

## European Rule of Law Mechanism: input from Luxembourg

*Note: This document provides input from Luxembourg to the European Commission’s annual Rule of Law Report 2021. This contribution consolidates the one provided for the first annual Rule of Law Report 2020. Where there are no new developments to point out, this document refers to Luxembourg’s input to the previous report, submitted in May 2020<sup>1</sup>. The following Ministries and entities have been involved in producing this document: Ministère d’Etat, Service Médias et Communication, Ministère de la Justice, Ministère des Finances, Ministère des Affaires étrangères et européennes, the latter being responsible for the overall coordination of this contribution. The following information is provided either in English or in French, two working languages of the European Commission.*

## I. Justice System

### A. Independence

#### 1. Appointment and selection of judges, prosecutors and court presidents

The recruitment of future judges and prosecutors (“*attachés de justice*”) is organised by a commission exclusively composed of higher judges and prosecutors. In principle, future judges are recruited via an exam, which can be completed by a recruitment based on application file, if, as a result of the exam, further posts need to be filled. The future judges, namely junior judges (“*attachés de justice*”), are nominated by the Grand Duke upon proposal of the recruitment commission.

The court presidents are all nominated by the Grand Duke upon proposal of the general assembly of the court in question. With respect to the nomination of the presidents (and vice-presidents) of the District Court, the opinion of the Supreme Court of Justice is needed. With respect to the nomination of the presidents of the administrative courts, the opinion of the Administrative Court of Appeal is needed.

#### 2. Irremovability of judges; including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

The Luxembourgish Constitution explicitly guarantees the irremovability of sitting judges (“*magistrats du siège*”), which can only be suspended or deprived of their rank by a formal judgment. Any relocation can only be achieved through a renewed nomination and with the consent of the judge. However, any judge can be suspended, revoked or relocated in case of infirmity or ill-conduct, according to the conditions provided for by law. The same rules of irremovability apply to the court presidents.

Judges – as well as court presidents and prosecutors – are retired when

- they have reached the age of 68, or;
- a serious and permanent infirmity no longer enables them to carry out their duties properly, or;
- they have demonstrated professional incapacity (duly established by a disciplinary procedure).

<sup>1</sup> [https://ec.europa.eu/info/sites/info/files/2020\\_rule\\_of\\_law\\_report\\_-\\_input\\_from\\_member\\_states\\_-\\_luxembourg.pdf](https://ec.europa.eu/info/sites/info/files/2020_rule_of_law_report_-_input_from_member_states_-_luxembourg.pdf)

Forced retirement is possible if the judge (or the prosecutor) who has reached the age of 68 or who is stricken by a grave and permanent infirmity refuses to retire.

### 3. *Promotion of judges and prosecutors*

Please refer to our input provided for the annual rule of law report 2020.

### 4. *Allocation of cases in courts*

Please refer to our input provided for the annual rule of law report 2020.

### 5. *Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)*

Please refer to our input provided for the annual rule of law report 2020.

### 6. *Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges.*

- Current situation

Disciplinary cases against judges of the judicial order (seat and public prosecutor's office) are investigated and judged by the Supreme Court of Justice ("*Cour supérieure de justice*"), on the requisition of the Public Prosecutor ("*procureur général d'État*"). Disciplinary cases against judges of the administrative order are investigated and judged by the Administrative Court on the requisition of the Minister of Justice.

There is an applicable code of deontology and ethics of the Luxembourg judges, adopted by the Supreme Court of Justice ("*Cour supérieure de justice*") and the Administrative Court.

There are no specific judicial immunity rules prescribed for judges.

- Reform project

A reform of the disciplinary law for judges is underway. In order to guarantee the principle of impartiality, the functions of engagement (National Council of Justice), investigation (magistrate of the bench) and the functions of judgment (Disciplinary Court of first instance – "*Tribunal disciplinaire*" and Disciplinary Court - "*Cour disciplinaire*") will be clearly separated. By introducing an appellant system, it is planned to create a double level of jurisdiction in disciplinary matters. Finally, the judges of the Disciplinary Court of first instance ("*Tribunal disciplinaire*") and the Disciplinary Court ("*Cour disciplinaire*") will be subject to election by their peers.

In terms of ethics, the National Council of Justice plans to draw up the rules of ethics for judges and will monitor compliance with these rules by judges. All members of the judiciary will be able to apply to the National Council of Justice for an opinion on an ethical issue.

### 7. *Remuneration/bonuses for judges and prosecutors*

Please refer to our input provided for the annual rule of law report 2020.

### 8. *Independence/autonomy of the prosecution service*

Please refer to our input provided for the annual rule of law report 2020.

9. *Independence of the Bar (chamber/association of lawyers) and of lawyers*

Please refer to our input provided for the annual rule of law report 2020.

10. *Significant developments capable of affecting the perception that the general public has of the independence of the judiciary*

Please refer to our input provided for the annual rule of law report 2020.

**B. Quality of justice**

11. *Accessibility of courts (e.g. court fees, legal aid, language)*

Please refer to our input provided for the annual rule of law report 2020.

Regarding the languages used in courts:

In the courts and tribunals of Luxembourg, the 3 official languages of the country (French, German, and Luxembourgish) may be used<sup>2</sup>. In practice, discussions and hearings are usually conducted in French and/or Luxembourgish.

