2001, Tr.Arr.Lux. 3 March 2000, Tr.Arr.Lux. 14 December 2001.

⁵⁸⁷ Hengen – Savoir loger, 2011, p. 14.

⁵⁸⁸ Tr.Arr.Lux, 26 February 2010, Process No. 123717.

- **Challenging the notice before court (or similar bodies)**
- **in particular claims for extension of the contract or for granting of a period of grace under substantive or procedural law**

The tenant who received a letter of termination by the landlord or who was ordered to leave the premises has a few mechanisms at his or her disposal which allow seeking an extension of the period of notice or, as the case may be, to be awarded a delay for eviction.

Within the framework of a termination for personal need of the landlord, the tenant may ask for an extension of the delay for termination⁵⁸⁹.

Once condemned to eviction and independent from the grounds which gave rise to termination, the tenant may always bring proceedings for obtaining a delay for eviction^{590, 591}.

- **Termination for other reasons**
 - **Termination as a result of execution proceedings against the landlord (in particular: repossession for default of mortgage payment)**

The procedure of termination which has been leading to a greater number of court decisions is the termination based upon personal needs of the landlord (Tr.Arr.Lux. 9 May 2003, Appeal 20 June 2001; Tr.Arr.Lux. 11 May 2001; J.P.Lux. 20 February 2001; Tr.Arr.Lux. 31 March 2000; Tr.Arr.Lux. 28 June 2002; Tr.Arr.Lux. 12 October 2001; Tr.Arr.Lux. 16 November 2001; Tr.Arr.Lux. 3 March 2000; Tr.Arr.Lux. 14 December 2001).

The Luxembourg legislator did not prescribe a minimum length for rental agreements: the contract parties are free to determine whether they wish to conclude a fixed-term contract or an open-ended one. For both fixed-term and open-ended rental agreements (except for the rental agreements over luxurious housing, as defined by Art. 6 of the LBUH) the principle of legal extension of rental agreements applies (Art. 12-3 LBUH in derogation of Art. 1736 CC). This means that according to Art. 12, any contract which reaches its fixed term is extended for an undetermined length or for the determined length provided in the contract unless one of the parties objects to the other about the violation of his or her contractual obligations or if the landlord makes use of one of the reasons which allow him to terminate⁵⁹² the contract by sending a termination letter (*lettre de résiliation*) with a 3 (or 6) month notice period prior to the expiration date of the rent agreement. In nearly all rent agreements, a “*reconduction tacite*” for one year is foreseen.

⁵⁸⁹ See generally ULC – Le bail à loyer, 2009, p. 17 passim.

⁵⁹⁰ See generally ULC – Le bail à loyer, 2009, p. 17 passim.

⁵⁹¹ ULC – Le bail à loyer, 2009, p. 16.

⁵⁹² One talks about “*résiliation*” of a contract whenever it is ended not to have effects from that moment on and of “*résolution*” when the contract is retroactively annulled.

- **Termination as a result of urban renewal or expropriation of the landlord, in particular:**
 - **What are the rights of tenants in urban renewal? What are the rules for rehousing in case of demolition of rental dwellings? Are tenants interested parties in public decision-making on real estate in case of urban renewal?**

Destruction

During the length of the rental agreement, the dwelling may be destroyed totally due to *cas fortuit* or case of *force majeure* (fire, flood, works done by a neighbour which led to a partial collapse of the dwelling, etc.). In this case, the contract is terminated as of right and there is no need of sending a registered letter or ask the court for termination⁵⁹³.

The dwelling may also be destroyed in part in a way that it becomes uninhabitable or that its occupation is difficult. In this case, only the tenant may ask for the termination of the contract (or, instead, for the reduction of the rent)⁵⁹⁴.

Abandonment of the dwelling

There are two possible cases of abandonment.

A first situation is where the tenant abandons completely the dwelling, without warning anyone. If the owner ignores this abandonment and did not receive the keys, this abandonment does not correspond to a termination, and thus the tenant is still due to pay the rent. From the moment that the owner realizes that the dwelling was abandoned by the tenant and he or she is forced to conclude that the tenant has irregularly terminated the contract, the owner must demand a relocation compensation for the period necessary to find a new tenant⁵⁹⁵.

In a second situation, which became fairly generalized, the conflict situation was not touched upon by the former law. The tenant lives with the respective partner or other relative in the same dwelling up to the point where following to a discussion, he or she abandons the dwelling. This abandonment places the remaining occupants in a complicated situation. In this case, the provisions concerning the death of the tenant apply; however, not every occupant of an immovable is protected by such rule. Indeed, a friend or an uncle is not protected. These do not have any other option besides attempting to do an arrangement with the landlord for a new rental agreement⁵⁹⁶.

⁵⁹³ Krieger – Le bail d’habitation, 2009, p. 73.

⁵⁹⁴ Krieger – Le bail d’habitation, 2009, p. 73.

⁵⁹⁵ Krieger – Le bail d’habitation, 2009, pp. 130-131.

⁵⁹⁶ Krieger – Le bail d’habitation, 2009, p. 131.

Élément substantiel in a rental contract

If the information inserted in a contract (such as the habitable surface, for example) is considered a substantial criterion (*élément substantiel*) by the tenant, the judge may terminate the contract. For that purpose, the tenant must prove that if he or she had known that the apartment was smaller, he or she would have never moved in.

Deposit

The Luxembourg courts have been considering as valid the termination, with immediate effect⁵⁹⁷, of the rental agreement by violation of the contract by the tenant, when he or she does not provide for the agreed deposit⁵⁹⁸. Nevertheless, the landlord shall require the tenant to provide the deposit, before proceeding to the termination of the contract⁵⁹⁹.

6.7 Enforcing tenancy contracts

Example of table for 6.7 Enforcing tenancy contracts

	Private rental agreement	Social rental agreement	Private rental agreement with a public task
Eviction procedure	Starts with judicial decision	At the end of 12 months	Starts with judicial decision
Protection from eviction	Possibility of one or two delays of three months each Young minors often relocated after eviction (LBUH applies)	Possibility of one or two delays of three months each Young minors often relocated after eviction (LBUH applies)	Possibility of one or two delays of three months each Young minors often relocated after eviction (LBUH applies)
Effects of bankruptcy	Does not, in principle, affect the rights and obligations of the parties	Does not, in principle, affect the rights and obligations of the parties	Does not, in principle, affect the rights and obligations of the parties The AIS ensures the landlord the regular payment or rent, whenever the tenant is not able to meet that obligation

⁵⁹⁷ Krieger – Le bail d’habitation, 2009, p. 122.

⁵⁹⁸ Tr.Arr.Lux 5 February 1998, 18/98.

Also, Tr.Arr.lux. 1 October 1999, process no. 64963 (*jugement par défaut à l’égard des locataires*). See also Krieger – Le bail d’habitation, 2009, pp. 122, n. 161.

⁵⁹⁹ Krieger – Le bail d’habitation, 2009, p. 52.

- **Eviction procedure: conditions, competent courts, main procedural steps and objections**

If the contract is terminated and the tenant refuses to leave the dwelling, the landlord may resort to court for obtaining an authorization of eviction. Since the entry into force of the LBUH, the procedure to be followed to obtain the authorization of the judge depends on the grounds for termination, namely, if the termination was due to a personal reason or to another reason⁶⁰⁰.

The tenant ordered to vacate the dwelling may ask the court to stay. The judge can authorize the tenant to stay at the dwelling for a maximum period of three months. The delay may be prorogued twice, each time for a maximum length of three months⁶⁰¹.

- **Rules on protection (“social defences”) from eviction**

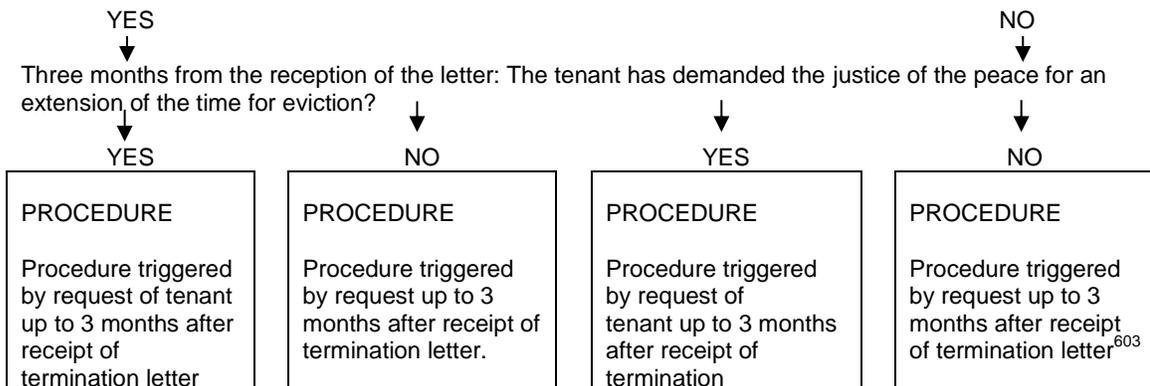
According to Art. 26 of the LBUH, the “municipal administrations have the mission of ensuring, as far as it is possible, the housing of every person who is residing on the territory of the municipality”. In practice, municipalities relocate evicted tenants only exceptionally. However, whenever the evicted family includes young minors, the juvenile judge often intervenes to order the provisory placement of the minors in families or accommodation facilities⁶⁰².

Most of the disputes between landlord and tenant arise when the tenant does not voluntarily leave the dwelling after notice of the landlord. The process may be described as follows:

Dispatch of the termination letter (for the case of termination based upon personal need of the landlord)

**

Owner purchased the dwelling during the three months preceding the dispatch of the termination letter?



⁶⁰⁰ Thewes – Le nouveau droit du bail, 2007, p. 101.

⁶⁰¹ ULC – Le bail à loyer, 2009, p. 17.

⁶⁰² Thewes – Le nouveau droit du bail, 2007, p. 104.

⁶⁰³ If the termination letter of the new owner is sent after the period of three months after the acquisition of the dwelling, the normal procedure applies.

<p>Art. 12-6 limits length of the notice process to a maximum of 12 months after the date of notification of the termination letter</p>	<p>Art. 12-6 limits length of possible “<i>sursis</i>” to a maximum of 12 months after the date of notification of the termination letter of the new landlord</p>	<p>letter Art. 12-3, al. 3 limits length of possible “<i>sursis</i>” to end at the latest 18 months after the date of notification of the termination letter of the new landlord</p>	<p>Art 12-3, al. 2 limits length of the process to 15 months after the date of notification of the termination letter of the new landlord</p>
<p>JUDGEMENT Decision of the judge authorizing an extension of the time for eviction until 12 months after the dispatch of the termination letter Art 12-3, al. 3 and Art. 12-6</p>	<p>JUDGEMENT Decision authorizing forced eviction of tenant Art 12-3, al. 2</p>	<p>JUDGEMENT Decision of the judge authorizing an extension of the time for eviction until 18 months after the dispatch of the termination letter Art. 12-3, al. 3</p>	<p>JUDGEMENT Decision authorizing forced eviction of tenant Art. 12-3, al. 2</p>
<p>APPEAL An appeal in not possible Art. 12-3, al. 3</p>	<p>APPEAL An appeal is not possible Art. 12-3, al. 2</p>	<p>APPEAL An appeal is not possible Art. 12-3, al. 3</p>	<p>APPEAL An appeal in not possible Art. 12-3, al. 2</p>
<p>APPLICATION FOR SUSPENSION Inapplicable procedure Art. 12-3, al. 3</p>	<p>APPLICATION FOR SUSPENSION Suspensions are possible⁶⁰⁴ but the time for eviction cannot go beyond 12 months from the dispatch of the termination letter Art. 12-3, al. 2 and 16-6</p>	<p>APPLICATION FOR SUSPENSION Inapplicable procedure Art. 12-3, al. 3</p>	<p>APPLICATION FOR SUSPENSION Suspensions are possible but the time for eviction cannot go beyond 15 months from the dispatch of the termination letter Art. 12-3, al. 2 and Art. 16, al. 5</p>
<p>Maximal length: 12 months</p>	<p>Maximal length: 12 months</p>	<p>Maximal length: 18 months</p>	<p>Maximal length: 15 months</p>

⁶⁰⁴ Further conditions: 1. The tenant must, in the eyes of the justice of the peace, deserve the suspension and prove that despite all efforts, no new dwelling could be found or that he or she acquired a dwelling which is still under construction. 2. The termination of the contract cannot have been due to breach of contract by the tenant. 3. In case termination is due to personal need of the landlord, the suspension cannot be incompatible with it.

