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## **COMMISSION STAFF WORKING DOCUMENT**

### **2022 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**

#### **2022 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 and continues to operate efficiently. The Constitutional reform, which aims to establish a Council for the judiciary and strengthen the independence of the Prosecutor's Office is being finalised. New legislative amendments seek to align the composition of the future Council for the Judiciary with European standards. Those amendments also specify the powers of the Council for the Judiciary regarding appointments, promotions, retirement and secondment of magistrates, and introduce a new disciplinary regime. Despite certain progress with the digitalisation project covering administrative courts, shortcomings remain regarding the digitalisation of justice overall. A new draft law that would make legal aid more accessible was tabled in Parliament.

All authorities involved in the fight against corruption are cooperating well although there remain challenges as regards human resources in the prosecution services dealing with economic and financial crime. Some progress was made in the area of asset declarations and lobbying as regards Members of Parliament and a transparency register will be set up. The Codes of Conduct for members of the Government and its advisers were strengthened, but not all public sectors have a code of conduct. Room for improvement also remains as regards the regulation of conflicts of interest and revolving doors. The impact of the new rules on political party financing could not yet be determined since elections are only expected to be next year. Legislation to protect whistleblowers is still limited to specific sectors, but the Government adopted a draft law in January 2022 to strengthen the protection of whistleblowers and transpose EU legislation. There were no corruption cases reported related to the COVID-19 pandemic in the past year.

Luxembourg continued strengthening the regulatory safeguards for the independence and effectiveness of the media regulator as the Audiovisual Media Services Directive (AVMSD) was transposed. Moreover, the competences and resources of the regulator have been further increased. A revised press aid scheme, covering online news media, has been adopted making it technologically neutral. The framework for the protection of journalists remains robust. Concerns remain about the lengthy procedures for access to official documents for journalists, who request that a fast-track option is introduced for their profession. A draft law to reinforce the independence of Radio 100.7 public service media has been presented to the Parliament.

A draft constitutional revision has been presented with the aim to introduce a direct right for citizens to put forward legislative initiatives. Since the publication of the 2021 Rule of Law Report, no action has been taken to address the concerns regarding the regularity and the extent of consultation of stakeholders, other than the ones required by law, in the decision-making process. A series of COVID-19 pandemic related measures were challenged before the Constitutional Court. The draft law on NGOs, which intends to simplify the procedures for their creation and governance, is being discussed in Parliament.

## **RECOMMENDATIONS**

It is recommended to Luxembourg to:

- Continue with the process to adopt the reform on the powers of the future Council for the Judiciary.
- Continue with the process to adopt the reform on making legal aid more accessible.
- Continue to implement and evaluate the new legislation on lobbying the Parliament, including the transparency register.
- Ensure that there are adequate resources for the prosecution services dealing with economic and financial crime.
- Reduce 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. Candidate judges are selected by a committee composed exclusively of judges and subsequently formally appointed by the executive. For posts at the Supreme Court and the Administrative Court of Appeal, 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. Each Bar Association has an Assembly<sup>1</sup>, a Bar Council<sup>2</sup>, a President of the Bar<sup>3</sup> and for the whole profession, a Disciplinary and Administrative Council<sup>4</sup>. Luxembourg participates in the European Public Prosecutor's Office (EPPO).

### **Independence**

**The level of perceived judicial independence in Luxembourg continues to be very high both among the general public and companies.** Overall, 77% of the general population and 76% of companies perceived the level of independence of courts and judges to be 'fairly or very good' in 2022<sup>5</sup>. According to data in the 2022 EU Justice Scoreboard, no significant changes can be identified in the evolution of the perceived level of independence since 2016. The perceived judicial independence among companies has increased since 2021 (71%), but is lower in comparison with 2016 (80%).

**The constitutional reform, which aims to establish a Council for the judiciary and strengthen the independence of the Prosecutor's Office, is being finalised.** On 20 October 2021, the Parliament adopted at first reading the revised text of Chapter VI (on Justice) of the Constitution<sup>6</sup>. As mentioned in the 2021 Rule of Law Report<sup>7</sup>, this revision aims at establishing a new Council for the judiciary and, more generally, to strengthen judicial independence<sup>8</sup>. As regards the Council for the judiciary, the draft text, as adopted at first reading<sup>9</sup>, outlines the main competencies of the future Council, namely the selection of magistrates before their appointment by the Grand Duke and deciding on the initiation of disciplinary proceedings against magistrates. The specific conditions under which these powers will be exercised, as well as the composition, organisation and the other competencies

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

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

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

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

<sup>5</sup> Figures 50 and 52, 2022 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%).

<sup>6</sup> Project No. 7575 – revision of Chapter VI (on Justice) of the Constitution.

<sup>7</sup> See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, pp. 2-3.

<sup>8</sup> Project No. 7575 – revision of Chapter VI (on Justice) of the Constitution.

<sup>9</sup> The second vote is usually within 3 months. However, due to the unsuccessful request for referendum, the timeline was changed and the second vote will take place later in 2022.

of the Council, are to be determined by law<sup>10</sup>. As regards the strengthening of independence of the Prosecutors' Office and the judiciary as a whole, the adopted draft enshrines the independence of judges and prosecutors. The judges are independent in exercising their functions<sup>11</sup>, while 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<sup>12</sup>. This independence is also reflected in the legislative amendments of the Criminal Procedure Code and the Criminal Code, which would remove the power of the Minister of Justice to give instructions to prosecutors in individual cases<sup>13</sup>.

