

Brussels, 30.9.2020
SWD(2020) 315 final

COMMISSION STAFF WORKING DOCUMENT

**2020 Rule of Law Report
Country Chapter on the rule of law situation in Luxembourg**

Accompanying the document

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**2020 Rule of Law Report
The rule of law situation in the European Union**

{COM(2020) 580 final} - {SWD(2020) 300 final} - {SWD(2020) 301 final} -
{SWD(2020) 302 final} - {SWD(2020) 303 final} - {SWD(2020) 304 final} -
{SWD(2020) 305 final} - {SWD(2020) 306 final} - {SWD(2020) 307 final} -
{SWD(2020) 308 final} - {SWD(2020) 309 final} - {SWD(2020) 310 final} -
{SWD(2020) 311 final} - {SWD(2020) 312 final} - {SWD(2020) 313 final} -
{SWD(2020) 314 final} - {SWD(2020) 316 final} - {SWD(2020) 317 final} -
{SWD(2020) 318 final} - {SWD(2020) 319 final} - {SWD(2020) 320 final} -
{SWD(2020) 321 final} - {SWD(2020) 322 final} - {SWD(2020) 323 final} -
{SWD(2020) 324 final} - {SWD(2020) 325 final} - {SWD(2020) 326 final}

ABSTRACT

The Luxembourgish justice system is marked by a high level of perceived judicial independence and an overall good level of efficiency. A constitutional reform is being discussed in Parliament to further strengthen judicial independence, by anchoring it in the Constitution and by establishing a council for the judiciary. As regards the quality of the justice system, measures are underway to foster the digitalisation of justice, which currently leaves room for improvement. In particular, the availability of means to submit cases, transmit summons and monitor legal proceedings online could be improved. Additionally, a reform of the legal aid system is being discussed to simplify certain procedures and make it accessible to a larger number of citizens. The efficiency of civil justice is consistently high, but data on administrative justice are still needed.

Luxembourg has the legal and institutional anti-corruption framework broadly in place. There is no specific anti-corruption strategy nor anti-corruption agency in place and the Ministry of Justice is in charge of the overall policy coordination. The institutional framework to prevent and fight corruption is divided between several authorities. Corruption is tackled by the prosecution service from a financial and economic crime angle, whilst the Court of Audit controls the financial management of the organs, administrations and services of the State. Shortages as regards resources of the prosecution have been reported and the recruitment process and resource allocation are being reviewed. There is stronger focus on preventive measures such as a Code of Ethics and a Code of Conducts for ministers and members of Parliament. Furthermore, lobbying and ‘revolving doors’ are not regulated and no national lobby register has been established.

The audiovisual media regulator functions independently, although there are concerns as regards its effectiveness, notably in view of limited human resources and the large number of foreign services licensed in the country. All entities registered in the Luxembourg Business Register, including media companies, have to provide detailed information on their ultimate beneficial owners and make such information publicly accessible. The law on freedom of expression in media ensures protection for journalists and, overall, the framework for journalists’ protection is robust. There were no reports of threats against journalists in recent years. Some concerns exist regarding delays in dealing with requests for access to documents held by public authorities.

The process for enacting laws includes conducting impact assessments and stakeholder consultations, and independent authorities play an important role in the system of checks and balances. A separate constitutional reform adopted on 15 May 2020 reinforced the role of the Constitutional Court and remedies the situation where a legal provision declared unconstitutional continues to create legal effects. Another proposed reform still under debate in the Parliament seeks to anchor the Ombudsman institution in the Constitution, which would contribute to further strengthening this institution. Furthermore, Luxembourg is considered to have an open civil society landscape, and recent initiatives aim at further fostering this environment.

I. JUSTICE SYSTEM

The justice system contains two separate branches of courts: ordinary courts with jurisdiction in civil and criminal matters and administrative courts hearing cases of administrative law. The ordinary branch includes three Justices of the Peace, two District Courts with general jurisdiction, a Court of Appeal and a Court of Cassation.¹ The administrative branch is composed of an Administrative First-instance Court and an Administrative Court of Appeal. The Constitutional Court rules on the compliance of laws with the Constitution. Candidate judges are selected by a committee composed exclusively of judges and subsequently formally appointed by the executive². For posts at the Supreme Court and the Administrative Appeal Court, judges are appointed by the executive on the advice of the Supreme Court or of the Administrative court, respectively. The prosecution service is independent but prosecution is exercised under the authority of the Minister of Justice. The two Bar associations are independent and represent lawyers established in Luxembourg.