- **May rules on the bankruptcy of consumers influence the enforcement of tenancy contracts?**

The bankruptcy of one of the parties to the rental agreement does not lead, automatically, to the termination of the contract, nor does it modify the rights and obligations of the parties⁶⁰⁵. Nevertheless, in case the rental agreement was concluded during the period declared “suspicious” by the court, it can be declared null and void provided that the amount that was consented by the bankrupted significantly surpasses what he or she received in return (Art. 445 Code of Commerce).

Whenever it is the tenant who went bankrupt, it is in the best interest of the landlord to quickly negotiate a termination of the rental agreement with the liquidator. Moreover, in such case the landlord is also legally entitled to have his or her credits paid with the furniture of the tenant⁶⁰⁶.

6.8 Tenancy law and procedure “in action”

The practical role of private rented housing can only be realistically assessed when the practical functioning of the legal system in this field (“tenancy law in action”) is taken into account:

- **What is the legal status and what are the roles, tasks and responsibilities of associations of landlords and tenants?**

The Luxembourg Union of Owners represents the group of homeowners but does not seem to be working for the past 15 years, as was mentioned above⁶⁰⁷.

There is no association of tenants in Luxembourg. People can, however, address the *Union Luxembourgeoise des Consommateurs* (Luxembourg Union of Consumers, ULC) for information or help. The *Service des Aides au Logement*, under the umbrella of the Housing Ministry, provides information and advice concerning individual and collective subsidies.

- **What is the role of standard contracts prepared by associations or other actors?**

There are several standard contracts available, either in paper format or online. One of the cases is the model of rental agreement⁶⁰⁸ and the model of inventory⁶⁰⁹ provided for by the ULC in collaboration with the Housing Ministry.

⁶⁰⁵ André Cloquet, “Les concordats et la faillite”, Larcier, Bruxelles, no. 1487 *apud* Thewes – Le nouveau droit du bail, 2007, p. 66, n. 100.

⁶⁰⁶ Thewes – Le nouveau droit du bail, 2007, p. 66.

⁶⁰⁷ See “Are there lobby groups or umbrella groups active in any of the tenure types? If so, what are they called, how many members, etc.?”.

⁶⁰⁸ ULC – Le bail à loyer, 2009, pp. 21-23.

The *Union Luxembourgeoise des consommateurs* aims at informing, advising and protecting tenants about housing issues. This information is particularly important, considering that so far there is no national association for the protection of the rights of tenants.

- **How are tenancy law disputes carried out? Is tenancy law often enforced before courts by landlords and tenants and/or are - voluntary or compulsory - mechanisms of conciliation, mediation or alternative dispute resolution used?**

Every dispute that concerns the existence and the execution of rental agreements and violation of right of first refusal (or pre-emptive right) are judged in the court of peace of the municipality where the rented dwelling is located (Art. 19 of the LBUH), with possibility of appeal to the District Court (*tribunal d'arrondissement*). The latter will be, in principle, a first instance court whenever the claim respects damages following to an abusive termination of the rental agreement.

- **Do procedures work well and without unreasonable delays? What is the average length of procedures? Are there peculiarities for the execution of tenancy law judgments (e.g. suspensions of, or delays for, eviction)?**

Luxembourg has a well-organized and effectively structured judicial and para-judicial system to address tenancy law disputes, which in most cases consist of neighbourhood disturbances ("*troubles de voisinage*").

The procedures of bringing the matter before the court of peace are simplified. Indeed, the referral of the justice of the peace is made through the redaction on a normal, blank piece of paper (*rédaction sur papier libre*) of the request (*requête*) by the plaintiff. This request shall be signed by the plaintiff and afterwards duplicated in two copies, one for each party of the dispute. Each party will be made recipient of convocation by the court clerk, to which a copy of the request will be added. The appearance in court is never compulsory, and it is also not necessary for the parties to be represented by an attorney. Nevertheless, if the defendant does not appear in court, the court may render a judgement by default ("*jugement par défaut*") considered broad-based (*contradictoire*), without that the defendant may defend him or herself.

Before the enactment of the LBUH, cases concerning termination of contracts were very lengthy; sometimes a period of time of several years would pass before the landlord would be able to effectively evict the tenant. Nowadays, there is a deadline of 6 months for the eviction, and this has significantly improved the quickness of the procedure.

As far as the procedure before the rents commissions are concerned, the procedure is also aimed at avoiding unnecessary delays. First, the commission should only be seized if the rental agreement has been concluded for at least six months and only in case the parties do not come up with an agreement within one month after the dispute over the rent arises. Afterwards, parties come before the

⁶⁰⁹ ULC – Le bail à loyer, 2009, pp. 24-29.

commission, and a visit of the dwelling will only take place whenever it is strictly necessary. After solving the dispute an appeal on the decision of the Commission is possible, but only within the month which follows to the communication of the decision by the rents Commission.

All in all, procedures work well and usually without delays: the average length of procedures where no appeal is made is about 3 months.

- **Are there problems of fairness and justice? Are there problems of access to courts especially for tenants? What is the situation concerning legal fees, legal aid and insurance against legal costs?**⁶¹³

There are no problems in accessing courts: the judicial fees are relatively low and affordable. Notwithstanding, the person who resorts to judicial action can ask the court for a procedural compensation (*indemnité de procédure*), which is regulated in the Civil Procedure Code. It is also possible to contract an insurance of judicial protection (*assurance de protection juridique*), but it is not very common.

- **How about legal certainty in tenancy law? (e.g.: are there contradicting statutes, is there secondary literature usually accessible to lawyers etc.?)**

There is a significant amount of information available on tenancy law. There are several reliable, regularly updated websites (such as the official website of the Housing Ministry⁶¹⁰ and academic literature, which is partially made available online as well (such as the work on the new law on residential rental agreements, by Marc Thewes in cooperation with the ULC⁶¹¹). There is no information of lack of legal certainty in the field, although there sometimes are different interpretations of the law which, in some cases, are more favourable to tenants and, in some others, more pro-owners.

The main law in the field of tenancy law is relatively recent, and there are no rules in contradiction with other regulations on the same topics. Whenever it provides for a different solution than the one provided for in the CC (as is the case for the notice imposed in the cases where the landlord wants to terminate the contract based on personal need), the general principle that special law derogates general law applies.

- **Are there “swindler problems” on the rental market (e.g. flats fraudulently advertised on the internet as rental offers by swindlers to whom the flats do not belong)?**

There is no information of such phenomena. However, given the small size of the country, such problems would be rapidly identified and the authors of such

⁶¹⁰ <http://www.ml.public.lu/> (last retrieved: 15.05.2014).

⁶¹¹ http://www.ulc.lu/Uploads/Publications/Doc/187_1_501183_loyer_F.pdf (last retrieved : 15.05.2014).

attempts of defrauding applicants to rental agreements would be quickly made responsible.

- **Are the areas of “non-enforcement” of tenancy law (such as legal provisions having become obsolete in practice)?**

The LBUH is recent, and the remaining legislation concerning tenancy law has been regularly updated. Therefore, we can consider that there are no significant areas where it is not enforced.

Exception could be made, however, to two aspects: the registration of rental agreements and the obligation of providing a CPE.

As far as the first is concerned, as we have explained, if the contract is written it shall be registered within three months following the conclusion of the contract. In practice, however, few rental agreements are registered because many persons (including real estate professionals) are unaware of this obligation and are convinced that residential rental agreements do not need to be registered. A rental agreement is still valid *inter partes* but, according to Art. 1743 of the CC it will not be opposable to third parties.

Concerning the second aspect, from 1 January 2010 onward, every time there is a change of tenant, the landlord holder of a CPE must provide the tenant with a certificate copy of the CPE. In case the landlord does not comply with this obligation, he or she will be violating the law, but it is not considered that the landlord will be thereby attempting against the pleasant enjoyment of the premises. It is unlikely that this would lead to a right of termination of the rental agreement by the tenant or even to a right of not paying the (whole) rent. In the worst case scenario, the landlord will be subject to a disciplinary punishment, but only if the tenant files a complaint. Therefore, we could consider that the obligation of communication of the CPE to new tenants is not properly enforced under the law in force.

- **What are the 10-20 most serious problems in tenancy law and its enforcement?**

One cannot consider that nowadays there are very serious tenancy law issues that must be urgently addressed. Nevertheless, there are some aspects which can be highlighted as issues which deserve (or are already receiving) the attention of the Ministry of Housing, which is the ministry in charge of dealing with these issues.

One of them is the lack of regulation of the AIS. The AIS has been developing a fundamental role in providing housing to people in need, and the Government plans to extend its activities and promote the creation of other social rental agencies. The Ministry of Housing is therefore working on a legal status for the AIS, which has already been put forward in the law project 6583 on the promotion of sustained housing and habitat.

Another aspect which deserves the attention of the Housing Ministry is the criteria of habitability. The law which provides them is more than a decade old, and there has been felt the need of providing for new regulation in this field,

particularly for the benefit of those who are more vulnerable, such as sick persons and young children.

The apparent lack of effective enforcement of the obligation of communicating the CPE – an aspect which was referred to in the previous question – is a minor aspect as compared to the question of registration. Indeed, the erroneous idea – sometimes even of real estate professionals – that rental agreements do not need to be registered may potentially lead to situations which are disadvantageous to the tenant, whenever a third party claims a legitimate right over the dwelling.

Another important aspect is that of the deposit. The maximum amount of the deposit is regulated by the law; due to the fact that it is based upon the monthly amounts of rents – and these are relatively high as compared with other European countries – this may prevent people from accessing the private rental market. This might be one of the aspects which still lead many persons working in Luxembourg to seek a dwelling outside the Grand-Duchy's borders.

Considering that the great majority of landlords are individuals who own one or two dwellings (*petits bailleurs*), the obligation of carrying major works by the landlord can be a great burden, particularly because the housing stock is relatively old (part of it was built before the 40s, as we have described⁶¹²).

Finally, and as far the social rental housing is concerned, for a homeless person to access to a social rental dwelling, he or she must be accompanied by an association. The access to social dwellings by these people, who are those who need a dwelling the most, could be facilitated if they could file in a request autonomously.

- **What kind of tenancy-related issues are currently debated in public and/or in politics?**

At the moment, politicians debate the lack of housing at affordable cost and the way that the private sector, on the one hand, and the social rental agencies (the so-called "*gestion locative sociale*"), on the other hand, can be involved in order to help meeting such housing demand.

The law project 6583 on the promotion of sustained housing and habitat – which will be the main law regulating tenancy law in the future – will be discussed and submitted for approval in the next few months and it contains ways of effectively addressing these issues.