As prescribed by law, lawyers and judges have to master the official languages of the State.

When individuals appearing before judges do not master any of the 3 official languages (e.g.: individuals not represented by a lawyer or witnesses), a sworn interpreter must be called to the hearing. Furthermore, if a party wishes to rely on documents written in a language other than the 3 official languages, they must provide the judge and the opposing party with copies of the documents, together with their translations (generally into French).

In practice, as the judges and the lawyers are generally also competent in English, documents in English may be submitted without translation and the use of English is accepted before the commercial chambers of the courts.

In accordance with the relevant European legislation, in criminal matters, the suspected and accused persons, as well as the victims of the crime and civil parties have a right to translation and interpretation to a language that they understand.

12. *Resources of the judiciary (human/financial/material)*

The courts and the administrative courts are governed by the law of 7 March 1980 on the judicial organisation<sup>3</sup> and by the law of 7 November 1996 relating to the organisation of the courts of the administrative order<sup>4</sup>, as they were modified.

The staff of the judicial courts currently stands at around 800 agents, including 260 judges and 290 court clerks and assumed clerks as well as agents from other careers, such as social workers, psychologists, and computer scientists, etc.

The administrative courts are staffed by 43 agents, including 21 judges and 22 court clerks.

The financial resources made available to the courts appear in the annual budget law.

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<sup>2</sup> <http://legilux.public.lu/eli/etat/leg/loi/1984/02/24/n1/jo>

<sup>3</sup> <http://data.legilux.public.lu/eli/etat/leg/loi/1980/03/07/n1/jo>

<sup>4</sup> <http://data.legilux.public.lu/eli/etat/leg/loi/1996/11/07/n1/jo>

In accordance with the law of 19 December 2020 on the budget of State revenue and expenditure for the financial year 2021<sup>5</sup>, the expenses of the judicial services were budgeted at the rate of 113.385.026 EUR for the judicial services (section 07.1) and at 5.713.341 EUR for administrative courts (section 07.3).

The afore-mentioned sums include the costs related to the running and maintenance of court buildings.

In a further section of the state budget, the capital expenditure of the judicial services was budgeted at the rate of 1.914.436 EUR (section 37.1) and at 3.191 EUR for administrative courts (section 37.3).

### *13. Training of justice professionals (including judges, prosecutors, lawyers, court staff)*

According to the law of 7 June 2012 on junior judges ("*loi sur les attachés de justice*"), the initial and further (continuing) judicial trainings of judges and prosecutors are organised and overseen by a commission consisting of 9 senior magistrates (which – as mentioned before – is also responsible for the recruitment of the candidates).

The professional training of junior judges consists of 2 parts:

- the first part of the professional training, which lasts at least four months, includes theoretical classes, written and oral tests, as well as educational visits;
- the second part of the professional training consists of an internship at a court or at a prosecutor's office.

The afore-mentioned commission furthermore guarantees that the judges and the prosecutors of Luxembourg participate in further (continuing) judicial training, i.e. in conferences, seminars and lectures in relation to legal topics, organised by external institutions (*e.g.* law academies, universities, international training associations, foreign magistrates' academies). The Ministry of Justice provides funds for the judicial training selected by the commission.

Lawyers also have an obligation to undergo further (continuing) professional training throughout their career. In this context, the Bar associations regularly organise conference cycles in cooperation with institutions accredited for the task.

### *14. Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)*

At national level, the digitalisation of justice is ongoing as work on the national case management system is being pushed forward. Already completed for the general and second degree jurisdiction ("*Tribunal d'arrondissement*" and "*Cour supérieure de justice*"), the implementation of the new case management system will be extended this year to the lower courts ("*Justice de paix*"). When completed, the system will allow the use of e-files, and the development of an external exchange platform will then be launched to enable digital communication with the court users, both professionals and citizens.

The documentation service of the courts is currently working on the establishment of a new anonymisation software of the judicial decisions based on an AI solution. The production of the

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<sup>5</sup> <http://legilux.public.lu/eli/etat/leg/loi/2020/12/19/a1061/jo>

software is planned to begin in the second semester of 2021. This digital tool will allow shortening the online publication procedure of court decisions.

During the ongoing COVID-19 pandemic and particularly in the months of complete lockdown, temporary legal provisions<sup>6</sup> were voted to allow the use of already existing digital communication solutions, such as e-mail, mainly for non-sensitive information, in order to avoid direct physical contact between judges, court staff and court users as much as possible. Specifically, in criminal procedures, the use of secure video communication tools was put in place, mainly to avoid unnecessary transport of detainees from prisons to courts. These provisions will stay in force until the sanitary situation is under control.