**New legislative amendments have been tabled aligning the composition of the future Council for the judiciary with European standards.** In October 2021, the Ministry of Justice decided to split the draft law on the organisation of the future Council for the judiciary<sup>14</sup> in two separate draft laws: one on the organisation of the future Council<sup>15</sup> (draft law on the composition) and one on the status of magistrates (draft law on the powers<sup>16</sup> of the future Council). On 15 October 2021, the new draft on the composition was tabled in Parliament. It aims to address the concerns raised by the 2020 and 2021 Rule of Law Reports and to align the composition 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 peers<sup>17</sup>. The latest draft legislation envisages a composition of nine members: six magistrates elected by their peers, among which the President of the Supreme Court, the President of the Administrative Court of Appeal, the State Prosecutor General are *ex officio* candidates<sup>18</sup>, one lawyer elected by their peers<sup>19</sup>, and two persons elected by the Parliament based on their education or experience<sup>20</sup>. This new structure, if adopted as provided in the latest draft, would comply with the Council of Europe recommendation. On 31 May 2022, the Council of State published their opinion on these new legislative amendments<sup>21</sup>. The Council of State approved of the new composition but also expressed some concerns<sup>22</sup>, which would be subject to further debates and amendments at the Parliament.

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<sup>10</sup> Art. 90, text of Project No. 7575. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, pp. 2-3.

<sup>11</sup> Art. 87(1), text of Project No. 7575.

<sup>12</sup> Art. 87(2), text of Project No. 7575.

<sup>13</sup> The legal safeguards surrounding this power combined with the fact that the Prosecution service is in practice recognised as independent appear to mitigate the risk to the autonomy of the Prosecution service. It is also to be noted that the Minister of Justice has not given instructions in an individual case for more than 20 years.

<sup>14</sup> Project No. 7323 on the Organisation of the Supreme Council of Justice.

<sup>15</sup> Project No. 7323A on the Organisation of the National Council of Justice.

<sup>16</sup> Project No. 7323B on the Status of magistrates.

<sup>17</sup> 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.

<sup>18</sup> The President of the Supreme Court, the President of the Administrative Court of Appeal, the State Prosecutor General will also be *ex officio* members only in the very first National Council of Justice, in order to establish the institution. – Project No. 7323A, p. 7.

<sup>19</sup> 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.

<sup>20</sup> Project No. 7323A, p. 6.

<sup>21</sup> Opinion No. CE : 60.824 on Parliamentary file No. 7323A, and Opinion No. CE : 60.892 on Parliamentary file No. 7323B of 31 May 2022.

<sup>22</sup> The concerns are related to the modalities of the election process regarding the President of the Supreme Court, the President of the Administrative Court of Appeal, the State Prosecutor General, namely the simultaneous vote for the position within the judiciary and the position within the Council for the judiciary.

**New legislative amendments are set to establish rules common to all magistrates including a new disciplinary regime.** On 20 December 2021, the Ministry of Justice tabled the second part of the draft law for the concerning the future Council for the judiciary, which deals with its powers<sup>23</sup>. In particular, this new draft law contains rules common to all magistrates (judges and prosecutors) with regard to recruitment, training, appointment<sup>24</sup> (including promotions<sup>25</sup>), secondment, ethics<sup>26</sup>, discipline<sup>27</sup> and retirement. On the appointment procedure for magistrates, the future Council would be the sole institution responsible for this, being guided by criteria for the appointment set in the law<sup>28</sup>. At the end of the procedure, the Council would present the selected candidates to the Grand Duke, who would appoint them without having a power of veto<sup>29</sup>. The decision for appointment would be susceptible to a judicial review regarding its legality<sup>30</sup>. On secondments, the draft law does not envisage any secondments of judges without their consent<sup>31</sup>. On retirement, the age and conditions would remain unchanged<sup>32</sup>. On the new disciplinary regime for magistrates, the future Council would play a major role, as it would have the prerogatives to initiate a 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<sup>33</sup>. The draft law creates two new disciplinary courts – a Disciplinary Tribunal (first instance court) and a Disciplinary Court (a second instance court)<sup>34</sup>. Both the Tribunal and the Court would be composed of three effective members and six alternates, all of whom would be magistrates but none of them would be prosecutors<sup>35</sup>. The Grand Duke would appoint the members of both the Tribunal and the Court after proposal of the Council for the judiciary<sup>36</sup>. The Grand Duke would not have a power of veto and would be obliged to appoint all proposed candidates<sup>37</sup>. The draft law also introduces a list of actions that could

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<sup>23</sup> Project No. 7323B on the Status of magistrates.

<sup>24</sup> Currently, the recruitment of magistrates is organised by a commission exclusively composed by higher magistrates. This commission proposes the candidates to the Grand Duke who appoints them.

<sup>25</sup> At present, for posts at the top of the judicial hierarchy, the appointment / promotion of the judges is made by the Grand Duke on the advice of the Supreme Court of Justice, or of the Administrative Court. The other judges and prosecutors are directly promoted by the executive.

<sup>26</sup> At the moment, there is an applicable code of deontology and ethics of the Luxembourg judges, adopted by the Supreme Court of Justice and the Administrative Court.