7. Effects of EU law and policies on national tenancy policies and law

7.1 EU policies and legislation affecting national housing policies

7.2 EU policies and legislation affecting national tenancy laws

- **7.1 and 7.2 are supposed to include:**

⁶¹² See fig. 8 ("Characteristics of the Housing Stock in Luxembourg").

- **EU social policy against poverty and social exclusion**
- **consumer law and policy**
- **competition and state aid law**
- **tax law**
- **energy saving rules**
- **private international law including international procedural law**
- **anti-discrimination legislation**
- **constitutional law affecting the EU and the European Convention of Human Rights**
- **harmonization and unification of general contract law (sources such as the Common European Sales Law, the Common Framework of Reference or the Principles of European Contract Law may be considered here)**
- **fundamental freedoms (e.g. the Austrian restrictions on the purchase of secondary homes and its compatibility with the fundamental freedoms);**
- **cases in which a license to buy house is needed – is this compatible with the fundamental freedoms?⁶¹³**

According to the Housing Ministry, the sector of housing is considered a fundamental aspect for the integration of the citizen in the society and, thus, to fight poverty and social exclusion. The Ministry is actively committed to help ensuring that every citizen lives or will live in a dwelling which is adapted to the household needs (certain, safe, clean and hygienic), because it considers it a fundamental aspect to ensure a balanced socio-economic system and overall life quality of the people living in the Grand-Duchy.

Social rental dwellings are scarce, and, due to the effects of the crisis, it is unlikely that many more constructions will be carried. Therefore, the Housing Ministry intends to strengthen the criteria of access and ensuring that every person living in a social rental dwelling is not able to financially afford a private rent. Every person who does not have a place to live, particularly homeless people and displaced people, have been helped by associations as the Red Cross (*Croix Rouge*) and Caritas, which provide for temporary accommodation.

Those who are in the waiting lists for acceding to social housing or are not eligible, for the fact that their incomes surpass the limit imposed for the access to this kind of housing are an important segment of the population whose housing needs the Housing Ministry has been attempting to address. The work of the AIS is aimed at providing a private sector dwelling for a lower rent. Another measure which has been implemented to help households renting in the private sector is a subsidy for payment of the deposit which, one has seen, can be of a relatively high amount.

There are also special segments of the population whose particular needs have been addressed. The law project 6583 on the promotion of sustained housing and habitat provides, in Art. 41, that the State shall participate in up to 70% of the costs of acquisition of land and dwellings and of the costs of

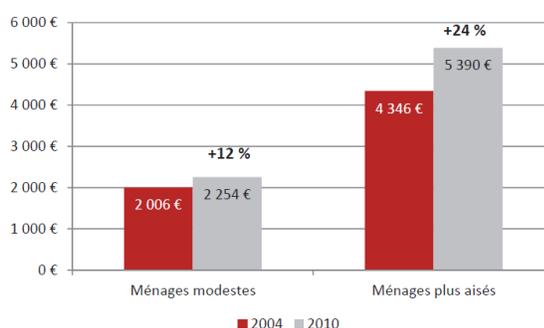
⁶¹³ These aspects are answered jointly.

constructing dwellings to be rented by promoters to households of low incomes, families with several children, elderly people, people with reduced mobility, persons in need of re-socialization, households in a precarious situation and households living in intergenerational structures of dwellings.

The law project 6542 introducing a rent subsidy and amending the law of 25 February 1979 on the subsidization to housing provides for financial aids for those who pay more than one third of their available income to housing. This has been happening progressively to many households, provided that the increase in the available income has been lower than the increase of the housing costs, particularly, the rent⁶¹⁴.

Fig 89

Evolution du revenu disponible des ménages locataires du parc privé entre 2004 et 2010, comparaison entre ménages modestes et ménages plus aisés

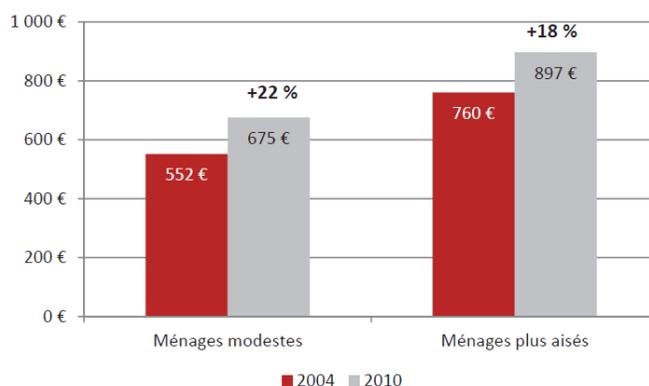


Source: CEPS/INSTEAD, PSELL-3/EU-SILC (2004, 2010)

Source: Law project 6542 introducing a rent subsidy and amending law of 25.02.1979 on the subsidies to housing

Fig 90

Evolution du loyer des ménages locataires du parc privé entre 2004 et 2010, comparaison entre ménages modestes et ménages plus aisés



Source: CEPS/INSTEAD, PSELL-3/EU-SILC (2004, 2010)

Source: Law project 6542 introducing a rent subsidy and amending law of 25.02.1979 on the subsidies to housing

⁶¹⁴ See figs 89 and 90.

As far as consumer law and policy is concerned, and albeit there is no legal notion of “defect”, the LBUH provides for the duty of the landlord of ensuring a pleasant enjoyment of the premises. This duty has been understood in a broad sense by the judges. Besides, there are regulations which expressly provide for the habitability criteria that dwellings must observe, and the Housing Ministry is preparing new regulations on the topic. Luxembourg has transposed the Consumer sales guarantees Directive 99/44/EC, although it is disputed whether “tenant” is to be understood as a consumer.

Luxembourg also transposed the unfair contract terms Directive 893/13/EEC. In addition, the LBUH contains a rule that provides that any term contained in a rental agreement which is aimed at depriving of effect a rule of the LBUH is null and void (Art. 5-5 *in fine*).

One has also seen that the private rental market is mostly composed of individuals who own and rent one or two dwellings. There is free competition, and the value of rents, albeit regulated by the LBUH, is calculated based upon the offer and demand.

Promoters receive several collective aids for the study of construction projects, purchase of land, land development, pre-financing of construction projects, construction of rental dwellings, construction of temporary accommodation for foreign workers or asylum seekers, construction of dwellings for students, interns, apprentices in training, people in continuous training, scientists and temporary experts, construction of care and education infrastructures executed within the framework of projects of construction of buildings. These aids sometimes amount to 100% of the overall cost (Art 29 of the amended Law of 25 February 1979 concerning subsidies to housing).

These subsidies are provided both to private and public entities (Art. 15 of the amended Law of 25 February 1979 concerning subsidies to housing), which ensures the respect of competition rules. Additionally, under Art. 24, whenever the promoter is a municipality, it shall support a charge equivalent to one third of the participation of the State as far as study costs and land development is concerned.

Tax law plays a particular important role in tenancy law in Luxembourg. There are several measures concerning taxes that have been taken by the Housing Ministry to support tenants and homeowners. One of the measures which was introduced to promote home-ownership was a super-reduced tax of 3% for newly created dwellings and the renovation or transformation costs following to the purchase of a dwelling. The phenomenon of vacant dwellings has been also fought through tax measures: the RGD 17 December 1991 increased the amounts concerning the deductibility of debt interests as long as the owner does not inhabit the dwelling.

The two most recent directives on energy performance have still not yet been transposed⁶¹⁵. Nevertheless, the Ministry of Housing has been very active in this field. There is much legislation addressing this topic, and the Government is strongly committed to ensure the coping with the European standards of energy efficiency.

⁶¹⁵ See, *infra*, “7.3. Table of transposition of EU legislation”.

One of the requirements which must be addressed by applicants to rental housing with a public task (i.e. social rental housing and private rental housing provided for the AIS) is that they must not be owners, nor usufructuaries of a dwelling in Luxembourg or in another country (Art. 4 of the RGD 16 November 1998⁶¹⁶). This situation, has still not been brought before the courts, but it would be a case which could appeal to Private International Law regulations

It was mentioned above that the construction of immovables aimed at certain segments of the population was subsidized by the Grand-Duchy of Luxembourg, and that subsidies could go up to the total amount of the cost. That is the case of constructions aimed at accommodating foreign workers. This is not only a rule which observes and promotes the fundamental EU liberty of circulation but it also consists of a positive discrimination measure. Luxembourg is the country where almost half of the population is composed by non-Luxembourgiens. The Grand-Duchy is committed to an anti-discrimination policy, particularly through the Ministry of Family, Integration and to the Great region and, more specifically, through OLAI. The Directive no. 2000/43/CE was transposed into the national legal system and Art. 14 of the ECHR ("prohibition of discrimination") has been thus respected.

As regards constitutional law affecting the EU and the European Convention of Human Rights, one has seen that the Luxembourg Constitution does not provide for a right to housing. There are, however, several measures which have been taken to ensure that everyone will have a place to live, and both Housing Ministry, Ministry of Family, Integration and to the Great region and social non-profit organizations have been collaborating in that direction. The work of the AIS has been a way of effectively ensuring that those households who could consist of a "gap" (they are neither eligible to social housing, nor can afford private housing), has been a way of, in practice, respecting this right. The Housing Ministry refers in its website to the concept of "access to housing" in the Vancouver Declaration on the human establishments, which has been ratified by Luxembourg and which the Housing Ministry has been attempting to meet in the respective housing policies.

One may consider that the rules which have been exercising a particular influence in the Luxembourg housing policies, besides Art. 14, are Art. 8 (right to respect of private and family life) and Art. 17 (prohibition of exploitation), and one can provide a few examples of how these principles are provided for in the Luxembourg tenancy law regime. As far as the right to respect of private and family law is concerned, one may refer the prohibition of landlord entering the premises of the rented dwelling without permission and presence of the tenant, as well as the criteria of habitability, which ensure that dwellings are sufficiently separated thereby avoiding promiscuity. An example of the fight against exploitation (*abus de droit*) is the regulations providing for the right of the landlord of terminating the rental agreement based upon personal need. Indeed, whenever the landlord invokes a personal need and the dwelling is, subsequently, not effectively used by his or her relatives, the tenant may fill in a claim to have back the right of occupying the dwelling.

⁶¹⁶ See, also, Art. 11 Law 25 February 1979.

As far as harmonization and unification of general contract law is concerned, tenancy law is not contemplated by the DCFR, as it was considered that this was a legal field – such as Family or Successions law – where Europeanization was more difficult or undesirable, considering that it is more deeply influenced by the particular cultural and socio-economic context of each country.

Finally, as far as fundamental freedoms are concerned, reference has already been made to the fact that the way that the Grand-Duchy of Luxembourg provides for the housing needs of immigrants has been a positive action towards the freedom of circulation of workers. The admission of “diplomatic clauses” in rental agreement contracts is also another measure which facilitates circulation of workers, particularly those who work in European institutions and are sometimes professionally reallocated, as it allows them to terminate the rental agreement on a short notice or without notice at all.

One can discuss whether the prohibition of access to housing with a public task whenever the applicant is owner of another dwelling outside the country could harm this freedom and consist of a discriminatory practice.