Independence

The level of perceived independence of the judiciary is high. Among the population, 74% consider the level of independence of courts and judges to be ‘fairly or very good’, as well as 74% of businesses.³ While the level of perceived judicial independence among the general population has been consistent over the last years, the perception among businesses is subject to more fluctuation.⁴

A planned revision of the Constitution would introduce new elements to further strengthen judicial independence. Currently, the justice system does not include a council for the judiciary. On 5 May 2020, a constitutional revision was proposed to establish such a council, which would be competent to nominate candidate-judges for all positions, prior to their formal appointment by the executive.⁵ Furthermore, the council would have the power to initiate disciplinary cases regarding judges,⁶ to give advice on matters related to the justice system and to develop ethics standards applicable to the judiciary.⁷ The council would be composed of nine members: the President of the Supreme Court, the President of the Administrative Court of Appeal, the State Prosecutor General, three judges elected by their peers, two representatives of civil society and academia⁸ and a lawyer⁹. The proposed constitutional revision will still be the subject of further debates in Parliament. It is important that the envisaged reform in its final form take account of relevant Council of Europe standards¹⁰. Additionally, the proposed constitutional revision would explicitly enshrine the

¹ Several other courts with specialised jurisdiction exist.

² Judges are formally appointed by the Grand Duke.

³ While 13% of the general population and 16% of companies indicate that they perceive the level of judicial independence to be ‘very good’ and 61% of the general population and 58% of companies perceive it as ‘fairly good’, only 9% of the general population and 5% of companies indicate that they perceive the level of judicial independence to be ‘fairly or very bad’. 2020 EU Justice Scoreboard, Figures 44 and 46, Eurobarometer survey. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

⁴ 2016, 2017, 2018, 2019, 2020 EU Justice Scoreboard.

⁵ Judges are formally appointed by the Grand Duke.

⁶ Currently, this competence resides with the State Prosecutor General.

⁷ GRECO has also recommended that the Council be involved in disciplinary decisions concerning prosecutors, GRECO Fourth Evaluation Round – Evaluation report, recommendation xiv.

⁸ Designated by Parliament.

⁹ Designated by the two bar associations.

¹⁰ Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, paras. 26-27.

independence of judges in the Constitution. While the original draft revision provided for the inclusion of the independence of both judges and of the prosecution service¹¹, the most recent version mentions only the independence of judges, which has raised concerns among certain stakeholders.¹² This revision will also still be debated in Parliament.

The power of the Minister of Justice to order the prosecution of a specific case is not used in practice and is accompanied by safeguards. While the prosecution service is recognised as independent, the prosecution is exercised formally under the authority of the Minister of Justice. The Minister has the competence to instruct the prosecution service to prosecute an individual case, but may not order to refrain from prosecution. In case a specific instruction to prosecute is given, it must be reasoned and issued in written form, and parties to the court proceedings have access to the instruction.¹³ Moreover, it appears that the power to give specific instructions is not used in practice. The legal safeguards in place, combined with the current practice, appear to mitigate the risk to the autonomy of the prosecution service.¹⁴

Quality

The process of digitalisation of the justice system is ongoing. There remains room to improve the digitalisation of the justice system. In particular, online information provision to the general public about the justice system, and the availability of electronic means to submit cases, to transmit summons and to monitor legal proceedings, are currently low.¹⁵ While judgments of most courts can be accessed online, publication is usually reserved for landmark cases.¹⁶ To foster the digitalisation of the justice system, the “paperless justice” (JUPAL) project aims to provide further information on the justice system to the public by establishing a portal where citizens can connect with lawyers, judges and notaries, and to increase the online publication rate of court judgments. The project is expected to be completed in 2026.

Discussions are ongoing on a reform of the legal aid system. The legal aid framework currently only provides for the possibility to fully reimburse lawyers’ fees and covered legal costs, with the threshold for eligibility in a consumer case lying below the Eurostat poverty threshold.¹⁷ In that regard, discussions are underway on a reform of the system to simplify administrative procedures and to also offer partial legal aid, if certain conditions are fulfilled. Such a reform would aim to make (partial) legal aid accessible to a larger number of citizens, thereby improving access to justice.

¹¹ Venice Commission opinion (CDL-AD(2019)003), para. 102.

¹² Information received in the context of the country visit. See also for example: Groupement des Magistrats Luxembourgeois, Open letter to the members of Parliament, 2020.

¹³ Figure 55, 2020 EU Justice Scoreboard.

¹⁴ Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe, para. 13(d). “*where the government has the power to give instructions to prosecute a specific case, such instructions must carry with them adequate guarantees that transparency and equity are respected in accordance with national law*”. As regards the safeguards, see para 13 (points d to e). See also in the context of the European Arrest Warrant: judgment of the Court of Justice of 27 May 2019, *OG (Parquet de Lubeck)*, Joined Cases C-508/18 and C-82/19 PPU, in which the Court held that in the context to such a warrant for the purpose of prosecution, the concept of ‘issuing judicial authority’ must be interpreted as not including public prosecutors’ offices of a Member State which are exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific case from the executive.