<sup>27</sup> Currently, disciplinary cases against judges of the judicial order (seat and public prosecutor's office) are investigated and judged by the Supreme Court of Justice, on the requisition of the Prosecutor General. Disciplinary cases against judges of the administrative order are investigated and judged by the Administrative Court on the requisition of the Minister of Justice.

<sup>28</sup> The Council would select among the candidates based on their professional competencies, personal qualities and rang in the magistracy. - Project No. 7323B, p. 9 (Art. 9 of the draft law).

<sup>29</sup> The Grand Duke would be obliged to appoint a magistrate. - Project No; 7323B, p. 11 (Art. 13 of the draft law).

<sup>30</sup> The decision on appointment may be the subject of an action for annulment before the administrative courts (at two instances). In the context of the action for annulment, a review of the legality of judicial appointments will be carried out. However, judicial review will not extend to the appropriateness of such appointments. – Project No. 7323B, p. 12.

<sup>31</sup> Information received in the context of the country visit to Luxembourg (e.g. Ministry of Justice)

<sup>32</sup> Project No. 7323B, p. 32.

<sup>33</sup> Input from Luxembourg for the 2022 Rule of Law Report, p. 8.

<sup>34</sup> Project No. 7323, p. 19, (Art. 27 of the draft law).

<sup>35</sup> Project No. 7323, pp. 19-23.

<sup>36</sup> The Presidents of courts from different levels of the judiciary present multiple candidates to the Council for the judiciary. The latter proceeds with the selection process and nominates for appointment the exact number of candidates needed to the Grand Duke. – Project No. 7323B, p. 21 (Art. 30 of the draft law).

<sup>37</sup> Information received in the context of the country visit to Luxembourg (e.g. Ministry of Justice).

provoke a disciplinary action<sup>38</sup>, none of which would allow for launching a disciplinary proceeding based on the contents of a magistrate's decision. Furthermore, the draft law lists the possible sanctions for disciplinary offences<sup>39</sup>, all of which would be susceptible to an appeal before the second instance disciplinary court<sup>40</sup>. The magistrates against whom there is a disciplinary proceeding before the disciplinary courts would have the right to be assisted by a lawyer<sup>41</sup>. In general, the current draft seems to be in line with the relevant European standards, in particular as regards the more sensitive areas of the appointment of magistrates (including promotion)<sup>42</sup> and the disciplinary regime<sup>43</sup>. On 31 May 2022, the Council of State published their opinion on these new legislative amendments<sup>44</sup>. The Council of State approved of the new regimes created by the draft law but also expressed some concerns<sup>45</sup>, which would be subject to further debates and amendments at the Parliament.

## Quality

**Despite progress with the digitalisation project covering administrative courts, shortcomings remain regarding the digitalisation of justice overall.** In February 2022, the first conceptual phase of the JANGA sub-project was concluded. This is the most advanced part of the “paperless justice” project that encompasses 13 sub-projects<sup>46</sup>. JANGA as the first sub-project concerns the digitalisation of all exchanges and archives for administrative courts<sup>47</sup>. The authorities expect to launch the functionalities by the end of 2022<sup>48</sup>. Furthermore, the temporary legislative changes made to adapt the procedures for criminal<sup>49</sup>, civil and commercial<sup>50</sup> cases during the COVID-19 pandemic and to allow the use of electronic tools would remain in force even after the pandemic<sup>51</sup>. It is unclear whether they will be consolidated under new legislation or integrated in the future revision that will incorporate the functionalities introduced under the “paperless justice” project. Nevertheless, the changes allow only for limited use of electronic tools in the courts<sup>52</sup>. Further shortcomings could be observed in the area of digital tools to initiate and follow proceedings. Currently, in civil and commercial cases it is only possible for the courts to serve documents

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<sup>38</sup> Project No. 7323B, p. 15 (Art. 21 of the draft law).

<sup>39</sup> Project No. 7323B, p. 16 (Art. 22 of the draft law).

<sup>40</sup> Project No. 7323B, pp. 30-31 (Art. 49 and 50 of the draft law).

<sup>41</sup> Project No. 7323B, p. 27 (Art. 41 of the draft law).

<sup>42</sup> Council of Europe Recommendation CM/Rec(2010)12 on Judges: independence, efficiency and responsibilities, paras. 44-48 (career of judges); CCJE, Opinion no.10(2007) on the Council for the Judiciary at the service of society, paras. 48-51 (promotion of judges), paras. 52-56 (evaluation of judges).

<sup>43</sup> Judgment of the Court of Justice of 15 July 2021, *Commission v. Poland*, Case C-791/19, EU:C:2021:596, paras. 80, 113 137, 139 and 140. Judgment of the Court of Justice of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others v Inspecția Judiciară and Others*, Joined Cases C-83/19, C-127/19, C-195/19, C-291/19, C-397/19, EU:C:2021:393, paras. 199-207.

<sup>44</sup> CE : 60.892 on Parliamentary file No. 7323B of 31 May 2022.

<sup>45</sup> The concerns are related to the composition of the two new disciplinary courts and to the fact that they will be composed solely of judges.

<sup>46</sup> The “paperless justice” project encompasses 13 sub-projects and aims to address present shortcomings in digitalisation of justice. See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 4.

<sup>47</sup> The remaining 12 sub-projects are either at an earlier stage or not yet started.