7.3 Table of transposition of EU legislation

DIRECTIVES	TRANSPPOSITION	RELATED SUBJECT	PART QUESTIONNAIRE
CONSTRUCTION			
Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJEU 30.4.2004 N° L 134/114)	<p><i>Règlement grand-ducal du 3 août 2009 portant exécution de la loi du 25 juin 2009 sur les marchés publics et portant modification du seuil prévu à l'article 106 point 10° de la loi communale modifiée du 13 décembre 1988.</i> <u>Official Journal: Mémorial Luxembourgeois A</u>, number: 180; <u>Publication date: 11/08/2009</u> <u>Page: 02608-02665; Reference: (MNE(2009)53555)</u></p> <p><i>Loi du 25 juin 2009 sur les marchés publics</i> <u>Official Journal: Mémorial Luxembourgeois A</u>, number: 172; <u>Publication date: 29/07/2009</u>, <u>Page: 02492-02530; Reference: (MNE(2009)53404)</u></p>	Special allocation procedure for contractors when the target is the construction of social housing	
Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative	<p><i>Règlement grand-ducal du 10 août 1992 concernant les produits de construction</i> <u>Official Journal: Mémorial Luxembourgeois A</u>, number 63, 21/08/1992, page 2091;</p>	Construction products: free movement, requirements, technical specificities, European Technical	

provisions of the Member States relating to construction products (OJEC 11.02.1989 N° L 40/12)	Publication date: 21/08/1992, Page: 2091, Entry into force: 10/08/1992	Agreement	
TECHNICAL STANDARDS			
Energy efficiency			
Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJEU 14.11.2012 N° L 315/1).		Energy saving targets imposed on the State. It also deals with the Public Administration buildings and others that require greater energy savings.	
Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJEU 18.06.2010 N° L153/13).	<p><i>Règlement grand-ducal du 26 décembre 2012 modifiant le règlement grand-ducal du 2 septembre 2011 relatif: a) aux contrôles d'équipements de réfrigération, de climatisation et de pompes à chaleur fonctionnant aux fluides réfrigérants du type HFC, HCFC ou CFC b) à l'inspection des systèmes de climatisation. Official Journal: Mémorial Luxembourgeois A, number 282, Publication date: 31/12/2012, Page: 04438-04439; Reference: (MNE(2013)50162)</i></p> <p><i>RGD du 12 décembre 2012 régime d'aides pour la promotion de l'utilisation rationnelle de l'énergie Official Journal: Mémorial A number 264 du 18 décembre 2012 (pp. 3469-3484)</i></p> <p><i>Règlement grand-ducal du 5 mai 2012 modifiant 1. le règlement grand-ducal modifié du 30 novembre 2007 concernant la performance énergétique des bâtiments d'habitation; 2. le</i></p>	Control and inspection of air conditioning systems, refrigeration appliances and heat pumps working with cooling liquids. Subsidization of rational use of energy. Energy efficiency of the new and the existing buildings. Energy efficiency of functional buildings.	3.5. Energy policy

règlement grand-ducal du 31 août 2010 concernant la performance énergétique des bâtiments fonctionnels.

Official Journal: Mémorial
Luxembourgeois A, number: 96;
Publication date: 11/05/2012,
Page: 01096-01203; Reference:
(MNE(2012)52427)

Règlement grand-ducal du 2 septembre 2011 relatif: a) aux contrôles d'équipements de réfrigération, de climatisation et de pompes à chaleur fonctionnant aux fluides

réfrigérants du type HFC, HCFC ou CFC, b) à l'inspection des systèmes de climatisation,

Official Journal: Mémorial
Luxembourgeois A, number: 197;
Publication date: 20/09/2011,
Page: 03587-03589; Reference:
(MNE(2012)57116)

Règlement grand-ducal du 31 août 2010 concernant la performance énergétique des bâtiments fonctionnels et modifiant 1. le règlement grand-ducal modifié du 30 novembre 2007 concernant la performance énergétique des bâtiments d'habitation; 2. le règlement grand-ducal modifié du 10 février 1999 relatif à l'agrément de personnes physiques ou morales privées ou publiques, autres que l'Etat, pour l'accomplissement de tâches techniques d'étude et de contrôle dans le domaine de l'énergie;

Official Journal: Mémorial
Luxembourgeois A, number: 173,
Publication date: 01/10/2010,
Page: 02850-02955; Reference:
(MNE(2012)57257)

Nationaler Plan Luxemburgs zur Erhöhung der Zahl der Niedrigstenergiegebäude im
(legal act: *mesures*

administratives), Official Journal:
Mesures administratives,
Publication Date: 02/08/2013;
Reference: (MNE(2013)57327)

	<p><i>Deuxième plan d'action national en matière d'efficacité énergétique</i> (legal act: <i>mesures administratives</i>) <u>Official Journal</u>: Mesures administratives, Page: 00001-00092; <u>Reference</u>: (MNE(2012)57117)</p> <p>Note: The above-mentioned national regulations address the question of the energy performance of buildings ; nevertheless, the Directive as such was still not transposed into the Luxembourg national legal system. It is, however, currently (March 2014) one of the priorities of the Luxembourg Government.</p>		
<p>Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labeling and standard product information of the consumption of energy and other resources by energy-related products (OJEU 18.6.2010 N° L 153/1)</p>	<p><i>Loi du 24 juillet 2011 concernant l'indication, par voie d'étiquetage et d'informations uniformes relatives aux produits, de la consommation en énergie et en autres ressources des produits liés à l'énergie,</i> <u>Official Journal</u>: <i>Mémorial Luxembourgeois A</i>, number 157, <u>Publication date</u>: 29/07/2011, <u>Page</u>: 02752-02754; <u>Reference</u>: (MNE(2011)55704)</p>	<p>Labelling and basic information for users of appliances which imply consumption of energy</p>	
<p>Commission Delegated Regulation (EU) N° 874/2012 of 12 July 2012 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labeling of electrical lamps and luminaires (OJEU 26.9.2012 N° L 258/1).</p>		<p>Labelling and basic information for household electric appliances' users.</p>	
<p>Commission Directive 98/11/EC of 27 January 1998</p>		<p>Labelling and basic information for household electric</p>	

<p>implementing Council Directive 92/75/EEC with regard to energy labelling of household lamps (OJEC 10.3.1998 N° L 71/1).</p>		<p>appliances' users.</p>	
<p>Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJEU 5.6.2009 N° L 140/16).</p>	<p><i>Loi du 17 décembre 2010 fixant les droits d'accise et les taxes assimilées sur les produits énergétiques, l'électricité, les produits de tabacs manufacturés, l'alcool et les boissons alcooliques et modifiant</i> <i>1. la loi modifiée du 30 juin 1976 portant: a) création d'un fonds pour l'emploi; b) réglementant l'octroi des indemnités de chômage complet;</i> <i>2. la loi modifiée du 23 décembre 2004 a) établissant un système d'échange de quotas d'émission de gaz à effet de serre; b) créant un fonds de financement des mécanismes de Kyoto; c) modifiant l'article 13bis de la loi modifiée du 10 juin 1999 relative aux établissements classés;</i> <i>3. la loi du 1er août 2007 relative à l'organisation du marché de l'électricité;</i> <i>4. la loi du 1er août 2007 relative à l'organisation du marché du gaz naturel</i> <u>Official Journal: Mémorial Luxembourgeois A, number 228, Publication date: 21/12/2010, Page: 03676-03681; Reference: (MNE(2011)51203)</u></p> <p>Règlement grand-ducal du 21 juin 2010 relatif au système d'étiquetage de l'électricité, <u>Official Journal: Mémorial Luxembourgeois A, number 98, Publication date: 30/06/2010, Page: 01802-01804; Reference: (MNE(2011)51215)</u></p> <p><i>Règlement grand-ducal du 31 août 2010 concernant la performance énergétique des bâtiments fonctionnels et modifiant 1. le règlement grand-ducal modifié du 30 novembre 2007 concernant la performance énergétique des bâtiments</i></p>	<p>Excise duties and similar taxes over energy products. Electricity labelling system Energy performance of functional buildings. Reduction of CO2 emissions Efficient use of biofuels and bioliquids. Organization of electrical energy market. Promotion of the rational use of energy and use of renewable energy in buildings. Composition and environmental impact of provided electricity.</p>	

d'habitation; 2. le règlement grand-ducal modifié du 10 février 1999 relatif à l'agrément de personnes physiques ou morales privées ou publiques, autres que l'Etat, pour l'accomplissement de tâches techniques d'étude et de contrôle dans le domaine de l'énergie,
Official Journal: Mémorial
Luxembourgeois A, number 173,
Publication date: 01/10/2010,
Page: 02850-02955; Reference:
(MNE(2011)51216)

Luxemburger Aktionsplan für erneuerbare Energien (Luxemburg, Juli 2010)
(legal act: *mesures administratives*), Official Journal: Mesures administratives, Page: 00001-00110; Reference:
(MNE(2011)51219)

1er Plan d'action en vue de la réduction des émissions de CO2
(legal act: *mesures administratives*); Official Journal: Mesures administratives, Page: 00001-00030; Reference:
(MNE(2011)51303)

Règlement grand-ducal du 27 février 2011 fixant les critères de durabilité pour les biocarburants et bioliquides,
Official Journal: Mémorial
Luxembourgeois A, number 41,
Publication date: 02/03/2011,
Page: 00590-00600; Reference:
(MNE(2011)51961)

Règlement grand-ducal du 16 mars 2012 concernant la qualité de l'essence et des carburants diesel et l'utilisation durable des biocarburants et modifiant le règlement grand-ducal du 21 février 2000 concernant la teneur en soufre de certains combustibles liquides, Official Journal: Mémorial
Luxembourgeois A, number 55,
Publication date: 26/03/2012,
Page: 00626-00632; Reference:
(MNE(2012)51503)

Règlement ministériel du 24 août 2012 portant approbation des programmes révisés du brevet de maîtrise dans les métiers «installateur chauffage-sanitaire» et «électricien», Official Journal: Mémorial Luxembourgeois A, number 7, Publication date: 14/01/2013, Page: 00120-00134; Reference: (MNE(2013)50646)

Loi du 7 août 2012 modifiant la loi modifiée du 1er août 2007 relative à l'organisation du marché de l'électricité Official Journal: Mémorial Luxembourgeois A, number 178, Publication date: 22/08/2012, Page: 02658-02670; Reference: (MNE(2013)50849)

Loi du 18 février 2010 relative à un régime d'aides à la protection de l'environnement et à l'utilisation rationnelle des ressources naturelles Official Journal: Mémorial Luxembourgeois A, number 44, Publication date: 18/03/2010, Page: 00712-00718; Reference: (MNE(2013)50850)

Loi du 21 décembre 2012 portant modification: 1) du Code du travail; 2) du Code pénal; 3) de la loi modifiée du 10 août 1991 sur la profession d'avocat; 4) de la loi modifiée du 27 juillet 1993 ayant pour objet: a) le développement et la diversification économiques, b) l'amélioration de la structure générale et de l'équilibre régional de l'économie; 5) de la loi modifiée du 30 juin 2004 portant création d'un cadre général des régimes d'aides en faveur du secteur des classes moyennes; 6) de la loi du 15 juillet 2008 relative au développement économique régional; 7) de la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration; 8) de la loi du 5 juin 2009 relative à la promotion de la recherche, du développement et de l'innovation; 9) de la loi du 18

février 2010 relative à un régime d'aides à la protection de l'environnement et l'utilisation rationnelle des ressources naturelles

Official Journal: Mémorial
Luxembourgeois A, number 296,
Publication date: 31/12/2012,
Page: 04698-04703; Reference:
(MNE(2013)50852)

Institut Luxembourgeois de Régulation. Règlement E10/23/ILR du 21 septembre 2010 concernant la détermination de la composition et de l'impact environnemental de l'électricité fournie, Official Journal:

Mémorial Luxembourgeois A, number 179, Publication date: 06/10/2010, Page: 03000-03001; Reference: (MNE(2013)50853)

Loi du 16 décembre 2011 concernant le budget des recettes et des dépenses de l'Etat pour l'exercice 2012

Official Journal: Mémorial
Luxembourgeois A, number 266,
Publication date: 23/12/2011,
Page: 04365-04383; Reference:
(MNE(2013)50861)

