Addendum to Conclusions XIII-3

(Luxembourg's first report)

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Conclusions

Part I — Consideration Article by Article

Article 1 — The right to work

Paragraph 1 — Full employment

The Committee took note of the information contained in Luxembourg's report and in the economic survey carried out by OECD in Luxembourg (1995).

It noted that the rate of unemployment, which had been rising since the first half of the 1980's, had remained moderate and represented 2.1 % of the work force in 1993 (compared with 1.4 % in 1991 and 1.6 % in 1992), the long-term unemployed representing a third of the total number of unemployed. The unemployment rate for men had reached 1.6 % in 1993, the rate for women was 2.1 %. The youth unemployment rate was 4.5 % in 1993.

The rise in unemployment was due mainly to the recession in the steel industry, where the number of employed had decreased from 30,000 in 1984 to 7,000 in 1994.

The Committee noted from the OECD's information that the increase in unemployment during the reference period had been accompanied by an increase in the number of new jobs created. In this respect, the Committee noted that foreign workers represented over 50 % of the national labour force and that trans-frontier workers totalled 25 %.

In order to cope with the recent deterioration of the unemployment situation, the government was following an economic diversification policy and taking numerous measures to encourage employment.

The report mentioned several measures aimed at *maintaining people in employment*, including:

— the granting of subsidies to employers who agreed not to make staff redundant and to award compensation for loss of pay due to the reduction in the hours normally worked in the company;

— re-employment assistance for employees who had been made redundant for economic reasons, those threatened with such redundancy, and employees transferred for economic reasons to another company, if they accepted a job with lower pay than their former wages.

The Act of 23 July 1993, introducing various employment incentives, had also established incentives to *recruit unemployed workers* over fifty years of age as well as the long-term unemployed. The Employment Fund, set up by the Act of 30 June 1976, reimbursed social security contributions — both the employer's and the employee's shares - if a person in one of these categories was recruited.

The government had also taken measures to create *new jobs*, for example by giving assistance in creating new jobs of value to the community, ie. services or activities not covered by the public services or by companies (up to a maximum amount of 350,000 Luxembourg francs per job created), or assistance with setting up businesses for unemployed workers in receipt of unemployment benefit who were particularly difficult to place. This was attributed in the form of capital representing the unemployment benefit that would have been paid to the person concerned.

Other measures were more specifically aimed at *integrating job-seekers under thirty years of age* into the labour market. For example work-experience contracts could be entered into for a period of between twenty-six and fifty-two weeks, thus facilitating the transition from school to employment, while in-company training courses consisted of alternating periods of theoretical and practical training. In the former case, trainees received a traineeship allowance equal to 85 % of the minimum social wage for unskilled workers. The Employment Fund covered the employer's share of social security contributions and reimbursed the employer 25 % of the traineeship allowance. In the latter case, the trainee continued to be eligible for unemployment benefit, the employer's share being at least 50 %. During the reference period, job-seekers also received assistance with geographical mobility and to allow them to attend training or retraining courses, mainly in the metallurgy and hotel and catering sectors.

For the purposes of in-depth restructuring of the *steel industry*, several laws had been enacted, on the basis of which employees were entitled to early retirement as of their fifty-seventh birthday. Moreover, workers in this sector threatened with redundancy had qualified for special assistance in the form of vocational training and retraining courses.

Finally the introduction of a temporary re-employment allowance for workers in this sector had motivated the surplus workforce to leave the sector. The report also stated that on account of the particularly serious crisis in the steel industry, this sector had been obliged to participate in special work benefiting the community. Referring to its conclusion under Article 1 para. 2 on this point, the Committee wished to have more information about such work and about the possibility of introducing similar work in other sectors.

The Committee wished to be informed of any developments in the situation and of the results of the measures taken in order to prevent the rise in unemployment, also requesting that the next report provide an estimate of the number of persons who had benefited from these measures.

Paragraph 2 — The right of the worker to earn his living in an occupation freely entered upon

As regards *the elimination of all forms of discrimination in employment*, the Committee noted from Luxembourg's report that the principle of non-discrimination was enshrined in the Constitution.

Concerning non-discrimination between men and women, the report referred to the Act of 8 December 1981 "on equality of treatment between men and women, which prohibits all direct or indirect discrimination based on sex, in matters concerning employment, career advancement and vocational guidance, basic and further training, retraining, self-employment and working conditions." Under the act, any provision contrary to the principle of equal opportunity, whether contractual, statutory or regulatory, was considered null and void and any dismissal motivated mainly by the employer's reaction to a reasoned complaint requesting that this principle be applied, was considered unfair.

The Committee also noted the creation, in 1984, of a Committee on Women's Work, composed of representatives of women's associations, of trade union organisations and employers' professional organisations, and of government representatives, which issued opinions and submitted proposals on all questions concerning the training and career advancement of women and the reconciliation of their family and

occupational responsibilities. The Committee hoped to receive information on the work of this committee (studies, surveys, etc.).

The Committee asked that the next report contain information on the exact extent to which the principle of equality was applied in practice, particularly in connection with the possibility of acceding to employment and remuneration.

As for other forms of discrimination, the Committee took note of the Act of 27 July 1993 on the integration of foreigners. This act prohibited and penalised all forms of discrimination based on race or colour, social, national or ethnic origin or religion. The Committee asked for information on this subject, particularly the practical measures taken in pursuance of this act, in connection with foreigners and any other measures taken to prevent discrimination.

It also took note of the special protection against dismissal for workers' representatives. It asked that the next report give a more detailed reply to Question F of the Form concerning the guarantees which prevented any discrimination in regard to members of workers' organisations at the time of recruitment, promotion or dismissal.

The Committee concluded that on this point Luxembourg met the requirements of this provision of the Charter, but on a provisional basis, pending receipt of the information requested.

The report also stated that *forced labour* was prohibited and that Luxembourg had ratified ILO Conventions Nos. 29 and 105 on forced labour. The Committee concluded that Luxembourg complied on this point with this provision of the Charter.

However, after reading the report, the Committee felt obliged to request explanations on the following two issues:

— the report mentioned that the Government in Cabinet reserved the right to decide which sectors of the economy were facing difficulties, of such seriousness as to qualify for special work of benefit to the community. So far this measure had only been applied to the steel industry. The Committee wished to have more information on this point, particularly on the type of work involved, and to know whether workers could be obliged to accept such work;

— the report also indicated that job seekers might be required to participate in training courses in order to be entitled or retain their

entitlement to full unemployment benefit. The Committee asked for more detailed information on this point.

Paragraph 3 — Free employment services

The Committee noted in Luxembourg's report that under the Act of 21 February 1976, concerning the organisation and operation of the Department of Employment (ADEM), the latter had the monopoly with regard to the placement of nationals and aliens. The ADEM, which was responsible to the Ministry of Labour, consisted of four regional agencies (Luxembourg, Esch/Alzette, Diekirch and Wiltz) covering all the cantons of the Grand Duchy.

The 1976 Act secured anyone seeking employment or wishing to change employment the right to register with the ADEM and employers who failed to inform the department of job vacancies were liable to a fine. The placement service was free for both job-seekers and employers.

The Committee asked whether the ADEM covered all sectors of economic activity.

The figures given in the report did not allow the Committee to assess the effectiveness of the ADEM placement service. It therefore asked that the next report indicate the number of persons placed by the ADEM in relation to the total number of jobs offered and of job-seekers.

Under the 1976 Act, anyone offering placement services outside the ADEM services was liable to a fine. According to the report, this was why there were no private placement agencies. Other sources mentioned that the Ministry responsible for small and medium-sized businesses and the self-employed authorised temporary employment agencies to provide placement services besides their other activities. The Committee asked that the next report contain information on this matter, particularly the scale of the placements made by these agencies.

A National Employment Committee, set up by the Ministry of Labour under the 1976 Act, advised the government, either at the request of the Minister of Labour or on its own initiative, on the formulation and implementation of labour policy. The committee was chaired by the Minister of Labour and comprised representatives of the government,

employers' organisations and the most representative trade unions. The Committee wished to know the extent to which such consultation enabled representatives of employers and workers to participate in the organisation and management of public employment departments.

Pending receipt of this information, particularly on the ADEM placement rate, the Committee deferred its conclusion.

Paragraph 4 — Vocational guidance, training and rehabilitation

The Committee referred to the information provided under Articles 9, 10 and 15, and noted that Luxembourg possessed institutions providing vocational guidance, training and rehabilitation.

The Committee recalled its general observation set out in Conclusions XII-1 and XII-2, according to which "the purpose of Article 1 of the Charter being to ensure the effective exercise of the right to work, the Committee specified in order to satisfy the requirements of Article 1 para. 4, a state must not only have institutions providing vocational guidance, training and rehabilitation, but must also ensure *access* to the institutions for all those interested, including foreigners, nationals of the States Parties to the Charter and the disabled".

In the light of this observation and having noted under Article 10 para. 2 that equality of treatment between Luxembourg nationals and those of other Contracting Parties to the Charter not members of the European Union and not parties to the Agreement on the European Economic Area was not guaranteed in access to institutions providing vocational training, the Committee was obliged to conclude that Luxembourg failed to comply with the requirements of Article 1 para. 4 of the Charter. It also referred to the other questions raised under Articles 9, 10 and 15 on equal treatment for nationals of other Contracting Parties and insisted on receiving detailed information on this point in the next report.

Article 2 — The right to just conditions of work

Paragraph 1 — Reasonable daily and weekly working hours

The Committee noted from Luxembourg's report that normal working hours were fixed by legislation (Article 2 of the Grand Ducal Regulation of 13 April 1984 laying down normal working hours and arrangements for flexible working hours in government services and Section 6 of the Coordinated Act of 10 December 1989 laying down statutory regulations for the employment of non-manual workers in the private sector) at eight hours a day and forty hours a week in both the public sector (civil servants and other state employees) and the private sector (manual and non-manual workers).

It noted from the statistics supplied in the report that the average working hours throughout all sectors of activity were forty-one hours per week and that the longest working week — in the metallurgical, building and mining sectors — varied between forty-three and forty-five hours.

The Committee observed that the legislation did not apply to certain categories of workers, such as manual and non-manual workers in family undertakings, home workers, travelling salespersons and sales representatives working outside the establishment.

Furthermore, it noted that if the social partners representing certain categories of workers such those in agriculture, viticulture and horticulture and hotel staff did not reach a collective agreement, the government was empowered to establish working hours by issuing a regulation. The Committee asked that the next report give information on the number of hours worked in sectors not covered by the legislation limiting hours of employment. It pointed out that Article 33 of the Charter applied in this case and therefore wished to know what proportion of the labour force worked in these sectors.

The Committee noted that the legislation applicable to manual and non-manual workers in the private sector allowed derogations from the normal working hours, either under the arrangements for overtime or under those for derogations with compensation.

Derogations from the overtime regulations were possible with the prior consent of the Minister of Labour and in return for increased pay. The Committee noted that working time could not exceed forty-eight hours a week for manual workers and forty-four hours a week for non-manual

workers and that overtime was limited to two hours a day. The Committee also noted that, in pursuance of Section 19 of the Act of 16 April 1979, civil servants and other state employees could be required to work overtime in an emergency (eg. work undertaken to deal with an accident which had occurred or was imminent) or to cope with exceptional workloads and that they were compensated for such overtime, in terms of either leave or pay.

The Committee noted that as regards compensation, workers could work more than the statutory hours of employment provided they were compensated at other times by equivalent periods of rest. It observed that the maximum working day for both manual and non-manual workers in the private sector could not legally exceed ten hours. However, the Committee noted that while the maximum period for which the statutory working hours could be exceeded was limited to two weeks for non-manual workers, the Minister of Labour could increase this period to a maximum of one year for certain sectors, such as the hotel and catering trade and the entertainment sector. The Committee also observed that there was no statutory limit on overtime for manual workers.

To enable it to assess the situation, the Committee requested that the next report contain details of the extent to which these derogations authorising workers to exceed statutory working hours existed and how they were applied, together with an estimate of the number of workers concerned.

In this connection, it pointed out that, according to the specific wording of Article 2 para. 1 of the Charter, daily and weekly working hours were required to be "reasonable" so as to protect workers' health and safety (Third report on certain provisions of the Charter which have not been accepted, p. 13).

Finally, the Committee noted that any breach of legislation and regulations on working hours was punishable by fines ranging from 501 to 30,000 Luxembourg francs and that these fines had been quintupled by an Act of 19 November 1975.

Pending receipt of the explanations requested, the Committee concluded, on a provisional basis, that Luxembourg met the requirements of this provision of the Charter.

Paragraph 2 — Public holidays with pay

The Committee noted from Luxembourg's report that the Statutory Public Holidays (Reform) Act of 10 April 1976 guaranteed ten paid statutory public holidays to all workers in the private sector bound by a contract of employment or apprenticeship. It noted that in cases where the public holiday fell on a Sunday or on a day not normally worked, it was replaced by a day's leave and when people worked on a public holiday, they were entitled to compensatory leave. It also noted that similar provisions applied to civil servants and other state employees under the Grand Ducal Regulation of 22 August 1985.

The Committee also noted that employers found in breach of the statutory provisions governing public holidays was liable to a criminal sanction.

This information enabled the Committee to conclude that Luxembourg met the requirements of this provision of the Charter.

Paragraph 3 — Annual holiday with pay

The Committee noted from Luxembourg's report that manual and non-manual workers in the private sector were entitled to twenty-five working days' annual leave, under the Act of 26 July 1975 amending and supplementing the Annual Paid Holiday (Workers in the Private Sector) Uniform Regulation Act of 22 April 1966. The Grand Ducal Regulations of 29 January 1976 and 16 June 1976 extended the scope of this act to cover agricultural and viticultural activities as well as hotels, restaurants and licensed premises. The large majority of workers in the private sector appeared to be entitled to paid annual leave.

The report also stated that workers could not waive their right to their holidays, even in return for compensatory payment (Article 17 of the Annual Paid Holiday (Workers in the Private Sector) Uniform Regulation Act of 22 April 1966). Moreover, if workers fell ill during their annual holiday, they were entitled to compensatory leave on presentation of a medical certificate.

The Committee also wished to have information on the situation of part-time workers in relation to this provision of the Charter.

Under the Grand Ducal Regulation of 22 August 1985 laying down the leave regulations for civil servants and other state employees, this category of workers was entitled to twenty-five working days' holiday. Longer holidays were given to those who had served longer. If they fell ill during their annual holiday, state employees were entitled to compensatory leave on presentation of a medical certificate.

The Committee noted that, according to Article 14 of the Grand Ducal Regulation of 22 August 1985, leave granted to state employees could be postponed for urgent operational reasons. The Committee asked that the next report state the nature of the postponement to which it referred and how the provision was applied in practice.

The Committee concluded that Luxembourg met the requirements of this provision of the Charter, but on a provisional basis pending receipt of the information requested.

