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2023 Rule of Law Report Country Chapter on the rule of law situation in Luxembourg

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PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
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2023 Rule of Law Report

The rule of law situation in the European Union

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ABSTRACT

Luxembourg's justice system has maintained its very high level of perceived judicial independence among the general public and continues to operate efficiently. The Government passed all the planned constitutional reforms, which led to the creation of the National Council for Justice and strengthening the independence of the Prosecutor's Office. The legislative reforms regarding the composition of the National Council for Justice, which aligned it with the European standards, and the status of magistrates have also been adopted. The first pilot project regarding the digitalisation of administrative justice was launched, but further steps towards improvement are necessary. The reform aiming to make legal aid more accessible remains pending.

Resources for the prosecution services dealing with economic and financial crime as well as the overall budget for law enforcement has increased and recruitment is also expected to rise. A revision to the Constitution assigned powers to the Prosecutor's Office to investigate and prosecute members of Government who can now be held criminally liable for corruption offences. The transparency register for members of Parliament is operational and publicly available, but its structure and implementation remain minimal and legislation on lobbying remains to be evaluated. The Codes of Conduct for members of Government and their advisers have been put in place and the transparency register is operational. Draft codes of conduct for local level political officials have been proposed. The Court of Auditors found no irregularities in relation to political party financing, while the financial control of municipalities remains with the Ministry of Internal Affairs. The law on the protection of whistleblowers was adopted covering breaches of both EU and national law.

The general legal framework establishing the regulator for audio-visual media services and its functioning remains stable, while additional tasks have been added. A new law establishes Radio 100.7 as Public Service Media, reinforcing its independence, establishing its mission and providing a stable financial framework for 2024-2030. The convention for the public service activities of the RTL Group is updated and continued for 2024-2030. A new *circulaire* reduces the time of processing requests from journalists for disclosure of official documents, although a fast-track option enshrined in law for the journalistic profession is not yet available. Horizontal legislation on company mergers is expected to contribute to transparency of ownership in the media sector. The framework for the protection of journalists remains robust.

The Parliament passed all the planned constitutional reforms, which include the introduction of a legislative initiative for citizens and inscribing the Ombudsperson in the Constitution. The exercise of the right of legislative initiative will be regulated by law; a draft was already tabled in Parliament. The legislative process still needs to improve in terms of openness of the public consultations. A mechanism for follow-up on non-execution of judgments is available for administrative court cases. The civic space in Luxembourg remains open and a new Government initiative provides further support for civil society organisations online.

RECOMMENDATIONS

Overall, concerning the recommendations in the 2022 Rule of Law Report, Luxembourg has (made):

- Fully implemented the recommendation to continue with the process to adopt the reform on the powers of the future Council for the Judiciary.
- No further progress on continuing with the process to adopt the reform on making legal aid more accessible.
- Significant progress on ensuring adequate resources for the prosecution services dealing with economic and financial crime.
- Some progress on continuing to implement and evaluate the new legislation on lobbying the Parliament, including the transparency register.
- Some progress on reducing the time of processing of requests for disclosure of official documents, taking into account European standards on access to official documents.
- No further progress on improving the legislative decision-making process by providing wider possibilities for stakeholders to participate in public consultations.

On this basis, and considering other developments that took place in the period of reference, it is recommended to Luxembourg to:

- Continue with the process to adopt the reform on making legal aid more accessible.
- Evaluate the implementation of the new legislation on lobbying the Parliament and the functioning of the transparency register and ensure that it meets the necessary transparency requirements set out in the Parliament's rules of procedures.
- Ensure the implementation of measures adopted in relation to the time of processing of requests for disclosure of official documents, taking into account European standards on access to official documents.
- Improve the legislative decision-making process by providing wider possibilities for stakeholders to participate in public consultations.

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. The administrative branch is composed of an Administrative First-instance Court and an Administrative Court of Appeal. The Constitutional Court is part of the judiciary and rules on the compliance of laws with the Constitution. Since 1 July 2023, the National Council for Justice is responsible for the appointment, appraisal and disciplinary proceedings of judges and prosecutors. The Prosecutor's Office is independent in the exercise of individual investigations and prosecutions, without prejudice to the Government's right to give direction on criminal policies. The two Bar Associations are independent and represent lawyers established in Luxembourg. Each Bar Association has an Assembly¹, a Bar Council², a President of the Bar³ and for the whole profession, a Disciplinary and Administrative Council⁴. Luxembourg participates in the European Public Prosecutor's Office (EPPO).

Independence

The level of perceived judicial independence in Luxembourg continues to be very high among the general public and is now high among companies. Overall, 76% of the general population and 74% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2023⁵. According to data in the 2023 EU Justice Scoreboard, the level remains consistently very high for the general public in the last years. The perceived judicial independence among the general public has remained stable with a slight decrease in comparison with 2022 (77%), but it is higher than in 2016 (73%). The perceived judicial independence among companies has decreased in comparison with 2022 (76%), as well as in comparison with 2016 (80%).

The constitutional reform, which establishes the National Council for Justice and strengthens the independence of the Prosecutor's Office, was adopted. On 21 December 2022, the Parliament adopted the constitutional reform establishing the National Council for Justice (NCJ) and strengthening the independence of the Prosecutor's Office⁶. As mentioned in previous Rule of Law Reports⁷, the new constitutional provisions outline the main competences of the NCJ, namely the selection of magistrates before their appointment by the Grand Duke and taking decisions on the initiation of disciplinary proceedings against magistrates. The regime under which these powers will be exercised was established by

¹ Art. 12-15 of the Law on the profession of a lawyer, 10 August 1991.

² Art. 16-19 of the Law on the profession of a lawyer, 10 August 1991.

³ Art. 20-23 of the Law on the profession of a lawyer, 10 August 1991.

⁴ Art. 24-25 of the Law on the profession of a lawyer, 10 August 1991.

⁵ Figures 49 and 51, 2023 EU Justice Scoreboard. 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%).

⁶ Project No. 7575 – revision of Chapter VI (on Justice) of the Constitution. Promulgated on 17 January 2023 and will enter into force 1 July 2023.

⁷ See 2021 and 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, pp. 2-3, pp. 3-4 respectively.

ordinary legislation⁸. As regards the strengthening of independence of the Prosecutors' Office and of the judiciary as a whole, the adopted reform enshrines the independence of judges and prosecutors in the Constitution. As already highlighted in last year's report, judges are independent in exercising their functions, while the Prosecutor's Office is now independent in the exercise of individual investigations and prosecutions, without prejudice to the Government's right to give direction on general criminal policies⁹. The strengthening of the independence of the Prosecutor's Office is further reflected in the legislative amendments to the Criminal Procedure Code and the Criminal Code¹⁰. These amendments were adopted on the same day, and they removed the power of the Minister of Justice to give instructions to prosecutors on individual cases¹¹.

Legislative amendments were adopted to align the composition of the National Council for Justice with European standards. On 21 December 2022, the Parliament also adopted the draft law dealing with the organisation of the NCJ¹², which came into force on 1 July 2023. In the 2022 Rule of Law Report¹³, it was explained that in order to align the composition of the NCJ with relevant Council of Europe standards, which recommend that at least half of the members of such councils should be judges (magistrates) elected by their peers¹⁴, the Government devised a composition of nine members: six magistrates elected by their peers – among which there would not be *ex officio* members but the President of the Supreme Court, the President of the Administrative Court of Appeal and the State Prosecutor General would be *ex officio* candidates¹⁵; one lawyer elected by their peers¹⁶; and two persons elected by the Parliament based on their education or experience¹⁷. In the final and adopted version of the law, also the *ex officio* candidate status for the two Presidents and the Prosecutor General was removed¹⁸. This law is in line with the Council of Europe recommendation on the composition of the councils for the judiciary¹⁹. The elections for the NCJ have been finalised²⁰, and it started functioning on 1 July 2023.