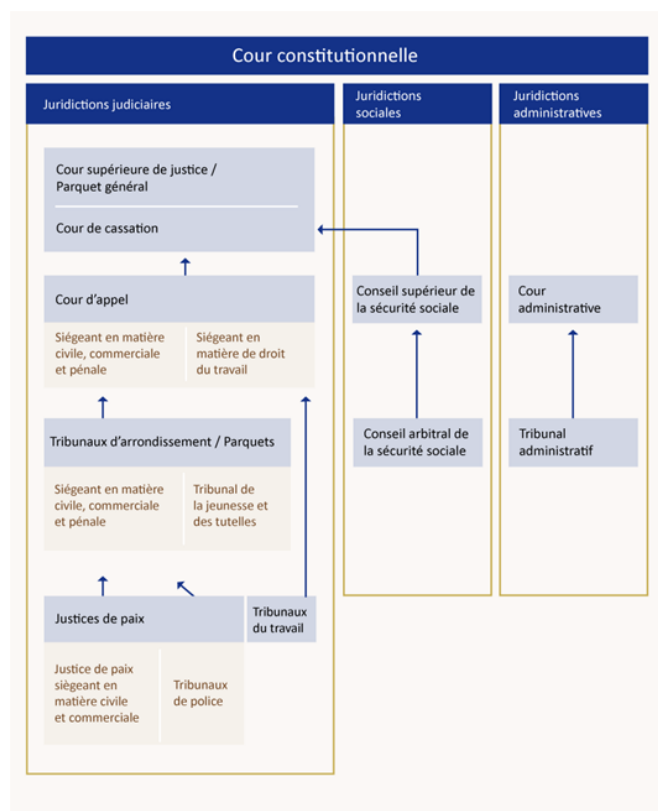
*15. Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)*

The monitoring of the workload of the courts' and prosecutors' offices is done through the statistical service ("*Service statistique de la Justice*") publishing the main statistics of the justice system in a yearly report: <https://justice.public.lu/fr/publications.html>. It provides mostly information on new cases, judicial decisions, pending cases, and convictions, and is publicly available online.

For further information, please refer to our input provided for the annual rule of law report 2020.

*16. Geographical distribution and number of courts/jurisdictions ("judicial map") and their specialisation*

The justice system of Luxembourg



<sup>6</sup> <http://legilux.public.lu/eli/etat/leg/loi/2020/06/20/a523/consolide/20201125>;  
<http://legilux.public.lu/eli/etat/leg/loi/2020/06/20/a542/consolide/20201222>

## Courts of Luxembourg and their specialisation

### The judicial jurisdiction

- 3 Justices of the Peace (*"Justices de paix"*) (Luxembourg, Diekirch, Esch-sur-Alzette)
  - Competent in civil and commercial matters (value under 10.000 EUR)
  - Acting as police court
  - Acting as labour court



- 2 District courts (*"Tribunaux d'arrondissement"*) (Luxembourg, Diekirch)
  - Jurisdiction in all civil and commercial matters that the law does not expressly assign to another jurisdiction
  - Competent in criminal matters (correctional or criminal chamber)
  - Acting as Juvenile and Guardianship Court (*"Tribunal de la jeunesse et de la tutelle"*)



- 1 Court of Appeal (*"Cour d'appel"*) (Luxembourg)

- Jurisdiction over decisions handed down at first instance by the district courts (civil, commercial, criminal and correctional matters)
- Jurisdiction over decisions handed down at first instance by labour courts
- 1 Court of Cassation ("*Cour de cassation*") (Luxembourg)
  - Jurisdiction over the Court of Appeal rulings
  - Jurisdiction over judgements rendered in last resort

### **The social jurisdiction**

- 1 Arbitration Council for Social Security ("*Conseil arbitral de la sécurité sociale*") (Luxembourg)
- 1 Superior Council for Social Security ("*Conseil supérieur de la sécurité sociale*") (Luxembourg)
  - Jurisdiction over decisions taken by social security institutions

### **The administrative jurisdiction**

- 1 Administrative Tribunal ("*Tribunal administratif*") (Luxembourg)
  - Jurisdiction over all administrative decisions for which no other appeal is permitted according to the law
  - Jurisdiction over regulatory administrative acts
  - Jurisdiction over appeals on direct taxes, municipal taxes and duties
- 1 Administrative Court ("*Cour administrative*") (Luxembourg)
  - Jurisdiction over judgements given by the Administrative Tribunal

**+ 1 Constitutional Court ("*Cour constitutionnelle*")** (Luxembourg) at the top of the hierarchy of all courts (including both the judicial, the social and the administrative branch)

- Compliance of laws with the Constitution.

For more information and for the originals of the pictures hereby copied, please refer to: <https://justice.public.lu/fr/organisation-justice.html>

## **C. Efficiency of the justice system**

### *17. Length of proceedings*

Please refer to our input provided for the annual rule of law report 2020.

## II. Anti-corruption framework

### A. The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)

18. List of relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption. Please indicate the resources allocated to these (the human, financial, legal, and practical resources as relevant), e.g. in table format.

The authorities in charge of prevention, detection, investigation and prosecution of corruption are the following:

	Human resources	Financial resources
<b>CRF (Cellule de renseignement financier)</b>		110.000€
Magistrates	6	
Analysts	13	
Officials (support staff/civil servants)	5	
IT specialists	3	
<b>The Investigative Offices:</b>		
Luxembourg	1 Head Investigative Judge 13 Investigative Judges	112.178.812€ (this is a global amount for the judicial services)
Diekirch	1 Head Investigative Judge 1 Investigative Judge	
<b>General Prosecutor's Office and State Prosecutor's Office is composed of 13 magistrates:</b>		
<b>Arrondissement Luxembourg</b>		
General Prosecutor's Office	16	
State Prosecutor's Office	26	
<b>Arrondissement Diekirch</b>		
State Prosecutor's Office	7	
<b>Judicial Police counts 410 employees:</b>		
Judicial Police's AML/CFT Section	14	243.728.663€ (this is a global amount)
Judicial Police's International Mutual Legal Assistance Section	12	

### B. Prevention

19. Integrity framework including incompatibility rules (e.g.: revolving doors)

The information provided in the report for 2020 remains relevant.