Paragraph 4 — Reduced working hours or additional holidays for workers in dangerous or unhealthy occupations

According to Luxembourg's report, only persons employed in mines were entitled to an additional three days' annual leave and workers in other dangerous or unhealthy occupations were entitled to increased pay as provided for in collective agreements. The government's policy was to eliminate the risks at source rather than reduce the working hours of persons engaged in dangerous or unhealthy occupations. Moreover, under the Act of 12 June 1965, all collective agreements had to provide for increased pay for dangerous and unhealthy work.

The Committee drew attention to its established case law, namely that while the aim pursued was to eliminate all hazards in the workplace, reduced working hours or increased annual leave as required by this provision of the Charter were, until that aim was achieved, crucial factors in reducing the number of accidents and cases of illness.

The Committee therefore concluded that Luxembourg did not fulfil the requirements of this provision of the Charter.

Paragraph 5 — Weekly rest period

The Committee noted from Luxembourg's report that Sunday was the traditional day of rest and that workers in the private sector and state employees could not be required to work on that day (Section 1 of the Weekly Rest (Manual and Non-Manual Workers) Act of 1 August 1988).

Having noted that certain categories of workers were not covered by this act, the Committee asked how the problem of weekly leave had been settled for such workers. As Article 33 of the Charter applied, it also asked for an estimate of the number of workers affected.

The Committee also took note of the derogations from the principle laid down in the above-mentioned act to the effect that Sunday was a day of rest. It noted that there were rules governing Sunday employment, which systematically entitled employees to compensatory leave.

Finally, the Committee noted that employers infringing the statutory provisions governing Sunday employment were liable to fines ranging from 2,501 to 50,000 Luxembourg francs and/or to a term of eight days' to one month's imprisonment.

Pending receipt of the information requested, the Committee deferred its conclusion.

Article 3 — The right to safe and healthy working conditions

Paragraph 1 — Issue of safety and health regulations

The Committee examined the legislation applying to health and safety at work appended to the Luxembourg report. It noted in particular the Safety and Health of Workers at Work Act of 17 June 1994, containing general principles on the prevention of occupational risks, the protection of safety and health and the elimination of risk and accident factors, which applied both to blue and to white collar workers in the private sector.

Furthermore, the Committee took note of the Occupational Health Services Act of 17 June 1994. It observed that the object of this instrument was to make provision for the health protection of workers by the organisation of medical supervision and the prevention of occupational accidents and diseases.

The Committee regretted that this information did not relate to the reference period. It asked in which respect the two above-mentioned acts had changed the prevailing situation.

The Committee also noted the protection afforded to public employees under the Amended Safety (Government Departments and Services, Public Institutions and Schools) Act of 19 March 1988, which applied *inter alia* to the public service, including all the services and departments under the aegis thereof or under the direct authority of the government as well as to municipalities and all establishments under their direct authority.

The Committee asked to receive a list of health and safety regulations issued under the above-mentioned legislation with a clear indication of the sectors covered. It further wished to receive the list and classification of establishments made by Grand Ducal regulation under the Dangerous, Unhealthy and Offensive Establishments Act of 9 May 1990.

As no mention was made in the report of the health and safety regulations applicable to the self-employed, to workers in family businesses and to domestic employees, the Committee asked which were the regulations applicable to these groups.

Finally, the Committee recalled the general question asked in Conclusions XIII-1 (p. 85) on the regulations applicable to home workers and asked to find a reply in the next report.

In view of the importance of the outstanding questions, the Committee deferred its conclusion.

Paragraph 2 — Provision for the enforcement of safety and health regulations by measures of supervision

The Committee noted from the Luxembourg report that supervision of the application of health and safety regulations was the responsibility of the Inspectorate of Labour and Mines, and that the supervision extended to all employers, companies and establishments employing workers in activities covered by the legislation or agreements relating to working conditions and the protection of workers. It observed that offenses were subject to criminal or administrative penalties. It also noted that civil servants were not covered by the labour inspection system but by the national safety system for the public service set up under the Amended Safety (Government Departments and Schools) Act of 19 March 1988. It was headed by an Inspector General of Safety for the Civil Service with wide powers.

The report further contained information on an advisory committee for the Inspectorate of Labour and Mines set up within the Ministry of Labour by the Ministerial Regulation of 20 October 1983, with the task of monitoring in general the application of the labour protection legislation. The committee was empowered to submit to the government whatever proposals it deemed appropriate to the running of the labour inspection service. It contained representatives of employers' associations and trade unions.

The Committee noted the detailed statistics provided by the report on the activities of the Inspectorate of Labour and Mines and on trends in occupational accidents and diseases. In particular, it noted that the number of visits made had increased between 1992 and 1993 (from 2,028 to 2,417) and that there had also been an increase in the number of firms inspected (from 1,127 to 2,001).

The Committee wished to continue receiving detailed information and drew the government's attention to the general question asked in its previous Conclusions (Conclusions XIII-1, pp. 92 and 93), to which it

hoped the next report would provide an updated reply. In this context, it also wished to find information on the number of inspections carried out in the agricultural field as well as statistical information on the activities of the Inspector General of Safety for the Civil Service.

Lastly, the Committee drew attention to its case law to the effect that compliance with Article 3 para. 1 was a prerequisite for compliance with Article 3 para. 2 (see Conclusions XII-1, p. 83 and XII-2, p. 75). Pending receipt of the information requested, in respect of both these provisions, the Committee deferred its conclusion.

Paragraph 3 — Consultation with employers' and workers' organisations on questions of safety and health

The Committee noted from the Luxembourg report that consultation with employers and workers when deciding on measures to improve industrial health and safety was provided for through public professional associations (*chambres professionnelles)*. There were six of these associations — one for farmers, one for craftsmen, one for trade, one for employees in the private sector, one for manual workers and one for civil servants and public employees. They were associations of public law, with the main purpose of protecting and defending the interests of the respective groups and to make proposals to the government.

In order to ascertain whether this type of consultation was in compliance with the requirements of Article 3 para. 3, the Committee requested that the next report provide answers to the questions it had asked on the public professional associations in its conclusion under Article 6 para. 1.

From the appendices to the report, the Committee observed that Section 5 of the Safety and Health of Workers at Work Act of 17 June 1994 set out an obligation for employers to consult with workers and/or their representatives as regards the planning and introduction of new technologies. The Committee wished to be informed whether this consultation at company level could involve employers' organisations and trade unions.

The Committee also noted an Act of 10 May 1974 establishing joint committees in enterprises in the private sector and organising the representation of workers in limited liability companies. These committees were composed of representatives of the employer and elected representatives of the workers in the enterprise. The joint

committees could make decisions in matters concerning the introduction or modification of measures concerning the health and safety of workers and concerning the prevention of occupational diseases (Section 7).

Furthermore, the Committee observed that in the public service, the "responsible officials" under the Amended Safety (Government Departments and Services, Public Institutions and Schools) Act of 19 March 1988 as amended by an Act of 8 June 1994, were obliged to consult those concerned, ie. shop stewards, local safety committees, safety teams and workers' representatives, when planning and introducing new technologies (Section 7). In addition, each responsible official was assisted by a local safety committee responsible for consulting the persons affected and concerned on all matters relating to safety and health (Section 10). It noted that the employees' representatives referred to in Chapter 11 of the Civil Service Act and Regulations were *ex officio* representatives in these committees.

The Committee again regretted that the information available to it did not relate to the reference period. Moreover, it was unclear to it whether workers' organisations in the public sector were actually being consulted in the field covered by this provision of the Charter. It therefore wished to be informed whether this was the case on the national level as well as in the workplace. In this context it also asked who were the employees' representatives referred to in Chapter 11 of the Civil Service Act.

Finally, the Committee asked to find information in the next report on the extent and frequency of any consultations with employers' and workers' organisations which had already taken place, including in the public sector.

Pending receipt of the requested information, the Committee deferred its conclusion.

Article 4 — The right to a fair remuneration

Paragraph 1 — Adequate remuneration

The Committee noted that Luxembourg had supplied statistics and other information under this provision. However, as in the case of the other Contracting Parties the Committee decided not to assess the compliance of the situation in Luxembourg and referred to the general observation it had made concerning Article 4 para. 1 and which appeared in Chapter 2 of Conclusions XIII-3 (pp. 215-218).

Paragraph 2 — Increased rate of remuneration for overtime work

The Committee took note of the information in the report of Luxembourg which explained the legal limitations applied to overtime work and the manner in which overtime pay rates were calculated. Under national law, the normal working day lasted for eight hours. The maximum amount of overtime permitted in one day was two hours. The amount of overtime worked per week could not exceed eight hours in the case of manual workers and four hours in the case of office workers.

The report stated that normal hourly pay was increased by 25 % for each hour of overtime performed by manual workers. For office workers, the overtime rate was 50 % higher than normal hourly pay, which, in both cases, was calculated by dividing the monthly wage by 173. The report did not state whether overtime work performed at weekends or on public holidays attracted a different rate of pay in the private sector. The Committee sought clarification on this point and asked that the next report indicate the precise legislative provisions applying to overtime pay.

In the case of adolescent workers, the law generally prohibited them from carrying out overtime work, although it could be authorised in exceptional cases. Every hour of work in excess of forty hours per week must be paid at twice the normal hourly wage, or at the apprenticeship allowance rate. As the amount of this allowance was not stated, the Committee asked that the next report confirm that it was superior to the normal hourly earnings of adolescent workers.

The report stated, apparently in connection with the private sector only, that reductions in working time could not lead to reductions in pay. The

Committee felt that this did not completely explain the impact of such reductions on the overtime rates described above and asked that the next report clarify this issue.

The position of civil servants in Luxembourg was slightly different. The report stated that where overtime work was performed beyond the normal forty hour week, the first eight hours were compensated by extra time off. The Committee asked that the next report clarify the exact legal basis for this arrangement, and in keeping with its case law which required that compensatory time off be sufficient, asked to be informed of its length.

From the ninth hour of overtime onwards, the worker was entitled to compensation. Special supplements were paid for overtime performed on Saturdays and Sundays (40 %) and statutory or replacement statutory holidays (70 %) and for work performed between 10 pm and 6 am (a further 20 %). However, the report appeared to state that overtime work performed at any other time of the week was paid at the normal rate only. The Committee sought confirmation of this, reminding the Luxembourg authorities that Article 4 para. 2 of the Charter clearly laid down the general right of workers to increased pay for such work. The Committee noted that the supplements listed above were still payable to civil servants who were granted extra time off in lieu of overtime payments.

Finally, the report stated that collective agreements could provide for a more generous rate of pay for overtime work. The Committee hoped that the next report would include more detailed information about collective agreements on this issue, giving practical examples from various sectors and indicating the number of workers covered.

Pending receipt of the requested information, the Committee deferred its conclusion.

Paragraph 3 — Non-discrimination between men and women workers with respect to remuneration

The Committee took note of the information supplied on equality of remuneration in Luxembourg's report, which stated that the applicable legislation was the Grand Ducal Regulation of 10 July 1974, which established the right to equal pay. The rule of equality must be observed in all elements of remuneration, direct or indirect, in cash or in kind, paid by the employer to the worker in respect of their employment. Criteria for job evaluation and professional classification must be objective. Any clause in a collective agreement or contract of employment which infringed the rule was null and void. In such cases, the higher rate of remuneration must be applied to all workers engaged in work of equal value. Any dispute over equal pay could be brought before the courts. The Labour Inspectorate was responsible for supervising the implementation of the rule. The report also mentioned that the minimum social wage was identical for male and female workers.

The Committee asked a number of questions about the operation of the Regulation of 1974. It wished to know:

— what legal protection was given to an employee claiming equal pay against retaliatory measures by their employer;

— more particularly, in the case of dismissal in such circumstances, what remedies were available to the employee;

— where the burden of proof lay in an equal pay dispute;

— what progress had been made in elaborating objective job evaluation criteria in Luxembourg.

Finally, the Committee noted from ILO information that in 1993 average hourly earnings for female workers in non-agricultural activities were approximately 70 % of those of men. In the manufacturing sector, this figure decreased to 64 %. In view of these figures, the Committee insisted that the next report provide detailed information, including statistics, on the practical application of the principle of equal pay. In particular, this information should consider the persistent difficulties concerning wage differences between women and men and the reasons for them. The next report should also indicate any initiatives taken or planned by the Luxembourg authorities in order to achieve greater equality of pay.

Pending receipt of the information requested, in particular on the practical application of the principle of equality of remuneration, the Committee deferred its conclusion.

Paragraph 5 — Limitation of deduction from wages

The Committee noted from the report of Luxembourg that, apart from tax and social security deductions, the issue of deductions by the employer from wages was regulated by section 5 of the Act of 11 November 1970 on assignments and attachments of remuneration for work as well as of pensions and annuities. The act, which applied to all employees, provided an exhaustive list of deductions, known as compensations, which the employer could make from the employee's wage. As a general rule, these deductions could not exceed one-tenth of the worker's wage. The Committee sought clarification that the one-tenth rule applied to the sum total of such deductions, rather than to each individual one.

The first deduction permitted took the form of fines imposed on the employee. These fines must be decreed by law, the statutory provisions governing the employee or be part of the workplace rules, provided they were duly posted. The Committee wished to know if in the last case such rules were imposed unilaterally by the employer or in accordance with collective agreements.

Compensation for loss caused by the worker was the second deduction permitted.

The third deduction permitted was for supplies made available to the worker. This referred both to tools and instruments necessary for the work and their maintenance and to necessary materials, where these were the responsibility of the worker according to trade practice or the contract of employment. The report stated that the limitation of one-tenth of wages did not apply to this deduction. The Committee asked whether there was any other rule or collective agreement limiting deductions under this heading.

The final deduction permitted under section 5 of the 1970 Act was in respect of cash advances.

The Committee asked whether worker had a right to appeal against the application of each of these deductions and which body was competent

to hear such appeals, or whether another supervisory mechanism existed.

In addition to the deductions which employers were allowed to make under Section 5, the Committee noted that further deductions were dealt with under Sections 4 and 8 of the 1970 Act. Section 4 provided that a worker's wage was to be divided into five portions for the purposes of assignments and attachments. The first portion of the wage was exempt from such deductions. With each subsequent portion of the wage, the maximum amount which could be assigned or attached rose from 10 % to 100 % of the portion. The exact relative value of each portion was to be determined by subsequent regulations. The Committee asked that the next report include a copy of the most recent regulations issued in this area.

Deductions permitted under Section 5 of the act were made to the first portion of the wage (which was exempt from attachment or assignment under Section 4). Section 8 referred to alimony payments and stated that they too were to be deducted from the same portion of the wage. As there was no reference to any limit on the amount which could be deducted for the payment of alimony in this way, the Committee asked that the next report indicate whether there was any overall limitation to the such deductions, ensuring that the worker continued to receive a minimum subsistence income, and requested some practical examples to illustrate the point.

Pending receipt of the information requested, the Committee decided to defer its conclusion.