⁸ Art. 90, text of Project No. 7575. See also 2021 and 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, pp. 2-3.

⁹ See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, pp. 2-3.

¹⁰ Art. 19 of the Criminal Procedure Code would be amended by Project No. 7323B on the Status of magistrates. Promulgated on 23 January 2023 and will enter into force on 1 July 2023.

¹¹ It is noted that the legal safeguards surrounding this power combined with the fact that the Prosecution service is in practice recognised as independent appeared to mitigate the risk to the autonomy of the Prosecution service and that the Minister of Justice had not given instructions in an individual case for more than 20 years.

¹² Project No. 7323A on the Organisation of the National Council of Justice. Promulgated on 23 January 2023 and will enter into force on 1 July 2023.

¹³ See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 4.

¹⁴ Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, paras. 26-27. See also Venice Commission Opinion (CDL-AD(2020)035), para. 44.

¹⁵ Project No. 7323A, p. 7.

¹⁶ The lawyer is elected by the Order of the lawyers of the Bars of Luxembourg and Diekirch with the majority of their members present and voting. – Project No. 7323A, p. 11.

¹⁷ Project No. 7323A, p. 6.

¹⁸ Art. 1 of the law promulgating Project No. 7323A, of 23 January 2023.

¹⁹ Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, paras. 26-27. See also Venice Commission Opinion (CDL-AD(2020)035), para. 44.

²⁰ The elections among magistrates have been concluded. The President of the Supreme Court did not apply for a position within the NCJ, while the President of the Administrative Court of Appeal and the Prosecutor General participated and were elected as members of the NCJ.

The reform on the powers of the National Council for Justice has been adopted. The 2022 Rule of Law Report recommended to Luxembourg to “continue with the process to adopt the reform on the powers of the future NCJ”²¹. On 21 December 2022, the Parliament also adopted the draft law dealing with the status of magistrates²², which came into force on 1 July 2023. As mentioned in the 2022 Rule of Law Report²³, this draft law sets out the powers of the NCJ over the individual magistrates – their appointment²⁴, career advancement, secondment, and disciplinary regime²⁵. Following the opinion of the Council of State on the draft law²⁶ and subsequent amendments, the law adopted in December 2022 allows for prosecutors to be elected and sit at the disciplinary courts. Considering these developments, the 2022 recommendation is fully implemented.

Quality

The first pilot project regarding the digitalisation of administrative justice was launched while further steps towards improvement are necessary. On 1 December 2022, a draft law accompanying the project for digitalisation of the administrative justice was tabled in Parliament²⁷. At the same time, the first pilot project of the “paperless justice” project²⁸ was launched²⁹ and covers only emergency proceedings before the administrative courts³⁰. The draft law is expected to be adopted over the summer. The “paperless justice” project is expected to be completed by 2026³¹. No concrete timeline is yet available for its evaluation nor for the launch of next projects.³² Despite this progress, the digitalisation of justice would benefit from further improvement. The procedural rules in place are only allowing a limited use of digital technology in the courts³³. Shortcomings persist in the availability of digital tools to initiate and follow proceedings³⁴. There has been no change in civil and commercial cases where it is only possible for the courts to serve documents electronically to citizens and businesses and to send electronic acknowledgement of receipt proving the submission of documents. There is no

²¹ See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 2.

²² Project No. 7323B on the Status of magistrates. Promulgated on 23 January 2023 and will enter into force on 1 July 2023.

²³ See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 5.

²⁴ The NCJ is responsible for the appointment of magistrates, on the basis of the criteria set in the law. At the end of the procedure, the NCJ is to present the selected candidates to the Grand Duke, who is to appoint them without having a power of veto. The percentage of female judges at the HCCJ is of around 80%, currently the third highest percentage among supreme courts within the EU. See Figure 36, 2023 EU Justice Scoreboard.

²⁵ The NCJ is responsible for initiating any disciplinary investigation concerning a magistrate and to launch the proceedings before the disciplinary courts; it would have the possibility to appeal the decision of the first instance disciplinary court.

²⁶ CE: 60.892 on Parliamentary file No. 7323B of 31 May 2022. See also 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 6.

²⁷ Project No. 8109.

²⁸ The “paperless justice” project encompasses 13 sub-projects and aims to address present shortcomings in digitalisation of justice. See 2021 and 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, pp. 4-6.

²⁹ Information received from the Ministry of Justice in the context of the country visit to Luxembourg.

³⁰ *Recours en référé*.

³¹ See 2020, 2021 and 2022 Rule of Law Reports, country Chapter on the rule of law situation in Luxembourg, respectively p. 3, p. 4 and p. 6.

³² Information received from the Ministry of Justice in the context of the country visit to Luxembourg.

³³ Figure 41, 2023 EU Justice Scoreboard.

³⁴ Figure 45, 2023 EU Justice Scoreboard.

possibility to receive comprehensive information on court fees, or pay court fees online, nor access the electronic files of closed or ongoing cases³⁵.

The reform that aims to make legal aid more accessible remains pending. The 2022 Rule of Law Report recommended to Luxembourg to “continue with the process to adopt the reform on making legal aid more accessible”³⁶. As mentioned in the 2022 Rule of Law Report, a draft law reforming the legal aid system had been tabled in Parliament³⁷. It was prepared by the Ministry of Justice and the Luxembourg Bar and tabled on 27 January 2022. The draft law envisages to expand the scope of application of legal aid to persons who do not hold the Luxembourgish nationality but reside in Luxembourg³⁸ and would allow for partial legal aid³⁹. The Council of State delivered its opinion on 1 June 2023⁴⁰, and it is currently being analysed by the authorities. However, no amendments to the initial draft law have been tabled so far.. Therefore, no further progress has yet been made in addressing the 2022 recommendation to continue with the process to adopt the reform.

Concerns have been raised regarding children’s access to a lawyer in practice. Although there are specific arrangements to ensure that children are assisted by a lawyer in criminal proceedings⁴¹, OKaJu (the Ombudsperson for children and youngsters) considers that the current framework for designating a lawyer is ineffective and lengthy, taking up to a year. In the meantime, the child could be arrested without having legal representation⁴². OKaJU has been engaged in discussions with the Luxembourg Bar aiming at improving the procedure. It should be noted that the right of children to be assisted by a lawyer is protected under EU law through the Access to Lawyer Directive⁴³, and under the Procedural Safeguards Directive⁴⁴. Furthermore, the European Court of Human Rights (ECtHR) considers access to a lawyer to be one of the fundamental elements of the right to a fair trial⁴⁵, and individuals charged with a

³⁵ Figure 45, 2023 EU Justice Scoreboard. However, in civil disputes, no court costs are incurred, except bailiff’s fee, which is available online. In addition, payment of court fees can be done by bank transfer.

³⁶ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 2.

³⁷ See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 7.

³⁸ In application of Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.

³⁹ The different modalities regarding partial legal aid will be clarified in a Grand-ducal regulation. Project No. 7959, p. 1 (Art. 2(1) of the draft law).

⁴⁰ See Council of State Opinion No. 60.901 of 1 June 2023. The opinion of the Council of State is a mandatory step in the legislative process in Luxembourg.

⁴¹ Figure 31, 2023 EU Justice Scoreboard.

⁴² Information received from OKaJu (Ombudsperson for children and youngsters) in the context of the country visit to Luxembourg.

⁴³ See recitals 52 and 55 of its preamble, as well as in Art. 5(2) to (4) Directive 2013/48/EU of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

⁴⁴ See Art. 6 Directive 2016/800/EU of 11 May 2016 on procedural safeguards for children suspected or accused in criminal proceedings. Children must be assisted by a lawyer from whichever of the following is the earliest: before they are questioned by the police or other law enforcement or judicial authority; when investigating or other competent authorities carry out an investigative act; without undue delay after deprivation of liberty; when they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.