Furthermore, regarding the 5<sup>th</sup> evaluation report adopted by GRECO, Luxembourg expressed in page 14 its determination to improve the rules of conduct for members of the government and to clarify



their rights and duties by introducing an effective, rigorous, regulated mechanism. In this sense, the recommendations on ministers and on senior civil servants appointed to political positions were implemented in two codes of conduct.

The two codes were adopted by the government in the form of a Grand Ducal order and submitted to GRECO to check the compliance with the recommendations before their entry into force. In the compliance report adopted in October 2020, GRECO welcomed the efforts made. At this time, the government is actively working on the Grand Ducal order to fully comply with the recommendations.

The above-mentioned codes provide a framework:

- to govern the direct recruitment of senior civil servants appointed to political positions;
- to promote and raise awareness of integrity matters in the government;
- to enshrine in law the principle of transparency of documents held by public authorities;
- to set up a register of interviews between ministers and representatives of interest groups;
- to clarify the rules on abstention by senior civil servants appointed to political positions in case of a conflict of interest if friends or relatives are involved;
- to improve and clarify rules on gifts applicable to ministers and senior civil servants appointed to political positions;
- to set up the obligation for members of government and advisers to notify the Ethics Committee of any new professional activity in the private sector;
- to widen the scope of the disclosure and publication obligations of ministers and senior civil servants appointed to political positions to include speculative and income-generating property assets and significant debts.

Regarding the incompatibility rules, the two codes of conduct lay down an obligation to notify the Ethics Committee of any new professional activity in the private sector for a certain period. The Ethics Committee provides the Prime Minister with a confidential opinion. GRECO has asked for a number of additional improvements<sup>7</sup>.

Furthermore, the Grand Ducal Police (PGD) adopted a code of conduct, which summarises its values and provides explanations and specific examples relating to these different values<sup>8</sup>; it is published on the government's website ("*Le Code de déontologie de la Police grand-ducale*")<sup>9</sup>. In addition, a course in relation with the prevention of corruption was added to the basic training for policing staff trainees.

The General Police Inspectorate (IGP), as an autonomous authority, put in place a working group to draft a code of conduct. Furthermore, a training program is currently being developed for the IGP's staff.

*20. General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)*

The modified Law of 14 September 2018 on transparent and open administration establishes citizens' general right of access to administrative documents.

(<http://legilux.public.lu/eli/etat/leg/memorial/2019/a382>).

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<sup>7</sup> 5<sup>th</sup> Evaluation Compliance Report of GRECO, points 56 to 63

<sup>8</sup> 5<sup>th</sup> Evaluation Compliance Report of GRECO, points 117 to 136

<sup>9</sup> <https://police.public.lu/fr/publications/2019/code-deontologie-police.html>

The above mentioned law establishes the principle of automatically making public the documents accessible to the authorities that fall within the scope of the law. Thus, the law establishes the right of access to all the documents relating to a given administrative activity which are held by state administrations and services, municipalities, syndicated municipalities, public establishments under supervision of the State or municipalities as well as legal entities providing public services, the Chamber of Deputies, the Council of State, the Ombudsman, the Court of Audit, and professional chambers.

Moreover, the code of conduct for members of government sets up a register of interviews taking place between ministers or advisers and representatives of interest groups. This register will contain information about the persons and content of the interview, and will be accessible to the public on the government's website ([www.gouvernement.lu](http://www.gouvernement.lu)). Following the recommendation of GRECO<sup>10</sup>, the Luxembourg authorities are currently working on items to improve and clarify the code of conduct.

Regarding asset disclosure rules, the codes of conduct foresee the obligation for ministers and their advisers to submit a list reporting property assets which they do not live in and are not lived in free of charge by a relative up to the second degree inclusive, as well as holdings in property companies. Also, except the mortgage debt contracted for the purchase of their main residence, they must declare any indebtedness exceeding 100.000 EUR. Concerning the advisors, the list to be submitted summarises all paid activities undertaken by them in the ten years prior to their appointment; the professional activities of their spouse or partner; any form of individual financial involvement, whether in shares or other securities, in the capital of a company; property assets which they do not live in and are not lived in free of charge by a relative up to the second degree inclusive, as well as holdings in property companies; any indebtedness exceeding 100.000 EUR, with the exception of mortgage debt contracted for the purchase of their main residence.

Once the codes of conduct enter into force, GRECO has signaled that it will consider the recommendations to be fully implemented.

Finally, the Law of 15 December 2020<sup>11</sup> modifying 1° the modified law of 21 December 2007 regulating the financing of political parties; and 2° the modified electoral law of 18 February 2003, adjusts the subsidies given to political parties since they had not been reassessed since their introduction 12 years ago. It clarifies and completes the electoral law to face the rising phenomenon of personal campaigns driven by individual party members.