Article 5 — The right to organise

The Luxembourg report stated that the Constitution guaranteed freedom to organise (Article 11) and freedom of association (Article 26). The Freedom of Association Act of 11 May 1936 secured freedom of non-association.

It added that in 1958 Luxembourg had ratified ILO Conventions Nos. 87 (Freedom of Association and Protection of the Right to Organise) and 98 (Right to Organise and Collective Bargaining).

Civil servants were granted freedom to organise by Section 36 of the amended Civil Servants Status Act of 16 April 1979.

During their term of office, trade union delegates had special protection from dismissal. The Contracts of Employment Act of 24 May 1989 considered such dismissal as null and void.

As far as members of the armed forces and the police were concerned, the report pointed out that as the Constitution guaranteed freedom of association and freedom to organise, they were free to set up and join trade unions. The Committee asked whether there was any restriction on the exercise of freedom to organise in the armed forces and the police.

As the Committee had received no other information on the regulation of the exercise of the right to organise, it asked for the next report to provide specific information on the manner in which workers were protected against any interference by employers and any form of discrimination on grounds of trade union activities (particularly in matters of recruitment, employment and dismissal) and on the penalties provided for. It also asked how workers were protected against any pressure exerted on them to join a trade union and whether there were any closed shop practices. It asked for copies of the legislation applicable.

Lastly, the Committee took note of the Collective Labour Agreements Act of 12 June 1965 which defined collective labour agreements as contracts on labour relations and general working conditions between workers and employers. Where the employer was bound by the clauses of the collective labour agreement, the provisions thereof governed labour relations and working conditions for all his or her members of staff. Any collective labour agreement complying with the provisions of the 1965 Act could be declared generally binding for all employers and

employees in the occupation in respect of which it was concluded. Furthermore, were recognised as trade unions all professional groupings with their own internal organisation and were designed to defend the professional interests of their members, to represent them and to improve their circumstances. Only the most representative trade unions nationally, ie. those were important by the size of their membership, their activities and their independence, could be parties to collective labour agreements as defined by the 1965 Act.

The Committee requested that the next report state:

— the number of trade unions recognised as being representative;

— whether trade unions which were recognised as being representative had any other exclusive rights;

— whether trade unions which were not recognised as being representative could conclude collective agreements at the level at which they operated.

The Committee also requested copies of judgements in this field (notably the arbitration decision of 10 November 1979 and the judgments of the Council of State of 19 June 1980 and 6 July 1988).

Pending receipt of all the information requested, the Committee deferred its conclusion.

Article 6 — The right to bargain collectively

Paragraph 1 — Joint consultation

The Luxembourg report stated that there were six public professional organisations (one for agriculture, one for craftsmen, one for trade, one for private sector employees, one for manual workers and one for civil servants and public employees), whose purpose was to protect and defend the interests of the groups concerned and make proposals to the government. Their members were elected every five years by qualified voters on the electoral rolls. The opinion of the relevant public professional association had to be sought for all acts, for all grand ducal regulations and for all grand ducal and ministerial decrees relating to its particular area of activity.

The Committee asked for detailed information on the constitution of these organisations, the responsibilities they held and the role they played in the field of joint consultation. It requested a copy of the applicable legislation. It also asked whether there were any other consultative bodies at national level.

Noting that the information provided concerned neither joint consultation within individual firms or at local level, nor consultation procedures and the areas covered by consultation, the Committee requested that more detailed information on these points (including references to the legislation applicable) be provided in the next report.

Pending receipt of the information requested, the Committee deferred its conclusion.

Paragraph 2 — Promotion of machinery for voluntary negotiations

The Committee noted in the Luxembourg report that under the Collective Labour Agreements Act of 12 June 1965, collective agreements could be concluded between one or more manual or non-manual workers' trade unions and one or more employers' organisations, or a particular firm, or a group of firms with the same type of production or activity, or a series of firms in the same sector (Section 1).

Section 6 of the Act of 12 June 1965 provided that employers who were asked by the authorised representatives of their staff to embark on negotiations with a view to the conclusion of a collective agreement could not evade the obligation to do so, unless they preferred to negotiate as part of a group of employers or with other employers in the same sector. However, if the talks did not begin within sixty days of the first request, the staff could force the employer concerned to negotiate alone. In addition, if an employer refused to start negotiations, the dispute would be submitted to the National Conciliation Board.

The Committee asked for the next report to provide full information, covering the next reference period, on existing collective bargaining procedures, specifying whether they were collective labour agreements concluded under the 1965 Act or collective agreements between employers and trade unions not considered as being the most representative under the terms of this act, their results and the areas covered, together with statistics, particularly on the percentage of workers concerned.

It also asked for information on the manner in which the right to bargain collectively was ensured in the civil service.

Pending receipt of the information requested, the Committee deferred its conclusion.

Paragraph 3 — Conciliation and arbitration

The Committee noted in the Luxembourg report that procedures for the settlements of labour disputes existed in the private and public sectors.

The report stated that in the private sector a Grand Ducal Decree of 6 October 1942 had set up a National Conciliation Board, a joint body to which disputes had to be referred before any work stoppage and which could also consider *proprio motu* any dispute of which it was informed.

The Committee noted that, if the conciliation procedure failed, the dispute could, at the request of only one of the parties and within forty-eight hours, be referred to an arbitration committee of three members (a Chair appointed by the government, an employees' representative and an employers' representative). The arbitration decision had to be taken within eight days and acceptance of the decision by the parties was equivalent to the conclusion of a collective agreement.

The report also mentioned the procedures provided for by the Collective Labour Agreements Act of 12 June 1965. Under Section 7 of the act, if an employer refused to embark on negotiations or if the parties failed to reach an agreement, the dispute had to come under the statutory conciliation procedure as described above. The act also empowered the parties, before conciliation was attempted or if it failed, to refer their disputes for settlement to one or more arbitrators of their choice.

In the public sector the procedure for the settlement of disputes was regulated by the Strikes (State Departments and Public Establishments under Direct State Control) Regulation Act of 16 April 1979. The act required disputes to be referred to a conciliation committee (comprising a judge as Chair, five representatives of the public authorities and five employees' representatives). If conciliation failed, the dispute was referred, at the request of one of the parties and within forty-eight hours, to the President of the Council of State, who acted as mediator. If the conciliation procedure and mediation (if any) failed, strike action had to be preceded by written notification.

The Committee concluded that Luxembourg satisfied this provision of the Charter.

Article 7 — The right of children and young persons to protection

Paragraph 1 — Minimum age of admission to employment

The Committee noted from the report submitted by Luxembourg that the Amended Children and Young Workers (Protection) Act of 28 October 1969 prohibited the employment of children under sixteen years of age for work of any kind, other than in the cases provided for by Sections 5 (work in technical and vocational schools and help with the housework) and 6 (participation in public performances) of the act.

In particular, it noted that, according to Section 6, an individual authorisation (granted by the Ministry of Education only under certain conditions) was required for children to be entitled to work in public performances.

The Committee asked for information to be included in the next report on the measures taken to supervise the enforcement of the act.

Finally, it asked for an answer in the next report to its general question raised under Article 7 para. 1 (Conclusions XIII-2, p. 77).

The information contained in the report enabled the Committee to conclude that Luxembourg complied with this provision of the Charter.

Paragraph 2 — Higher minimum age in certain occupations

The Committee noted from the report submitted by Luxembourg that the Children and Young Workers (Protection) Act of 28 October 1969, supplemented by a Grand Ducal Regulation of 30 July 1972, prohibited the performance of certain types of work by young workers under the age of eighteen, by reason of the danger these represented to their health or their moral welfare.

It noted that the list of work prohibited to children under the age of eighteen years in the above-mentioned act and regulation covered most of the working activities implying danger to the health or moral welfare of young persons.

However, the Committee noted from ILO information that there was no prohibition on the employment of children in dangerous work in agriculture. It asked whether any protective measure was envisaged.

Pending receipt the information requested the Committee deferred its conclusion.

Paragraph 3 — Safeguarding the full benefit of compulsory education

The Committee noted from the report submitted by Luxembourg that according to Section 1 of the Act of 21 March 1979, education was compulsory until the age of fifteen. It also noted that the Children and Young Workers (Protection) Act of 28 October 1969 prohibited the employment of children below the age of fifteen years (still subject to compulsory schooling) in work of any kind, subject to some exceptions. The Committee referred to its conclusion under Article 7 para. 1 and concluded that Luxembourg complied with this provision of the Charter.

Paragraph 4 — Working hours of young persons under sixteen years of age

The Committee noted from the report submitted by Luxembourg that according to Section 7 of the Children and Young Workers (Protection) Act of 28 October 1969 young workers must not work for more than forty hours per week or eight hours per day. However, collective agreements and, where there were none, the Director of the Inspectorate of Labour and Mines, could authorise a maximum of nine hours' work per day provided that the working week was no more than forty-four hours and the average weekly working time, calculated over a maximum period of four weeks, was no more than forty hours.

It recalled its case law, according to which it had consistently held that eight hours of work per day was excessive (Conclusions XIII-2 p. 88 and XIII-1, p. 166). The Committee had also held that a forty hours working week was excessive (Conclusions XII-2, pp. 123-124).

In order to assess whether Luxembourg complied with this provision of the Charter, to which Article 33 was applicable, the Committee asked for information to be included in the next report as to the number of young people under sixteen years of age who worked for over eight hours per day or forty hours per week under collective agreements or by express authorisation of the Inspectorate of Labour and Mines.

Finally, the Committee noted that according to Section 10 of the above-mentioned act, employers must allow young workers to absent themselves from work to attend compulsory vocational training classes and that the hours spent at school were counted as working hours and paid according to their normal wage.

Pending receipt of the information requested the Committee deferred its conclusion.

Paragraph 5 — Fair remuneration for young workers and apprentices

The Committee noted from the report submitted by Luxembourg that the Act of 26 February 1993 set the minimum wage for workers aged eighteen and over at 41,530 or 40,307 Luxembourg francs, depending on whether these workers had or did not have family charges.

According to the report, young workers were paid 40 %, 30 % or 20 % less (depending on their age) than those over the age of eighteen.

The Committee pointed out that it had consistently held (see in particular Conclusions IV, p. 58 and the Third report on certain provisions of the Charter which have not been accepted, p. 21), that a situation in which workers under the age of eighteen earned up to 40 % less than those over the age of eighteen could not be regarded as being in conformity with this provision of the Charter. Since the minimum wage of young workers aged fifteen and sixteen was reduced by 40 % compared to that of young workers over the age of eighteen, the Committee concluded that Luxembourg did not comply with this provision of the Charter.

Finally, it asked that the next report contain detailed information on the wages of apprentices.

Paragraph 6 — Treatment of the time spent in vocational training as forming part of the working day

The Committee noted from the report submitted by Luxembourg that pursuant to Section 10 of the Children and Young Persons (Protection) Act of 28 October 1969, employers must allow young workers to absent themselves from work to attend compulsory vocational education

classes and that hours spent in such education should be counted as working hours and entitle the young workers to their normal salary. It also noted that these provisions were applicable to all categories of young workers.

The Committee asked for information to be included in the next report as to whether time spent by young workers in vocational training courses, outside compulsory education, with the consent of their employers was also counted as working hours and entitled these workers to their normal salary.

Pending receipt of the information requested, the Committee deferred its conclusion.

Paragraph 7 — Annual holiday of young persons under eighteen

The Committee noted from the report submitted by Luxembourg that since 1975 the length of annual holiday had been twenty-five working days per year, regardless of the age of the employee.

In the light of the information submitted and the positive conclusion adopted for Article 2 para. 3, the Committee concluded that Luxembourg fulfilled the requirements of this provision of the Charter.

Paragraph 8 — Prohibition of night work for young persons under eighteen

The Committee noted from the report submitted by Luxembourg that under Section 16 of the Children and Young Persons (Protection) Act of 28 October 1969, the employment of young workers between 8 pm and 6 am was prohibited for all categories of workers under the age of eighteen.

However, according to the above-mentioned act, firms with continuous operation, hotel and catering establishments and licensed premises could employ young workers until 10 pm, but the authorisation of the Director of the Inspectorate of Labour and Mines was required.

Finally, the Committee noted that the only other derogation possible to the general rule, was included in the Ancillary Medical Profession (Regulations) Act of 18 November 1967. However, under this act only

one derogation had been granted, for one employee, by the Inspectorate of Labour and Mines during 1992/93.

In the light of the information submitted, the Committee concluded that Luxembourg complied with this provision of the Charter.

Paragraph 9 — Provision of regular medical control for young workers under eighteen

The Committee noted from the report submitted by Luxembourg that, according to Section 22 of the Children and Young Workers (Protection) Act of 28 October 1969, pre-employment examinations, which must be taken during the three months preceding commencement of a job or apprenticeship, were required for young workers aged less than eighteen.

It noted that these medical examinations had to be carried out by qualified doctors approved by the Ministry of Labour and the Ministry of Public Health. By means of a fitness certificate, they approved the young person's fitness for work. Without such a certificate no employer could recruit a young worker.

Moreover, further medical examinations had to be made at intervals to be laid down by Grand Ducal regulation. Although the first of these examinations had to take place within no more than six months of the date on which the young worker took up his duties, no information was included as to when subsequent medical examinations had to be made. The Committee asked that details on this point, together with a copy of the relevant Grand Ducal regulation, be submitted in the next report.

Finally, it asked who bore the cost of these medical examinations and under which legal provision.

In the light of the information submitted the Committee concluded that Luxembourg fulfilled the requirements of this provision of the Charter, but on a provisional basis pending receipt of the information requested.

Paragraph 10 — Special protection for children and young people from physical and moral dangers to which they are exposed

The Committee noted from the report submitted by Luxembourg that Appendix No. 1 of the Children and Young Workers (Protection) Act of 28 October 1969 and Grand Ducal Regulation of 30 July 1972 (Appendix No. 2) included a list of work and occupations prohibited by virtue of the risks they represented for the health or moral welfare of young persons. The Committee referred to its conclusion under Article 7 para. 2 in this respect.

It regretted that no information was submitted regarding questions B, C, and D of the Form. It therefore asked that this information be included in the next report.

Finally, the Committee asked that next report reply to its general question raised under Article 7 para. 10 in Conclusions XIII-2, p. 100.

Pending receipt of the requested information, the Committee deferred its conclusion.

Article 8 — The right of employed women to protection

Paragraph 1 — Maternity leave

The Committee took note of the information provided in the Luxembourg report on the points covered by this provision.

The right to leave

The Committee noted that under Section 3 of the Act of 3 July 1975 on the maternity protection of employed women and Article 13 of the Social Insurance Code as amended by the Act of 2 May 1974, the length of maternity leave was eight weeks before the expected date of birth and eight weeks after; the period of postnatal leave was extended to twelve weeks in the event of premature birth or breastfeeding, and if the birth took place after the expected date, the period of prenatal leave was extended until the actual date of birth without a reduction of postnatal leave.