¹⁵ Figures 22 & 27, 2020 EU Justice Scoreboard.

¹⁶ Figure 28, 2020 EU Justice Scoreboard.

¹⁷ Figure 23, 2020 EU Justice Scoreboard.

Efficiency

While civil justice performs efficiently overall, certain data are lacking as regards the functioning of administrative justice. The efficiency of civil justice is consistently high, although the length of proceedings is significantly longer at second and at third instance.¹⁸ The number of pending civil cases is low,¹⁹ and a consistent clearance rate of around 100% shows that civil justice deals with its caseload effectively.²⁰ Data are lacking, however, as regards the length of court proceedings and the number of pending cases in administrative justice.²¹ This does not allow for having a clear overview of the overall efficiency of the justice system.

II. ANTI-CORRUPTION FRAMEWORK

The institutional framework to prevent and fight corruption is shared between several authorities. The Ministry of Justice is the main authority in charge of policy coordination and overall corruption matters. Within the Ministry, an intergovernmental committee, the Corruption Prevention Committee, acts as a consultative forum and supports the overall national policy to fight corruption. While there is no specialised anti-corruption prosecution authority as such, the Economic and Financial section of the Prosecutor's Office has specific competences to investigate criminal cases of economic and financial nature, including corruption cases.

In the latest Corruption Perceptions Index by Transparency International, Luxembourg scored 80/100, and ranked 5th in the European Union and 9th globally.²² Amongst the respondents, while 42% perceive corruption as widespread (EU average 71%), only 6% declared that corruption affects their daily life (EU average 26%).²³ As regards businesses perception, 26% companies perceive corruption as widespread (EU average of 63%) and 41% of companies believe that corruption is a problem when doing business (EU average 37%). 25% people consider that there are enough successful prosecutions to deter people from corrupt practices (EU average of 36%), while 57% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average of 31%).²⁴

No national anti-corruption strategy is in place. The Ministry of Justice is in charge of overall policy coordination on anti-corruption. Within the Ministry of Justice, the Committee for the Prevention of Corruption (COPRECO) acts as a consultative forum and proposes measures for an effective fight against corruption both at national and international level. Follow-up to COPRECO's activity can be of two different types: legislative or awareness-raising. For instance, the 2011 Whistleblower legislation originated from discussions within COPRECO. The Committee is supposed to meet at least twice a year. However, no data regarding its meetings and or annual reports are publicly available.

¹⁸ 2016, 2017, 2018, 2019, 2020 EU Justice Scoreboard.

¹⁹ Figure 14, 2020 EU Justice Scoreboard.

²⁰ Figure 11, 2020 EU Justice Scoreboard.

²¹ Figures 5, 8, 9, 13 and 15, 2020 EU Justice Scoreboard. Comparative data on the efficiency of the justice system is gathered by CEPEJ in the context of the EU Justice Scoreboard. For Luxembourg, these specific data are not available.

²² Transparency International, Country profile: Luxembourg.

²³ Special Eurobarometer 502 (2020).

²⁴ Flash Eurobarometer 482 (2019).

The institutional framework to prevent and fight corruption is divided between several authorities. These include the Ministry of Justice, the Court of Audit, the Prosecution, and the Police. The competences of the Economic and Financial section of the Prosecutor's Office focus on combating financial crime in general rather than specifically on corruption. The Financial Intelligence Unit together with the Economic and Financial department investigate corruption-related offences stemming from financial crimes. As far as resources of the prosecution are concerned, shortages have been reported in the past year.²⁵ Issues regarding insufficient resources are aggravated by the increasingly complex nature of financial crimes. In this context, the recruitment process and resources allocation are being reviewed.²⁶

The Court of Audit controls the financial management of the organs, administrations and services of the State. It is also empowered to audit legal persons under public law, provided that these persons are not subject to another financial control provided for by law. All legal persons governed by public law and natural and legal persons of private law receiving public financial aid for a specific purpose may be subject to the supervision of the Court of Audit, as to the purposeful use of these public funds.²⁷ The Court of Audit also has jurisdiction over the financing of political parties.²⁸