<sup>48</sup> Information received in the context of the country visit to Luxembourg (e.g. Ministry of Justice).

<sup>49</sup> Law of 20 June 2020 on the temporary adaptation of certain procedural modalities in criminal matters.

<sup>50</sup> Law of 19 December 2020 on the temporary adaptation of certain procedural modalities in civil and commercial matters.

<sup>51</sup> Information received in the context of the country visit to Luxembourg (e.g. Ministry of Justice).

<sup>52</sup> Figure 42, 2022 EU Justice Scoreboard.

electronically to citizens and businesses and to send electronic acknowledgement of receipt proving the submission of documents. However, it is not possible to receive comprehensive information on or pay court fees online, nor it is possible to access the electronic files of closed or ongoing cases<sup>53</sup>. Despite the progress achieved, the scope of available online tools and digital solutions remains limited<sup>54</sup>, while the “paperless justice” project aims to be completed only by 2026.

**A new draft law aims to make legal aid more accessible.** On 27 January 2022, the Ministry of Justice and the President of the Luxembourg Bar presented a draft law on legal aid<sup>55</sup>. This more detailed and comprehensive legislation would replace the existing article of the Law on the Profession of a Lawyer<sup>56</sup> and the Grand-ducal regulation on legal aid<sup>57</sup>. The new draft law expands the scope of application of legal aid to persons who do not hold the Luxembourgish nationality but reside in Luxembourg<sup>58</sup> and allows for partial legal aid<sup>59</sup>. Due to the introduction of partial legal aid, the new draft law would ease the requirements for acquiring legal aid<sup>60</sup>, which are currently limited to people only with income below the social inclusion income. It would include also people in specific situations (for instance people in bankruptcy)<sup>61</sup>. The draft law is currently pending in Parliament and undergoing stakeholder consultations.

## Efficiency

**The courts continued to perform efficiently despite some challenges with the clearance rate potentially due to the COVID-19 pandemic.** Despite the effects of the COVID-19 pandemic and the increase of the estimated time needed to resolve a case, efficiency continues to be consistently high, although the length of proceedings is significantly longer at second and third instances<sup>62</sup>. The number of pending cases remains low, with the exception of criminal cases<sup>63</sup>. However, the clearance rate has fallen below 100% which is potentially due to the effects of the COVID-19 pandemic. Therefore, this difference would probably be of temporary nature<sup>64</sup>. Finally, for the first time, data are available as regards the length of court proceedings and the number of pending cases in administrative courts<sup>65</sup>. The estimated time

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<sup>53</sup> Figure 46, 2022 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.

<sup>54</sup> Figures 46 and 47, 2022 EU Justice Scoreboard.

<sup>55</sup> Project No. 7959.

<sup>56</sup> Art. 37 of the Law on the profession of a lawyer, 10 August 1991.

<sup>57</sup> Grand-ducal regulation on the legal aid, 18 September 1995.

<sup>58</sup> 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.

<sup>59</sup> 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).

<sup>60</sup> Partial legal aid will mainly allow people with resources slightly greater than REVIS to benefit from proportional coverage of their lawyer's fees. Levels representing income brackets higher than the REVIS will make it possible to determine the proportion borne by the State, which depending on the case will relate to 50% or 25% of the fees and expenses. These levels as well as the amounts to which they will be applicable will be more fully defined in a Grand-Ducal regulation. - Project No. 7959, p. 11.

<sup>61</sup> See among others Art. 3-6, paras. 6 and 8 Criminal Procedure Code (CPC); Art. 18-1 of the Law on Extradition, 20 June 2001 – Project No. 7959, p. 2 (Art. 2(5)).

<sup>62</sup> Figures 6, 7 and 9, 2022 EU Justice Scoreboard.

<sup>63</sup> Figure 14, 2022 EU Justice Scoreboard.

<sup>64</sup> Figure 11, 2022 EU Justice Scoreboard.

<sup>65</sup> Figures 6, 9, 10, 14 and 16 2022 EU Justice Scoreboard.

needed to resolve administrative cases at first instance is high in comparison to other EU Member States; in the absence of earlier data, it is not possible to establish trends.

## **II. ANTI-CORRUPTION FRAMEWORK**

The institutional framework to prevent and fight corruption has not changed since the 2021 report. Luxembourg has no specific anti-corruption strategy, nor an anti-corruption agency; it 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. There is no specialised anti-corruption prosecution authority although 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 remains low.** In the 2021 Corruption Perceptions Index by Transparency International, Luxembourg scores 81/100, ranks 4<sup>th</sup> in the European Union and 9<sup>th</sup> globally<sup>66</sup>. This perception has been relatively stable<sup>67</sup> over the past six years. The 2022 Special Eurobarometer on Corruption shows that 36% of respondents consider corruption widespread in their country (EU average 68%) and 9% of respondents feel personally affected by corruption in their daily lives (EU average 24%)<sup>68</sup>. As regards businesses, 43% of companies consider that corruption is widespread (EU average 63%) and 38% consider that corruption is a problem when doing business (EU average 34%)<sup>69</sup>. Furthermore, 40% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 34%)<sup>70</sup>, while 54% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 29%)<sup>71</sup>.