The Committee accordingly found that the length of maternity leave could on no account be less than the minimum of twelve weeks provided for by the Charter and that the period of postnatal leave was always at least eight weeks, which was satisfactory.

It also noted that under Section 29 of the Act of 16 April 1979 determining the general status of civil servants, women civil servants benefited from the same guarantees. It wanted to know what rules were applicable to public sector employees other than civil servants.

Section 3 of the 1975 Act prohibited the employment of a woman during the eight weeks preceding the birth, unless she expressly stated that she was fit for work; this statement, which could be revoked at any time, had to be backed up by a medical certificate. The employment of women in the eight weeks following confinement was also banned, and in this case there were no exceptions to the rule.

The Committee noted in the report that infringements of the prohibition on work were punishable by a prison sentence of eight days to three months and/or a fine of 501 to 50,000 Luxembourg Francs (amounts increased fivefold by an Act of 19 November 1975).

The Committee considered that the legislation on maternity leave satisfied the requirements of Article 8 para. 1. It nevertheless wished to

know whether all employed women without exception were entitled to this protection.

Allowances

The report stated that pecuniary maternity allowances were equal to the gross wage which the insured worker would have earned had she carried on working during maternity leave.

Having noted that under the Act of 27 July 1992 reforming sickness insurance and the health sector, the amount of the pecuniary maternity allowance was equal to that of the pecuniary sickness allowance (Section 25) and that the pecuniary sickness allowance was calculated with reference to the insured person's gross wage (Section 10), the Committee asked what the reference criteria were and what proportion of the employed woman's wage the pecuniary maternity allowance represented. It also noted that the monthly pecuniary allowance could not exceed five times the amount of the reference minimum wage (Section 10) and therefore asked what the amount of the ceiling on the allowance was, whether there was also a ceiling for the reference wage and, if so, what was its amount, and whether the allowance was supplemented in respect of employed women receiving a wage higher than the ceiling and, if so, how. It lastly noted that entitlement to this allowance was subject to compulsory insurance coverage for at least six months during the year preceding maternity leave (Section 25) and therefore wanted to know what was the entitlement of employed women who had not been insured for six months.

The Committee noted from Section 29 of the above-mentioned 1979 Act that civil servants continued to receive their remuneration during maternity leave. It requested detailed information on the allowances to which public sector employees other than civil servants were entitled.

It also asked whether all employed women, except those who did not satisfy the six months' insurance coverage requirement, were entitled to pecuniary maternity allowances. In this connection it drew the government's attention to the general question on Article 8 para. 1 (Conclusions XIII-1, p. 172) and asked that the next report answer it in full.

Lastly, the Committee wished to know whether equal treatment of employed women of Luxembourg nationality and employed women

lawfully residing or regularly working in Luxembourg who were nationals of the other Contracting Parties was secured with regard to the matters covered by Article 8 para. 1 and, if so, how.

Pending receipt of the information requested, the Committee deferred its conclusion.

Paragraph 2 — Illegality of dismissal during maternity leave

The Committee noted in the Luxembourg report that under Section 10 of the Act of 3 July 1975, the employer was prohibited from notifying an employee of the termination of the employment contract in the event of medically established pregnancy and for a period of twelve weeks following the birth. This complied with the requirements of Article 8 para. 2 of the Charter regarding the period of prohibition.

The report specified that, under the act, an employee dismissed before her pregnancy had been medically established could give proof of her condition by providing a medical certificate within eight days of the notice of dismissal, which was then considered null and void. According to case law the employment contract was thus deemed to continue to exist. If the dismissed employee did not argue that her dismissal was void, she was entitled to the statutory severance allowances and could sue for damages for unfair termination of her contract of employment. The Committee requested confirmation that the same applied in cases of unlawful dismissal after pregnancy had been medically established.

It noted that in the event of infringements of the prohibition on dismissal of employees during pregnancy or maternity leave, the law provided for a prison sentence of eight days to three months and/or a fine of 501 to 50,000 Luxembourg francs (rates increased fivefold by an Act of 19 November 1975).

The report indicated that no exceptions to the prohibition of dismissal were provided for in cases of company closure. The Committee asked how, in this case, the jobs of employees on maternity leave were maintained, and requested communication of the case law quoted in the report.

It also noted in the 1975 Act (Section 10 para. 2) that the ban on dismissal did not prevent the expiry of a fixed-term contract or the

termination of a contract of unlimited duration on serious grounds arising from the conduct or misconduct of the employee.

The Committee asked for the next report to provide information on practice and safeguards relating to the employment of women under fixed-term contracts to avoid such contracts being used to circumvent the ban on dismissal during maternity leave (Conclusions XII-2, p. 139 and XIII-2, pp. 213-214). It also asked for details of the meaning assigned by the courts and in practice to the "serious grounds" on which women could be dismissed during maternity leave.

Lastly, it asked whether all employed women without exception were covered by the prohibition of dismissal, including public sector employees and civil servants, whether equal treatment of employed Luxembourg nationals and nationals of the other Contracting Parties lawfully residing or working in Luxembourg was secured in the matter and, if so, how.

The Committee concluded that the situation was in compliance with the requirements of the Charter, but on a provisional basis, pending receipt of the information requested.

Paragraph 3 — Time off for nursing mothers

The Committee noted in the Luxembourg report that under Section 7 para. 2 of the Act of 3 July 1975 nursing mothers who so requested had to be granted time to breastfeed for two periods of forty-five minutes each, at the beginning and end of their working day. The two periods could be combined in a single period of at least ninety minutes where there was only one break of less than one hour in the course of the working day or where the employee was unable to breastfeed her baby near the workplace.

The Committee noted that breastfeeding breaks were regarded as working time and paid at the normal rate.

It also noted that the act provided for infringements of these provisions to be punishable by a prison sentence of eight days to three months and/or a fine of 501 to 50,000 Luxembourg francs (rates increased fivefold by an Act of 19 November 1975).

The Committee asked whether all employed women without exception, including public sector employees and civil servants, were entitled to the

protection afforded by this provision, whether equal treatment of employed Luxembourg nationals was secured in this area to employed nationals of the other Contracting Parties lawfully residing or regularly working in Luxembourg and, if so, how.

Pending receipt of this information, the Committee concluded that the situation complied with the Charter.

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Article 9 — The right to vocational guidance

The Committee took note, in Luxembourg's report and in a publication issued by the Commission of the European Communities, entitled "Educational and vocational guidance services for the fourteen to twenty-five age group — Belgium, France and the Grand-Duchy of Luxembourg" (1988), of a very wide range of vocational guidance measures.

The figures given in the report concerned 1994, therefore outside the reference period. The Committee took note of them, while insisting that the next report contain statistics for the reference period in question. It asked furthermore that the next report contain figures on the level of specialised staff dedicated to vocational guidance.

It also noted that the Act of 21 February 1976 establishing the Department of Employment (ADEM) guaranteed all young people and adults free access to the vocational guidance service run by the ADEM. The purpose of this service was to help solve problems concerning not only the choice of training and occupation, but also career-related problems, by offering advice on an individual basis. The report stated that nine specialised "units" were providing such guidance. The Committee wished to know the exact scope of the term "unit" and to have information on the number of persons, both young people and adults, using the service.

It noted that the *Beruffsinformatiouns-Zentrum* (BiZ, vocational information centre), set up in 1992, offered individual visitors, both young people and adults, as well as groups and school classes, the opportunity to consult a range of resource materials (booklets, books, films, computerised aptitude tests, etc.). A total of 2,270 persons visited the BiZ in 1994.

The report mentioned that there were vocational guidance centres providing personalised advice which had been consulted by 2,430 person in 1994. However, it did not specify who ran these services or the framework within which they were organised. The Committee therefore asked for more information on these centres.

The Committee noted the participation of the Luxembourg vocational guidance services, within the framework of the European Union's PETRA programme, in the creation of a European network to facilitate the exchange of information and advice. It also noted that a Guidance

Information Network (RIO), taking the form of a database on education, vocational training and careers was in the process of being set up during the reference period.

The Committee took note of various specific measures that had been taken, either within schools or in co-operation with them, to give young people educational and vocational guidance.

The Act of 1 April 1987 set up an Educational Psychology and Guidance Centre (CPOS) attached to the Ministry of Education and Vocational Training. This body was responsible for providing psycho-pedagogical guidance for pupils in the sixth year of primary schools, in secondary and secondary technical schools and in further education as well as for assisting young people in making the transition from school to employment. Moreover, in each secondary and secondary technical school there was an educational psychology and guidance service responsible for informing pupils of existing training courses and careers and for preparing them to make career choices. The Committee asked that the next report indicate the exact number of pupils using these services.

The Committee also noted that in-service occupational induction courses were organised for pupils in preparatory classes and secondary technical schools.

The report stated that different schemes had also been set up to improve educational and vocational guidance for young people with a view to improving guidance in respect of post-primary and secondary technical education (The *Orientatioun fir Kanner* (ORIKA) project), as well as to facilitating employment and apprenticeship for pupils (*Op der Sich no Aarbecht*) (OSNA) courses).

Disabled persons received the same help and advice as everyone else, but the services were run by other authorities: guidance and training for young disabled persons were provided under the auspices of a directorate of the Ministry of Education's Directorate of Differentiated Education, whereas disabled workers recognised by the Vocational Guidance and Reclassification Committee were the responsibility of the ADEM's Disabled Workers Service. The Committee wished to receive further information on vocational guidance for disabled pupils in the special institutions mentioned under Article 15 para. 1, on the guidance activities of the Disabled Workers Service and on the proportion of disabled persons seeking advice from this department.

The Committee noted that up to half of the users of the vocational guidance centres were foreigners. It requested that the next report state whether nationals of other Contracting Parties lawfully resident or working regularly in Luxembourg had access to the other guidance services mentioned in the report under the same conditions as nationals.

The Committee noted that users were informed of the various vocational guidance activities through the publication of booklets, radio and television broadcasts and links with parent-teacher associations.

Lastly, it noted that public funds had been granted to vocational guidance.

The Committee concluded that Luxembourg met the requirements of Article 9, but on a provisional basis, pending receipt of the information requested, particularly on equal treatment for nationals of other Contracting Parties to the Charter.

Article 10 — The right to vocational training

Paragraph 1 — Promotion of technical and vocational training and the granting of facilities for access to higher technical and university education

The Committee took note of the information contained in Luxembourg's report and in a European Communities publication published by the European Centre for the Development of Vocational Training (CEDEFOP) entitled "*Le système de formation professionnelle au Luxembourg"* (1994).

It noted that the provisions applicable to vocational training appeared in the Amended Secondary Technical Education and Further Vocational Training Reform Act of 4 September 1990 and that vocational and further vocational training were mainly the responsibility of the Ministry for Education and of the public professional association.

The Committee noted that vocational training started in technical secondary education, provided by technical secondary schools in three stages; lower, intermediate and upper. The intermediate stage, lasting two or three years, comprised general vocational and practical education. In 1992-93, there were fifteen technical secondary schools attended by 11,877 pupils with a total staff of 2,000 teachers.

Pupils completing their technical secondary education could continue their training at one of the following establishments: the School of Commerce and Management (ECG), the Technical Secondary School of Arts and Crafts (LTAM), the Higher Institute of Technology (IST), or the Bank Training Institute of Luxembourg (IFBL). They could also train as master craftsmen at the Chamber of Guilds.

The Committee noted the number of pupils following these courses and asked that the next report provide information on the number of teachers in these establishments.

Pupils failing the examination for entrance to secondary education could take the option of supplementary education, during which they could benefit from the vocational training courses provided at Further Vocational Training Centres. The Committee requested that the next report specify the centres concerned, the number of beneficiaries and the areas covered by this training.

Pupils completing their traditional secondary education had access to the courses mentioned and could also continue their studies in three different ways: by spending an academic year at the Luxembourg University Centre, then continuing their studies abroad, as Luxembourg did not provide a full university course; by completing a short course of higher management studies organised by the same centre; or by taking courses offered by the Higher Institute for Educational Studies and Research (ISERP) or the Institute for Educational and Social Studies (IEES).

The Committee noted the levels of Ministry of Education expenditure on education in general and on secondary vocational and technical education in particular.

It also noted from the report that financial assistance for vocational training and higher studies involved the payment of grants and loans to students wishing to pursue higher studies. Grants were subject to a maximum limit and depended on parents' income and on whether or not the student lived with his or her parents. Students could benefit from loans with an interest rate of 2 %. Grants could be supplemented by the amount of enrolment fees. Finally, the report also stated that "special" grants could be awarded to students who had successfully completed the first "cycle" of their higher studies within the standard allotted time. The Committee asked what proportion of the grant and loan applications processed were accepted.

The Committee noted that the Grand Ducal Regulation of 12 May 1972 on the measures applicable to the employment of foreign workers on the territory of the Grand Duchy of Luxembourg provided that foreigners wishing to attend a course or undergo an apprenticeship had to apply for a permit valid for the period of the course or apprenticeship. This condition was not applicable to workers who were nationals of European Union member states and had no longer been applicable, since 1 January 1994, to nationals of the countries party to the Agreement on the European Economic Area. Before deciding whether this situation was in conformity with Article 10 para. 1, the Committee asked for the next report to specify what was meant by the term "course". Without prejudice to this last question, it wished to know how equal treatment was provided for the nationals of the other Contracting Parties which were not members of the European Union in respect of access to the various levels of vocational training.

The report stated that the Act of 13 March 1993 on financial aid placed on an equal footing all students domiciled in Luxembourg, whether nationals of Luxembourg or of a country of the European Union, wishing to pursue higher studies. The Committee wanted to know how equal treatment in respect of financial assistance was guaranteed for nationals of other Contracting Parties.

Pending receipt of the information requested, particularly on the issue of equal treatment for the nationals of other Contracting Parties, the Committee decided to defer its conclusion.

Paragraph 2 — Promotion of apprenticeship

The Committee took note of the main information on the apprenticeship system in Luxembourg from a European Communities publication published by the European Centre for the Development of Vocational Training (CEDEFOP) and regretted that this information had not been indicated in the report.

The Committee referred to its conclusion on Article 10 para. 1 in respect of the structure of the education system in general and of vocational training systems in particular.

It noted that the vocational course which was part of the intermediate "cycle" of technical secondary education, governed by the Amended Secondary Technical Education and Further Vocational Training Reform Act of 4 September 1990, was jointly organised by the Ministry for Education and the public professional organisations concerned in the sectors of agriculture, manual skills, commerce, hotel and tourism and industry.

This apprenticeship system, designed for fifteen to eighteen years-olds, comprised three years of practical training in a firm under an apprenticeship contract, during which a sandwich course was taken at a technical secondary school for a minimum of eight hours a week. During this period, the apprentice received an apprenticeship allowance (see conclusion under Article 7 para. 5). Success in the final examination led to the award of the CATP (Certificate of Technical and Vocational Proficiency).

The Committee also noted that the public professional organisations had apprenticeship advisers, responsible for informing, monitoring and

offering support to apprentices and for acting as intermediaries between apprentices and their firms.