⁴⁵ European Court of Human Rights judgment of 27 November 2008, *Salduz v. Turkey* [GC], 36391/02, para. 51; see also European Court of Human Rights judgment of 13 September 2016, *Ibrahim and Others v. the United Kingdom* [GC], 50541/08 et al; see also European Court of Human Rights judgment of 9 November 2018, *Beuze v. Belgium*, 71409/10.

criminal offence have the right to access a lawyer from the early stages of a police investigation⁴⁶.

Efficiency

The courts remain efficient and clearance rate shows improvements. The courts continued to perform efficiently, as the estimated time needed to resolve a case at first instance in civil, commercial or administrative proceedings in 2021 remains the same as in 2020⁴⁷. Furthermore, a slight improvement is observed in the estimated time needed to resolve a case at first instance in the specific civil and commercial cases category⁴⁸. The decrease in clearance rate observed in the 2022 Rule of Law Report⁴⁹ has been overturned, with a rate of 99% approaching again the level from before the pandemic⁵⁰. The length of proceedings for litigious civil and commercial cases at first instance remained stable⁵¹. Similarly, the length of proceedings for administrative cases at first instance also remained at the same level as in 2020⁵². For the first time, data are available on the length of judicial proceedings in a specific area of EU law – competition law⁵³. Despite the relatively lengthy proceedings before the national competition authority⁵⁴, the judicial proceedings in this area are among the most efficient in the EU⁵⁵.

II. ANTI-CORRUPTION FRAMEWORK

Luxembourg has a legal and institutional anti-corruption framework broadly in place. The Ministry of Justice is the main authority in charge of overall anti-corruption matters, including policy coordination. Within the Ministry of Justice, an intergovernmental committee, the Corruption Prevention Committee (COPRECO), acts as a consultative forum and supports the overall national policy to fight corruption. The Economic and Financial section of the Prosecution service has specific competences to investigate criminal cases of economic and financial nature, including corruption cases. The Court of Auditors is indirectly involved in the fight against corruption through its controls on the use of public funds.

The perception among experts and business executives is that the level of corruption in the public sector is relatively low. In the 2022 Corruption Perceptions Index by Transparency International, Luxembourg scores 77/100, ranks 6th in the European Union and 10th globally⁵⁶.

⁴⁶ European Court of Human Rights judgment of 27 November 2008, *Salduz v. Turkey [GC]*, 36391/02, para. 60; see also European Committee of Social Rights Decision of 20 October 2020, *International Commission of Jurists (ICJ) v. Czech Republic*, Complaint No. 148/2017. - The ECtHR's scrutiny of whether an applicant had effective access to a lawyer is stricter in cases involving children.

⁴⁷ Figure 5, 2023 EU Justice Scoreboard.

⁴⁸ Figure 6, 2023 EU Justice Scoreboard.

⁴⁹ See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, pp. 7-8.

⁵⁰ Figures 11, 2023 EU Justice Scoreboard.

⁵¹ Figure 6, 2023 EU Justice Scoreboard. The length in days remains 158.

⁵² Figure 8, 2023 EU Justice Scoreboard. The length for 2020 was 513 days and for 2021 it was 524 days.

⁵³ Figure 16, 2023 EU Justice Scoreboard.

⁵⁴ Figure 17, 2023 EU Justice Scoreboard.

⁵⁵ Figure 16, 2023 EU Justice Scoreboard.

⁵⁶ Transparency International (2023), Corruption Perceptions Index 2022. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

This perception has deteriorated over the past six years⁵⁷. The 2023 Special Eurobarometer on Corruption shows that 40% of respondents consider corruption widespread in their country (EU average 70%) and 10% of respondents feel personally affected by corruption in their daily lives (EU average 24%)⁵⁸. As regards businesses, 44% of companies consider that corruption is widespread (EU average 65%) and 35% consider that corruption is a problem when doing business (EU average 35%)⁵⁹. Furthermore, 38% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 32%)⁶⁰, while 50% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 30%)⁶¹.

The number of reported corruption cases over the past year and the number of convictions has increased. The number of corruption cases has been relatively stable over the past years⁶² but has increased with 27 cases opened in 2022, compared to 22 in 2021⁶³. Data for 2022 also show an increase in the number of ongoing investigations -18 compared to five in 2021 - and in convictions - six compared to one in 2021⁶⁴. The Police, on the other hand, did not report any corruption cases in 2022, which reportedly can be explained by the fact that ongoing judicial investigations, due to their confidentiality, are not registered in the common police database used to compile police statistics until the cases are completed and closed by the prosecutor⁶⁵. The statistics on ongoing cases are, nevertheless, registered in the Judicial Police's own management system "JDA". However, the number of reported offenses of corruption in the police database was higher in previous years⁶⁶ when the same system was in place. Cooperation between EPPO and the police is considered to be adequate and it is excellent with the national prosecution offices⁶⁷.

Significant progress has been made on increasing the resources for the prosecution services dealing with economic and financial crime and for the law enforcement authorities and recruitment is expected to rise. The 2022 Rule of Law report recommended to Luxembourg to 'ensure that there are adequate resources for the prosecution services dealing with economic and financial crime'⁶⁸. The number of prosecutors at the economic and financial

⁵⁷ In 2018 the score was 81, while in 2022 the score is 77. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

⁵⁸ Special Eurobarometer 534 on Corruption (2023). The Eurobarometer data on citizens' corruption perception and experience is updated every year. The previous data set is the Special Eurobarometer 523 (2022).

⁵⁹ Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023). The Eurobarometer data on business attitudes towards corruption is updated every year. The previous data set is the Flash Eurobarometer 507 (2022).

⁶⁰ Special Eurobarometer 534 on Corruption (2023).

⁶¹ Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023).

⁶² Twenty-nine cases each in 2019 and 2020, down to 22 in 2021. Written contribution from the Prosecution Office (Economic and Financial Crime Section) in the context of the country visit to Luxembourg.

⁶³ Written contribution and information received in the context of the country visit to Luxembourg from the Prosecution Service (Economic and Financial Crime Section).

⁶⁴ Written contribution from the Prosecution Office (Economic and Financial Crime Section) in the context of the country visit to Luxembourg. Data provided show the state of play as of 8 March 2023. Three of these convictions relate to money laundering.

⁶⁵ Information received in the context of the country visit to Luxembourg from the Police.

⁶⁶ The Judicial Police recorded five corruption investigations in 2020 and four in 2021 as reported in the 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, pp. 8-9.

⁶⁷ Input from EPPO for the 2023 Rule of Law Report.

⁶⁸ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 2.

crime section of the Prosecutor's Office increased by three in 2023 to a total of 16 and the Prosecution Service intends to recruit more magistrates in 2024⁶⁹. Following the adoption of the law of 23 December 2022 on legal advisers⁷⁰, the prosecution service expects a 15 percent increase in the number of magistrates at the economic and financial section⁷¹. However, no change has occurred in the administrative staffing of this section⁷². The overall budget for the law enforcement authorities has also increased⁷³, including the number of police recruitments⁷⁴, but it is not clear to what extent this will benefit specifically the Department for Economic and Financial Crime dealing with anti-corruption. Therefore, in light of these developments there has been significant progress on the implementation of the recommendation made in the 2022 Rule of Law Report.

A revision to the Constitution assigned powers to the Prosecutor's Office to investigate and prosecute members of Government. On 21 December 2022, the Parliament adopted the constitutional reform that allows the Prosecutor's Office to instigate and conduct criminal proceedings against a member of Government for acts committed in the exercise of their duties⁷⁵. The constitutional amendment abolishes the Parliament's exclusive right to bring charges against members of Government, assigning that power to the Prosecutor's Office instead. To fill the gap until the constitutional amendment's entry into force in July, the law of 3 March 2023⁷⁶ implements the provisions on the criminal liability of members of

⁶⁹ Written contribution and information received from the Prosecution Service (Economic and Financial Crime Section) in the context of the country visit to Luxembourg.