Legislation has been adopted with regard to conflicts of interest and declarations of assets for members of Government and civil servants. As for ministers, the Code of Conduct, rules on declaration of assets, holding of managerial or board positions, acceptance of gifts and declarations of interests are in place. The Code of Conduct was also evaluated positively by GRECO, which highlighted that room for improvement remained with regard to oversight mechanisms, since the Code is mainly self-regulatory²⁹. An Ethics Committee has been established in 2018. The Ethics Committee has an advisory role, issuing opinions on the interpretation of the Code of Conduct. Since its establishment, six cases have been brought before the Committee. The letters which refer cases to the Committee are published on the Government website, which has a section dedicated also to the opinion issued by the Ethics Committee and therefore made public.³⁰ A Code of Conduct for members of Parliament from 2014 in matters of financial interests and conflicts of interest is in place.³¹ Irregularities can be investigated up request by the President of the Chamber or if reported by citizens, when found in relation with members of Parliament's declaration of assets which are made publicly available. In order to further detail the Code of Conduct for members of the Chamber of Deputies, an implementing instrument was adopted in 2018³². Luxembourg has also adopted a Code of Ethics for its police force in December 2019³³. The police force has also strengthened its ethical training for its members.

²⁵ Ministry of Justice (2019), Annual activity report of 2018, chapter 3.1, p. 171.

²⁶ Works are being done under the project law 7452 on establishing and organizing the asset management and recovery office.

²⁷ Amended law of 8 June 1999 on the Organization of the Court of Audit.

²⁸ Court of Audit (2018), Activity report of 2018.

²⁹ GRECO (2018), Fifth evaluation round – Evaluation report on Luxembourg on preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies.

³⁰ Government of Luxembourg, Government web page.

³¹ Chamber of Deputies (2019), Rules of the Chamber of Deputies, point 20, p. 6.

³² This was done in order to follow up on GRECO Fourth Evaluation Round – Evaluation Report, recommendation i. However, GRECO still considered the recommendation partly implemented. GRECO Fourth Evaluation Round – Second Interim Compliance Report, pp. 2-5.

³³ Follow-up on a recommendation from the GRECO Fifth Evaluation Round.

Lobbying and ‘revolving doors’ are not regulated. Rules concerning conflicts of interest, secondary employment, membership of a corporate board or holding of managerial position are included in the Code of Conduct for Ministers, but none of these regulate lobbying.³⁴ As for lobbying rules applicable to members of Parliament, the Code of Ethics for Members of the Parliament³⁵ envisages that they must act in the public interest, and interviews must be carried out according to the provisions of the Rules of the Chamber of Deputies, which regulates on-site visits but not unofficial contacts or reporting on activities such as Government questions or works in commissions of inquiry.³⁶ Several rules exist to prevent conflicts of interest of civil servants arising from acceptance of gifts and secondary employment. These rules are laid down in chapter 5 of the Civil Servants Act, 1979. However, there are no provisions addressing post-employment and contacts with third parties. As regards ‘revolving doors’, there are no provisions addressing ‘revolving doors’ for civil servants. Some provisions are however applicable as foreseen in the Code of Ethics applicable to the members of the Government. In the context of the implementation of GRECO’s Fifth Evaluation Round, the Government is currently working on new ethical rules applicable to ministers and senior civil servants concerning the exercise of a new occupational activity after leaving office. The form that those rules will take has yet to be determined.

A National Action Plan to improve the legislation on access to information for 2019-2021 has been adopted. The aim of this action plan is to further implement the principles of open government, in particular by enhancing access to information, fostering civic participation and mainstreaming the highest standards of professional integrity in the civil service. An outcome of this Action Plan has been the implementation of the Law of 14 September 2018 on a transparent and open administration, which gives the public at large the right to access documents, and which established an independent commission to monitor that the right is respected. Given the recent adoption and broad scope of the law, it is expected that the future decisions of the Commission will clarify points such as the scope of exceptions or limitations to access certain documents.

III. MEDIA PLURALISM

The legal framework concerning media pluralism is based on a set of constitutional and legislative safeguards. Freedom of expression is explicitly recognised in the Constitution and protected by national law. The Law on Electronic Media guarantees the financial and administrative independence of the audiovisual media regulator.³⁷

The regulatory authority for audiovisual media services is an independent public body with its own legal personality. The *Autorité Luxembourgeoise Indépendante de l’Audiovisuel* (ALIA) is responsible for 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 stations³⁸. The independence of the Authority is formally recognised by the law on electronic media³⁹, which

³⁴ GRECO (2018), Fifth Evaluation Round – Evaluation Report, paras. 66-69.

³⁵ Art. 5, Rules of the Chamber of Deputies.

³⁶ Chamber of Deputies (2019), Rules of the Chamber of Deputies.

³⁷ In 2020, Luxembourg is at 17th position worldwide in the Reporters Without Borders World Press Freedom Index. See: <https://rsf.org/en/ranking>.