Extrait du guide relatif au contrôle documentaire concernant l'obligation d'ajouter des biocarburants aux essences et au gasoil routier (legal act: mesures administratives); Official Journal: Mesures administratives, Page: 00001-00003; Reference: (MNE(2013)50863)

Loi du 21 décembre 2012 concernant le budget des recettes et des dépenses de l'Etat pour l'exercice 2013;

Official Journal: Mémorial
Luxembourgeois A, number 273,
Publication date: 28/12/2012,
Page: 04003-04019; Reference:
(MNE(2013)50866)

<p>Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (DOCE 14.8.2009 N° L 211/55).</p>	<p><i>Loi du 7 août 2012 modifiant la loi modifiée du 1er août 2007 relative à l'organisation du marché de l'électricité</i>, <u>Official Journal: Mémorial Luxembourgeois A</u>, number 178, <u>Publication date</u>: 22/08/2012, <u>Page</u>: 02658-02670, <u>Entry into force</u>: 22/08/2012; <u>Reference</u>: (MNE(2012)54009)</p>	<p>Legislation related to the organization of the electricity market</p>	
<p>Heating, hot water and refrigeration</p>			
<p>Commission Delegated Regulation (EU) N° 626/2011 of 4 May 2011 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of air conditioners (OJEU 6.7.2011 N° L 178/1).</p>		<p>Labelling and information to provide about air conditioners.</p>	
<p>Commission Delegated Regulation (EU) N° 1060/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household refrigerating appliances (OJEU 30.11.2010 N° L 314).</p>		<p>Labelling and information to provide about household refrigerating appliances.</p>	
<p>Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJEU</p>	<p><i>Loi du 7 août 2012 modifiant la loi modifiée du 1er août 2007 relative à l'organisation du marché du gaz naturel</i>, <u>Official journal: Mémorial Luxembourgeois A</u>, Numéro: 179, <u>Publication date</u>: 22/08/2012, <u>Page</u>: 02672-02682, <u>Entry in force</u>: 22/08/2012; <u>Reference</u>:</p>	<p>Legislation on the organization of the market of natural gas</p>	

14.8.2009 N° L 211/94).	(MNE(2012)54008)		
Council Directive of 10 December 1982 amending Directive 78/170/EEC on the performance of heat generators for space heating and the production of hot water in new or existing non-industrial buildings and on the insulation of heat and domestic hot-water distribution in new non-industrial buildings (OJEC 31.12.1982 N° L 378/19).		Legislation about heating and hot water in dwellings and buildings.	
Household appliances			
Commission Delegated Regulation (EU) N° 392/2012 of 1 March 2012 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household tumble driers (OJEU 9.5.2012 N° L 123/1).		Labelling and information to provide about tumble driers.	
Commission Delegated Regulation (EU) N° 1059/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of		Labelling and information to provide about dishwashers.	

household dishwashers (OJEU 30.11.2010 N° L 314/1).			
Commission Delegated Regulation (EU) N° 1061/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household washing machines (OJEU 30.10.2010 N° L314/47).		Labelling and information to provide about washing machines.	
Commission Delegated Regulation (EU) N° 1062/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of televisions (OJEU 30.11.2010 N° L 314/64).		Labelling and information to provide about televisions	
Commission Directive 2003/66/EC of 3 July 2003 amending Directive 94/2/EC implementing Council Directive 92/75/EEC with regard to energy labelling of household electric refrigerators, freezers and their combinations (OJEU 09.07.2003 N° L 170/10).	<i>Règlement grand-ducal du 23 octobre 2006 modifiant le règlement grand-ducal du 28 juin 1996 concernant l'indication de la consommation d'énergie des réfrigérateurs, des congélateurs et des appareils combinés électriques</i> <i>Official journal: Mémorial Luxembourgeois A, number 187</i> <i>Publication date: 30/10/2006, Page: 03300-03302; Reference: (MNE(2006)57354)</i>	Labelling and information to provide about household refrigerators, freezers and combined electrical equipment.	
Commission Directive 2002/40/EC of 8 May 2002 implementing Council Directive 92/75/EEC with	<i>Règlement grand-ducal du 28 février 2006 concernant l'indication de la consommation d'énergie des fours électriques à usage domestique</i>	Labelling and information to provide about household electric ovens.	

regard to energy labelling of household electric ovens (OJEC 15.05.2012 N° L 128/45).	<u>Official journal:</u> <i>Mémorial Luxembourgeois A</i> , number: 37 <u>Publication date:</u> 03/03/2006, <u>Page:</u> 00727-00735; <u>Référence:</u> (MNE(2006)51504)		
Commission Directive 96/60/EC of 19 September 1996 implementing Council Directive 92/75/EEC with regard to energy labelling of household combined washer-driers (OJEC 18.10.1996 N° L 266/1).	<i>Règlement grand-ducal du 17/08/1998 concernant l'indication de la consommation d'énergie des lavantes-séchantes domestiques combinées</i> <u>Official journal:</u> <i>Mémorial Luxembourgeois A</i> , number: 69 <u>Publication date:</u> 27/08/20 <u>Page:</u> 1372	Labelling and information to provide about household combined washer-driers.	
Lifts			
European Parliament and Council Directive 95/16/EC of 29 June 1995 on the approximation of the laws of the Member States relating to lifts (OJEC 07.09.1995 N° L 213).	<i>Règlement grand-ducal du 25 octobre 1999 relatif aux ascenseurs.</i> <u>Official journal:</u> <i>Mémorial A</i> number 138 <u>Publication date:</u> 25/10/1999 <u>Reference:</u> (SG(1999)A/14991)	Legislation about lifts.	
Boilers			
Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels (OJEC 22.06.1992, N° L 167) amended by Council Directive 93/68/EEC of 22 July 1993 (BOE 27.03.1995 N° 73).	<i>Règlement grand-ducal du 11/08/1996 portant transposition de la directive 92/42/CEE concernant les exigences de rendement pour les nouvelles chaudières à eau chaude alimentées en combustibles liquides ou gazeux,</i> <u>Official journal:</u> <i>Mémorial Luxembourgeois A</i> , number 67 <u>Publication date:</u> 18/09/1996, <u>Page:</u> 2022, <u>Entry in force:</u> 11/08/1996	Legislation about boilers.	
Hazardous substances			
Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain	<i>Règlement grand-ducal du 30 juillet 2013 relatif à la limitation de l'utilisation de certaines substances dangereuses dans les équipements électriques et électroniques</i>	Legislation about the limited use of dangerous substances in electrical and electronic equipment	

<p>hazardous substances in electrical and electronic equipment (OJEU 01.07.2011 N° 174/88).</p>	<p><u>Official journal</u>: <i>Mémorial Luxembourgeois A</i>, number 145 <u>Publication date</u>: 05/08/2013, <u>Page</u>: 02863-02874; <u>Reference</u>: (MNE(2013)57238)</p>		
CONSUMERS			
<p>Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJEU 22.11.2011 N° L 304/64).</p>		<p>Information and consumer rights. Legislation referred to procurement of services, car park. Immovables are excluded: lease of housing, but not of premises.</p>	<p>6. 2 Preparation and negotiation of tenancy contracts. - Ancillary duties of both parties in the phase of contract preparation and negotiation.</p>
<p>Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) N° 2006/2004 on cooperation between national authorities responsible for the enforcement of</p>	<p><i>Loi du 27 février 2011 modifiant la loi du 30 mai 2005 portant organisation de la gestion des ondes radioélectriques, Official journal: Mémorial Luxembourgeois A, Numéro: 43</i> <u>Publication date</u>: 08/03/2011, <u>Page</u>: 00630-00632; <u>Reference</u>: (MNE (2011) 51947)</p> <p><i>Loi du 26 juillet 2010 portant modification de la loi modifiée du 30 mai 2005 portant: 1) organisation de l'Institut Luxembourgeois de Régulation; 2) modification de la loi modifiée du 22 juin 1963 fixant le régime des traitements des fonctionnaires de l'Etat, Official journal: Mémorial Luxembourgeois A, Numéro: 132</i> <u>Publication date</u>: 12/08/2010, <u>Page</u>: 02184-02185; <u>Référence</u>: (MNE(2010)55250)</p> <p><i>Loi du 28 juillet 2011 portant</i></p>	<p>Consumer protection in the procurement of communication services.</p>	

<p>consumer protection laws (OJEU 18.12.2009 N° L 337/11).</p>	<p><i>modification: 1) de la loi modifiée du 30 mai 2005 concernant la protection de la vie privée dans le secteur des communications électroniques; 2) de la loi modifiée du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel; 3) de la loi modifiée du 22 juin 1963 fixant le régime des traitements des fonctionnaires de l'Etat; 4) du Code de la consommation. juridique: Loi</i> <u>Official journal: Mémorial Luxembourgeois A, Numéro: 172</u> <u>Publication date:</u> 10/08/2011, Page: 02938-02941; Référence: (MNE(2011)55853)</p> <p><i>Loi du 27 février 2011 sur les réseaux et les services de communications électroniques</i> <u>Official journal:</u> Mémorial Luxembourgeois A, Numéro: 43 <u>Publication date:</u> 08/03/2011, Page: 00610-00629; Référence: (MNE(2011)51946).</p>		
<p>Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (OJEU 01.05.2009, N° 110/30).</p>		<p>Collective injunctions infringements of Directives Annex I.</p>	
<p>Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJEU 27.12.2006, N° L 376/21).</p>		<p>Misleading advertising and unfair business-to-consumer commercial practices.</p>	

<p>Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) N° 2006/2004 of the European Parliament and of the Council (OJEU 01.6.2005 N° L 149/22).</p>			
<p>Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJEC 04.06.1997 N° L 144/19).</p>	<p><i>Loi du 16 avril 2003 concernant la protection des consommateurs en matière de contrats à distance. ref. Mémorial Grand-Ducal A n° 61 du 8 mai 2003, 1026, référence: (SG(2003)A/05309) abrogated by the Loi du 8 avril 2011 portant introduction d'un Code de la consommation.</i></p>	<p>Contracts relating to immovables are excluded, except from lease (Art. 2(1) e) of the loi du 14 avril 2003 and Art. 222(1)d) of the Code of Consumption</p>	
<p>Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJEC 21.04.1993 N° L 095).</p>	<p><i>Loi du 27/11/2000 portant modification de la loi modifiée du 25/08/1983 relative à la protection juridique du consommateur</i> <u>Official journal: Mémorial Grand-Ducal A N° 139 du 27/12/2000 (page 3014), SG(01) A/713 du 17/01/2001</u> <u>Publication date: 27/12/2000, Page: 3014, Entry in force: 27/11/2000</u></p> <p><i>Loi du 26/03/1997 portant: 1) transposition des directives 93/13/CEE du 05/04/1993 concernant les clauses abusives dans les contrats conclus avec les consommateurs et 89/577/CEE du 20/12/1985</i></p>	<p>Unfair terms</p>	<p>6.3 Conclusion of tenancy contracts – control of contractual terms</p>