**The number of reported corruption cases opened over the past year as well as convictions decreased.** Whereas 28 cases were opened in 2019 and 29 cases in 2020, 22 cases were opened until the end of 2021. The success rate of prosecutions went down: of five judgments on the merits in 2021, there was only one conviction, compared to two convictions on four judgments on the merits in 2020 and four convictions on five judgments on the merits in 2019<sup>72</sup>, but it is not evident to infer conclusions from comparing data that consists of low numbers. The number of offences of corruption contained in the police databases is much

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<sup>66</sup> Transparency International, Corruption Perceptions Index 2021 (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).

<sup>67</sup> In 2017 the score was 82, while in 2021, the score was 81. The score significantly increases/decreases when it changes more five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

<sup>68</sup> Special Eurobarometer 523 (2022). The Eurobarometer data on citizens' corruption perception and experience is updated every second year. The previous data set is the Special Eurobarometer 502 (2020).

<sup>69</sup> Flash Eurobarometer 507 (2022). The Eurobarometer data on business attitudes towards corruption as is updated every second year. The previous data set is the Flash Eurobarometer 482 (2019).

<sup>70</sup> Special Eurobarometer 523 (2022).

<sup>71</sup> Flash Eurobarometer 507 (2022).

<sup>72</sup> Input from Luxembourg for the 2022 Rule of Law Report, p. 18.

lower but remained stable in comparison to last year, with five offences in 2020 and four in 2021<sup>73</sup>.

**Challenges remain as regards human resources in the prosecution services dealing with economic and financial crime, sometimes resulting in delays in prosecution of corruption.** The Prosecution service numbers 43 prosecutors and among them, one third are employed in the area of the fight against economic, financial and corruption offences<sup>74</sup>. As outlined in the 2021 Rule of Law report<sup>75</sup>, only a limited increase of resources was granted, also due to the absence of appointable persons<sup>76</sup>. The latest available annual report from the Prosecution service<sup>77</sup> confirms the lack of resources, particularly in its Economic and Financial section<sup>78</sup>. Nevertheless, the Prosecution service has confirmed that it treats all cases, although sometimes with delays<sup>79</sup>. Delays in the investigation of corruption cases, which are by nature complex and technical, entail the risks that evidence can no longer be uncovered and assets no longer recovered, as well as the expiry of the statute of limitation, effectively barring prosecution.

**The Government aims to ensure that members of the Government can be held criminally liable for offences, including corruption.** Under the current Constitution<sup>80</sup>, only the Parliament has the right to bring charges against members of Government. Under one of the projects of the Constitutional revision<sup>81</sup>, members of the Government would be criminally liable for acts committed by them in the exercise of their duties, even after their term of office has ceased. However, only the Public Prosecutor's Office may bring and direct proceedings for such act. The Office should assess the appropriateness of prosecuting members of the Government if they are accused of facts by individuals and thereby protect them from potential false and/or politically motivated allegations<sup>82</sup>.

**The Corruption Prevention Committee (COPRECO) met once in the last year and a half.** Although COPRECO is required by law<sup>83</sup> to meet at least twice a year, it did not meet in 2021, neither in person nor online, reportedly due to the COVID-19 pandemic and staff changes. After an 18-month break, a meeting took place on 30 March 2022, which informed participants on several ongoing assessments of the Luxembourg anti-corruption framework

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<sup>73</sup> This can be explained by the fact that the prosecution service retains the cases as they progress. The figure to be used is that based on the legal classification made by the judicial authorities. Input from Luxembourg for the 2022 Rule of Law Report.

<sup>74</sup> Input from Luxembourg for the 2022 Rule of Law Report, pp. 13-14.

<sup>75</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 5.

<sup>76</sup> The State Prosecutor General notes that the position of prosecutor has become less attractive due to the increased criticism on the work of prosecutors, as well as the timing and eligibility requirements of the competitions to become a prosecutor. Luxembourg Government (2022) Jurisdictional and prosecutorial statistics 2021, pp. 16-17.

<sup>77</sup> Jurisdictional and prosecutorial statistics 2020, prepared by the Government.

<sup>78</sup> The State Prosecutor General also notes that the appointment of prosecutors from this section to the European Public Prosecutor's Office in 2021 left an important gap. Luxembourg Government (2022) Jurisdictional and prosecutorial statistics 2021 (*Statistiques des juridictions et des parquets Année 2021*), p. 15.

<sup>79</sup> Information received in the context of the country visit to Luxembourg (e.g. Prosecution service).

<sup>80</sup> See Art. 83 of the Constitution.

<sup>81</sup> Project No. 7700, revision of Chapters I, II, III, V, VII, VIII, IX, X, XI and XII of the Constitution – first out of two votes passed but there is a request for a referendum, which delays the final adoption.

<sup>82</sup> Written contribution received from the Ministry of State in the context of the country visit to Luxembourg.

<sup>83</sup> Art. 3(1) of the Regulation of 15 February 2008 determining the composition and operation of the Committee for the Prevention of Corruption.

by international bodies and the state of play of legislation in progress or adopted in Luxembourg<sup>84</sup>. Signatories of the UN Convention against Corruption are required to ensure the existence of an independent body that oversees and coordinates preventive anti-corruption policy<sup>85</sup>. Insofar as COPRECO could be considered as such a body, there are no indications it has carried out any oversight or coordination over the past year.