³⁸ Independent Audiovisual Authority of Luxembourg, web page of the Independent Audiovisual Authority of Luxembourg.

³⁹ Law of 27 July 1991 on Electronic Media.

provides, in particular, that the Authority is financially and administratively independent.⁴⁰ Concerns have been raised about the full independence of the regulatory authority, notably as regards the nomination procedure, since the Government is ultimately responsible for the nomination and dismissal of the members of the board of governors and of its director (after consultation of the board)⁴¹. In this context, it should be recalled that the revised Audiovisual Media Services Directive (AVMSD) sets out specific guarantees for the independence and effectiveness of national media regulators. The law transposing the Directive was presented to Parliament in the summer of 2020. ALIA is a recent institution, established in December 2013. The limited resources of the regulatory authority in view of the large number of audiovisual media services licensed in the country⁴² are perceived as an issue.⁴³ The decisions and opinions of ALIA are available online.⁴⁴

The Luxembourgish Press Council⁴⁵ is a self-regulating body established by law⁴⁶. It is composed of equal numbers of publishers and journalists. The members are appointed by a grand-ducal decree, based on a proposal of the respective associations. It is in charge of issuing professional press cards and of the self-regulation of the profession. It has published a code of conduct⁴⁷ on the rights and duties of journalists and editors. The Press Council's Complaints Commission treats complaints on editorial content. It may also issue recommendations and guidelines on matters regarding freedom of expression in the media or the work of journalists and editors. Its independence is formally recognised in the Law on Electronic Media. Decisions of the Complaints Commission are published on the Council's website.

A legal framework is established as regards transparency of media ownership. A law from 2019⁴⁸ requires all Luxembourg entities registered in the Luxembourg Business Register, including media companies, to provide detailed information on their ultimate beneficial owners. The law stipulates that this information has to be publicly accessible. As regards the print media sector, the law requires companies concerned to publish their ownership structures only when one shareholder holds more than 25% of the capital, which limits transparency of ownership in that sector. For audiovisual media services, ALIA publishes in its annual report a list of services licenced in Luxembourg, without mentioning their ownership. It should be recalled in this regard that the revised AVMSD encourages Member States to adopt legislative measures providing that media service providers under their jurisdiction make accessible information concerning their ownership structure, including the beneficial owners.

The Government makes an active contribution to support news media. There is no legislation on the distribution of state advertising to media outlets, and complete information on indirect subsidies is not available either. The Media Pluralism Monitor (MPM) 2020 indicates, however, that they constitute an important source of revenue for many publishers.

⁴⁰ The revised Audiovisual Media Services Directive (AVMSD) sets out a range of specific guarantees for the independence and effectiveness of national media regulators.

⁴¹ 2020 Media Pluralism Monitor.

⁴² Many media service providers from different countries have a Luxembourgish license.

⁴³ Information received in the context of the country visit.

⁴⁴ Independent Audiovisual Authority of Luxembourg, web page containing decisions and opinions of the Independent Audiovisual Authority of Luxembourg.

⁴⁵ Luxembourg Press Council, web page on the Luxembourg Press Council.

⁴⁶ Coordinated text of 30 April 2010 on the Law of 8 June 2004 on Freedom of Expression in the Media.

⁴⁷ Luxembourg Press Council (2006), Code of ethics.

⁴⁸ Law of 13 January 2019 Establishing a Register of Beneficial Owners.

In Luxembourg, the printed press is supported by a public aid scheme⁴⁹ 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 EUR 100,000 is allocated to online media fulfilling the necessary criteria⁵⁰. The total amount of the distributed aid is published annually. In 2019, EUR 7.8 million were allocated to news publishers. In May 2020, the Government announced the establishment of an extraordinary indemnity for the media in the context of the COVID-19 pandemic.⁵¹ Furthermore, a reform of the press aid scheme was adopted by the Council of Government in July 2020 and is currently in the legislative process. The new regime would be technologically neutral and apply equally to print and online news media.

The framework for the protection of journalists is based on a set of constitutional and legislative safeguards. In particular, the law on freedom of expression in the media provides protection for the journalists working in Luxembourg. Journalists are legally protected in cases of editorial change,⁵² and journalistic sources are well protected too. Imprisonment is among the envisaged sanctions for defamation⁵³, but criminal defamation prosecutions against the media are rare.⁵⁴ In one case in 2018 (during the investigation of the so-called “Chamber-Leaks”/“Parliament-Leaks” incident), the National Union of Professional Journalists alleged that criminal investigations were an intimidation attempt. There were no reports of threats against journalists in Luxembourg in recent years, either on the Council of Europe Platform to promote the protection of journalism and safety of journalists or on Mapping Media Freedom.