	<p>concernant la protection des consommateurs dans les cas de contrats négociés en dehors des établissements commerciaux; 2) modification de la loi modifiée du 25/08/1983 relative à la protection juridique du consommateur; 3) modification de l'article 1135-1 du Code Civil; 4) modification de la loi du 16/07/1987 concernant le colportage, la vente ambulante, l'étalage de marchandises et la sollicitation des commandes.</p> <p><u>Official journal:</u> <i>Mémorial Grand-Ducal A Numéro 30 du 29/04/1997 Page 1116</i> <u>Publication date:</u> 29/04/1997, <u>Page:</u> 1116, <u>Entry in force:</u> 26/03/1997</p>		
<p>Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJEC 31.12.1985 N° L 372/31).</p>	<p><i>Loi du 25/08/1983 relative à la protection juridique du consommateur, <u>Official journal:</u> <i>Mémorial Grand-Ducal A Numéro 70 du 01/09/1983 Page 1494</i> <u>Publication date:</u> 01/09/1983, <u>Page:</u> 1494, <u>Entry in force:</u> 25/08/1983 abrogated by the <i>Loi du 8 avril 2011 portant introduction d'un Code de la consommation.</i></i></p> <p><i>Loi du 15/05/1987 modifiant et complétant certains articles du code civil et complétant la loi du 25/08/1983 relative à la protection juridique du consommateur.</i></p> <p><u>Official journal:</u> <i>Mémorial Grand-Ducal A Numéro 36 du 29/05/1987 Page 570</i> <u>Publication date:</u> 29/05/1987, <u>Page:</u> 570, <u>Entry in force:</u> 15/05/1987</p> <p><i>Loi du 26/03/1997 portant: 1) transposition des directives 93/13/CEE du 05/04/1993 concernant les clauses abusives dans les contrats conclus avec les consommateurs et 85/577/CEE du 20/12/1985 concernant la protection des consommateurs dans le cas de</i></p>	<p>Information and consumer rights Legislation on door-to-door sales and street vending, Contracts on immovables are excluded.</p>	

	<p><i>contrats négociés en dehors des établissements commerciaux; 2) modification de la loi modifiée du 25/08/1983 relative à la protection juridique du consommateur; 3) modification de l'article 1135-1 du code civil; 4) modification de la loi du 16/07/1987 concernant le colportage, la vente ambulante, l'étalage de marchandises et la sollicitation de commandes.</i></p> <p><u>Official journal:</u> <i>Mémorial Grand-Ducal A Numéro 30 du 29/04/1997 Page 1116</i> <u>Publication date:</u> 29/04/1997, <u>Page:</u> 1116, <u>Entry in force:</u> 26/03/1997</p> <p><i>Loi du 05/03/1970 sur le colportage et les professions ambulantes.</i></p> <p><u>Official journal:</u> <i>Mémorial Grand-Ducal A Numéro 14 du 16/03/1970 Page 342</i> <u>Publication date:</u> 16/03/1970, <u>Page:</u> 342, <u>Entry in force:</u> 05/03/1970</p>		
HOUSING-LEASE			
Regulation (EC) N° 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations - Rome I (OJEU 04.07.2008 N° L 177/6).		Law applicable (art. 4.1.c and d and 11.5)	
Council Regulation (EC) N° 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJEC 16.01.2001 N° L 12/1).		Jurisdiction (art. 22.1)	

<p>Commission Regulation (EC) N° 1920/2001 of 28 September 2001 laying down detailed rules for the implementation of Council Regulation (EC) N° 2494/95 as regards minimum standards for the treatment of service charges proportional to transaction values in the harmonized index of consumer prices and amending Regulation (EC) N° 2214/96 (OJEC 29.9.2001 N° L 261/46).</p>		<p>CPI harmonization. Art. 5 includes estate agents' services for lease transactions.</p>	
<p>Commission Regulation (EC) N° 1749/1999 of 23 July 1999 amending Regulation (EC) N° 2214/96, concerning the sub-indices of the harmonized indices of consumer prices (OJEC 13.8.1999 N° L 214/1).</p>			<p>6.4. Contents of tenancy contracts Index-oriented increase clauses</p>
<p>Council Regulation (EC) N° 1687/98 of 20 July 1998 amending Commission Regulation (EC) No 1749/96 concerning the coverage of goods and services of the harmonized index of consumer prices (OJEC 31.07.1998 N° L 214/12).</p>		<p>CPI harmonization. Subscript 4: Lease, housing preservation and repair, water and other services.</p>	
<p>Commission Regulation (EC) N° 2214/96 of 20 November 1996 concerning harmonized indices of</p>			

consumer prices: transmission and dissemination of sub-indices of the HICP (OJCE 21.11.1996 N° L 296/8).			
Recommendation 65/379/EEC: Commission Recommendation of 7 July 1965 to the Member States on the housing of workers and their families moving within the Community (OJEC 27.07.1965 N° L 137/27).		Discrimination on grounds of citizenship. Equality in granting housing, aids, subsidies, premiums or tax advantages to workers who have moved within the EU.	
DISCRIMINATION			
Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJEU 21.12.2004 N° L 373/37).	<i>Loi du 21 décembre 2007 portant: 1. transposition de la directive 2004/113/CE du Conseil du 13 décembre 2004 mettant en oeuvre le principe de l'égalité de traitement entre les femmes et les hommes dans l'accès à des biens et services et la fourniture de biens et services; 2. modification du Code pénal; 3. modification de la loi modifiée du 27 juillet 1997 sur le contrat d'assurance, Official journal: Mémorial Luxembourgeois A, Numéro: 232 Publication date: 21/12/2007, Page: 03930-03932; Référence: (MNE(2008)50707)</i>	Principle of equal treatment irrespective of the gender	6.3. Conclusion of tenancy contracts Restrictions on choice of tenant - antidiscrimination issues
Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJEC 19.07.2000 N° L 180/22).	<i>Loi du 29 novembre 2006 modifiant: 1. la loi modifiée du 16 avril 1979 fixant le statut général des fonctionnaires de l'Etat; 2. la loi modifiée du 24 décembre 1985 fixant le statut général des fonctionnaires communaux Official journal: Mémorial Luxembourgeois A, Numéro: 207 Publication date: 06/12/2006, Page: 03589-03592; Référence: (MNE(2006)58316) Loi du 28 novembre 2006</i>	Discrimination on grounds of racial or ethnic origin	6.3. Conclusion of tenancy contracts Restrictions on choice of tenant - antidiscrimination issues

	<p>portant: 1. transposition de la directive 2000/43/CE du Conseil du 29 juin 2000 relative à la mise en oeuvre du principe de l'égalité de traitement entre les personnes sans distinction de race ou d'origine ethnique; 2. transposition de la directive 2000/78/CE du Conseil du 27 novembre 2000 portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail; 3. modification du Code du travail et portant introduction dans le Livre II d'un nouveau titre V relatif à l'égalité de traitement en matière d'emploi et de travail; 4. modification des articles 454 et 455 du Code pénal; 5. modification de la loi du 12 septembre 2003 relative aux personnes handicapées</p> <p><u>Official journal:</u> Mémorial Luxembourgeois A, Numéro: 2007 <u>Publication date:</u> 06/12/2006, <u>Page:</u> 03584-03588; <u>Référence:</u> (MNE(2006)58315)</p>		
IMMIGRANTS OR COMMUNITY NATIONALS			
<p>Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (OJEU 18.06.2009 N° L 155/17).</p>	<p>Loi du 8 décembre 2011 modifiant la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration</p> <p><u>Official journal:</u> Mémorial Luxembourgeois A, Numéro: 19 <u>Publication date:</u> 03/02/2012, Page: 00238-00242; <u>Référence:</u> (MNE(2012)50714)</p> <p>Règlement grand-ducal du 25 janvier 2012 modifiant: 1. le règlement grand-ducal du 26 septembre 2008 déterminant le niveau de rémunération minimal pour un travailleur hautement qualifié en exécution de la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration; 2. le règlement grand-ducal modifié du 5 septembre 2008</p>	<p>Equality of treatment with housing (art. 14.1.g.) However, Member States may impose restrictions (art. 14.2)</p>	

	<p><i>portant exécution de certaines dispositions relatives aux formalités administratives prévues par la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration; 3. le règlement grand-ducal modifié du 5 septembre 2008 définissant les critères de ressources et de logement prévus par la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration, <u>Official journal: Mémorial Luxembourgeois A, Numéro: 19, Publication date: 03/02/2012, Page: 00242-00243; Référence: (MNE(2012)50715)</u></i></p>		
<p>Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) N° 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJEU 30.04.2004 N° L 158/77)</p>	<p><i>Règlement grand-ducal du 21 décembre 2007 modifiant le règlement grand-ducal modifié du 28 mars 1972 relatif aux conditions d'entrée et de séjour de certaines catégories d'étrangers faisant l'objet de conventions internationales, <u>Official journal: Mémorial Luxembourgeois A, Numéro: 245, Publication date: 31/12/2007, Page: 04541-04544; Référence: (MNE(2008)50029)</u></i></p> <p><i>Loi du 29 août 2008 1) portant sur la libre circulation des personnes et l'immigration; 2) modifiant – la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection, – la loi modifiée du 29 avril 1999 portant création d'un droit à un revenu minimum garanti,– le Code du travail,– le Code pénal; 3) abrogeant– la loi modifiée du 28 mars 1972 concernant 1. l'entrée et le séjour des étrangers; 2. le contrôle médical des étrangers; 3. l'emploi de la main-d'oeuvre étrangère, – la loi du 26 juin 1953 portant fixation des taxes à percevoir en matière de cartes d'identité pour étrangers,– la loi du 28 octobre 1920 destinée à endiguer l'affluence exagérée</i></p>	<p>Legal status of immigrants entering the country based upon international conventions. Free movement of European citizens and their families.</p>	

	<p><i>d'étrangers sur le territoire du Grand-Duché, Official journal: Mémorial Luxembourgeois A, Numéro: 138, Publication date: 10/09/2008, Page: 02024-02052; Référence: (MNE(2008)55070)</i></p> <p><i>Règlement grand-ducal du 19 mai 2011 modifiant 1. le règlement grand-ducal modifié du 5 septembre 2008 portant exécution de certaines dispositions relatives aux formalités administratives prévues par la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration; 2. le règlement grand-ducal du 26 septembre 2008 portant création des traitements de données à caractère personnel nécessaires à l'exécution de la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration et déterminant les données à caractère personnel auxquelles le ministre ayant l'Immigration dans ses attributions peut accéder aux fins d'effectuer les contrôles prévus par la loi, Official journal: Mémorial Luxembourgeois A, Numéro: 102, Publication date: 20/05/2011, Page: 01619-01620; Référence: (MNE(2011)53892)</i></p> <p><i>Règlement grand-ducal modifié du 5 septembre 2008 portant exécution de certaines dispositions relatives aux formalités administratives prévues par la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration, Official journal: Mémorial Luxembourgeois A, Numéro: 102, Publication date: 20/05/2011, Page: 01620-01624; Référence: (MNE(2011)53893)</i></p>		
<p>Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are</p>	<p><i>Loi du 29 août 2008 1) portant sur la libre circulation des personnes et l'immigration; 2) modifiant– la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires</i></p>	<p>Equal treatment in housing (art. 11.1.f.)</p>	<p>6.3. Conclusion of tenancy contracts, Restrictions on choice of tenant - antidiscrimination issues</p>