#### *21. Rules on preventing conflict of interests in the public sector*

The codes of conduct for members of government and senior civil servants appointed to political positions give a general definition of conflicts of interest. They set rules to ensure the latter are impartial and independent. In this sense, the Ethics Committee is required to give an opinion on any possible conflict of interest a candidate may have regarding a prior private sector post<sup>12</sup>.

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<sup>10</sup> 5<sup>th</sup> Evaluation Compliance Report of GRECO, points 39 to 43

<sup>11</sup> <http://legilux.public.lu/eli/etat/leg/loi/2020/12/15/a1000/jo>

<sup>12</sup> 5<sup>th</sup> Evaluation Compliance Report, points 12 to 46

The PGD code of conduct establishes rules preventing conflicts of interest and includes an obligation to report any conflict of interest to the hierarchical superior. Since the code of conduct is binding, any breach of this rule can result in disciplinary action<sup>13</sup>.

*22. Measures in place to ensure whistleblower protection and encourage reporting of corruption*

The authorities are currently working on a draft law to transpose EU directive 2019/1937 of the European Parliament and the Council of 23 October 2019. The draft law provides for an improved and larger whistleblower protection regime in compliance with the directive.

The national legislation will cover the scope defined by national and the European Court of Human Rights jurisprudence.

In addition, the material scope of the draft law goes beyond the scope proposed by the directive. Indeed, the material scope will cover all national law.

Also, the whistleblower protection has been strengthened within the Grand Ducal Police by including provisions in the code of conduct which are binding<sup>14</sup>. This meets the requirements of the GRECO recommendation.

*23. List the sectors with high-risks of corruption in your Member State and list the relevant measures taken/envisaged for preventing corruption and conflict of interest in these sectors. (e.g. public procurement, healthcare, other).*

With the COVID-19 pandemic, a new trend was noted in the area of corruption and breaches of integrity regarding the police. Namely, shopkeepers, restaurateurs and hairdressers offered reduced rates for police officers, paramedics and care staff<sup>15</sup>.

In response to this, the Grand Ducal Police (PGD) issued a message to all staff, reminding them of the ethical principles to be observed.

It should be emphasised that the PGD and the IGP regularly exchange on new trends in corruption and breaches of integrity.

*24. Measures taken to address corruption risks in the context of the COVID-19 pandemic.*

The authorities coordinate domestically and continue to cooperate internationally to assess the ongoing impact of COVID-19.

*25. Any other relevant measures to prevent corruption in public and private sector*

The Law of 13 January 2019 creating a Register of beneficial owners<sup>16</sup> ("RBE") establishes this register with the purpose to preserve and make available information on beneficial owners of registered entities.

The Law of 12 March 2020 modifying 1° the Criminal code; 2° the Criminal procedure code; 3° the modified law of 12 February 1979 regarding the added value tax; transposes EU directive 2017/1371

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<sup>13</sup> The measures foreseen in the code of conduct meet GRECO's recommendation requirements; 5<sup>th</sup> Evaluation Compliance Report, points 143 to 149

<sup>14</sup> 5<sup>th</sup> Evaluation Compliance Report, points 168 to 172

<sup>15</sup> 5<sup>th</sup> Evaluation Compliance Report, points 111 and following

<sup>16</sup> <http://legilux.public.lu/eli/etat/leg/memorial/2019/a15>

of the European Parliament and the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law<sup>17</sup>.

On 18 March 2020, a bill n°7533 was filed. This bill intends to transpose the EU directive 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law.

The Law of 25 March 2020<sup>18</sup> (2020 AML/CFT Law) amends the modified law of 12 November 2004 on the fight against money laundering and the fight against terrorist financing (2004 AML/CFT Law), as well as the 1976 Notaries Law, the 1990 Bailiff Law, the 1991 Lawyers Law, the 1999 CPAs Law and the 2016 Audit Profession Law. The Law of 25 March 2020 subjects virtual currencies, virtual assets and virtual asset service providers to the 2004 AML/CFT Law, reinforces customer due diligence obligations of professionals, reinforces national and international cooperation between supervisory authorities, SRBs and their foreign counterparts and reinforces and streamlines the supervisory and sanctioning powers of the different SRBs.

The modified Law of 25 March 2020<sup>19</sup> (2020 RBASD Law) transposes part of the 5th AML Directive, by obliging professionals to hold and keep a file on data relating to payment accounts, bank accounts and safes and by establishing a central electronic system for retrieving data concerning payment accounts and bank accounts identified by an IBAN number and safes held by credit institutions. The law gives the CSSF ("*Commission de surveillance du secteur financier*") the task of maintaining said central electronic system for retrieving said data and determines who has access to the data.

The bill n°7452 filed on 27 June 2019 creates and organises an asset recovery office whose purpose is to trace and identify the proceeds from crime.