A legislative framework exists to safeguard the right to information. The right to information was enshrined in legislation in September 2018.⁵⁵ The law ensures that every natural or legal person has the right to access documents held by the public authorities. From the viewpoint of the effectiveness of the law, however, the Luxembourg Union of Journalists (ALJP) observes that there are still cases where information is provided with a substantial delay that is incompatible with the nature of journalistic reporting.⁵⁶

⁴⁹ Government of Luxembourg, web page on help for the written press.
https://smc.gouvernement.lu/fr/service/medias/presse/Presse_ecrite.html.

⁵⁰ Government of Luxembourg, web page on help for the online press.
<https://smc.gouvernement.lu/fr/service/medias/presse/aide-a-la-presse.html>.

⁵¹ Government of Luxembourg, web page on extraordinary compensation for the media in the context of the COVID-19 pandemic.
https://smc.gouvernement.lu/fr/actualites.gouvernement%2Bfr%2Bactualites%2Btoutes_actualites%2Bcommuni ques%2B2020%2B05-mai%2B07-indemnite-medias.html.

⁵² Chapter III of the Law of 30 April 2010 on the Law of 8 June 2004 on Freedom of Expression in the Media.

⁵³ https://cmpf.eu.eu/wp-content/uploads/2019/01/decriminalisation-of-defamation_Infographic.pdf.

⁵⁴ MPM 2020 mentions the “affaire Lunghi” in which three people have been convicted in 2019. Another recent court case involves a businessman who brought charges of defamation in three countries against a journalist of the daily Luxemburger Wort as well as its editor-in-chief and director for publishing an article critically covering his business activities. Charges were dropped in Luxembourg in August 2019.

⁵⁵ Law of 14 September 2018 on a Transparent and Open Administration.

⁵⁶ ALJP interview in Delano (2019), Freedom of information for press: “it’s really a necessity”.

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Luxembourg has a unicameral⁵⁷ parliamentary system of government, in which legislative proposals can originate from the Government and from members of Parliament. The Council of State gives an advisory opinion on draft legislation, whether proposed by the Government or by members of Parliament. The Constitutional Court scrutinises the constitutionality of legislation. Independent authorities play an important role in the system of checks and balances.

Impact assessments and stakeholder consultations are part of the legislative process.

Legislative proposals by the Government are subject to an impact assessment before they are submitted to the Chamber of Deputies. Depending on its subject matter, the draft legislation is also submitted for an advisory opinion to the Economic and Social Council or to one of the five specialised professional chambers if it touches upon an area that these chambers are competent for.⁵⁸ Open consultations for the public at large may also be organised and are increasingly held online.⁵⁹ Advisory opinions of the Council of State, of the professional chambers, as well as the parliamentary proceedings in the Chamber of Deputies, can be consulted both online and in print.⁶⁰

A state of emergency was declared in response to the COVID-19 pandemic. The state of emergency was declared on 18 March 2020 and prolonged six days later. The emergency state, which is foreseen by the Constitution,⁶¹ allowed the Government to adopt adequate, necessary and proportionate measures in all matters for a limited amount of time. Legislation adopted after the end of the state of emergency on 24 June 2020 prolonged certain measures relating to the COVID-19 pandemic until the end of September.⁶²

Several independent authorities fulfil key roles in safeguarding fundamental rights. The National Human Rights Institution, the CCDH⁶³, is accredited with ‘A’ status by the UN Global Alliance of National Human Rights Institutions. The consultative body gives opinions and recommendations on matters related to fundamental rights, either on its own initiative or at the request of the Government.⁶⁴ The CCDH falls under the authority of the Prime Minister, but operates independently in practice. It is part of a broader structure of institutions protecting fundamental rights, which also includes the Ombudsman, the Ombudsman for the Rights of the Child, the National Commission for Data Protection and the Centre for Equal Treatment. To facilitate citizens’ access to institutions protecting fundamental rights, the Government intends to house those bodies together in one House of Human Rights.

Recent initiatives aim to foster the landscape for civil society. Luxembourg is considered to have an open civil society landscape,⁶⁵ and recent efforts aim at further strengthening the civil society landscape. The Government recently established two consultative bodies under

⁵⁷ The parliament is composed of the Chamber of Deputies.

⁵⁸ There are five of such specialised consultative chambers.

⁵⁹ OECD (2019), Indicators of regulatory policy and governance 2019: Luxembourg, p. 2.

⁶⁰ The Amended Law of 14 September 2018 on a Transparent and Open Administration.

⁶¹ Article 32(4) of the Luxembourgish Constitution.