⁷⁰ Law of 23 December 2022 on legal advisers and amending: 1° the amended law of 16 April 1979 laying down the general status of state civil servants; 2° the amended law of 7 March 1980 on judicial organisation; 3° the amended law of 7 November 1996 on the organisation of administrative courts; 4° the amended law of 27 July 1997 on the organisation of the Constitutional Court; 5° the amended law of 7 June 2012 on justice attachés; 6° the amended law of 8 March 2017 on Luxembourg nationality. — Mémorial A No 681.

⁷¹ The Law provides for an increase of high ranked magistrates (prosecutors) dedicated to the economic and financial section of the Prosecutor's office. It provides that the economic and financial section is led by a full dedicated joint prosecutor (*procureur d'Etat adjoint*) and that the magistrates' team is strengthened with two additional Principal deputy prosecutors (*Substitut principal*). The Law also provides that magistrates will be seconded by 'référéndaires'. To date, there is one with the economic and financial crime section of the Luxembourg Prosecutor's office. Written contribution from the Prosecution Service (Economic and Financial Crime Section) in the context of the country visit to Luxembourg.

⁷² Written contribution received from the Prosecutor's Office (Economic and Financial Crime Section) in the context of the country visit to Luxembourg.

⁷³ Input from Luxembourg for the 2022 Rule of Law Report, pp. 8-9. Compared to 2021, the financial resources for the Financial Intelligence Unit (FIU) increased by EUR 750 000, those for the judicial services increased by EUR 4.8 million and those for the judicial police increased by EUR 24 million.

⁷⁴ According to information received from the Police in the context of the country visit to Luxembourg, around 600 police and 240 civilian experts have been recruited since 2018 across all police departments including the judicial police. The human resources within the Judicial Police have increased considerably in the recent years, while the number of judicial police officers has risen to 93 for the year 2023. The increased budget is a global amount that includes both the remuneration of the police and all costs, whether for training, expertise, technical equipment or other. Thus, the increase in the budget will benefit the economic and financial service, which also deals with corruption cases. Written contribution from the Ministry of Foreign and European Affairs in the context of the country visit to Luxembourg.

⁷⁵ Project No. 7700 – revision of Chapter V (on Government) of the Constitution. Promulgated on 17 January 2023 and entered into force on 1 July 2023.

⁷⁶ Law of 3 March 2023 on the criminal liability of members of the Government, partially implementing Article 82 of the Constitution and amending: 1° of the Criminal Code; 2° of the amended Act of 7 March 1980 on judicial organisation — Mémorial A No 104. This Law will apply to members of the Government in office, in respect of offences of which they are accused during the performance of their duties, whether those offences were committed in or out of their duties, and for offences committed prior to the commencement of the duties

Government⁷⁷. The Prosecutor's Office has welcomed the forthcoming constitutional amendment as the normal criminal procedural rules will then also apply to members of Government⁷⁸.

The Corruption Prevention Committee resumed its normal operations and met twice, though no recommendations or measures were proposed. The intergovernmental Corruption Prevention Committee (COPRECO) resumed its normal operations in 2022⁷⁹. The Committee will focus much of its attention in 2023 on the ongoing evaluation of Luxembourg by the OECD⁸⁰. During the two meetings that took place in 2022, COPRECO discussed the situation after the COVID-19 pandemic and informed its new members about ongoing assessments of the anti-corruption framework by international bodies and the state of play of legislation in progress or adopted⁸¹. It did not present or propose any recommendations or specific measures in the past year. COPRECO does not report on its meetings, nor is it required to do so, which is seen as a lack of transparency according to civil society organisations⁸². Although COPRECO is set up as an inter-ministerial committee, representatives from the private sector such as the financial sector and the Chamber of Commerce are invited regularly⁸³. Depending on the topics to be discussed, COPRECO may also invite civil society organisations, although this does not happen structurally, which indicates a potential imbalance in its consultation of external stakeholders. Luxembourg does not have a specialised anti-corruption body or an anti-corruption strategy and there are currently no plans to change the current set-up⁸⁴ of COPRECO into a specific anti-corruption body within the meaning of the UN Convention against Corruption⁸⁵.

Some progress has been made on lobbying, since the implementation of the transparency register for Members of Parliament is minimal and the legislation remains to be evaluated. The 2022 Rule of Law Report recommended to Luxembourg to 'continue to implement and evaluate the new legislation on lobbying the Parliament, including the

of the Member of the Government in office; and to former members of the Government for offences alleged to have been committed in the performance of their former duties. It also applies to members of the European Commission for offences referred to in Articles 246 to 252 and 496-1 to 496-4 of the Criminal Code, committed in the performance of their duties.

⁷⁷ The Law of 3 March 2023 shall cease to apply from the entry into force of a law revising the Constitution and repealing Article 82 currently in force. Any acts of investigation and prosecution validly carried out under this Law shall continue to produce their legal effects in the course of the proceedings concerning the member of the Government.

⁷⁸ Information received in the context of the country visit to Luxembourg from the Prosecutor's Office.

⁷⁹ COPRECO is required by law to meet at least twice a year according to Art. 3(1) of the Regulation of 15 February 2008 determining the composition and operation of the Committee for the Prevention of Corruption. See also 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 9. A meeting took place on 18 April 2023 and the next one is planned for October or November 2023. Information received from COPRECO in the context of the country visit to Luxembourg.

⁸⁰ Ibid. There will be an on-site visit in May and a plenary discussion at the OECD in December 2023.

⁸¹ Ibid.

⁸² Information received in the context of the country visit to Luxembourg from StopCorrupt.

⁸³ Information received from COPRECO in the context of the country visit to Luxembourg.

⁸⁴ Ibid.

⁸⁵ Parties to the UN Convention against Corruption are required to ensure the existence of an independent body that oversees and coordinates preventive anti-corruption policy. Luxembourg ratified the Convention on 6 November 2007, which entered into force on 14 December 2005.

transparency register⁸⁶. As reported in the previous Rule of Law report⁸⁷, the transparency register was created by law on 9 December 2021⁸⁸. The transparency register became operational and is publicly available through the website of the Parliament⁸⁹. Members of Parliament must reject any request for a meeting with persons or organisations, which are not registered. However, the information in the transparency register is limited and does not yet include the information required by the amendment to the Rules of Procedure of the Chamber of Deputies on the transparency register⁹⁰. Both the content and the format of the register have been criticised as insufficient for ensuring transparency⁹¹. Due to the recent set up of the register, there has not yet been any evaluation of the functioning of the transparency register, and none is currently planned⁹². Overall, there has been some progress on the implementation of the recommendation made in the 2022 Rule of Law Report.

A register to increase transparency about meetings between members of the Government, their advisers and third parties, is operational and publicly available, and draft codes of conduct for local level political officials have been proposed. Following the implementation in May 2022 of the Codes of Conduct for members of the Government and their advisers⁹³, meetings between members of Government, advisers and representatives of interest groups or other third parties have to be registered, provided that their purpose is to influence the Government's legislative or regulatory activity⁹⁴. Besides organisational information about the meeting and attendees, the register should also include a summary of the stakeholders' positions about such legislative or regulatory activities, or the laws or regulations adopted or planned which were discussed⁹⁵. The register is meant to remain permanently available⁹⁶. According to the Government, the technical implementation of the transparency register was the biggest challenge following the adoption of these Codes of Conduct, but the register is

⁸⁶ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 2.

⁸⁷ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 10.

⁸⁸ Amendment of the Rules of Procedure of the Chamber of Deputies, Document 7499 of 2020-2021, 17 January 2022.

⁸⁹ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 10. In the 2022 Rule of Law report, it was noted that the transparency register still had to be made operational.