Pupils who were not capable of pursuing practical and theoretical studies at the same speed, could take an apprenticeship with less theoretical courses, leading to the CITP (Certificate of Basic Technical and Vocational Skills).

The Committee noted that the figures on the numbers of pupils following the vocational course in technical secondary schools were much lower in 1991-92 than in previous years. The Committee noted from the information given in the CEDEFOP publication that a reform was under way to improve apprenticeship methods, and asked to be kept informed of the progress of the reforms and of any results achieved.

Persons aged twenty-one and holding a CATP, if they had practised their trade for three years, could take crafts training with a view to "master" status organised by the Chamber of Trades. This training comprised three years of preparatory studies, culminating in an examination covering the theory associated with the occupation and management, and including practical tests. A master's certificate was issued to successful candidates.

Public technical secondary education was free of charge. The state gave assistance, in the form of subsidies, to the Chamber of Trades to cover some of the costs arising from the organisation of crafts training with a view to master status. It also gave assistance to the professional organisations to cover the wages of apprenticeship advisers and to the Chamber of Commerce for the organisation of aircraft mechanic training.

The Committee stressed that the next report should give an update of information on the apprenticeship system, including full information in reply to Question E of the Form.

Finally, as in its conclusion on Article 10 para. 1, the Committee noted that under the Grand Ducal Regulation of 12 May 1972 on the measures applicable to the employment of foreign workers provided nationals of the other Contracting Parties which were not members of the European Union and not parties to the Agreement on the European Area wishing to attend a course or undergo an apprenticeship first had to apply for a work permit valid for the period of the course or apprenticeship. The Committee pointed out that, according to its case

law, a prior requirement for a work permit to enable the nationals of other Contracting Parties to start an apprenticeship constituted discriminatory treatment contrary to Article 10 para. 2 (Conclusions XII-2, p. 156-7, XIII-2, p. 220 and XIII-3, p. 165). It therefore decided that the situation in Luxembourg was not in conformity with the requirements of this provision of the Charter.

Paragraph 3 — Vocational training and retraining of adult workers

The Committee noted the particulars of further vocational training given in the Luxembourg report and in the publication of the European Centre for the Development of Vocational Training (CEDEFOP).

The main provisions applying to vocational training were set out in the Amended Secondary Technical Education and Further Vocational Training Reform Act of 4 September 1990, and in the Act of 1 December 1992 which firstly set up a public body to develop vocational training and secondly laid down the staff establishment of the Further Vocational Training Centres. Vocational training was organised mainly by the Ministry for Education in the Further Vocational Training Centres (CFPCs), by the public professional organisations and by the professional associations.

The Committee noted from the report that three CFPCs conducted appropriate courses in specific areas of activity according to each individual's qualification standard, job experience and personal requirements. These training measures, financed by the European Social Fund and by the Luxembourg Employment Fund, were defined according to trainee target groups:

— for young unemployed persons and job-seekers, the CFPCs provided skills training or partial skills training by way of induction to occupational activity and/or a means to permanent and settled integration into employment;

— the unemployed, particularly long-term and persons in receipt of the minimum guaranteed income, could undergo inductive training and training for re-employment in such diverse occupational sectors as welding, vehicle maintenance, the food sector and office automation, conducted by a four-stage process: social and psychological stabilisation, career guidance, vocational training proper, and finally educational and welfare counselling plus backup at the workplace;

— women wishing to re-enter the labour market and disabled persons were eligible for specific retraining and rehabilitation measures;

— workers in precarious circumstances or having lost their jobs as a result of cyclical difficulties in their branch could also take suitable re-training or supplementary training courses.

The Committee requested that the next report provide information on the total number of participants in the further training programmes conducted in the CFPCs, broken down according to the above target groups, as well as on the distribution of training provisions among the various categories of occupational activity.

The Committee noted that the function of the Institute for the Development of Further Vocational Training, set up under the above-mentioned Act of 1 December 1992, was to assist in devising further vocational training concepts and in achieving the prescribed objectives through the conduct of schemes to provide occupational induction, retraining, conversion, and advanced skills, to be carried out in a manner reflecting technological progress and educational innovation. The Institute was answerable to the Ministry for Education and composed of representatives of the relevant ministries and public professional organisations. The Committee asked that the next report present information on the Institute's operation and activities and on any developments which may have resulted from the foundation of the Institute.

The Committee further noted that the professional organisations ran year-round classes, practical courses and seminars or lectures, for which they received state subsidies. It requested further information on these activities, specifically their organisation, distribution among the various chambers, conditions of admission and participation levels.

Furthermore, certain occupational sectors had set up appropriate training structures under their own responsibility. This was the case for the further training organised in the banking sector by the Bank Training Institute of Luxembourg (IFBL), mentioned in the conclusions for Article 10 paras. 1 and 2.

Having noted in its conclusion concerning Article 10 para. 1 that nationals of Contracting Parties not members of the European Union and not parties to the Agreement on the European Economic Area required a work permit in order to complete a course or an apprentice-ship, the Committee reiterated the questions which it had raised in this

regard and insisted that the next report contain full information on the question of access to further training and retraining opportunities for nationals of other Contracting Parties legally residing and regularly working in Luxembourg.

Lastly, the Committee asked that the next report give more detailed information on retraining measures and in reply to Question C of the Form.

Pending receipt of the requested information, particularly regarding the question of equal treatment for nationals of the other Contracting Parties, the Committee decided to defer its conclusion.

Paragraph 4 — Encouragement for the full utilisation of available facilities

The Committee noted from the Luxembourg report that education in general, and vocational training in particular, was free of charge at public educational establishments.

It was, however, not clear to the Committee, in the light of the information given in the publication of the European Centre for the Development of Vocational Training (CEDEFOP), whether the following were also free of charge:

— access to post-secondary vocational training, namely that provided by the School of Commerce and Management, the Technical Secondary School of Arts and Crafts, the Higher Institute of Technology, the Bank Training Institute and the crafts training with a view to "master" status, for which the Chamber of Trades was responsible;

— access to the courses organised by, or in collaboration with, the Luxembourg University Centre and by the Institute for Educational and Social Studies.

Should this not be the case, it asked for the next report to state the amount of the enrolment fees.

The Committee also asked whether the further training courses examined in its conclusion under Article 10 para. 3 were free of charge. It also wished to be informed of the action taken following the opinion of the Economic and Social Council on access to further training and its

funding, an opinion which the government had requested prior to legislating in this field.

Where the granting of financial assistance in appropriate cases was concerned, the Committee referred to the observations made in its conclusion relating to Article 10 para. 1 and to the questions raised on this point.

As no information had been provided to clarify whether the time devoted to training at the employer's request was included in normal working hours, the Committee stressed that the next report should give an answer to this question.

According to the information given in the CEDEFOP publication, both sides of industry participated in the organisation and management of vocational training through the public professional organisations. As regards vocational training in general, these organisations were requested to give their opinion on any draft legislation or regulations prior to their submission to the legislative authorities. They also participated in the determination of occupations subject to apprentice-ships, the setting of conditions to be met by firms wishing to train apprentices, the monitoring and supervision of apprenticeships, etc. They further played an active role in technical secondary education, particularly by providing apprenticeship advisers and helping to prepare syllabuses covering both the theory associated with occupations and practical training.

The Committee referred to the questions it had asked on the public professional organisations under Article 6 para. 1.

It also referred to its conclusion relating to Article 10 para. 3 and to the questions it had raised on the Institute for the Development of Further Vocational Training, in which the ministries and the professional organisations concerned were equally represented.

It also noted that two committees were responsible for co-ordination, one in respect of technical secondary education, the other in respect of further vocational training. These were made up mainly of represen-tatives of the ministries and public professional organisations con-cerned. The Technical Secondary Education Co-ordination Committee was responsible for advising the Minister for Education about all aspects of technical secondary education and for ensuring that schools and firms collaborated with each other. The Committee asked for the next report to give further information about how, in practice, the

activities of these committees helped to guarantee the efficiency of training systems.

The Committee asked whether there were forms of consultation other than that carried out directly or indirectly with the public professional organisations, particularly with the trade unions.

Finally, the Committee referred to its conclusion relating to Article 10 para. 1 and to the questions raised about the equal treatment of the nationals of other Contracting Parties in respect of financial assistance.

Pending receipt of the requested information, the Committee deferred its conclusion.

Article 11 — The right to protection of health

Paragraph 1 — Removal of the causes of ill-health

The Luxembourg report contained a detailed description of the protection of health and began by stating that all health services other than those run by the Directorate of Health and the local authorities were private services, bound by agreements with, or subsidised by, the Ministry of Health, the Ministry of Social Security or the Ministry of Family Affairs.

The report showed that in 1991 there were thirty-one hospitals with 4,438 beds and twelve socio-medical centres. The Committee hoped that the next report would provide information on the number of family planning clinics and psychiatric establishments.

The Committee noted from a European Parliament study (The health systems of European Community member states: a comparative analysis, 1993), that the infant mortality rate was relatively high, with 9,2 per 1,000 live births registered in 1991 (the European Community median stood at 8,2). According to the report, a working party made up of representatives of the Ministry of Health and the Directorate of Health and gynaecologists, obstetricians and midwives had been set up to make proposals to raise the standard of prenatal and perinatal care in order to reduce infant mortality. The Committee asked for the results of their findings and information on action taken to implement them to be included in the next report.

The Committee learnt that another working party had been set up to promote healthy lifestyles for senior citizens. According to the same European Parliament Study, life expectancy levels for both men and women (70.6 and 78.5 years respectively) were below average compared with other European Union states (where the averages stood at 72.8 and 79.5 years). The Committee asked to receive information in the next report on the apparent reasons for these lower levels and asked for information on the results of any measures taken to improve these figures.

The report stated that smoking was banned in all schools, which were required to distribute preventive educational health information, and that there were campaigns against smoking and drinking. The Committee noted from the Human Development Report (1995) drafted under the United Nations Development Programme that male suicide rates were

high. It hoped to receive an indication in the next report as to what was being done to lower this rate. As far as restrictive measures in the campaign against drugs was concerned, the Committee learnt that various methods were being used to combat drug addiction such as through the media, producing booklets for health professionals and handouts for the general public, etc. According to the appendix, the Manternach Therapy Centre provided for inpatient care of drug addicts, and an outpatient care facility called the "Street Workers Service" was also mentioned.

Although the government stated that it was following a policy based on a 1976 Act of prevention, reduction or elimination of atmospheric pollution, the Committee noted from the above-mentioned UNDP Report that Luxembourg produced the highest level of greenhouse gas emissions per capita in 1991. It took note that a department of environmental medicine had been set up in 1993 to monitor the effects of air pollution on human health, and hoped that the next report would indicate the measures taken to improve this situation.

The Committee noted that several acts were in force to ensure the quality of drinking water and water for bathing, and that there was also legislation regulating noise levels. It further noted that radioactivity monitoring was carried out on workers exposed to ionising radiation, and that measurements were carried out on air and water supplies and radon levels charted in housing and workplaces.

The Committee took note of the detailed information on the housing situation provided in the report and particularly of the Housing Assistance Act of 25 February 1979 and the Grand Ducal Regulation of the same date laying down the rental, health and hygiene criteria to be met by rented accommodation. These covered the safety, cleanliness and hygiene of housing as well as minimum standards of construction and furnishing in the case of rented accommodation.

In response to the general question (Conclusions XII-1 and XII-2) on the protection of persons working in or residing near nuclear power plants, the report mentioned that no plants currently existed within Luxembourg territory, although several plants were located close to its national borders. Protection of Luxembourg workers performing maintenance work at these plants was covered by the Grand Ducal Regulation of 17 August 1994 amending the Regulation of 29 October 1990. The Home Minister and the Minister of Health were responsible for putting the emergency plans into operation in the event of an accident, and a

booklet written in French, German, Portuguese and English had been published to inform the general public of these plans.

In the light of the information received, the Committee was able to conclude that Luxembourg met the requirements of this provision of the Charter, but on a provisional basis pending receipt of the additional information requested.

Paragraph 2 — Advisory and educational facilities

The Luxembourg report provided extensive examples of the measures taken to provide advisory and diagnostic facilities for the promotion of health for school-age children as well as for other groups.

The Committee noted that initiatives included campaigns to combat drug addiction and smoking, and to promote healthy diets. Measures taken in the field of health education for the general public included information packs, handouts and booklets covering diverse subjects such as Aids, abuse of medicines and carcinogenic substances at work and there were also group or individual health education projects on birth preparation, baby care classes and the promotion of breast-feeding.

The Committee noted that there were medical and para-medical staff on school medical teams. It also noted, in accordance with the School Medicine (Regulation) Act of 2 December 1987, (applied in 1990-91 after the Grand Ducal Regulation of 21 December 1990), determining the content and frequency of school medical action and check-ups, that children received a wide range of both medical and dental check-ups from their first year at school onwards.

The Committee noted that other check-ups were available including mammography programmes for women aged between fifty and sixty-four, and cervical cancer screening programmes. A check-up was also required for certain sporting activities and was compulsory when applying for a driving licence.

The Committee noted that mention was made of a National Medico-Psycho-Educational Committee. It wished to receive information on this body's functions in the next report.

In the light of the information provided, the Committee considered that Luxembourg met the requirements of this provision of the Charter.

Paragraph 3 — Prevention of diseases

A chart appended to the Luxembourg report contained information regarding vaccinations administered to children, showing that diphtheria, tetanus, whooping cough, polio, measles, German measles, mumps and BCG vaccines were provided free of charge by the Ministry of Health and administered by the doctor responsible for monitoring the children. The Committee wished to receive details in the next report indicating which of these vaccinations was compulsory and the percentage of children receiving the various vaccines.

The Committee further noted that Hepatitis B vaccines were compulsory and free of charge for students in para-medical professions, health staff in state hospitals and care centres, babies of Hepatitis B-positive mothers, renal dialysis patients and drug addicts attending treatment centres. Preventive and curative vaccinations were also available (rabies, yellow fever, etc.), but these were subject to a fee.

On the subject of Aids, the Committee noted that advice and home care was provided for patients. It hoped to receive information in the next report on the number of sufferers and of deaths from Aids, measures taken or envisaged to combat its spread and the amount of funding set aside for research, care and education projects in this field.

It also wished to receive information on measures taken to prevent the spread of infectious diseases, such as by compulsory medical examination or hospitalisation or isolation.

Pending receipt of the information requested, the Committee concluded that Luxembourg complied with the requirements of this provision of the Charter.

Article 12 — The right to social security

Paragraph 1 — Establishment or maintenance of a system of social security

The Committee regretted that Luxembourg's report had not provided full and detailed information on the social security system. In fact, the report merely stated that the system was chiefly linked to occupational activity, covering all persons pursuing an occupation.