⁶² These include rules on gatherings and assemblies, as well as pecuniary sanctions for certain violations of COVID-19 measures.

⁶³ *Commission consultative des Droits de l’Homme*.

⁶⁴ Regulation of 26 May 2000 Establishing a Consultative Commission on Human Rights.

⁶⁵ See the rating given by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

the National Action Plan for the implementation of the Convention on the Rights of Persons with Disabilities 2019-2024, to foster cooperation between civil society and the government by providing a forum for discussion.⁶⁶ Stakeholders consider that the civil society landscape could be further improved by introducing privacy guarantees in the existing rules of registration for non-profit organisations.⁶⁷

A recent constitutional reform introduced changes relevant for the system of checks and balances. A constitutional revision of 15 May 2020 reinforced the effects of Constitutional Court decisions declaring a legal provision unconstitutional. The Constitution now provides that such provisions cease to have legal effect from the day following the Constitutional Court ruling onward, unless the Court itself orders a different timing.⁶⁸ It also states that the Court determines the conditions and limitations of the effect of the decision on effects that the unconstitutional provision has created. This constitutional revision remedies the situation where a legal provision declared unconstitutional continues to create legal effects. Furthermore, a proposed revision of the constitution foresees to enshrine the office of the Ombudsman in the text of the constitution itself.⁶⁹ The revision is still at the stage of debates in the Parliament. This anchoring of the Ombudsman institution at the constitutional level would contribute to strengthening this institution.⁷⁰

⁶⁶ Input from Luxembourg to the 2020 Rule of Law Report and information received in the context of the country visit.

⁶⁷ European Network of National Human Rights Institutions (2020), *The rule of law in the European Union: reports from national human rights institution*; information received in the context of the country visit.

⁶⁸ Article 95ter of the Luxembourgish Constitution.

⁶⁹ The proposal for a constitutional revision dates back to 15 May 2009, but the provision relating to the Ombudsman institution was added later. It was part of the version sent to the Venice Commission for an opinion on 6 June 2018.

⁷⁰ Council of Europe: Venice Commission opinion (CDL-AD(2019)005): *‘The Ombudsman institution, including its mandate, shall be based on a firm legal foundation, preferably at constitutional level, while its characteristics and functions may be further elaborated at the statutory level.’*

Annex I: List of sources in alphabetical order.*

* *The list of contributions received in the context of the consultation for the 2020 Rule of Law Report can be found at (COM website).*

Centre for Media Pluralism and Media Freedom (2020), 2020 Media pluralism monitor <https://cmpf.eui.eu/media-pluralism-monitor/mpm-2020>.

Chamber of Deputies (2019), Rules of the Chamber of Deputies. https://www.chd.lu/wps/wcm/connect/public/406a71a2-1082-4298-b7a0-dff4e3d61b8b/Reglement+CHD_11022020.pdf?MOD=AJPERES&ContentCache=NONE&CACHE=NONE&CVID=n0-deSF&CVID=n0-deSF.

CIVICUS, Monitor tracking civic space: Luxembourg. <https://monitor.civicus.org/country/luzembourg/>.

Council of Europe (1999), Criminal law convention on corruption.

Council of Europe: Committee of Ministers (2000), Recommendation Rec(2000)19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system.

Council of Europe: Venice Commission (2019), Luxembourg - Opinion on the proposed revision of the Constitution (CDL-AD(2019)003).

Council of Europe: Venice Commission (2019), Principles on the protection and promotion of the Ombudsman institution (the Venice principles) (CDL-AD(2019)005).

Council of the European Union (1995), Council act of 26 July 1995 drawing up the Convention on the protection of the European Communities' financial interests C 316/48.

Council of the European Union (2003), Council framework decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector L 192.

Court of Audit (2018), Activity report of 2018. <https://cour-des-comptes.public.lu/dam-assets/fr/rapports/rapport-activites/Rapport-d-activite-2018.pdf>.

Court of Justice of the European Union, judgment of 27 May 2019 in joined cases *OG*, C-508/18 and *PI*, C-82/19 PPU.

Delano (2019), Freedom of information for press: “it’s really a necessity”. <https://delano.lu/d/detail/news/freedom-information-press-its-really-necessity/205336>.

Directorate-General for Communication (2020), Eurobarometer: perceived independence of the national justice system in the EU among the general public.

Directorate-General for Communication (2020), Flash Eurobarometer 482: businesses’ attitudes towards corruption in the EU.

Directorate-General for Communication (2020), Special Eurobarometer 502: corruption.