⁹⁰ According to article 2.5 of the amendment, the register should include the name, the legal form, the address, the telephone number, email address, the company number in the trade and companies register, the objects of the association, company or group and the name of the third party represented, if any. The transparency register of the Parliament does not include the required information following article 2.5.

⁹¹ StopCorrupts considers that the Parliament's register is a simple Excel file that could be confused with a list of the various companies and associations present in the country. In addition, it criticises that there is no mention of the interaction between the lobbyists and the members of Parliament. As for the Government's register, the 'PDF' format would not adequately allow research and analysis. Written contribution from StopCorrupt received in the context of the country visit to Luxembourg.

⁹² Information received in the context of the country visit to Luxembourg from the Parliamentary administration.

⁹³ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 10. Two separate Codes of Conduct for Members of Government and their advisers were adopted in March 2022. These codes include rules on gifts, revolving doors, conflict of interest and lobbying.

⁹⁴ Input from Luxembourg for the 2023 Rule of Law Report, p. 10. Information also received from the Ministry of State in the context of the country visit to Luxembourg.

⁹⁵ Input from Luxembourg for the 2023 Rule of Law Report, p. 10. Information also received from the Ministry of State in the context of the country visit to Luxembourg.

⁹⁶ Information received from the Ministry of State in the context of the country visit to Luxembourg. However, the information in the register is not updated in real-time or regularly. The most recent meetings included in the register took place in January 2023

reportedly functioning well⁹⁷. Following the Grand Ducal Decree of 14 March 2022⁹⁸ that increased its powers, the Ethics Committee⁹⁹ can publish communiqués on breaches of the Code of Conduct. The Ethics Committee may also at any time issue recommendations to strengthen the Code of Conduct¹⁰⁰. Progress to address the gap identified in last year's Rule of Law Report¹⁰¹ has been made as regards elected representatives at municipal level. A draft law and a draft Grand-Ducal Regulation¹⁰² were tabled in July 2022 with the aim to introduce ethical principles applicable to municipal councilors in the exercise of their functions and strengthen transparency in the exercise of local politics and administration. It also envisages the establishment of a committee of ethics for municipal councilors to advise on the application of the ethical principles¹⁰³. The law will include rules on the limits of the amount of the gifts which municipal councilors may accept and an obligation for them to make a declaration of their real estate assets (including those of their spouses) and interests within one month of their taking office¹⁰⁴. The Government is awaiting the opinion of the Council of State and intends to adopt the draft law and regulation in 2024¹⁰⁵. As reported last year, there is no specific code of conduct for civil servants at local level, which constitutes an important gap¹⁰⁶, and civil society has been asking for the development of such a code¹⁰⁷. Civil servants at local level are subject to the Municipal Code, which sets out their rights and duties in general, as well as disciplinary

⁹⁷ Information received from the Ministry of State in the context of the country visit to Luxembourg. See also GRECO's positive assessment on the implementation of its recommendation on this subject. GRECO (2022), Fifth Evaluation Round – Second Compliance Report, rec. v, para. 29-40.

⁹⁸ Grand Ducal Decree of 14 March 2022 laying down rules of professional conduct for members of the Government, Memorial A, 133.

⁹⁹ Written input received in the context of the country visit to Luxembourg from the Ethics Committee. The Government members undertake to comply, during and after the end of their term of office, with the rules of conduct set out in the amended Grand-Ducal Decree of 14 March 2022 laying down the rules of conduct for Government members. In accordance with Chapter 2 of the decree, an ethics committee has been set up to ensure the application of ethical rules. This committee is composed of at least three persons, chosen from among Government members, deputies, judges, state councillors or civil servants who have respectively ceased their mandates or their functions. The members of the ethics committee are appointed for a non-renewable period of 5 years.

¹⁰⁰ The amended Grand Ducal Decree of 14 March 2022 laying down the rules of Conduct for Government members, A133, art. 28 (2) and the Grand-Ducal Decree of 14 March 2022 laying down the ethical rules for advisers who are attached to the Government, A134, art. 14(2). Written contribution received in the context of the country visit to Luxembourg from the Ethics Committee. In April 2023, the Ethics Committee recommended measures to further strengthen the functioning of the ethics committee, such as the possibility for the committee to hear experts.

¹⁰¹ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 11.

¹⁰² Draft law PL No 8052 and draft Grand-Ducal Regulation (PRGD 61.113).

¹⁰³ Written contribution from the Ministry of Foreign and European Affairs in the context of the country visit to Luxembourg.

¹⁰⁴ Input from Luxembourg for the 2023 Rule of Law Report, pp. 9-10. Information also received from the Ministry of State in the context of the country visit to Luxembourg. More specifically, the municipal councillors are required to submit a declaration of interests that provides information on their professional, political and paid or unpaid activities, their participation in private law organizations, whether paid or not, and a declaration of real estate assets that provides information on their real estate assets as well as those belonging to their spouse or partner that are located on the territory of the municipality where the municipal councillors exercises their mandate. The content of these declarations will be specified in the draft Grand Ducal regulation 61.113. Written contribution from the Ministry of Foreign and European Affairs in the context of the country visit to Luxembourg.

¹⁰⁵ Information received in the context of the country visit to Luxembourg from the Ministry of State.

¹⁰⁶ 2022 Rule of Law report, Country Chapter on the rule of law situation in Luxembourg, p. 11.

¹⁰⁷ Written contribution received in the context of the country visit to Luxembourg from StopCorrupt.

measures¹⁰⁸. Furthermore, the transparency and integrity charter for the General Police Inspectorate was implemented on 1 May 2022.

The Court of Auditors found no irregularities in relation to political party financing, while the financial control of municipalities remains with the Ministry of Internal Affairs.

There have been no new developments concerning audits of political party financing since the political party financing rules only apply during elections¹⁰⁹, which are taking place in October 2023¹¹⁰. The Court of Auditors is responsible for the annual control of political party financing. It did not detect any irregularities or suspicions of corruption in 2022¹¹¹. Furthermore, where public resources are used to finance political parties, the Court of Auditors audits all the accounts and balance sheets of parties at national and local level who have obtained at least 2% of the total votes¹¹². The law on political party financing¹¹³ obliges political parties to register all donations above EUR 250 and make them public through the register of donations. Political parties may only accept donations from natural persons. The Court of Auditors does not check the gifts for individual members of Parliament¹¹⁴. In case of a breach of the Parliament's Code of Conduct, the Parliament's Advisory Committee has the competence to give guidance on the interpretation of the Code¹¹⁵. The Court of Auditors did not find any irregularities with regards to public procurement¹¹⁶, which the Court checks systematically¹¹⁷. While the Court can at any time oversee the use of public funds given to any public or private legal entity in specific investment cases at local level, it has no general oversight power at the level of municipalities since financial control of the municipalities is done by the Ministry of Internal Affairs. To

¹⁰⁸ Chapters 5 and 15 of the Municipal Code. Input from Luxembourg for the 2023 Rule of Law Report.

¹⁰⁹ 2022 Rule of Law report, Country Chapter on the rule of law situation in Luxembourg, p. 11.

¹¹⁰ Information received in the context of the country visit to Luxembourg from the Ministry of State.

¹¹¹ Information received in the context of the country visit to Luxembourg from the Court of Auditors.

¹¹² Those parties having presented a complete list in each electoral constituency during legislative elections and a complete list during the European elections and having obtained at least 2% of the total votes. Written contribution from the Court of Auditors in the context of the country visit to Luxembourg.

¹¹³ Consolidated version applicable on 01/01/2020: Law of 21 December 2007 regulating the financing of political parties, Memorial A237, 5700.

¹¹⁴ Article 6 of the Code of Conduct for Members of Luxembourg with respect to financial interests and conflict of interest stipulates that Members of Parliament are not allowed to accept gifts above EUR 150 and every gift below that amount should be registered in the publicly available register. The register of gifts for members of parliament can be found on the website of the Parliament. The most recent version of the register was published on 30 April 2022.