**Some progress was made in the area of asset declarations and lobbying as regards members of Parliament.** On 14 September 2021, the Parliament amended its Code of Conduct<sup>86</sup>, which strengthens the rules on the declaration of assets and extra-parliamentary work and activities such as participation in boards or committees of companies<sup>87</sup>. In contrast to what GRECO recommended<sup>88</sup>, and what applies to people taking up adviser posts in the Government, the new asset declaration regime for Members of Parliament does not cover assets of family members and spouses<sup>89</sup>. Furthermore, on 9 December 2021, a new transparency register was created in law<sup>90</sup>. Members of Parliament have to declare all contacts with registered lobbyists and must reject a request for meeting with unregistered persons seeking to influence the legislative work of Members or the Chamber's decision-making process<sup>91</sup>. The data of lobbyists and contacts will be made public in an easily accessible form on the website of the Parliament. The register is an important tool to prevent corruption through transparency, but it still has to be made operational and will be evaluated one year after its entry into force<sup>92</sup>. No progress was made with regard to the introduction of an effective system of monitoring and sanctions concerning breaches of the Code of Conduct for members of Parliament<sup>93</sup>.

**The Codes of Conduct for members of the Government and its advisers were strengthened, but not all public sectors have a Code of Conduct.** The Government adopted on 24 March 2022 a new Code of Conduct for Members of Government and another one for the Government advisers<sup>94</sup>. These codes include rules on gifts, revolving doors, conflict of interests and lobbying. They address loopholes that GRECO identified in relation to previous drafts from 2019<sup>95</sup>, by making clear, for example, that the obligation to register the data falls upon the advisers or the secretariat of the Members of Government present at the interview. The Ethics Committee can give its opinion on the application of the Code of Conduct for members of the Government at the request of the Prime Minister<sup>96</sup>. The Prime

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<sup>84</sup> Written contribution from the Luxembourg Government in the context of the country visit to Luxembourg. See also input from Luxembourg for the 2022 Rule of Law Report, pp. 17.

<sup>85</sup> United Nations Convention against Corruption Luxembourg signed the Convention on 10 December 2003 and it entered into force on 6 November 2005.

<sup>86</sup> Parliament Official website, Document 7824 of 2020-2021, 25 October 2021.

<sup>87</sup> GRECO (2022), Fourth Evaluation Round– Third interim Compliance report: Luxembourg. p. 4.

<sup>88</sup> GRECO (2020), Fourth Evaluation Round– Second Interim compliance report: Luxembourg. p. 3.

<sup>89</sup> GRECO notes the same gap as to spouses and family members for ministers, see GRECO (2020), Fifth Evaluation Round – Compliance report. pp. 11-12.

<sup>90</sup> Through amendment of the Rules of Procedure of the Chamber of Deputies, Parliament Official website, Document 7499 of 2020-2021, 17 January 2022

<sup>91</sup> By contrast, activities responding to the direct and individual request of the Chamber of Deputies or a Member, such as ad hoc or regular requests for factual information, data or expertise, are not covered by the Register. See Articles 4 and 5 of the amended Rules of Procedure.

<sup>92</sup> Parliament Official website, Resolution of 9 December 2021 (3703).

<sup>93</sup> GRECO (2022), Fourth Evaluation Round, Third Interim Compliance report, p. 10.

<sup>94</sup> Parliament Official website, Document 133 and 134 of 24 March 2022.

<sup>95</sup> GRECO (2020), Fifth Evaluation Round– Compliance report: Luxembourg. p. 8.

<sup>96</sup> Art. 3 of Grand Ducal Decree of 14 November 2014 laying down the rules of professional conduct of members the Government and their duties and rights in the performance of their duties.

Minister did not submit any case to the appreciation of the Ethics Committee in 2021 and the Committee did not meet between January and September 2021<sup>97</sup>. The General Police Inspectorate (IGP) has adopted a charter highlighting the values of independence, objectivity, transparency and integrity. As reported by Luxembourg for the 2021 Rule of Law Report, the work on a code of conduct for the IGP is still in progress and the Government plans to complete this in the second half of 2022<sup>98</sup>. There is no code of conduct for municipalities and local governments<sup>99</sup>, which constitutes an important gap.

**Since next elections are in 2023, it is not yet possible to evaluate the impact of the 2020 law on political party financing.** As mentioned in the 2021 Rule of Law Report<sup>100</sup>, the law on political party financing, as amended in December 2020, introduced an obligation for all candidates for national and European elections to declare all donations exceeding EUR 250. The rules only apply during elections and the next elections, according to the constitutional fixed-year term, are scheduled to be held in 2023. It is therefore too early to evaluate if the changes have made the framework more effective.

**Whistleblower protection legislation currently in place is still limited to specific sectors such as private and public labour law and new legislation to address these gaps is in preparation.** On 10 January 2022, the Government adopted a draft law aiming to transpose the Whistleblower Directive<sup>101</sup>. The scope of the draft is broader than the EU Directive and aims at ensuring whistleblowers are better protected against retaliation (including by assuming that retaliation occurs due to the whistleblowing, thereby reversing the burden of proof). The draft law provides for the creation of a reporting office, under the authority of the Minister of Justice. The tasks of the office would be to inform and assist any person wishing to report a violation of the law, to raise awareness of the legislation on whistleblower protection, to inform the competent authorities of failures to comply with the obligations to set up internal channels, and to draw up recommendations on any matter relating to the application of the law<sup>102</sup>.