However, the Committee obtained information on the organisation and financing of social security from other sources, including from the report on Luxembourg's application of the European Code of Social Security and its Protocol for the period from 1 July 1991 to 30 June 1992 and from a publication of the Commission of the European Communities (MISSOC 1994) entitled "Social protection in the member states of the European Union". It noted that social security in Luxembourg was principally a matter for the Minister for Social Security, that the Minister for Family Affairs, Public Housing and Solidarity was responsible for family benefits, the National Family Benefits Fund and solidarity benefits and that the Minister for Labour was responsible for employment and placement policy as well as unemployment benefits. It noted that social security comprised:

— social insurance, in which a distinction was made between *health and maternity insurance* (comprising benefits in kind — medical care —, benefits in the event of incapacity for work and a funeral allowance), *pensions insurance* (comprising old-age, invalidity and survivors' pensions) and *industrial injury insurance* (comprising health care, cash benefits and annuities and covering industrial accidents, occupational diseases and several other contingencies);

— family benefits, which were paid under a universal scheme to persons residing in Luxembourg and consisted of an education allowance, a maternity allowance and a birth allowance;

— unemployment benefit.

With regard to financing, the Committee noted that:

— health and maternity insurance and pensions insurance were chiefly financed by insured persons' and employers' contributions and state contributions;

— industrial injury insurance costs were borne by employers;

— monthly family allowances were financed by employers' and Luxembourg residents' contributions (50 %) and the state (50 %), while the maternity allowance and birth allowance and the operating costs of family allowances were entirely borne by the state;

— unemployment benefit was financed by taxation.

The Committee also noted that the main social security schemes were those for blue-collar workers, private sector white-collar workers, civil servants and public sector employees, local government employees and officials, tradespeople, entrepreneurs, craftspeople, the academic professions and the agricultural sector.

This information, obtained from sources other than the national report, enabled the Committee to conclude that Luxembourg had an established and well-developed social security system covering all branches of ILO Convention No. 102. The Committee nevertheless asked for the next report to confirm the information on the organisation and financing of the social security system and to provide details of the amounts of benefit paid.

Pending receipt of this information, the Committee concluded that Luxembourg met the requirements of this provision of the Charter.

Paragraph 2 — Maintenance of a social security system at a satisfactory level at least equal to that required for ratification of International Labour Convention No. 102

Paragraph 3 — Progressive improvement of the social security system

The Committee noted in the Luxembourg report that since the entry into force of the Charter on 9 November 1991 the main measures taken had involved raising the level of benefits to keep pace with the rising cost of living. All cash benefits had been increased by 2.5 % between November 1991 and December 1993. Invalidity, old-age and survivors' pensions, as well as industrial injury benefits, had been raised by 3.8 % as from 1 January 1993 and family benefits had been substantially increased. The period of the education allowance had been extended

from two to four years for families with three children and for those with a disabled child.

The Committee noted that an act reforming sickness insurance had come into force on 1 January 1994 (outside the reference period). It asked for the next report to provide details of the innovations introduced by this law and their consequences in practice.

Meanwhile, in view of the information provided and the fact that Luxembourg gave full effect to both ILO Convention No. 102 and the European Code of Social Security and its Protocol, the Committee concluded that the situation complied with this provision of the Charter.

Paragraph 4 — Equal treatment for the nationals of other Contracting Parties with respect to social security

The Committee noted that Luxembourg was bound by bilateral or multilateral social security agreements with all the Contracting Parties to the Charter except Malta and Cyprus. It asked whether social security agreements were planned or intended with those two countries and, if not, how equal treatment with Luxembourg nationals was secured for Cypriot and Maltese nationals.

The Committee noted from the report that family benefits came under a universal scheme based on residence. It asked whether there was a residence requirement and if so, to whom it applied and to which benefits. It also asked what was the position of nationals of Contracting Parties who worked in Luxembourg but had their residence elsewhere. With respect to the payment of family allowance only to children residing permanently and with their official home in Luxembourg, the Committee referred to the questions it had asked in its conclusion under Article 16. Having taken note of the way in which these benefits were financed, the Committee wished to receive details of residents' contributions to this scheme.

Finally, the Committee likewise wished to know whether refugees and stateless persons in Luxembourg were entitled to social security coverage.

Pending receipt of the information requested, the Committee deferred its conclusion.

Article 13 — The right to social and medical assistance

Paragraph 1 — Social and medical assistance for those in need

The Committee took note of the information contained in the Luxembourg report.

Social assistance

1. The guaranteed minimum income (RMG)

The Committee noted in the report that the RMG, introduced by the amended Act of 26 July 1986,[1] was paid by the National Solidarity Fund (FNS) to all those whose resources fell below the statutory income levels. It observed that an applicant who disagreed with a decision of the FNS could appeal to the Chair of the Social Security Arbitration Panel and, in some cases, to the National Social Security Council. The Committee asked for the next report to specify whether these were independent appeal bodies empowered to take enforceable decisions.

The Committee also took note that the RMG was only granted to persons of at least thirty years of age and who had been resident for at least ten years in Luxembourg.

The report stated that the age requirement of thirty years had been introduced by Parliament for educational reasons to avoid young people abandoning their studies and becoming dependent on the social assistance system. While sharing this concern, the Committee pointed out that the age requirement in effect excluded young people in difficulties under the age of thirty from entitlement to the RMG.

With regard to the prescribed ten-year residence period, which applied to both Luxembourg nationals and nationals of the Contracting Parties to the Charter, the Committee was struck by the length of this period and drew attention to its case law to the effect that it was contrary to the requirements of the Charter to make social assistance benefits subject to a prescribed period of residence (Conclusions XII-2, p. 127).

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[1] Act on a. establishment of a guaranteed minimum income; b. establishment of a national social welfare service; c. amendment of the Act of 30 July 1960 on the establishment of a National Solidarity Fund.

The Committee noted that in 1993 the RMG amounted to 28,716 Luxembourg francs for a single person, 32,142 for an adult with a dependent child and 42,024 for a couple without children. At 31 December 1993 4,551 households were in receipt of the RMG as against 4,331 at 31 December 1992, which meant an increase of 220 households.

2. Specific benefits

The Committee took note of the specific benefits paid by the National Solidarity Fund to various groups in need, in particular the special allowance for the severely handicapped (introduced by the Act of 16 April 1979), the heating allowance (Government in Council Regulation of 18 February 1983) and the system of advancing and subsequently recovering maintenance payments (Act of 26 July 1980) which allowed a maintenance payment to be advanced to the beneficiary under certain circumstances in the event of non-payment by the debtor. The Committee asked whether these specific benefits were subject to a prescribed residence requirement and, if so, which.

Lastly, the Committee took note of the amount of expenditure on assistance in 1993 and asked to be kept informed of its variations.

The Committee considered that the RMG and specific benefits did not constitute sufficient appropriate assistance as they did not cover all categories of the population in need. It took note that another form of assistance — *les secours* — provided by the Municipal Social Office under the Grand Ducal Royal Decree of 11 December 1846 on the reorganisation and administration of charity offices and the Act of 28 May 1897 on the provision of social assistance, was available to those who did not meet the requirements for entitlement to the RMG. However, the Committee was unable to establish whether this assistance adequately replied to the RMG's insufficient coverage and to the fact that assistance was limited to certain categories of the population, especially as according to the report there was no right of appeal against a refusal to grant such assistance.

Medical assistance

The Committee noted that beneficiaries of the RMG had access to health care under Section 1 para. 11 of the Act of 27 July 1992 reforming sickness insurance and the health sector.

It also noted that the health care expenses of persons in need who were not entitled to the RMG assistance could be borne by the social assistance services. The Committee wished to know whether it was possible to appeal against a refusal to bear those costs.

It further noted in the report under Article 11 para. 1 that a mobile health assistance unit existed, entitled "*Service des Travailleurs de Rue*".

As the RMG and specific benefits were restricted to certain categories of the population and could not alone constitute adequate assistance, the Committee was obliged to conclude that the situation was not in compliance with the Charter with respect to social assistance.

Paragraph 2 — Non-discrimination with respect to persons receiving social and medical assistance

The Committee noted from the Luxembourg report that under Article 11 of the Constitution all citizens were equal before the law. The report stated that, as a result, any discrimination on the grounds that a person was receiving social and medical assistance would be contrary to the Constitution and could therefore be a ground for legal action. The Committee also noted that no legislation provided for a diminution of the political or social rights of beneficiaries of the guaranteed minimum income (RMG). It wished to know whether the same was true for persons receiving other forms of assistance than the RMG.

Meanwhile, the Committee concluded that Luxembourg complied with this provision of the Charter.

Paragraph 3 — Advice and assistance in case of want

The Committee noted from the Luxembourg report that consultation and personal help services for persons lacking resources were provided by the community social offices, by public social services and by government-approved private social services. In order to assess the situation, it asked for the next report to provide more detailed informa-

tion on the organisation and functioning of the services and the number of staff assigned to them.

Pending receipt of this information, the Committee deferred its conclusion.

Paragraph 4 — Equal treatment for the nationals of other Contracting Parties with respect to social and medical assistance

The Committee regretted that Luxembourg's report did not contain detailed information on this provision. In fact, the report merely indicated that social and medical legislation made no distinction based on nationality.

With regard to the requirements for the award of the RMG (guaranteed minimum income) and of the other forms of financial assistance granted to nationals of other Contracting Parties to the Charter who did not satisfy the RMG requirements, the Committee referred to its conclusion under Article 13 para. 1.

The Committee also observed that the material scope of Article 13 para. 4 was in part determined with reference to the 1953 European Convention on Social and Medical Assistance, which contained special provisions on repatriation. It asked whether in Luxembourg such repatriation took place within the limits, under the conditions and according to the arrangements provided for by Articles 6 to 10 of the 1953 Convention, notably for nationals of countries which had not ratified this convention (Austria, Cyprus and Finland).

Referring to its conclusion on Article 13 para. 1, the Committee concluded that Luxembourg did not meet the requirements of this provision of the Charter.

Article 14 — The right to benefit from social welfare services

Paragraph 1 — Provision or promotion of social welfare services

The Committee noted that in Luxembourg the various areas of the social services were mainly organised and run by private sector voluntary organisations. The state concluded agreements with the various voluntary organisations requiring them to guarantee that their social services met the appropriate standards and criteria of social service and to take on trained staff.

It noted that social welfare was provided by general regionally-based social and community health services (for people in a specific geographical area), general social casework services (for families, motor-impaired children, people with disabilities etc.) and specialist social services such as the Immigration Service, the family welfare association Action Familiale et Populaire and the Family Planning service. The Committee asked for the next report to give details of the tasks performed by these services as well as on their geographical distribution.

The Committee noted that in 1991 there were fifty-two government-regulated posts, eight of them in anti-poverty work and more specifically in social casework. The Committee asked what this term actually covered. It also noted that there was approximately one social worker for every 8,000 people and asked to be informed of developments in the number of staff employed in the various social services. It also requested that the next report give the approximate number of beneficiaries from these services.

Lastly, the Committee requested detailed information on services for elderly persons, and asked if there were any services for prisoners on their release.

The Committee adopted a positive conclusion, but on a provisional basis, pending receipt of the information requested.

Paragraph 2 — Public participation in the establishment and maintenance of social welfare services

The Committee noted in the Luxembourg report that the Non-Profit-Making Associations and Charitable Foundations Act of 21 April 1928, as amended by the Act of 4 March 1994, authorised the establishment of social services. The Ministry of Family Affairs provided financial assistance, and assistance in kind, such as accommodation, offices and equipment, to help set up such services. The Committee also took note of the tax incentives granted to voluntary organisations wishing to set up such services.

All this information enabled the Committee to adopt a positive conclusion.

Article 15 — The right of physically or mentally disabled persons to vocational training, rehabilitation and social settlement

Paragraph 1 — Vocational training arrangements for the disabled

The Committee took note of the arrangements described in the report of Luxembourg for the vocational training, rehabilitation and resettlement of physically and mentally disabled persons. While it appreciated the fact that the statistics supplied were quite recent (1994), the Committee underlined the need to have data covering the full reference period in each supervision cycle, in order to assess the evolution of the national situation and discern the major trends.

It noted that there were specialised schools in different parts of the country attended by fifty-one physically handicapped children and approximately 235 mentally handicapped children. After their compulsory schooling, these young persons could receive preparatory and vocational training at either a public centre or a private institute. There were 91 places in the former and just over 300 in the latter. There were approximately fifty trained personnel in both the public and private centres, including educators, teachers and psychologists.

Social resettlement was offered through recognised private institutions on an individual basis by qualified staff.

Vocational training and rehabilitation was offered through the Disabled Workers Service, attached to the Ministry of Labour and Employment. The Committee noted that the Act of 12 November 1991 on disabled workers provided the legal framework for state action in this field. The 1991 Act established the administrative machinery, defined what was meant by "disabled worker" and authorised the state to incur expenditure in organising and promoting training and rehabilitation for eligible individuals. Under Section 2 of the act, any person suffering from a diminution in their abilities of at least 30 % was eligible for the various measures available. All applications were first considered by the Guidance and Vocational Reclassification Committee to verify the level of disability and state what form of training or rehabilitation was suitable in each case. On this basis, the Disabled Workers Service could offer a training place to the individual on various courses in metalwork (locksmithery, maintenance, automobiles, welding and transport) and building (carpentry, painting, tiling and masonry). This was the case for sixty-eight persons in 1994. Those who were severely handicapped

could be placed in specialised rehabilitation centres in Belgium, France or Germany. According to the report, nine persons were placed abroad in this way in 1994.

Another possibility was offered in special workshops in the country for occupational induction and rehabilitation, the costs being borne by the Disabled Workers Service. Trainees could receive an allowance if they were not in receipt of other pensions or benefits. This allowance, including premiums, could equal the level of full unemployment benefit.

The report provided further figures on the number of training places available, stating that there were 493 places in five centres. There were ninety persons employed in these centres, with the staff:trainee ratio varying between 1:3 and 1:7. However, it was not completely clear from the report that these figures were separate from the ones quoted above for young persons. The Committee asked for clarification on this point.

In addition, the Committee asked questions on the following points:

— the number of disabled persons applying for vocational training and the number accepted each year;

— the actual situation of disabled foreign nationals of other Contracting Parties to the Charter legally resident in Luxembourg or legally employed there. The Committee noted in this regard that the 1991 Act contemplated future regulations on the eligibility of non-European Union nationals for any of the training or rehabilitation available in Luxembourg and asked whether any such regulations had been issued.

— the suitability of the training offered in view of employment opportunities in Luxembourg. As the examples given tended more towards manual skills, the Committee asked whether skills in other fields such as technology or communications were taught.

Pending receipt of the information requested, the Committee deferred its conclusion.

Paragraph 2 — Placement arrangements for the disabled

The Committee noted the information contained in the report of Luxembourg, which included statistical data illustrating the number of disabled persons applying to the Disabled Workers' Service for

assistance in finding employment between 1987 and 1994. The information revealed a continuous increase each year, matched by a corresponding rise in the number of persons benefiting from the various measures. During the reference period, 656 applications were made in 1992, of which 426 were processed and 275 were accepted. In 1993, 862 applications were received, of which 496 were processed and 301 accepted. The data supplied did not indicate the total number of disabled persons in paid employment. The Committee asked that these figures be included in the next report.