¹¹⁵ Code of Conduct for Members of Luxembourg with respect to interests financial and Conflict of Interest, art. 7. For example, in 2022, a member of Parliament asked for guidance concerning a secondary activity, after a parliamentary question was asked. The Advisory Committee concluded there was a conflict of interest and the member stepped down from the activity. Information received from the Parliamentary Administration in the context of the country visit to Luxembourg. See Advisory Committee Press release of 9 June 2022.

¹¹⁶ The Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023) shows that 17% of companies in Luxembourg (EU average 26%) think that corruption has prevented them from winning a public tender or a public procurement contract in practice in the last three years. This is 9 percentage points below the EU average.

¹¹⁷ Information received in the context of the country visit to Luxembourg from the Court of Auditors. The Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023) shows that 17% of companies in Luxembourg (EU average 26%) think that corruption has prevented them from winning a public tender or a public procurement contract in practice in the last three years. This is 9 percentage points below the EU average.

ensure independent oversight at all levels of government, the Court has in the past requested that its oversight responsibilities be also extended to the municipal level¹¹⁸.

The law aiming to transpose the Whistleblower Directive, amended following an opinion issued by the Council of State, has been adopted. As noted in the previous Rule of Law report¹¹⁹, the Government adopted a draft law aiming to transpose the Whistleblower Directive¹²⁰. Following an opinion on the draft law by the Council of State, the Government of Luxembourg amended the draft law and published the law on 17 May 2023 in the national gazette¹²¹. The scope of the law is broader than the EU directive¹²², as it covers all offenses that harm the public interests¹²³.

Measures are being taken to further strengthen collaboration to tackle financial crimes. Following the COVID-19 pandemic and the growing threat in relation to government support schemes¹²⁴, the police is monitoring potentially fraudulent transactions at local, regional and national level. This system enables closer collaboration between the services involved in the detection of financial crimes such as fraud, money laundering and corruption of public funds. The system might be expanded to an official database¹²⁵. On 5 July 2022, the law on management and recovery of seized or confiscated assets¹²⁶ came into force. This obliges all actors, in particular banking establishments and financial service providers, to inform the authorities no later than 1 May 2023 of all assets seized within the framework of criminal proceedings, domestic or foreign. According to civil society, the law will benefit international corruption related work¹²⁷.

III. MEDIA PLURALISM AND MEDIA FREEDOM

The legal framework concerning media freedom and pluralism comprises a set of constitutional and legislative safeguards. Freedom of expression is explicitly recognised in the Constitution. The Law on Freedom of Expression in Media ensures protection for journalists¹²⁸. The Law on Electronic Media guarantees the financial and administrative independence of the audiovisual media regulator. The Law on Open and Transparent Administration regulates access to information held by public authorities and bodies.

While the general legal framework establishing the regulator for audio-visual media services and its functioning remains stable, additional tasks have been added. Amendments to the electoral provisions introduced by Law of 22 July 2022 have added two additional tasks to the Luxembourg Independent Authority for Audiovisual Media (ALIA). ALIA is to draw up guidelines on the conditions for the production, programming and

¹¹⁸ Ibid.

¹¹⁹ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 11.

¹²⁰ Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law.

¹²¹ Law of 16 May 2023 transposing Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of law in the EU, Memorial A232, 12.

¹²² A possibility allowed under the Directive and encouraged by the European Commission.

¹²³ Information received from the Ministry of State in the context of the country visit to Luxembourg.

¹²⁴ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, pp. 11-12.

¹²⁵ Information received in the context of the country visit to Luxembourg from the Police.

¹²⁶ Law of 22 June 2022 on the management and recovery of seized or confiscated assets, Memorial A323, 7452.

¹²⁷ Written contribution from StopCorrupt in the context of the country visit to Luxembourg.

¹²⁸ Luxembourg ranks 20th in the 2023 Reporters without Borders World Press Freedom Index compared to 21st in the previous year.

broadcasting of election messages of political parties and groups of candidates as well as programmes relating to the electoral media campaign that audiovisual or audio media service providers entrusted with a public service mission are required to broadcast¹²⁹. As regards its resources, there have been no significant changes since the publication of the 2022 Rule of Law Report despite the increase of its tasks. ALIA has asked for a substantial increase of human and financial resources to deal efficiently with its many tasks, for instance, in the context of electoral campaigns and in the area of media literacy and European affairs¹³⁰.

New provisions to control company mergers, when introduced, could contribute to improve transparency of media ownership. The analysis of results of the public consultation opened in January 2022 on possible measures to generally control company mergers is being finalised and a draft law is expected before the summer¹³¹. Given the highly concentrated media landscape with an ownership structure that is not fully transparent and accessible¹³², the possible introduction of such a general regime could also contribute to transparency of media ownership. Further measures to improve transparency of media ownership may be implemented in the future, but the Government awaits the adoption of the European Media Freedom Act (EMFA) to have a solid ground on which to base them and to avoid creating any legal confusion before the EMFA is adopted¹³³.

The independence of public Radio 100,7 was reinforced. The Parliament adopted the law on the organisation of the public entity “Média de service public 100,7”¹³⁴. The law strengthens the Luxembourg public service radio, which is now referred to as “public service media” and not just “radio”, thus opening options for presence in other media than radio, for instance online. Its missions and governance are revised, and its financing secured. Radio 100,7 is now called upon to develop a generalist programme of information, culture and entertainment. The programme will also have to continue to reflect the values of the public service through objective, independent and pluralistic media coverage, promoting democratic values, in particular respect for fundamental rights. The independence of the Radio 100,7 management board is strengthened, with six new independent members from civil society and state representatives reduced to three (previously four). The law also calls for regular audience consultation through advisory meetings or other appropriate means. As an independent public institution with legal personality and financial and administrative autonomy, the 100,7 media will have to organise itself in such a way as to guarantee its autonomy and independence with regard to editorial decisions. The funding of the service is guaranteed, multi-year and stable. A Multiannual (2024-2030) Convention¹³⁵ between the Government and the Public Service Media 100,7 was signed on 31 March 2023¹³⁶. The budget for 2024 increases by more than 25%¹³⁷ and a total allocation for a 7-year period envisages almost EUR 80 million to pursue

¹²⁹ Article 35(1)(m) of the amended Act of 27 July 1991 on electronic media following the modification of 12 August 2022.

¹³⁰ Written contribution from ALIA in the context of the country visit to Luxembourg. p. 4 and Media Pluralism Monitor 2023, country report for Luxembourg, p. 14 and p. 33.

¹³¹ Information provided by the Government in the context of the country visit to Luxembourg.

¹³² Media Pluralism Monitor 2023, country report for Luxembourg, pp. 17-18 and p.34.

¹³³ Information provided by the Government in the context of the country visit to Luxembourg.

¹³⁴ See Multiannual Convention between the Government and the Public Service Media 100,7 (2024-2030).

¹³⁵ Ibid.

¹³⁶ See Press release from the Government regarding the signing of the Multiannual Convention with Radio 100,7.

¹³⁷ The amount earmarked for 2024 is EUR 9 646 500 from EUR 7 567 287 in 2022. Figures provided by Radio 100.7.

Radio 100,7 current activities, continue the development of online services and keep up with innovation in technology. Advertising will continue to be prohibited on air and on the website, although sponsorship will continue to be allowed under strict conditions¹³⁸.