**While corruption related to the COVID-19 pandemic remained a risk, there were no such cases in 2021.** Although corruption has been noted as a growing threat in relation to government support schemes<sup>103</sup>, no specific measures have been adopted so far<sup>104</sup>. The Police and Prosecution have not seen the abovementioned risk materialise in terms of cases during 2021<sup>105</sup>. As part of its audits, the Court of Auditors routinely controls if the regulation on

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<sup>97</sup> Written contribution from the Ethics Committee received in the context of the country visit to Luxembourg.

<sup>98</sup> Input from Luxembourg for the 2021 Rule of Law Report, p. 14; further written information received from Luxembourg Government in the context of the country visit to Luxembourg.

<sup>99</sup> Information received in the context of the country visit to Luxembourg, (e.g. Stopcorrupt).

<sup>100</sup> See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 7.

<sup>101</sup> (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law and allowing for a more general and effective protection of whistleblowers in general.

<sup>102</sup> Input from Luxembourg for the 2022 Rule of Law Report, pp. 16-17.

<sup>103</sup> Input from Luxembourg for the 2022 Rule of Law Report, p. 17; National risk assessment to money laundering and terrorist financing, 15 September 2020 and Financial crime and AML/CFT implications during the COVID-19 pandemic, Circulaire CSSF 20/740 of 10 April 2020, p. 3.

<sup>104</sup> As mentioned above, COPRECO met in the first trimester of 2022. One of the items on the agenda was the corruption risks in the context of the ongoing pandemic and further necessary measures to address the existing risks. Input from Luxembourg for the 2022 Rule of Law Report, p.17.

<sup>105</sup> Information received in the context of the country visit to Luxembourg, (e.g. National Police; Prosecution service).

public procurement is being respected. It did not detect any irregularities or suspicions of corruption in 2021<sup>106</sup>.

### **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 journalists. The Law on Electronic Media guarantees the financial and administrative independence of the audiovisual media regulator<sup>107</sup>.

**The legal framework concerning the regulator for audio-visual media services has remained stable and financial resources increased.** As the Audiovisual Media Services Directive was transposed in 2021, regulatory safeguards for the independence and effectiveness of the media regulator (ALIA) were strengthened and its competences increased. Financial resources have been reinforced with a higher budgetary allocation for 2022 that should allow ALIA to increase its staff. Additionally, the revision of the regulation<sup>108</sup> establishing the annual tax received by ALIA for the overview of services under its remit has further added new own funds. The revised tax is now EUR 2 000 per service, and the scope of the regulation has been extended to cover also services of third countries using a Luxembourg uplink or Luxembourg satellite<sup>109</sup>. In spite of these positive changes, the Media Pluralism Monitor 2022 report for Luxembourg considers that ALIA lacks human resources and competences to deal efficiently and proactively with the many tasks allocated to it by law, such as exerting control over the number of channels in different languages that moved to Luxembourg after Brexit<sup>110</sup>.

**A new press aid scheme was adopted by Parliament.** On 30 July 2021, Parliament adopted the new Law on an Aid Scheme for Professional Journalism<sup>111</sup>, which reviews the former aid scheme for written press established in 1976. It sets up a single technologically neutral framework, covering printed press and online media, thus broadening the scope of the previous scheme and bringing it up to date. A new aid is introduced for “startups” that are not yet eligible for the main scheme, as well as aid for citizen publishers as acknowledgement to their function as socio-cultural and media actors complementing other media. The law also seeks to encourage transparency, training, media education and the accessibility for persons with disabilities. The criteria for eligibility are widened beyond the three official languages, and monthly and free publications are eligible. The committee on press aid advising the minister (responsible for media) is also enlarged. With this new scheme, the budget allocated to written press is increased by 27%.

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<sup>106</sup> Written contribution from the Court of Auditors received in the context of the country visit to Luxembourg,

<sup>107</sup> Luxembourg ranks 21st in the 2022 Reporters without Borders World Press Freedom Index compared to 20th in the previous year.

<sup>108</sup> Grand-Ducal Regulation of 3 March 2021 amending the Grand-Ducal Regulation of 2 February 2015 setting the amount and terms of payment of taxes to be collected by the Independent Luxembourg Audiovisual Authority with regard to the monitoring of audiovisual media services and sound.

<sup>109</sup> Law of 27 July 1991 on electronic media.

<sup>110</sup> 2022 Media Pluralism Monitor, country report for Luxembourg, pp. 11 and 29

<sup>111</sup> Law of 30 July 2021 on the aid scheme for professional journalism.

**A draft law has been tabled to reinforce the independence of Radio 100,7 public service media.** The only public service medium is Radio 100,7 which was established under the provisions of the Law on Electronic Media of 1991. A 1992 regulation<sup>112</sup> set up its structure and functioning, and the station began broadcasting in 1993. A draft law was tabled in Parliament in January 2021<sup>113</sup> seeking to establish a solid legal framework for Radio 100,7. The new draft law would review the objectives, governance and financial security of this public service medium. Radio 100,7 currently has a socio-cultural purpose, but the new law calls to design a programme of generalist information, culture, and entertainment. It will remain an independent public institution with financial and administrative autonomy. Moreover, the current four state representatives on the 100,7 management board will be reduced to three. Instead, six new independent members from civil society will come on board. The draft law also calls for regular audience consultation through advisory meetings or other appropriate means. Funding will be fixed for at least five years, which will provide a clear framework for the institution. In addition to Radio 100,7, a convention between the Government and RTL Group<sup>114</sup> establishes a “public service mission” for the RTL broadcaster. 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 that cannot be exceeded. The convention is expected to be renewed for the period 2024-2030.