Although the report did not make reference to the general system of quotas, the Committee noted with interest Section 5 of the Act of 12 November 1991 on disabled workers which made provision for such a quota. For the public sector, the quota was 5 % of the total workforce. In the private sector, the quota was one disabled worker for companies with between twenty-five and forty-nine employees, 2 % of the workforce for companies employing between 50 and 299 persons and 4 % of the total workforce in companies with more than 300 employees. Companies affected by this rule were obliged to keep the Disabled Workers Service informed of the disabled workers they already employed and of vacancies arising which could be suitable for disabled persons. Private sector employers who failed to meet the quota were required to pay an amount equal to 50 % of the minimum social wage to the Treasury every month for each disabled worker they failed to employ, until they finally satisfied the quota. The Committee requested details on the practical implementation of this scheme.

The report described three measures relating to the employment of disabled persons.

Firstly, the Act of 12 November 1991 authorised the state to offer wage subsidies to employers who hired disabled persons. According to the tables supplied, this was done in respect of 54 employees in 1992 and 115 in 1993. In 1994, outside the reference period, this rose to 193. Wage subsidies ranged between 60 % of the worker's salary (in 1.6 % of cases) and simply paying the employer's social contributions in respect of disabled staff (in 11.5 % of cases). The most common arrangement was for the wage subsidy to equal 40 % of the worker's wage (71.4 % of cases).

Secondly, there was a limited budget available to finance the adjustment of the workplace to meet the needs of a disabled worker. In 1994, assistance was granted in six cases.

Thirdly, the state was authorised to pay a subsidy to permit a disabled worker take six extra days of annual leave. During the reference period, this was done in 91 cases in 1992 and 175 cases in 1993.

The report included a table illustrating the number of persons assisted under the various initiatives. As the figures for 1993 appeared to show that a person could be eligible for more than one of the initiatives, the Committee sought confirmation that this was possible.

The Committee also learned that under Section 2 of the Grand Ducal Regulation of 14 April 1992, employers could be paid a settling-in allowance in respect of disabled employees whose productivity was lower at the start of their employment. Disabled workers themselves could receive a return to work allowance. Having already noted that employers could be authorised to pay disabled workers at a lower rate than the minimum wage during a certain period, the Committee wished to have confirmation that disabled workers were protected against an overall reduction in their income.

As regards self-employment, disabled persons wishing to start up their own business could be granted a partial or total exemption from social security costs.

Finally, the Committee enquired whether disabled nationals of other Contracting Parties who were legally resident or lawfully employed in Luxembourg were subject to any restrictions or conditions in the measures described above which were not imposed on nationals.

Pending receipt of the requested information, the Committee decided to defer its conclusion.

Article 16 — The right of the family to social, legal and economic protection

The Committee noted in Luxembourg's report the great effort made to provide a full and complete picture of the situation in the country in matters falling under this provision of the Charter. It noted in particular the extensive economic measures taken on behalf of the welfare of the family, with benefits such as family allowance, allowance for disabled children, allowance for bringing up children (child allowance), beginning of year school allowance, birth grants, maternity allowance and tax deductions for dependent children.

The Committee noted that these allowances were increased with the cost of living. Other forms of assistance were mentioned in the report, such as the fact that years spent raising children were included in the qualifying period for old age pension and that the minimum social wage was higher for workers with family dependents.

However, as the report indicated that the family allowance was granted in respect of children raised continuously and having their legal place of residence in Luxembourg, the Committee asked that the next report clarify whether in all cases nationals of Contracting Parties to the Charter resident in Luxembourg were refused this allowance when their children lived in another country. It requested that the information to be provided cover also the allowance for disabled children, the child allowance, the beginning of year school allowance, the maternity grant and the birth allowance, as these were granted on the same conditions of residence.

The Committee noted the reply to its general question on the childminding services available to families, in particular creches, nurseries and after-school and holiday schemes for children. It noted in that Luxembourg was following a policy aimed to enlarge considerably and distribute more equally day nursery provisions available throughout the country. Day nurseries were mainly set up on the initiative of local authorities, although they were partly state-financed. The Committee wished to receive information on the number of these nurseries and the conditions for attendance.

There had been a very large increase, of more than 22 %, in the number of places in nurseries between 1992 and 1993, although this was not evenly spread. It was very high for children in the two-month to two-year age group (49 %, although the number of places was still

small according to the report), while there was a 19 % increase in places for two to four year-olds and an 18 % increase for the over four year-olds from 1992 to 1993. There were currently more than 3,000 places, 29 % (870) of which were state-regulated.

The Committee asked to find information on any developments in this field in the next report. It also wished to find information about the number of places in the various other kinds of child day care mentioned in the report (children's centres and open-door centres).

As regards family participation, the Committee noted the information included in the report on the higher Council for the Family and Children, consisting of the most representative organisations working in the field, with the purpose of advising the government on matters relating to the wellbeing of children and the family.

In relation to the legal protection of the family, the report contained information on divorce, child custody and parental authority. The Committee observed in particular that in custody proceedings the opinion of the child was to be taken into account, if appropriate in view of its age and degree of maturity. It also noted that family mediation and family and marriage counselling was carried out to a large extent through various associations, although it was partly state-financed.

In respect of family housing, the report contained information on financial assistance with rented accommodation provided for by the act on the guaranteed minimum income (RMG) and on rent control. It also mentioned that the amount of the lower social rents paid for social housing belonging to the state and local authorities depended on the composition and income of the household. The Committee further noted the obligation of local authorities to house the homeless (Section 31 of the Lease Act) and that the report referred to it as a "moral" obligation. It asked for a clarification as to the application of this provision in practice.

In view of the importance of the outstanding questions, the Committee deferred its conclusion.

Article 17 — The right of mothers and children to social and economic protection

The Committee observed the information contained in the Luxembourg report on the social and economic protection of mothers and children. Among the various benefits mentioned were the maternity benefits for working women described under Article 8 para. 1. As to the protection of women who were not covered by social security during pregnancy and confinement, reference was made to the guaranteed minimum income, the maternity allowance and the child allowance. The report also mentioned the birth grant. Great efforts had been made to provide a reasonable level of protection for mothers and children. As regards the residence requirements applying to certain family benefits, the Committee referred to the questions asked in its conclusion under Article 16.

The report contained information about the care of children under two years of age outside the family home. It indicated that the applicable legislation was Section 5 of the Public Health Protection Act of 27 June 1906. However, from the report it was not clear to the Committee on which basis and in accordance with which procedure children could be taken into care. It was also unclear whether the legislation indicated only related to children under two years of age. If this was the case, the report contained very little information as to what measures were taken to provide sufficient protection for children over that age against a home environment that might be detrimental to their health and wellbeing. The report mentioned deprivation of parental authority, but the practical consequences for the child were not explained. It therefore asked to find these details in the next report.

The Committee examined the information contained in the report on the establishment of maternity and paternity of children born out of wedlock. It noted *inter alia* that natural descent from the father could be established by recognition, paternity proceedings and judgment. However, according to Section 340-1 of the Civil Code paternity proceedings were not admissible where it was established that: 1. during the legal period of conception, the mother was of notoriously immoral conduct or had sexual relations with another individual, unless it could be proved by blood tests or other reliable medical methods that such individual could not be the father; or 2. if the supposed father gave sufficient evidence that he could not be the father. The Committee

requested more details on this issue (procedure, number of cases, the nature of evidence, etc.).

The Committee wished to be informed whether maternity and paternity proceedings could be brought by the public authorities on behalf of the child and whether the child had in general a right to have its parentage established.

In respect of children born out of wedlock, the Committee further noted that as regards custody and guardianship there was no difference in treatment. It wished to know, however, why the property of children born out of wedlock that had been recognised was placed under the supervision of the guardianship judge as this did not seem to be the case as regards the property of children whose parents were married. The Committee also noted that the legitimation of children born out of wedlock conferred on the legitimated child all the rights and duties of a legitimate child.

The Committee noted that as regards inheritance rights the law made no distinction between children born within or out of wedlock. However, as the report stated that "failing any testamentary dispositions, they inherit the same share as legitimate children", the Committee asked whether testamentary dispositions affected the rights of children born out of wedlock in a different way from those born within wedlock.

According to the report there were two forms of adoption in Luxembourg law, simple adoption and full adoption. In the case of simple adoption the child remained in its natural family and preserved all its rights and obligations, notably its inheritance rights. However, a full adoption conferred on the adopted child and its descendants the same rights and obligations as if it had been a child of the marriage of the adopters. The affiliation resulting from adoption replaced the natural affiliation and the adopted child ceased to be a member of its biological family subject to certain impediments to marriage. The report stated both that such adoptions could not be revoked and that they could be revoked on very serious grounds. The Committee asked for a clarification and wished to know, in case the adoption could be revoked, which were the serious grounds referred to.

The Committee took note of the information contained in the report on the treatment of juvenile delinquents. It asked to receive updated and complementary information in the next report taking into account the general question asked under Article 17 (Conclusions XIII-2, p. 157).

Finally, as regards protection against physical and moral dangers and ill-treatment, the Committee observed that there was a full range of civil and criminal law provisions to protect children from physical and moral harm. It also noted that there had been information campaigns to educate public opinion and prevent cases of cruelty. In addition, there was a telephone help-line and specialised services for children with problems. The Committee asked for more information about the specific criminal law provisions applying to parents that were mentioned in the report. It recalled that the above-mentioned general question also related to this field.

In view of the importance of the outstanding questions, the Committee deferred its conclusion.

Article 18 — The right to engage in a gainful occupation in the territory of other Contracting Parties

Paragraph 1 — Applying existing regulations in a spirit of liberality

The Committee noted from the report submitted by Luxembourg that according to Section 26 of the amended Aliens Act of 28 March 1972, which laid down the conditions governing access to employment of foreign nationals, "no alien worker shall be employed on the territory of the Grand Duchy of Luxembourg without a work permit".

However, under Section 1 of the Amended Grand Ducal regulation of 12 May 1972, work permits were not required for nationals of member states of the European Union (including their spouse and children under twenty-one years of age or dependent — even if they did not have the nationality of a member state of the European Union) and, as from 1 January 1994, for nationals of a state party to the Agreement on the European Economic Area.

The Committee further noted that Section 2 of the Grand Ducal Regulation of 12 May 1972 governed the employment of foreign workers who were nationals of third countries. There were four categories of work permits:

— permit A, for which no residence permit was required, and which was valid for up to one year, for one occupation and one specific employer;

— permit B, available to workers who could show that they had lived and worked in Luxembourg for a continuous period of at least one year, which was valid for four years, for one type of occupation but for any employer;

— permit C, available to workers who had lived and worked in Luxembourg for a continuous period of five years or were born in Luxembourg and lived there continuously for at least two years prior to the application of a work permit, which was valid for an unlimited time and for all occupations and employers; and

— permit D, for apprentices and trainees, valid for the duration of the apprenticeship or traineeship.

According to the report, 291 applications for work permits (from a total of 3,495) were refused in 1992 and 245 (out of 3,879) in 1993 (8,33 %

and 6,32 % of the total number of applications). The Committee asked for information to be included in the next report as to the number of applications granted and refused for nationals of Contracting Parties to the Charter who were not nationals of a country within the European Union or the European Economic Area.

The Committee noted that a refusal to grant or renew a work permit depended on the situation on the labour market (Section 10 of Grand Ducal Regulation of 17 June 1994). Only highly skilled personnel, political refugees and persons to whom the rules on family reunion applied were not affected by this consideration.

As to the withdrawal of work permits, the Committee noted that workers whose residence permit was not renewed would have their work permit (category B or C) withdrawn (Section 10 of Grand Ducal Regulation of 17 June 1994). It asked for practical information concerning the reasons for the withdrawal of residence permits to be submitted in the next report. In this context, the Committee also asked for a detailed answer in the next report to its general question raised under Article 18 para. 1 in Conclusions XIII-2 (p. 168).

Finally, the Committee noted that foreigners were only excluded from entering the civil service.

Pending receipt of the information requested, which was necessary to evaluate whether existing regulations were applied in a spirit of liberality, the Committee deferred its conclusion.

Paragraph 2 — Simplifying existing formalities and reducing dues and taxes

The Committee noted from the report submitted by Luxembourg that the procedure for the issuing of a *work permit* to wage-earners was regulated by Sections 4 and 6 of the Amended Grand Ducal Regulation of 12 May 1972, which laid down the measures applicable to the employment of foreign workers on the territory of the Grand Duchy of Luxembourg.

According to the report, work permits were issued by the Minister of Labour or his or her representative acting on the opinion of the Department of Employment (or, since the entry into force of Grand Ducal Regulation of 17 June 1994, outside the reference period, under

Section 7 bis of this regulation by a special committee of representatives of the Ministry of Labour, the Ministry of Justice, the Ministry of Social Security, the Department of Employment and the Inspectorate of Labour and Mines). For access to the occupation of craftsman, tradesman, businessman, industrialist and to certain professions (architect or engineer, chartered accountant or industrial property adviser) the permit, which was a written permit, was issued in advance by the minister responsible for establishment permits, ie. the Minister for Small and Medium-sized Businesses (Section 1 of the Act of 28 December 1988 regulating access to the occupations of craftsman, tradesman and industrialist and to certain of the professions).

The Committee asked for information to be included in the next report as to the amount to be paid for a work permit by nationals of Contracting Parties to the Charter which were not members of the European Union or parties to the Agreement on the European Economic Area.

The Committee also noted that work permits were only issued once the employer had furnished evidence of a bank guarantee of at least 60,000 Luxembourg francs to cover the costs of repatriation of the workers in respect of whom the work permit was requested (Section 9 bis of the Grand Ducal Regulation of 17 June 1994).

Concerning the refusal or non-renewal of work permits, reference was made to Article 18 para. 1 and to Section 10 of the Amended Grand Ducal regulation of 12 May 1972.

As far as the issuing of *residence permits* was concerned, the Committee noted the existence of two Grand Ducal Regulations (both of 28 March 1972) concerning the formalities to be completed by foreigners residing in the country and concerning the conditions of entry and residence of certain categories of foreigner covered by international agreements respectively. Since, according to the report, the second was to be amended in the near future following the entry into force of the Schengen agreement, the Committee asked to be kept informed of any development in this field.

According to Section 4 of the Grand Ducal Regulation of 12 February 1993, residence permits were issued and renewed free of charge for nationals of member states of the European Union. Nevertheless, no information was included in the report as to charges applicable to nationals of non-European Union member states who were Contracting

Parties. The Committee therefore asked that this information be included in the next report.

The report stated that there was no direct link between the issuing of a work permit and the issuing of a residence permit, as the Minister of Justice could issue residence permits to persons without work permits. However, the Ministry of Justice only usually issued residence permits to persons with enough income to provide for their own needs, an amount at least equal to the minimum social wage for wage-earners and 75,000 Luxembourg francs for non wage-earners.