The Multiannual Convention with RTL Group for their “public service mission” activities was renewed¹³⁹. RTL Group is a private undertaking control by the Bertelsmann group with no direct or indirect participation of the LU Government¹⁴⁰. On 14 June 2022, Luxembourg renewed for a period of seven years (2024-2030) the convention with RTL Group currently in place, since 2021. The convention covers RTL Group’s “public service mission” activities in television, radio and online. New commitments are included in this new convention, namely, the commitment of RTL to create a programme for children and to establish, in collaboration with the University of Luxembourg, a so-called “Media Centre” to promote media education. The convention also includes support measures for the local cinematographic and audiovisual sector through enhanced cooperation between RTL and the national support fund for audiovisual production. The Government provides for a guarantee to cover parts of the costs related to the production of some agreed TV and radio programmes and related digital activities, based on a defined set of criteria and an annual maximum amount of EUR 15 million¹⁴¹.

Some progress has been made to reduce the time of processing requests from journalists for disclosure of official documents, while some demands from journalists remain unaddressed¹⁴². The 2022 Rule of Law Report recommended to Luxembourg to “reduce the time of processing of requests for disclosure of official documents, taking into account European standards on access to official documents”¹⁴³. While the law on general access to information and documents¹⁴⁴ is still under evaluation, on 27 June 2022 the Government issued a *lettre circulaire* to the services in the administration concerning the “rights and obligations of state servants in their relations with the press”¹⁴⁵. Its purpose is to establish a uniform procedure to respond to journalists’ requests for information, easing the flow of information and respecting the timely responses required by journalistic work. It instructs state agents to reply to press requests within 24 hours, with the information required or an estimate of the time needed to reply or indicating the legal reasons why the information cannot be provided. However, journalists consider the *circulaire* insufficient, as its nature entails that there is no right to challenge the decision of the administration on access to information before the courts. Journalists’ representatives have reiterated that the exercise of their profession needs a fast-track option, different from the general right to access to information for citizens¹⁴⁶. They have

¹³⁸ Written contribution provided by ALIA in the context of the country visit to Luxembourg.

¹³⁹ See Press release from the Government regarding the signing of the Multiannual Convention with RTL Group.

¹⁴⁰ <https://company.rtl.com/en/investor-relations/our-share#shareholding-structure>.

¹⁴¹ Law of 22 May 2022, authorizing the financing of the public Service mission of RTL for the period (2024-2030).

¹⁴² Information note provided by the ALJP in the context of the country visit to Luxembourg.

¹⁴³ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 2.

¹⁴⁴ Law of 14 September 2018 on open and transparent administration.

¹⁴⁵ Referred to as the *Circulaire Bettel*.

¹⁴⁶ Information note provided by the ALJP in the context of the country visit to Luxembourg.

been calling on the Government to introduce such a procedure in the law of 8 June 2004 on freedom of expression in the media¹⁴⁷. Therefore, some progress has been made.

The professional environment for journalists continues to be safe. The framework for the protection of journalists remains robust¹⁴⁸. The Council of Europe Platform to promote the protection of journalism and safety of journalists has not registered any alerts for Luxembourg for 2022 and 2023¹⁴⁹. Since the 2020 Rule of Law Report¹⁵⁰, no major legislative developments have taken place as regards the framework for the protection of journalists. Criminal defamation prosecutions against the media continue to be scarce, but journalists reiterate their concern that lawsuits may be used to intimidate media and journalists with new cases emerging sporadically¹⁵¹. The Government provides financial support to the Press Council and the Luxembourg Professional Association of Journalists, which covers partially the expenses related to the legal protection of their members¹⁵².

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Luxembourg is a unicameral¹⁵³ parliamentary democracy, 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, such as the Consultative Commission for Human Rights (CCDH), the Ombudsperson and the Ombudsperson for children and youngsters, play an important role in the system of checks and balances.

The constitutional reform introducing a legislative initiative for citizens was adopted. On 21 December 2022, the Parliament adopted the constitutional reform establishing the right of legislative initiative for citizens¹⁵⁴. The adopted constitutional reform provides that Parliament decides in public session on the reasoned proposals for the purposes of legislating, presented by 125 citizens and supported by at least 12 500 citizens having the right to vote¹⁵⁵. The new text also specifies that the exercise of this right of legislative initiative would be regulated by law. A draft law tabled in Parliament at the same time¹⁵⁶ sets out the scope of the legislative

¹⁴⁷ The Professional Association of Luxembourg Journalists (ALJP) and the Press Council suggested already in 2017 draft amendments for that purpose. Information note provided by the ALJP in the context of the country visit to Luxembourg.

¹⁴⁸ 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, and journalistic sources are well protected too. – See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 8.

¹⁴⁹ Council of Europe Platform to promote the protection of journalism and safety of journalists <https://fom.coe.int/en/pays/detail/11709546>.

¹⁵⁰ See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 14.

¹⁵¹ Information received in the context of the country visit to Luxembourg (e.g. ALJP).

¹⁵² Information received in the context of the country visit to Luxembourg (e.g. Ministry of State)

¹⁵³ The parliament is composed of the Chamber of Deputies.

¹⁵⁴ Project No. 7777 - Proposition for revision of Chapters IV and Vbis of the Constitution. Promulgated on 17 January 2023 and entered into force 1 July 2023.

¹⁵⁵ Input from Luxembourg for the 2023 Rule of Law Report, p. 16. See also 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, pp. 14-15.

¹⁵⁶ Project No. 8037 – Draft law on the reasoned proposals for the purpose of legislating.

initiative¹⁵⁷, the conditions for its admissibility¹⁵⁸, and the detailed procedure before the Parliament¹⁵⁹. Following an opinion of the Council of State¹⁶⁰, new amendments were tabled before the Parliament on 17 May 2023. The expectations are that the draft law would be adopted during the summer of 2023¹⁶¹.

The legislative process has not improved in terms of openness of the public consultations.

The 2022 Rule of Law Report recommended to Luxembourg to “improve the legislative decision-making process by providing wider possibilities for stakeholders to participate in public consultations”¹⁶². As mentioned in the 2021 and 2022 Rule of Law Reports¹⁶³, concerns have been raised as regards the regularity and extent of stakeholder consultations in the decision-making process. Throughout the ordinary legislative procedure, a consultative opinion of the Council of State is mandatory for every proposed legislation. In addition, there are five professional chambers¹⁶⁴, which are consulted in their respective field of expertise. The consultations with the Consultative Commission for Human Rights (CCDH)¹⁶⁵ continue to take place, as described in the 2022 Report¹⁶⁶. The CCDH is regularly consulted on legislation potentially affecting the fundamental rights of citizens¹⁶⁷, but continue not to be consulted when it comes to non-legislative measures, such as ordinances¹⁶⁸. However, according to a recent report, the process does not appear to be structurally open¹⁶⁹, in particular to stakeholders¹⁷⁰. Stakeholders also confirmed that the situation remains the same as in previous years and there was no effective follow-up by state authorities to improve the possibilities for stakeholders to participate in public consultations¹⁷¹. Thus, there has been no further progress in addressing the 2022 recommendation.

¹⁵⁷ Art. 3(1) of Project No. 8037 – Draft law on the reasoned proposals for the purpose of legislating.

¹⁵⁸ Art. 3(2) of Project No. 8037 – Draft law on the reasoned proposals for the purpose of legislating.

¹⁵⁹ Art. 8 to 11 of Project No. 8037 – Draft law on the reasoned proposals for the purpose of legislating.

¹⁶⁰ Opinion CE : 61.081, of 25 April 2023 on Project No. 8037.

¹⁶¹ Information received from the Chambre des Députés (Parliament) in the context of the country visit to Luxembourg.

¹⁶² See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 2.

¹⁶³ See 2021 and 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 15.

¹⁶⁴ Chamber of Employees; Chamber of Civil Servants and Public Employees; Chamber of Agriculture; Chamber of Commerce; Chamber of Trades.

¹⁶⁵ The UN Committee on Economic, Social and Cultural Rights recommended to Luxembourg to extend the mandate of the CCDH to receive individual complaints and to increase the financial and human resources allocated to the institution. See Contribution from OHCHR on Luxembourg for the 2023 Rule of Law Report, p. 2. The CCDH has an A-status re-accreditation as a National Human Rights Institution by Global Alliance of National Human Rights Institutions (GANHRI).