The modified Law of 10 July 2020<sup>20</sup> (2020 RFT Law) introduces a Beneficial Owner register for trusts, fiducies and other similar legal arrangements into Luxembourg law. It obliges trusts and fiducies to obtain and store information on the identity of the beneficial owners, including the settlor, the trustees, the protector, the beneficiaries or the class of persons in whose main interest the legal arrangement or entity is set up or operates and any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means. This information must be adequate, accurate and up-to-date. The 2020 RFT Law also provides for the establishment of a register managed by the AED with the purpose of storing accurate information on the trusts and fiducies and on the beneficial owner(s). It also provides the requirements for accessing said information stored in the register. Administrative penalties and other administrative measures are foreseen in case of violation of the professional obligations referred to in the law.

On 1 February 2021 a bill was filed whose purpose is the transposition of the EU Regulation 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders.

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<sup>17</sup> <http://legilux.public.lu/eli/etat/leg/memorial/2020/a153>

<sup>18</sup> <http://legilux.public.lu/eli/etat/leg/loi/2020/03/25/a194/1o>

<sup>19</sup> <http://legilux.public.lu/eli/etat/leg/loi/2020/03/25/a193/1o#:~:text=la%20version%20PDF,-,Loi%20du%2025%20mars%202020%20instituant%20un%20syst%C3%A8me%20C3%A9lectronique%20central,1%C2%B0>

<sup>20</sup> <http://legilux.public.lu/eli/etat/leg/loi/2020/07/10/a581/1o>

The Law of 25 February 2021<sup>21</sup> (2021 AML/CFT Law) further clarifies some provisions of the 2004 AML/CFT Law, as well as the modified law of 20 April 1977 regarding gambling and sports bets.

The Grand-Ducal Regulation of 14 August 2020<sup>22</sup> (2020 AML/CFT Regulation) amends the 2010 AML/CFT Regulation. Among other changes, it (1) gives a definition of the term "appropriate time", which is used by the 2004 AML/CFT Law in the context of professionals required to apply the CDD procedures to existing customers on a risk-sensitive basis, (2) states that CDD measures must be carried out for occasional operations of virtual asset service providers exceeding 1.000 EUR and (3) clarifies that business relationships and transactions involving notably high-risk countries constitute higher-risk situations which require the application of enhanced CDD measures.

### C. Repressive measures

#### 26. Criminalisation of corruption and related offences

Please refer to our input provided for the annual rule of law report 2020.

#### 27. Data on investigation and application of sanctions for corruption offences (including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds.

The statistics provided for 2020 take into account the following offences:

- embezzlement of funds by public officers,
- bribery,
- conflict of interest,
- corruption and influence padding,
- acts of intimidation against a public officer,
- active corruption,
- money laundering as a consequence of the above mentioned offences.

New notices in JUCHA (computer system in which the data concerning a criminal case is registered, created in 2020):

ML = money laundering

Total	...of which ML cases
28	4

#### Follow-up of cases created in 2020

	Total	...of which ML-cases
Ongoing investigation	14	3

<sup>21</sup> <http://www.legilux.public.lu/eli/etat/leg/memorial/2021/a158>

<sup>22</sup> <http://legilux.public.lu/eli/etat/leg/rgd/2020/08/14/a694/fo#:~:text=V1.9.7%20%2D%20202010071413-,R%C3%A8glement%20grand%2Dducal%20du%2014%20ao%C3%BBt%202020%20modifiant%20le%20r%C3%A8glement,contre%20le%20financement%20du%20terrorisme.>

Ad Acta	13	1
Judgment	1	0

#### Decisions 2020

	Total	...of which ML cases
Judgment on the merits	4	1
Court order (District Court)	2	2
Dismissal (District Court)	1	1
Referral (District Court)	5	1
Final decisions	2	0
Court decisions	3	1

#### Convictions 2020

	Total	...of which ML convictions
Natural persons	2	2
Legal entities	0	0

*28. Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)*

As stated in question 19, the entry into force of the code of conduct for members of government and the code of conduct for senior civil servants was postponed to allow the government to make the necessary amendments to take into account GRECO's conclusions. The rules are thus not applicable yet.

Furthermore, the revision of the current constitutional provisions covering the jurisdiction of the judicial authority and its powers to prosecute matters involving ministers has been delayed. In that sense, members of government continue to have certain privileges of prosecution and jurisdiction and as such, they can only be indicted by the Chamber of Deputies and judged by the Supreme Court of Justice sitting in full court.

### III. Media pluralism

#### A. Media authorities and bodies

*29. Independence, enforcement powers and adequacy of resources of media regulatory authorities and bodies*

The Luxembourg Independent Media Authority ALIA is in charge of monitoring the application of regulatory requirements related to audiovisual services and media. Its supervisory activities cover

traditional television, on-demand services (VOD) and national, regional, and local radio stations. The Authority has the power to impose sanctions, which are subject to appeal in administrative courts.

Article 35sexies<sup>23</sup> of the law on electronic media, as amended, lists the administrative sanctions applied by the Authority in case of a violation of the law. However, the Authority cannot impose sanctions or reprimands on violations that fall within the scope of criminal law.

The Authority decides directly on the granting and withdrawal of permits for regional radio services (transmission networks) and local radio services. The Minister in charge of media must consult the Authority before granting licences and permits for national and international media services. As regards its legal status, the Authority is an independent public body with its own legal personality. Furthermore, its independence is formally recognised by the law of electronic media as amended, which also provides that the Authority is financially and administratively independent. In this respect, the Authority is continuously growing in terms of human resources.