<p>long-term residents (OJEU 23.01.2004 N° L 16/44).</p>	<p><i>de protection,– la loi modifiée du 29 avril 1999 portant création d'un droit à un revenu minimum garanti,– le Code du travail,– le Code pénal; 3) abrogeant– la loi modifiée du 28 mars 1972 concernant 1. l'entrée et le séjour des étrangers; 2. le contrôle médical des étrangers; 3. l'emploi de la main-d'oeuvre étrangère,– la loi du 26 juin 1953 portant fixation des taxes à percevoir en matière de cartes d'identité pour étrangers,– la loi du 28 octobre 1920 destinée à endiguer l'affluence exagérée d'étrangers sur le territoire du Grand-Duché</i> <u>Official journal: Mémorial</u> <u>Luxembourgeois A, Numéro: 138</u> <u>Publication date: 10/09/2008,</u> <u>Page: 02024-02052; Référence:</u> <u>(MNE(2008)55075)</u></p>		
<p>Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJEU 03.10.2003, N° L 251/12).</p>	<p><i>Loi du 29 août 2008 1) portant sur la libre circulation des personnes et l'immigration; 2) modifiant– la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection,– la loi modifiée du 29 avril 1999 portant création d'un droit à un revenu minimum garanti,– le Code du travail,– le Code pénal; 3) abrogeant– la loi modifiée du 28 mars 1972 concernant 1. l'entrée et le séjour des étrangers; 2. le contrôle médical des étrangers; 3. l'emploi de la main-d'oeuvre étrangère,– la loi du 26 juin 1953 portant fixation des taxes à percevoir en matière de cartes d'identité pour étrangers,– la loi du 28 octobre 1920 destinée à endiguer l'affluence exagérée d'étrangers sur le territoire du Grand-Duché</i> <u>Official journal:</u> <u>Mémorial Luxembourgeois A,</u> <u>Numéro: 138</u> <u>Publication date: 10/09/2008,</u> <u>Page: 02024-02052; Référence:</u> <u>(MNE(2008)55076)</u></p>	<p>The reunification applicant shall prove to have a habitable and large enough dwelling (art. 7.1. a).</p>	

<p>Regulation (EEC) N° 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJEC 17.04.1964 N° L 257/2).</p>		<p>Equal treatment in housing and access to the housing applicants' lists (Art. 9 and 10.3).</p>	<p>6.3. Conclusion of tenancy contracts Restrictions on choice of tenant - antidiscrimination issues</p>
<p>INVESTMENT FUNDS</p>			
<p>Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) N° 1060/2009 and (EU) N° 1095/2010 (OJEU 01.07.2011, N° L 174/1)</p>	<p><i>Loi du 12 juillet 2013 relative aux gestionnaires de fonds d'investissement alternatifs et – portant transposition de la directive 2011/61/UE du Parlement européen et du Conseil du 8 juin 2011 sur les gestionnaires de fonds d'investissement alternatifs et modifiant les directives 2003/41/CE et 2009/65/CE ainsi que les règlements (CE) n° 1060/2009 et (UE) n° 1095/2010; – portant modification: – de la loi modifiée du 17 décembre 2010 concernant les organismes de placement collectif; – de la loi modifiée du 13 février 2007 relative aux fonds d'investissement spécialisés; – de la loi modifiée du 15 juin 2004 relative à la société d'investissement en capital à risque (SICAR); – de la loi modifiée du 13 juillet 2005 relative aux institutions de retraite professionnelle sous forme de société d'épargne-pension à capital variable (sepcav) et d'association d'épargne pension (assep); – de la loi du 13 juillet 2005 concernant les activités et la surveillance des institutions de retraite professionnelle; – de la loi modifiée du 5 avril 1993 relative au secteur financier; – de la loi</i></p>	<p>Real estate investment funds</p>	

	<p><i>modifiée du 12 novembre 2004 relative à la lutte contre le blanchiment et contrôle financement du terrorisme;– de la loi modifiée du 23 décembre 1998 portant création d’une commission de surveillance du secteur financier;– de la loi modifiée du 10 août 1915 concernant les sociétés commerciales;– de la loi modifiée du 19 décembre 2002</i></p> <p><u>Official journal:</u> <i>Mémorial Luxembourgeois A,</i> <i>Numéro: 119</i> <i>Publication date: 15/07/2013,</i> <i>Page: 01856-01927; Référence: (MNE(2013)56737)</i></p>		
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8. Typical national cases (with short solutions):

The ten most typical Luxembourg cases are, in descending order:

8.1 Unjustified withholding of the deposit by the landlord

My contract ended in June 30, 2010. The deposit I put forward in the beginning of my lease contract has still not been paid as of today, 1 January, 2012.

In case the rental agreement (*contrat de bail*) obliges the tenant to provide a deposit (*garantie locative*) to the landlord, that provision shall comprise one of the tenant’s main obligations to be performed upon the beginning of the contract’s execution.

The landlord is allowed to keep the deposit only during the six months subsequent to the termination of the lease contract. The landlord may withhold the deposit (or part of it) upon proof of the expenses incurred in benefit of the tenant⁶¹⁷.

In case the landlord keeps the deposit beyond six months without the support of any legal provision or presentation of any reasonable justification⁶¹⁸, the ULC usually suggests the tenant to inform the landlord of his or her intention to resort to a justice of peace. Justices of peace usually decide in favour of the tenant. However, these cases do not usually come to court, as the landlord very often returns the deposit first⁶¹⁹.

⁶¹⁷ Krieger – Le bail d’habitation, 2009, p. 69.

⁶¹⁸ Also Thewes speaks of the high amount of judicial decisions in this field. See Thewes – Le nouveau droit du bail, 2007, p. 99.

⁶¹⁹ See Art. 5-2 and 3 of the ‘Loi du 21 septembre 2006 sur le bail à usage d’habitation et modifiant certaines dispositions du Code civil’ *Mémorial A* – No. 175, October 2, 2006, pp. 3150-3158.

8.2 Inflated rental increases

My landlord has just decided to increase my monthly rent by 40%.

Very often, during a lease contract, the landlord decides to very significantly increase the rent.

According to the law in force, rents cannot be automatically increased, as the LBUH maintains the prohibition of automatic indexation terms (*clauses d'indexation automatique*) of the rent, which already existed when the *Loi du 14 février 1955* was in force⁶²⁰.

If the tenant considers the rent too high, the ULC usually suggests the tenant to resort to the Rent Commission of the respective municipality. This Commission acts as a mediator and determines the rent amount according to the given data and the official scale provided by the LBUH. This committee acts as a mediator and determines the rent amount according to the given data and the official scale provided by the LBUH⁶²¹.

8.3 Wrongful increase of rents

I concluded a lease contract over an apartment and have been living there for four months. My landlord informed me that he intends to increase the rent in two months' time.

Quite frequently, the increase of rent by the landlord is unlawful. This happens, for example, when the landlord increases the rent before he or she is legally allowed to do so, and when he settles an amount which is against the law.

In case of conflict, the increase of rents must go through a specific process. First, the landlord must notify his or her intention in written form, and wait one month before being able to present its case before the rent commission. When he or she does so, he or she has to address a letter to the municipal council of the municipality where the dwelling is situated. It will contact the competent rent commission which summons the parties and attempts conciliation. If an agreement is reached, a minute is written and signed by the parties; otherwise, the commission determines the amount of rent (or the amount of advances for charges)⁶²².

The increase of the life cost and the devaluation of money are often the main justifications of the landlord to increase the amount of the rent. In order to allow tenants to adapt to this economic reality, the law provides that the landlord cannot increase the rent in the first six months of performance of the lease contract⁶²³ and afterwards only after every two years⁶²⁴ according to ratios of

⁶²⁰ Thewes – Le nouveau droit du bail, 2007, p. 32; Hengen – Savoir loger, 2011, p. 12.

⁶²¹ Cf. Arts 3-11 Loi 2006, Chapitre II. – De la fixation du loyer et des charges, in particular Arts 3, para. 5 and 5, para. 5.

⁶²² Thewes – Le nouveau droit du bail, 2007, pp. 32-34.

⁶²³ Krieger – Le bail d'habitation, 2009, pp. 88-89.

adaptation⁶²⁵. The adaptation of the rent is to be done upon agreement of the parties or within a procedure before a rent assessment commission or a court.

Generally, wrongful increases of rent are refused, in written form, by the tenant or the ULC itself. In case the landlord still considers he or she has the right to a rent increase, he or she must take the case to court. He or she will probably lose the case⁶²⁶.

8.4 Delayed payment⁶²⁷ ⁶²⁸, partial payment or non-payment of the rent or associated costs⁶²⁹ by the tenant

My tenant and I agreed that the monthly rent would be 800€. However, this month she only paid 650€, which corresponds to the cold rent.

The main obligation of the tenant is to pay the rent⁶³⁰. However, very frequently the tenant does not pay it⁶³¹ or its associated costs, does not pay them in full⁶³² or does not pay them regularly⁶³³.

The ULC advises tenants not to do it, because non-payment of the rent consists of a serious lack of performance of the lease contract and justifies an immediate termination by the landlord⁶³⁴. Several lease contracts contain a clause according to which the lease contract automatically terminates upon the non-payment of one or two monthly rents⁶³⁵. Moreover, case law has been admitting the application of this sanction when a single monthly rent was unpaid, or even when the payment was delayed⁶³⁶.

The landlord to whom the due rent is not paid can address the court to obtain a declaration of termination of the lease and an order for the tenant to pay the lease arrears. The landlord can also deduct the due rents from the deposit, in case it was invoiced as 'upon first demand' guarantee⁶³⁷.

Cf. Art. 1728, para. 2 and Art. 1760 CC.

⁶²⁴ Under the law which was in force before the Law September 2006, this period was of three years. Krieger – *Le bail d'habitation*, 2009, p. 89. See also J.P.Esch., 16 May 2009, Process no. 1089/2009.

⁶²⁵ However, in case there is a change of tenants, the landlord can proceed immediately to an increase of the rent.

⁶²⁶ Cf. Arts 3-11 Loi 2006, Chapitre II. – De la fixation du loyer et des charges.

⁶²⁷ For further developments, see Thewes – *Le nouveau droit du bail*, 2007, pp. 41-43 and Krieger – *Le bail d'habitation*, 2009, pp. 90-91.

⁶²⁸ J.P.Esch, 16 March 2012, Reporter Nadine Erpelding; Tr.Arr.Lux, 20 June 2003, Process No. 77179.

⁶²⁹ '*Nebenkosten*'.

⁶³⁰ Thewes – *Le nouveau droit du bail*, 2007, p. 50; Hengen – *Savoir loger*, 2011, p. 13.

⁶³¹ J.P.Esch, 06 December 2012, Reporter Nadine Erpelding; Tr.Arr.Lux, 3 May 2005, Process No. 90307.

⁶³² J.P.Lux, 30 April 2003, Process No. 1942/2003; Tr.Arr.Lux, 27 June 2008, Process No. 114839, 126/2008.

⁶³³ Tr.Arr.Lux, 27 June 2008, Process No. 115138, 125/2008; Tr.Arr.Lux, 04 June 1992, 126/92; Krieger – *Le bail d'habitation*, 2009, p. 53, n. 37.

⁶³⁴ Hengen – *Savoir loger*, 2011, p. 14.

⁶³⁵ Krieger – *Le bail d'habitation*, 2009, p. 53.

⁶³⁶ Thewes – *Le nouveau droit du bail*, 2007, p. 51 and Krieger – *Le bail d'habitation*, 2009, p. 53.

⁶³⁷ Thewes – *Le nouveau droit du bail*, 2007, p. 51 and Krieger – *Le bail d'habitation*, 2009, p. 52.

8.5 Termination by the tenant without regard to the legal requirements

My tenant informed me yesterday that she no longer intend to live in the apartment from the next month on.

The tenant may intend to terminate the lease contract for reasons of personal convenience or failure of performance by the landlord. In most cases, the tenant will want to terminate the contract due to personal reasons: he or she found a bigger or cheaper place to live, he or she decided to acquire an own apartment, etc.

Quite often, the tenant terminates the rent contract without attending to the legal requirements⁶³⁸, in particular in what concerns the withdrawal notice⁶³⁹.

Termination of a lease contract must observe some prerequisites. Indeed, in a contract for an indefinite period, termination implies a minimum period of notice of three months⁶⁴⁰, unless the contract provides for a longer period of notice. If it is a fixed-term contract, it must be terminated in the last day of the contract⁶⁴¹. If the periods of notice are not adhered to by the tenant, the latter might have to pay damages and due rents to the landlord.