The report further stated that chancery dues payable by nationals of non-European Union or non-European Economic Area states for the issuing of a foreigner's identity card (valid, in principle, for five years) were 1,200 Luxembourg francs (standard rate) or 400 Luxembourg francs (reduced rate). These dues could be waived, notably on grounds of poverty. The Committee asked under which circumstances the reduced rate was applicable and whether the identity card chancery due replaced any other existing fees.

Lastly the report indicated that no measures were envisaged to simplify existing formalities. The Committee recalled that under this provision of the Charter, Contracting Parties were required to simplify existing formalities and reduce or abolish chancery dues and other charges payable by foreign workers or their employers. It considered that there was room for further simplification and in particular for reductions in the charges payable by foreign workers and their employers.

Pending receipt of the information requested, the Committee deferred its conclusion.

Paragraph 3 — Liberalising regulations

As regards Luxembourg the Committee noted that there were four categories of work permits: permit A (valid for up to one year, for one occupation and one specific employer), permit B (valid for four years, for one occupation but for any employer), permit C (valid for an unlimited time and for all occupations and employers), and permit D (valid for the duration of the apprenticeship or traineeship).

It noted that, pursuant to the amended Grand Ducal regulation of 12 May 1972 concerning the employment of foreign workers on the

territory of the Grand Duchy of Luxembourg, the Minister of Labour had power to grant or to refuse the renewal of work permits in the conditions described under Article 18 para. 1. However, the Committee noted that, according to the report, the Minister of Labour had not yet refused to renew the work permit of any foreigner legally established on the territory of Luxembourg. It asked to be kept informed of any development in this field, together with information as to whether such prerogatives applied to the granting and renewal of work permits irrespective of their type.

As to Question B of the Form, the Committee noted that holders of a work permit were entitled to stay in Luxembourg until the expiry date of the residence permit. If in the meantime the person in question found another job on his own initiative or with the help of the Department of Employment a new permit could be issued.

Furthermore, holders of work permits who stopped working while the permit was valid could receive a further work permit for another employer if they held a permit category B or C.

Finally, the Committee noted that workers who had lost their jobs for reasons beyond their control were entitled to unemployment benefits.

The Committee recalled that this provision of the Charter provided for the liberalisation of regulations governing the employment of foreign workers. It considered that although the overall situation was satisfactory in Luxembourg, there was a margin within which further steps could be taken to liberalise the applicable regulations.

Pending receipt of the information requested the Committee deferred its conclusion.

Paragraph 4 — The right of nationals to leave the country

The Committee noted from the report submitted by Luxembourg that there were no restrictions or special conditions in respect of the right of nationals to leave the country to engage in a gainful occupation in the territory of another state.

In the light of this information the Committee concluded that Luxembourg met the requirements of this provision of the Charter.

Article 19 — The right of migrant workers and their families to protection and assistance

Paragraph 1 — Free assistance and information services; steps against misleading propaganda relating to emigration and immigration

The Committee noted in the report of Luxembourg that the Act of 27 July 1993 on the integration of foreigners was the relevant law in this area. The act provided for a Government Immigration Office to assist migrants in a variety of ways. This body offered training and guidance, assisted family reunion and supported the organisation of leisure activities. The overall aim was to help migrants adapt to the social, economic and cultural life of Luxembourg. The report also referred to private groups and trade unions which assisted migrants. The Committee asked what arrangements were made, if any, to assist nationals wishing to emigrate.

With respect to the issue of misleading propaganda, the report stated that it was covered by Section 3 of the 1993 Act which prohibited discrimination on grounds of race, colour, descent, national or ethnic origin, and religion against any individual or group. The Committee asked for examples of how this legislation was applied in practice. In addition, it asked what steps were taken to ensure that migrant workers were not prey to misrepresentation on important issues such as employment opportunities and living conditions in Luxembourg.

Finally, the report stated that information for migrants was generally available in their own language. The Committee asked that the next report state the languages into which information for migrants had been translated.

The Committee concluded that Luxembourg met the requirements of this provision of the Charter, but on a provisional basis pending receipt of the further information requested.

Paragraph 2 — Measures to facilitate the departure, journey and reception of migrant workers and their families

The Committee noted the information contained in the Luxembourg report on the role of the Government Immigration Office in helping

migrants to travel to the country and their reception upon arrival. The Immigration Office also assisted in the problems related to family reunion and the return home of migrants. However, in order to obtain a clearer view of the situation, the Committee asked that the next report indicate how many nationals of Contracting Parties had sought help during the reference period and what forms of assistance were offered by the Immigration Office.

Under the Act of 27 July 1993 the Immigration Office was responsible for providing advice and assistance for foreigners seeking accommodation. It was also responsible for the management or establishment of temporary accommodation centres for foreign workers in collaboration with other bodies and the promotion of the construction and fitting out of communal housing for foreign workers. The state was authorised to contribute up to 100 % of the cost in the building, fitting out and furnishing of the accommodation described above. The Immigration Office was responsible for ensuring that normal health and safety standards were respected in such premises.

Pending receipt of the information requested, the Committee deferred its conclusion.

Paragraph 3 — Co-operation between social services in emigration and immigration countries

The Committee noted in the report of Luxembourg that regular contacts were maintained between national social services and the social services in the home countries of migrants, in accordance with the terms of Section 27(d) of the Act of 27 July 1993 on the integration of foreigners in Luxembourg. The Committee asked that the next report indicate the practical results of such co-operation and the issues addressed.

The Committee further enquired whether contacts also existed with international organisations working with migrants.

Pending receipt of this information, the Committee deferred its conclusion.

Paragraph 4 — Treatment of migrant workers not less favourable than that of nationals in respect of employment, trade union rights and accommodation

The Committee noted from the report of Luxembourg that all laws and regulations concerning wages and other working conditions were applied in the same way to migrant workers, both by the state and by trade unions. Within trade unions there were sections dealing with the rights of migrant workers. There were also organisations acting in the interests of migrants which could support their rights.

As for trade union membership and enjoyment of the benefits of collective bargaining, the report stated that no distinctions were made between nationals and migrants.

The Committee noted that since 1993, all persons employed in Luxembourg, whether residents or not, enjoyed equal rights with nationals to vote and to stand for office in the public professional associations. It asked that the relevant legal texts be included in the next report.

Concerning housing, the Committee had already taken note in its conclusion under Article 19 para. 2 of the efforts made on behalf of migrants. As these related mainly to temporary and communal accommodation, the Committee wished to be informed:

— whether migrants were treated equally in all respects with nationals in relation to the various housing allowances mentioned in the report under Article 16;

— whether there were any restrictions on the purchase, construction or rental of a dwelling by a migrant worker which did not apply to nationals;

— whether residence requirements existed in either of the above cases.

In addition, the Committee asked that the next report contain information on the overall housing situation in Luxembourg, with particular reference to the position of migrants.

Hoping to receive full answers to all its questions in the next report, the Committee deferred its conclusion.

Paragraph 5 — Treatment of migrant workers not less favourable than that of nationals in respect of employment taxes, dues and contributions

The Committee noted from the report of Luxembourg that national law ensured equality of treatment for all workers in the country as regards taxes, dues and other contributions payable in respect of employment. While concluding that this situation complied with the requirements of the Charter, the Committee asked that the next report indicate how equality of treatment in taxation matters was ensured for those who worked in Luxembourg but resided outside the state.

Paragraph 6 — Family reunion

The Committee noted the information contained in the report of Luxembourg, which stated that in order to help foreign workers secure appropriate family accommodation, the Immigration Office and the Ministry of Housing could allocate grants and act as guarantors for initial capital in acquiring property. This possibility was open to all migrants with more than three children. The Committee accordingly asked what assistance was available to migrants with less than three children. It also asked how many applications were made by migrants for such assistance, how many were successful and what the level of assistance was. The information should indicate how many of the applicants were nationals of a Contracting Party to the Charter.

The report stated that there was a different legal regime on family reunion for persons from inside the European Union or from an European Economic Area state and all others. In the former case, Council Regulation No. 1612 of 1968 applied and ensured, *inter alia*, the right of children to join their parents in another member state up to the age of twenty-one years or for as long as they were dependent upon them. In the latter case, there was no right to family reunion laid down in national law. The report insisted, however, on the fact that administrative practice on family reunion was favourable, as family reunion was mentioned in the 1993 Act as one of the means of furthering the integration of migrant workers in Luxembourg (Section 2(b)).

The report stated that family reunion could be requested once the applicant had obtained the B work permit (issued after one year) and

had suitable accommodation. Normally only children under the age of eighteen were admitted for family reunion. However, children over this age could be admitted where it could be shown that they had been dependent on the worker for the two previous years. Moreover, children over the age of eighteen must not have any dependents themselves and must have no other person who could provide for them elsewhere. The Committee underlined that the Appendix to the Charter expressly stated that Article 19 para. 6 applied to children up to the age of twenty-one years. It asked that the next report indicate more clearly the legal basis of the restrictions described above and provide statistics showing how many applications were made for family reunion and the number accepted and refused, distinguishing clearly between children under and over the age of eighteen years.

The Committee noted that Section 9 of the Grand Ducal Regulation of 28 March 1972 concerning the entry and residence of foreigners in Luxembourg, as amended, stipulated the illnesses which would, in the case of European Union nationals, lead to refusal of entry. These illnesses were:

— diseases requiring quarantine as set out in International Health Regulation No. 2 of 25 May 1951 of the WHO;

— tuberculosis;

— syphilis;

— other infectious diseases or contagious parasites where these lead to the taking of special measures in Luxembourg to protect inhabitants.

To this list were added sicknesses which may endanger public order or security;

— drug addiction;

— severe psychiatric disturbance.

The Committee asked whether the same provisions applied to nationals of Contracting Parties not members of the European Union or parties to the European Economic Agreement. In the case of drug addiction and psychiatric disturbance, the Committee asked to be informed in the next report of the number of persons refused entry to the country on these grounds. The Committee noted that Section 10 of the same regulation provided that the contraction of any of these illnesses after a person

had been permitted to settle in the country could not justify withdrawal of permission to remain and asked whether the same rule applied to nationals of the Contracting Parties not members of the European Union or party to the European Economic Agreement.

As for other possible grounds for refusal, the report stated that under the Grand Ducal Regulation of 28 March 1972, persons who were not nationals of a member state of the European Union or the European Economic Area or of a contracting party to the European Convention on Establishment could be denied the right to reside in Luxembourg on the grounds that they threatened public safety, peace, order or health. Since the grounds listed were not identical to those set out in Article 31 of the Charter, the Committee asked that the next report explain how the 1972 Regulation was interpreted and how many applications for family reunion were made, showing the number of refusals and the grounds for them.

Pending receipt of the information requested, the Committee decided to defer its conclusion.

Paragraph 7 — Treatment of migrant workers not less favourable than that of nationals in respect of legal proceedings

The Committee noted from the report of Luxembourg that the Act of 23 March 1893 on legal aid restricted its use in principle to nationals, although it would appear that in practice foreigners were treated equally in access to legal aid. The Committee considered that the situation was unsatisfactory. In the absence of a statutory right to equality of treatment with nationals, foreigners could find themselves denied legal aid or prejudiced in some other way when seeking access to the courts concerning a matter coming within Article 19 of the Charter. The Committee asked that the next report indicate whether the *cautio judicatum solvi* could be required from the nationals of any of the Contracting Parties.

Pending receipt of this information, the Committee concluded that the situation in Luxembourg was not in conformity with the Charter.

Paragraph 8 — Security against expulsion

The Committee noted from the report of Luxembourg that the decision to deport a non-national was taken in the form of an order by the Minister for Justice, following consideration by the Government in Council. The deportation order must be notified to the person concerned and state the reasons for the expulsion and the possibilities of bringing an appeal against it. As the report did not specify what grounds for expulsion were set out in national law for non-European Union nationals, the Committee asked that the next report contain this information and include the relevant texts applied.

There were two appeal procedures. The first involved an appeal to the administrative authority which took the decision. The Committee asked what the legal basis for this procedure was, if the appeal lay on both procedural and substantive points and whether it stayed execution of the deportation order.

The second possibility was an appeal to the Conseil d'Etat which had the jurisdiction to review all acts of the administration. The time-limit imposed was three months from the date of the deportation order, although this was suspended during the appeal procedure described above. Once again, the Committee enquired whether the appeal lay on both procedural and substantive points and if it had a suspensive effect on the order of deportation.

Pending receipt of the information requested, the Committee deferred its conclusion.

Paragraph 9 — Transfer of earnings and savings

The Committee noted from the report of Luxembourg that there were no limits imposed on the amount of earnings and savings which could be transferred out of the country by migrant workers. It concluded that this situation was in keeping with the Charter.

Paragraph 10 — Extension of protection and assistance to self-employed migrants

The Committee noted from the report of Luxembourg that the other provisions of Article 19 were applied in the same way to self-employed migrants. As it had posed many questions about the application of these provisions, the Committee deferred its conclusion under Article 19 para. 10, hoping that the information necessary to make a comprehensive assessment of the treatment of all migrant workers in Luxembourg would feature in the next report.

Part II — Assessment of the position of Luxembourg[2]

[2] The Committee did not examine the compliance of national situations with Article 4 para.1 and, for the states concerned, referred to its general observation under Article 4 para. 1 which appears in Chapter 2 of Conclusions XIII-3 (pp. 215-218).

As concerns the provisions for which a report was required in this supervision cycle,

I. the Committee concluded that Luxembourg complied with the following provisions:

Article 1 para. 2

Article 2 paras. 1, 2 and 3 (provisionally)

Article 6 para. 3

Article 7 paras. 1, 3, 7, 8 and 9 (provisionally)

Article 8 paras. 2 (provisionally) and 3

Article 9 (provisionally)

Article 11 paras. 1 (provisionally), 2 and 3

Article 12 paras. 1, 2 and 3

Article 13 para. 2

Article 14 paras. 1 (provisionally) and 2

Article 18 para. 4

Article 19 paras. 1 (provisionally), 5 and 9

II. the Committee deferred its conclusion with regard to the following provision:

Article 1 para. 3

Article 2 para. 5

Article 3 paras. 1, 2 and 3

Article 4 paras. 2, 3 and 5

Article 5

Article 6 paras. 1 and 2

Article 7 paras. 2, 4, 6 and 10

Article 8 para. 1

Article 10 paras. 1, 3 and 4

Article 12 para. 4

Article 13 para. 3

Article 15 paras. 1 and 2

Article 16

Article 17

Article 18 paras. 1, 2 and 3

Article 19 paras. 2, 3, 4, 6, 8 and 10

III. the Committee concluded that Luxembourg was not fully complying with the following provision:

Article 1 para. 4

Article 2 para. 4

Article 7 para. 5

Article 10 para. 2

Article 13 paras. 1 and 4

Article 19 para. 7