Despite budgetary constraints, Parliament has significantly increased its budget allocation (2021: 1.400.000 EUR, which represents an increase of 70% compared to 2020).

The Luxembourg Press Council is the self-regulating body equally composed of editors and journalists. It is in charge of issuing press passes and of the self-regulation of the profession. It has published a code of conduct on the rights and duties of the journalists and the editors. Its Complaints Commission treats complaints on editorial content. The Press Council may also issue recommendations and guidelines on matters regarding freedom of expression in the media or the work of journalists and editors. Its members are appointed by grand-ducal decree on the proposal of the sector. Its independence is legally recognized.

*30. Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies*

The Board of Directors ("*Conseil d'administration*") of ALIA has 5 members, one of whom is its Chairman and all of whom are appointed by the Grand Duke at the recommendation of the Government.

Members of the Board of Directors may not be members of the Government, the Chamber of Deputies, the Council of State or the European Parliament. They may not hold any municipal position, or mandate in any entity supervised by the Authority, nor may they hold any direct or indirect interest in any company or other body that comes within the scope of the Committee. There is no procedure to revoke a member of the Board. The law only foresees a procedure for the replacement of Board members who have resigned, died or who are permanently incapable of performing their duties.

The Grand Duke appoints the Director ("*directeur*") for a renewable 5-year term of office. The Government issues a proposal based on the advice of the Board of Directors. The Director shall hold a university degree and may not be member of the Government, the Chamber of Deputies, the Council of State or the European Parliament. He may not hold any municipal position, undertake any activity

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<sup>23</sup> <http://legilux.public.lu/eli/etat/leg/loi/2013/08/27/n5/jo>

that is incompatible with his position, or hold any direct or indirect interest in any company or other body that comes within the scope of the Authority.

The mandate of the Director may be revoked, if the latter is permanently unable to perform his/her duties or no longer meets position requirements. The Government having requested the opinion of the Board of Directors triggers this procedure.

*31. Existence and functions of media councils or other self-regulatory bodies*

Please refer to our input for point 29 above on the Press council.

**B. Transparency of media ownership and government interference**

*32. The transparent allocation of state advertising (including any rules regulating the matter); other safeguards against state / political interference*

Official notices are published in all daily newspapers.

Besides state advertising, and in order to promote the diversity of the Luxembourgish press landscape, the printed press is supported by a public aid scheme consisting of a basic amount, identical for all eligible newspapers, and a proportional amount calculated on the basis of the quantity of pages. A fixed amount of 100.000 EUR is allocated to online media fulfilling the criteria. The total amount of the distributed aid is published annually, and in 2020, for instance, 7.1 million EUR have been allocated to news publishers. It is noteworthy that the press aid scheme was instituted in 1973 and that the allocation of funds does not interfere with the editorial independence of the beneficiary media.

*33. Rules governing transparency of media ownership and public availability of media ownership information*

Please refer to our input provided for the annual rule of law report 2020.

**C. Framework for journalists' protection**

*34. Rules and practices guaranteeing journalist's independence and safety*

Please refer to our input provided for the annual rule of law report 2020.

*35. Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists*

No specific dispositions.

*36. Access to information and public documents*

Since 1 January 2019, public bodies (government administrations and departments, communes, public sector establishments, the Parliament, etc.) are required to publish their documents online, either on their own websites or on the Luxembourgish data platform ([www.data.public.lu](http://www.data.public.lu)). When a document is amended, the published version must be updated. A requested document is sent to the applicant as quickly as possible, and no later than one month following the administration's receipt of the request.



*37. Lawsuits and convictions against journalists (incl. defamation cases) and safeguards against abuse*

Defamation remains an offence in Luxembourg, but criminal defamation prosecutions against media are extremely rare. In a recent court case, a businessman brought charges of defamation in three countries against a daily newspaper, but the charges were dropped in August 2019.

**IV. Other institutional issues related to checks and balances**

**A. The process for preparing and enacting laws**

*38. Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), and transparency and quality of the legislative process*

Please refer to our input provided for the annual rule of law report 2020.

*39. Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)*

Please refer to our input provided for the annual rule of law report 2020.

*40. Regime for constitutional review of laws*

Please refer to our input provided for the annual rule of law report 2020.

*41. COVID-19: provide update on significant developments with regard to emergency regimes in the context of the COVID-19 pandemic*

*- judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic*

*- oversight by Parliament of emergency regimes and measures in the context of COVID-19 pandemic*

*- measures taken to ensure the continued activity of Parliament (including possible best practices)*

The duration of the emergency regime is limited by the Constitution to ten days and can be extended to three months by the vote of a law by Parliament.

In the context of the Covid-19 pandemic, the Government invoked the emergency regime on 18 March 2020. Subsequently, the duration of the emergency regime was extended to this maximal duration by the vote of a law of 24 March 2020. Thus, with the end of this exceptional regime, all emergency measures taken by Government in this context expired automatically on 24 June 2020.

As the continuity of some measures was still necessary, part of the measures have been enshrined in a law of 24 June 2020<sup>24</sup>, repealed by a law of 17 July 2020<sup>25</sup>, which has since then been amended eight times. Thus, since the end of the emergency regime, Parliament works normally and has full control over the adoption or amendment of measures taken in the context of the pandemic.