Cf. Arts 1737, 1741, 1742, 1760, 1761, 1762-2 CC Lux. and Art. 12, paras 2 and 3 LBUH.

8.6 Termination by the tenant without regard to the contractual requirements

My tenant informed me yesterday that she longer intends to live in the apartment four months from now despite the rental agreement imposing a six month period of notice.

The same solution as above (8.5) applies: if the period of notice is not adhered to by the tenant, the latter might have to pay damages and the remaining due rents to the landlord. Nevertheless, if the tenant finds another person to substitute for him or her, provided that the landlord accepts this person as new tenant, he or she might be free from the contract after those four months.

Cf. Arts 1737, 1741, 1742, 1760, 1761, 1762-2 CC Lux. and Art. 12, paras 2 and 3 LBUH.

8.7 Termination by the landlord without regard to the legal requirements

⁶³⁸ Tr.Arr.Lux, 4 February 2011, Process No. 131157, 25/2011.

⁶³⁹ 'Kündigungsfrist'.

⁶⁴⁰ This period is only of two months in the cantons within the competence of the Justice of Peace of Esch-sur-Alzette. See Thewes – Le nouveau droit du bail, 2007, p. 51 Georges Krieger – Le bail d'habitation, 2009, p. 96, n. 157.

⁶⁴¹ Krieger – Le bail d'habitation, 2009, p. 100.

My landlord asked me to leave the apartment because there were complaints from the neighbours that I was noisy, but I was able to prove that he wanted to make the apartment available for an old friend of his.

It is perfectly conceivable that the landlord intends to enjoy his or her dwelling for professional or personal reasons, or wishes to accommodate relatives of his or her there.

The law allows the landlord to terminate the lease contract unilaterally in three cases, and termination is then subject to certain formalities.

To cause noise is usually not seen as any of the three possible grounds for termination of the contract by the landlord, i.e., it is not considered a personal need, nor a contractual breach of the tenant nor serious and legitimate reason. Therefore, this termination would be null and void. As consequence, the lease contract will continue according to the established terms.

Cf. Art. 12-2 LBUH.

8.8 Calculation of the associated costs

In the associated costs I am due to pay, 50€ concern ‘administrative fees’.

According to the law in force the landlord can only charge that the tenant also ‘consumed’ or contributed to (*charges locatives*⁶⁴²).

Here are included: the energy consumption within the dwelling and common parts of the building (operation of elevators, lightening of stairs)⁶⁴³; maintenance costs of the common parts (gardener, cleaning up of stairs); the costs of reparations in case they are not due to the dilapidated condition of the dwelling or *force majeure*⁶⁴⁴ and the municipal taxes connected to the use of the dwelling, for example, the household waste removal tax.

The costs which cannot be placed at the expenses of the tenant are: the reading fees of the calorimeters⁶⁴⁵; the replacement of floors due to deterioration caused by normal use and all the works related to the roof of the dwelling.

The question which is placed very often is whether the administrative expenses (*frais de gérance*) may be placed at the expenses of the tenant, but the tendency is to consider that the landlord shall support them. However, the technical assistance expenses (*frais de gérance technique*) may, in principle, be placed at the expenses of the tenant⁶⁴⁶.

Cf. Arts 5 para. 3 and 9, para. 3 LBUH.

⁶⁴² For further developments see Thewes – Le nouveau droit du bail, pp. 35-39.

⁶⁴³ Krieger – Le bail d’habitation, 2009, p. 46. Tr.Arr.Lux 11 April 1984; J.P.Esch, 17 March 1995, Process no. 605/95.

⁶⁴⁴ Krieger – Le bail d’habitation, 2009, p. 46. J.P.Esch, 17 March 1995, Process no. 60/95.

⁶⁴⁵ Krieger – Le bail d’habitation, 2009, p. 47. J.P.Diek, 27 June 1985, Credoc 98506793.

⁶⁴⁶ Krieger – Le bail d’habitation, 2009, p. 34.

8.9 Inventory

My rental contract terminates today, and my landlord claims that he will deduct from the deposit the costs of a new wardrobe, as some scratches were not there before I started living in the apartment. In fact, they were there when I first moved into the house, but I cannot prove it.

As a rule, tenant and landlord should provide an inventory, both in the beginning and in the end of the contractual relationship. These documents show the losses for which the tenant is liable and which do not include those arising from the normal use of the dwelling and/or its content.

Very often these inventories are not elaborated, and that situation is always beneficial to the landlord, because the CC (Art. 1720) provides that the rental dwelling must always be delivered to the tenant in a perfect state and that it also should be returned by the latter in the same state. Therefore, in case there is no inventory, it might very well be that the tenant will have to financially support costs which will turn the dwelling into a much better state than the one it was upon the delivery of the dwelling by the landlord⁶⁴⁷.

In case of payment of a deposit at the beginning of the rent agreement, an inventory is compulsory by law (!).

8.10 Illegal terms

According to my rental contract, I am obliged to pay, as a deposit, the equivalent to three and a half months of rent.

The rental contract often includes illegal terms, such as an automatic rent increase (*indexation*), the obligation of the tenant to support all kinds of costs, the establishment of the number of tenants, the establishment of a rent which surpasses 5% of the invested capital⁶⁴⁸, the imputation of the heating costs to the tenant⁶⁴⁹, a high deposit etc.

According with the law in force, the landlord can preview the obligation of payment of a deposit, but this cannot surpass the equivalent to three months of rent.

Cf. Art. 5-2 LBUH.

⁶⁴⁷ Hengen – Savoir loger, 2011, p. 12.

⁶⁴⁸ Thewes – Le nouveau droit du bail, 2007, p. 23.

⁶⁴⁹ See no. 8.

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9.2 List of most frequent cases brought before justice

In descending order:

1. **Termination by the landlord based on the need to pursue significant works in the immovable** (Tr.Arr.Lux. 17/12/2004, Tr.Arr.Diek. 01/04/2003, Tr.Arr.Lux. 14/02/2011, Tr.Arr.Lux. 05/02/2010), **or the need of selling of the dwelling** (Tr.Arr.Lux. 26/02/2010) **or on personal needs** (Tr.Arr.Lux. 09/05/2003, Appel 20/06/2001, Tr.Arr.Lux. 11/05/2001, J.P.Lux. 20/02/2001, Tr.Arr.Lux. 31/03/2000; Tr.Arr.Lux. 28/06/2002, Tr.Arr.Lux. 12/10/2001, Tr.Arr.Lux. 16/11/2001, Tr.Arr.Lux. 03/03/2000, Tr.Arr.Lux. 14/12/2001).
2. **Exception of non performance of contract for failure of the landlord, namely, for keeping up with obligation of maintenance** (J.P.Lux. 13/03/2003, Tr.Arr.Lux. 28/04/2000, Tr.Arr.Lux. 27/06/2008) **or for need of repairs** (J.P.Lux. 15/07/2003, J.P.Lux. 17/12/2002, Tr.Arr.Lux., 04/04/2003, Tr.Arr.Lux. 14/05/2004, Tr.Arr.Lux. 27/06/2008).
3. **Non-payment of the rent** (Tr.Arr.Lux. 15/07/2005, J.P.Lux., 15/07/2003, Tr.Arr.Lux. 27/02/2004, Tr.Arr.Lux. 11/02/2000, Tr.Arr.Lux. 26/01/2001, Tr.Arr.Lux. 20/06/2003, Tr.Arr.Lux. 13/05/2005).
4. **Fire of the rented dwelling and presumption of tenant's fault** (Appel 18/12/2003, Tr.Arr.Lux. 07/11/2002; Tr.Arr.Lux. 07/11/2002, Tr.Arr.Lux. 11/07/2002, Tr.Arr.Lux. 11/06/2001, Tr.Arr.Lux. 07/03/2006).
5. **Obligation of the landlord of allowing the undisturbed enjoyment of the rented dwelling** (J.P.Lux. 21/01/2003, J.P.Lux., 21/11/2000, Tr.Arr.Lux. 23/11/2001, J.P.Lux. 30/04/2003, Tr.Arr.Lux. 13/02/2009, TALux 11/01/2008).
6. **Proof of existence of a rent contract – oral lease** (Tr.Arr.Lux. 14/10/2005; Tr.Arr.Lux. 07/10/2005) – 1715 CC.
7. **Termination by the tenant before the term of the contract** (Tr.Arr.Lux. 22/12/2004).
8. **Abusive use of right of termination by landlord** (Tr.Aee.Diek. 13/02/2001, Te.Arr.Diekirch 09/01/2002, Appel 14/06/2000).
9. **Liability for degradations of the rented dwelling** (Tr.Arr.Lux. 07/01/2005, J.P.Lux. 03/10/2000, J.P.Lux. 07/11/2000, Appel 16/06/2005).
10. **Eviction for non-performance of duties by tenant, namely payment of rent** (Tr.Arr.Lux. 15/07/2005; Tr.Arr.Lux. 26/11/2004, J.P.Lux. 05/11/2002; J.P.Lux. 07/11/2000, Tr.Arr.Lux. 27/03/2009).

11. **Obligation of the tenant to use the dwelling as a bonus pater familias** (Tr.Arr.Diek. 21/02/2001, Tr.Arr.Diek. 13/12/2000, Appel 14/06/2000, Tr.Arr.Lux. 18/10/2002).

12. **Fixation of the rent** (Tr.Arr.Lux. 21/05/2002, Tr.Arr.Lux. 22/03/2002, Tr.Arr.Lux. 04/05/2001, Tr.Arr.Lux. 17/06/2011).

9.3 Abbreviations

Art./Arts	Article(s)
BCL	<i>Banque Centrale du Luxembourg</i>
CC	<i>Code Civil</i> (Civil Code, Luxembourg)
CIGDL	<i>Chambre Immobilière du Grand-Duché du Luxembourg</i> (Real Estate Chamber of the Grand-Duchy of Luxembourg)
CPE	<i>Certificat de performance énergétique</i> (energy performance certificate)
EC	European Communities
ECHR	European Court of Human Rights
e.g.	<i>exempli gratia</i> (for example)
EU	European Union
ff.	and following
fig.(s)	figure(s)
GDP	Gross Domestic Product
i.e.	<i>id est</i> (that is)
J.P.Esch.	<i>Justice de Paix d' Esch-sur-Alzette</i> (District Court of Esch-sur-Alzette)
J.P.Lux.	<i>Justice de Paix de Luxembourg</i> (District Court of Luxembourg)
LBUH	<i>Loi du 21 septembre 2006 sur le bail à usage d'habitation</i> (law of 21 September 2006 on residential rental agreements)
n.	Footnote
No.	Number
OECD	Organisation for Economic Cooperation and Development
OLAI	<i>Office luxembourgeois de l'accueil et de l'intégration</i> (Luxembourg Office of Reception and Integration)
Para.(s)	<i>Paragraph(s)</i>
Pas. Lux.	<i>Pasicrisie Luxembourgeoise</i>
QoQ	Quarter-on-Quarter
RGD	<i>Règlement grand-ducal</i> (Grand-ducal regulation)
SCI	<i>Société Civile Immobilière</i> (Real estate company)
SNHBM	<i>Société Nationale des Habitations à Bon Marché</i> (National Company for Affordable Housing)
t.	<i>Tome</i> (volume)
Tr.Arr.Diek.	<i>Tribunal d'arrondissement de Diekirch</i> (District Court of Diekirch)
Tr.Arr.Lux.	<i>Tribunal d'arrondissement de Luxembourg</i> (District Court of Luxembourg)
ULC	<i>Union Luxembourgeoise des Consommateurs</i> (Luxembourg

VAT

Consumer Protection Association)
Value-Added Tax