¹⁶⁶ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 15.

¹⁶⁷ Information received from CCDH in the context of the country visit to Luxembourg.

¹⁶⁸ Written contribution from ENNHRI on Luxembourg for the 2023 Rule of Law Report, p. 8.

¹⁶⁹ Outside of the mandatory consultation process of the professional chambers and the Council of State, the independent authorities, such as the CCDH, are able to submit opinions. Furthermore, other stakeholders, such as Civil Society Organisations, can submit opinions but they are not published on the website and there is no information to what extent they have been followed or why they have not been followed. For the general public, it seems that there is no possibility to submit opinions on draft laws.

¹⁷⁰ OECD Better Regulation Practices across the European Union 2022, p. 180. See also 2021 and 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, pp. 11-12.

¹⁷¹ Written contribution from ENNHRI on Luxembourg for the 2023 Rule of Law Report, p. 10. See also written contribution from CCDH for the 2023 Rule of Law Report, pp. 15-18. Information also received by CCDH, OKaJu and Initiative Devoir de Vigilance in the context of the country visit to Luxembourg.

The Ombudsperson was inscribed in the Constitution, following the adoption of a constitutional reform. On 21 December 2022, the Parliament adopted the constitutional reform dealing with the powers of the Parliament¹⁷², which anchors the institution of the Ombudsperson in the Constitution. As mentioned in the 2022 Rule of Law Report¹⁷³, a comprehensive constitutional reform had been proposed but eventually put aside in 2019¹⁷⁴, and was later followed by the reintroduction of the provision related to the Ombudsperson in the targeted constitutional revision mentioned above. As mentioned in last year's report¹⁷⁵, the Ombudsperson recommended modifying the law establishing the Ombudsperson institution¹⁷⁶ in order to introduce the right to an own-initiative opinion and expand some other competencies. This proposal has not yet received any follow-up from the authorities¹⁷⁷.

On 1 January 2023, Luxembourg had one judgment of the European Court of Human Rights pending implementation, an increase of one compared to the previous year¹⁷⁸. The case concerns a breach of the right to access to a court due to the inadmissibility of a cassation appeal in civil matters based on excessive formalism by the Court of Cassation¹⁷⁹. As of 1 January 2023, Luxembourg's rate of leading judgments from the past 10 years that remain pending was at 25% (compared to 0% at the start of 2022)¹⁸⁰. The judgment has been pending for almost 12 months. On 15 June 2023, the number of leading judgments pending implementation has increased to two¹⁸¹.

Mechanisms for follow-up on non-execution of judgments are available for administrative cases. In case of a non-execution of a judgment by an organ of the administration for more than three months, the concerned party can seize the court that pronounced the judgment in order to appoint a special commissioner. The special commissioner will then take the necessary action for the authority that has to execute the decision¹⁸². When the decision should be taken by a decentralised public person or by a deconcentrated authority, this special commissioner is chosen from among the senior civil servants of the supervising ministry, or the ministry having a direct link with the legal person of public law concerned¹⁸³. In other cases, the special commissioner is chosen from among the members of the court¹⁸⁴. Other mechanisms in case of a non-execution of a judgment from the organs of the administration also exist. Firstly, the court which pronounced the judgment can

¹⁷² Project No. 7777 - Proposition for revision of Chapters IV and Vbis of the Constitution. Promulgated on 17 January 2023 and will enter into force 1 July 2023.

¹⁷³ See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 15.

¹⁷⁴ Project No. 6030. See also 2021 Rule of Law Report, chapter on Luxembourg, p. 2. Between 2009 and 2019, a new draft Constitution was debated in Luxembourg. This project was abandoned in 2020 and has been replaced by a proposal to make several targeted revisions of different parts of the Constitution.

¹⁷⁵ See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 15.

¹⁷⁶ Recommendation 51 – Modification of the Law of 22 August 2003 on the establishment of the Ombudsperson.

¹⁷⁷ Information received from the Ombudsperson in the context of the country visit to Luxembourg.

¹⁷⁸ The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe.

¹⁷⁹ Judgment of the European Court of Human Rights of 12 October 2021, *Foyer Assurances S.A. v. Luxembourg*, 35245/18.

¹⁸⁰ All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2023. See the Contribution from the European Implementation Network for the 2022 Rule of Law Report, p. 5.

¹⁸¹ Data according to the online database of the Council of Europe (HUDOC-EXEC).

¹⁸² Art. 84 of the Law on the organisation of the administrative justice.

¹⁸³ Written contribution from the Supreme Court in the context of the country visit to Luxembourg, pp. 12 - 13.

¹⁸⁴ Art. 85 of the Law on the organisation of the administrative justice.

recall the judgement by announcing it again, to remind the administrative authority concerned about the necessary actions to be taken. Moreover, the court can decide to publish the judgment in the Official Journal to make it more visible¹⁸⁵.

A new Government initiative provides further support for civil society organisations online. The civic space remains open¹⁸⁶. Since the publication of the 2022 Rule of Law Report, there have been no changes to the legislative framework regarding civil society organisations (CSOs). Stakeholders have reported that the work environment for CSOs has been safe and enabling, and does not call for changes¹⁸⁷. With the online world becoming a more prominent working place for everyone, including CSOs, the Government launched an initiative called “BEE SECURE”, which promotes a safer, more responsible and more positive use of digital technology and online environments¹⁸⁸. The platform provides a general point of information and point of contact for questions related to online security and the responsible use of communication technology. It also offers a supporting service to anonymously report potential illegal content encountered online¹⁸⁹.

¹⁸⁵ Information received from the Supreme Court and the Council of State in the context of the country visit to Luxembourg.

¹⁸⁶ See 2021 and 2022 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 13 and p. 16. See also rating given by CIVICUS. Ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

¹⁸⁷ Information received from *Initiative Devoir de Vigilance* and Business & Human rights in the context of the country visit to Luxembourg.

¹⁸⁸ Input from Luxembourg for the 2023 Rule of Law Report, p. 18. The online platform is not specifically made for CSOs but for the wider public. Nevertheless, CSOs seem to be the ones predominantly using it.

¹⁸⁹ For more information see the website of BEE SECURE <https://www.bee-secure.lu/fr/a-propos/>.

Annex I: List of sources in alphabetical order*

* The list of contributions received in the context of the consultation for the 2023 Rule of Law report can be found at https://commission.europa.eu/publications/2023-rule-law-report-targeted-stakeholder-consultation_en.

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Annex II: Country visit to Luxembourg

The Commission services held virtual meetings in March 2023 with:

- Chambre des Députés (Parliament)
- Committee for the Prevention of Corruption (COPRECO)
- Constitutional Court
- Consultative Commission for Human Rights (CCDH)
- Council of State
- Court of Audit
- Groupement des magistrats Luxembourgeois
- Initiative devoir de vigilance
- Internal Security Service
- Luxembourg Association of Journalists (ALJP)
- Luxembourgish Media Regulator (ALIA)
- Ministry of Foreign and European Affairs
- Ministry of Interior
- Ministry of Justice
- Ministry of State
- Ombdusperson for children (OKaJu)
- Police Grand Ducal
- Press Council of Luxembourg
- Prosecution service
- Public service media 100,7
- Supreme Court of Justice
- The Commission for access to documents

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

- ALDA (European Association for Local Democracy)
- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Culture Action Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- Front Line Defenders
- ILGA Europe
- International Commission of Jurists
- International Federation for Human Rights (FIDH)
- International Planned Parenthood Federation European Network
- International Press Institute
- JEF Europe
- Osservatorio Balcani e Caucaso Transeuropa
- Philea

- Reporters Without Borders
- SOLIDAR
- Transparency International EU