Eurojust and European Judicial Network (2020), Questionnaire on the CJEU’s judgment in relation to the independence of issuing judicial authorities and effective judicial protection: Updated compilation of replies and certificates.

European Commission (2016, 2017, 2018, 2019, 2020), The EU Justice Scoreboard.

European Commission (2019), Report from the Commission to the European Parliament and the Council assessing the extent to which the Member States have taken the necessary measures in order to comply with Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector COM(2019) 355 final.

European Commission (2020), Report on the implementation of Council Framework Decision of 13 June 2002 on the European arrest warrant and surrender procedures between Member States.

European Network of National Human Rights Institutions (2020), The rule of law in the European Union: reports from national human rights institutions.

Government of Luxembourg (2019), Open government partnership – Luxembourg national action plan 2019-2021. <https://sip.gouvernement.lu/en/partenariat-gouvernement-ouvert/pan-2019-2021.html>.

Government of Luxembourg, Government web page. <https://gouvernement.lu/fr/systeme-politique/gouvernement.html>.

Government of Luxembourg, Organization of justice web page. <https://justice.public.lu/fr/organisation-justice.html>.

Government of Luxembourg, web page on extraordinary compensation for the media in the context of the COVID-19 pandemic. https://smc.gouvernement.lu/fr/actualites.gouvernement%2Bfr%2Bactualites%2Btoutes_actualites%2Bcommuniqués%2B2020%2B05-mai%2B07-indemnité-medias.html.

Government of Luxembourg, Help for the online press web page. <https://smc.gouvernement.lu/fr/service/medias/presse/aide-a-la-presse.html>.

Government of Luxembourg, Help for the written press web page. https://smc.gouvernement.lu/fr/service/medias/presse/Presse_ecrite.html.

GRECO (2013), Fourth Evaluation Round – Evaluation Report on Luxembourg on corruption prevention in respect of members of Parliament, judges and prosecutors.

GRECO (2017), Fourth Evaluation Round – Second Compliance Report on Luxembourg on corruption prevention in respect of members of Parliament, judges and prosecutors.

GRECO (2018), Fifth Evaluation Round – Evaluation Report on Luxembourg on preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies.

Groupement des Magistrats Luxembourgeois (2020), Open letter to the members of Parliament.

Independent Audiovisual Authority of Luxembourg, Decisions and opinions of the Independent Audiovisual Authority of Luxembourg web page. <https://www.alia.lu/fr/espace-juridique/avis>.

Independent Audiovisual Authority of Luxembourg, Independent Audiovisual Authority of Luxembourg web page. <https://www.alia.lu/fr/>.

Luxembourg Press Council (2006), Code of ethics. <http://www.press.lu/informations/deontologie/>.

Luxembourg Press Council, Luxembourg Press Council web page. <http://www.press.lu/>.

Luxemburger Wort (2018), House search at Radio 100.7. <https://www.wort.lu/de/lokales/hausdurchsuchung-bei-radio-100-7-5afab949c1097cee25b895c1>.

Ministry of Justice (2019), Annual activity report of 2018. <https://gouvernement.lu/dam-assets/fr/publications/rapport-activite/minist-justice/2018-rapport-activite-mjust/2018-rapport-activite-mjust.pdf>.

OECD (2019), Indicators of regulatory policy and governance 2019: Luxembourg.

Police of Luxembourg (2019), Code of ethics. <https://police.public.lu/fr/publications/2019/code-deontologie-police.html>.

RTL (2018), Short search at Radio 100.7 – documents already deleted. <https://www.rtl.lu/news/national/a/1180001.html>.

Transparency International, Country profile: Luxembourg. <https://www.transparency.org/en/countries/luxembourg>.

Virtual country visit to Luxembourg in the context of the 2020 Rule of Law Report.

Annex II: Country visit to Luxembourg

The Commission services held virtual meetings in May and June 2020 with:

- Audio-visual media regulator (ALIA)
- Commission for Access to Documents
- Commission for the Prevention of Corruption (COPRECO)
- Consultative Commission of Human Rights
- Ethics Committee
- Group of Luxembourgish Magistrates
- Luxembourg Association of Professional Journalists
- Ministry of Foreign and European Affairs
- Ministry of Justice
- Press Council
- Prosecution Service
- StopCorrupt
- Supreme Court of Justice

* The Commission also met the following organisations in a number of horizontal meetings:

- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Conference of European Churches
- EuroCommerce
- European Center for Not-for-Profit Law
- European Centre for Press and Media Freedom
- European Civic Forum
- Free Press Unlimited
- Front Line Defenders
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Press Institute
- Lifelong learning Platform
- Open Society Justice Initiative/Open Society European Policy Institute
- Reporters without Borders
- Transparency International EU