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<sup>24</sup> <http://legilux.public.lu/eli/etat/leg/loi/2020/06/24/a524/lo>

<sup>25</sup> <http://legilux.public.lu/eli/etat/leg/loi/2020/07/17/a624/lo>

In addition, since the beginning of the pandemic, the Government frequently informed the leaders of the Parliamentary bodies about the latest developments of the crisis in about thirty meetings.

## **B. Independent authorities**

*42. Independence, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions*

Please refer to our input provided for the annual rule of law report 2020.

## **C. Accessibility and judicial review of administrative decisions**

*43. Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data) and judicial review (incl. scope, suspensive effect)*

Étant donné que les décisions administratives, qui peuvent le cas échéant contenir des sanctions administratives, sont des actes administratifs individuels qui produisent des effets juridiques affectant la situation personnelle ou patrimoniale d'une personne individuelle, ces décisions ne font pas l'objet d'une publication.

Par contre, si un recours est exercé par un administré à l'encontre d'une décision administrative devant les juridictions administratives, la décision fait l'objet d'une certaine publicité du fait de la publication d'office de l'ensemble de la jurisprudence administrative sur le site internet des juridictions administratives<sup>26</sup>.

Conformément à l'article 11, paragraphe 1 de la loi modifiée du 21 juin 1999 portant règlement de procédure devant les juridictions administratives<sup>27</sup>, les recours devant les juridictions administratives n'ont pas d'effet suspensif. L'acte administratif querellé continue à sortir ses effets tant qu'il n'a pas été annulé ou réformé par une décision définitive. L'article 45 de la prédite loi dispose ainsi qu'il est sursis à l'exécution des jugements ayant annulé ou réformé des décisions attaquées pendant le délai et l'instance d'appel. Étant donné que l'exécution immédiate d'un acte administratif peut affecter la situation juridique ou de fait de l'administré de façon irréversible, le législateur a prévu, dans certains rares cas, la possibilité pour l'administré d'obtenir la suspension des actes administratifs qui font l'objet d'un recours contentieux. Un effet suspensif de plein droit est par exemple prévu pour les recours en réformation des décisions relatives à la reconnaissance du statut de réfugié politique.

Au cas où la suspension automatique et de plein droit des actes administratifs n'est pas expressément prévue par une loi spéciale, il existe toujours la possibilité de surseoir à l'exécution d'un acte administratif par une décision de sursis à exécution prononcée par le juge administratif, éventuellement assortie de mesures de sauvegarde, suivant une procédure accélérée : le référé administratif. Dans le cadre du référé administratif, le président du tribunal administratif statue au provisoire sans porter préjudice au principal. L'exercice de ce recours est cependant soumis à la condition de l'introduction préalable d'un recours au fond devant le tribunal administratif. Ainsi, la

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<sup>26</sup> <https://justice.public.lu/fr/jurisprudence/juridictions-administratives.html>

<sup>27</sup> [http://legilux.public.lu/eli/etat/leg/recueil/cours\\_tribunaux/20201221](http://legilux.public.lu/eli/etat/leg/recueil/cours_tribunaux/20201221)

requête en suspension doit être introduite simultanément à la requête en réformation ou en annulation de l'acte administratif en question.

44. *Implementation by the public administration and State institutions of final court decisions*  
Please refer to our input provided for the annual rule of law report 2020.

#### **D. The enabling framework for civil society**

45. *Measures regarding the framework for civil society organisations (e.g. access to funding, registration rules, measures capable of affecting the public perception of civil society organisations, etc.)*

Please refer to our input provided for the annual rule of law report 2020.

#### **E. Initiatives to foster a rule of law culture**

46. *Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, etc.)*

La proposition de révision de la Constitution (doc. parl. PPR 7700<sup>28</sup>), qui a été déposée en date du 17 novembre 2020, consacre dans le texte constitutionnel la notion de l'état de droit et du respect des droits de l'homme comme des valeurs fondamentales sur lesquelles repose l'État luxembourgeois. Le libellé proposé est le suivant : « *[Le Grand-Duché du Luxembourg] est fondé sur les principes d'un État de droit et sur le respect des droits de l'Homme* ».

Dans sa Déclaration annuelle de politique étrangère, prononcée devant la Chambre des Députés le 11 novembre 2020<sup>29</sup>, le Ministre des affaires étrangères et européennes Jean Asselborn a lancé un appel au respect de l'état de droit et à la défense des valeurs communes européennes, aussi dans le contexte de la crise de COVID-19. Cette allocution a été suivie d'un débat avec les Députés.

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<sup>28</sup><https://chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RoleDesAffaires?action=doDocpaDetails&backto=/wps/portal/public/Accueil/Actualite&id=7700>

<sup>29</sup> [https://maee.gouvernement.lu/content/dam/gouv\\_maee/minist%C3%A8re/d%C3%A9clarations-de-politique-%C3%A9trang%C3%A8re/2020/FR-2020-Declaration-politique-etrangere.pdf](https://maee.gouvernement.lu/content/dam/gouv_maee/minist%C3%A8re/d%C3%A9clarations-de-politique-%C3%A9trang%C3%A8re/2020/FR-2020-Declaration-politique-etrangere.pdf)