**The law on access to information is under evaluation, while concerns remain as to the ease of access to documents by journalists.** The Law of 14 September 2018 on a Transparent and Open Administration governs access to official information and documents<sup>115</sup>. The 2020 and 2021 Rule of Law Reports noted concerns as regards the length of procedures and a selective approach in disclosing information<sup>116</sup>. The law is currently in a process of a detailed evaluation, the results of which are expected to be published during 2022. As noted in the 2020 and 2021 Rule of Law Reports<sup>117</sup>, Luxembourg does not guarantee a fast-track access to information for the press that would be different from the right to access to information for citizens. Journalists’ representatives and stakeholders reiterated that the exercise of their profession needs a fast-track option and called on the Government to introduce such a procedure<sup>118</sup>. Similarly, the Consultative Commission for Human Rights (CCDH)<sup>119</sup> appealed to the Government to guarantee journalists access to information in all circumstances.

**Control of company mergers would improve transparency of media ownership.** A public consultation was opened in January 2022 concerning the introduction of measures to control

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<sup>112</sup> Grand-ducal regulation of 19 June 1992 setting the terms and conditions for the structure and operation of the public establishment created by article 14 of the law of 27 July 1991 on electronic media.

<sup>113</sup> Project No. 7749 – draft law on the organisation of the public establishment “Public Service Media 100.7” and amending the amended law of July 27, 1991 on electronic media.

<sup>114</sup> Agreement relating to the provision of the Luxembourg public service in the field of television.

<sup>115</sup> Law of 14 September 2018 on open and transparent administration.

<sup>116</sup> See 2020 Rule of Law Report Country Chapter on the rule of law situation in Luxembourg, p. 8; and 2021 Rule of Law Report Country Chapter on the rule of law situation in Luxembourg, pp. 9-10.

<sup>117</sup> See previous footnote.

<sup>118</sup> Information received from ALJP and the Press Council in the context of the country visit to Luxembourg. See also written contribution from ENNHRI on Luxembourg for the 2022 Rule of Law Report, p. 7.

<sup>119</sup> See 2021 Rule of Law Report Country Chapter on the rule of law situation in Luxembourg, p. 10

company mergers in general<sup>120</sup>. Given the highly concentrated media landscape and an ownership structure that is not fully transparent and accessible<sup>121</sup>, the possible introduction of such a regime could contribute to transparency of media ownership.

**The professional environment for journalists continues to be safe.** The framework for the protection of journalists remains robust<sup>122</sup>. Since the 2020 Rule of Law Report, the Commission has not received any indications concerning changes of the framework for the protection of journalists. Criminal defamation prosecutions against the media continue to be scarce, but the concern remains amongst professionals and NGOs that lawsuits may be used as a means to intimidate media and journalists with new cases emerging sporadically<sup>123</sup>. The Government provides some financial support for the Press Council and the Luxembourg Professional Association of Journalists, which covers partially the expenses related to the legal protection of their members.

#### **IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES**

Luxembourg is a unicameral<sup>124</sup> 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, play an important role in the system of checks and balances.

**A draft constitutional revision aiming to introduce a legislative initiative for citizens has been presented.** On 29 June 2021, the final part of the series of constitutional revisions was tabled<sup>125</sup>. It focuses on the role of the Parliament and aims at strengthening its role<sup>126</sup>. Moreover, it introduces a new form of direct democracy: the citizens' right to put forward a legislative initiative. According to the draft law, the citizens' proposals would have to be reasoned, presented by 125 citizens and supported by 12 500 citizens<sup>127</sup>. This would enable citizens and civil society to submit proposals for legislation in a more precise and binding<sup>128</sup>

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<sup>120</sup> Launch of a public consultation concerning the introduction into national law of a regime for controlling concentrations between undertakings. Information provided by the Government in the context of the country visit to Luxembourg.

<sup>121</sup> MPM 2022 Report for Luxembourg, pp. 9, 13, 14, 26, 29.

<sup>122</sup> 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.

<sup>123</sup> Information received in the context of the country visit to Luxembourg (e.g. ALJP).

<sup>124</sup> The parliament is composed of the Chamber of Deputies.

<sup>125</sup> Project No. 7777 - Proposition for revision of Chapters IV and Vbis of the Constitution.

<sup>126</sup> See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, pp. 11-12

<sup>127</sup> Project No. 7777, p. 18 (Art. 67 of the draft law).

<sup>128</sup> When it comes to the binding nature of petitions, according to Art. 164 of the Regulation of the Parliament, the petitions are subject to an admissibility approval by the Petitions Committee at the Parliament and then by the Conference of Presidents (the speaker of the Parliament and the leaders of the political parties represented in Parliament). Once deemed admissible, the petition will have to collect 4500 signatures in 42 days. Afterwards, the petitioners gain the right to a meeting with the responsible Minister for the area of the Petition and Members of Parliament. –When it comes to the binding nature of the citizens' legislative initiative, if the requirements are met, the Parliament will have to discuss the proposal publicly.

way than by way of a simple petition<sup>129</sup>. On 16 July 2021<sup>130</sup> and 26 April 2022<sup>131</sup>, the Council of State expressed its support to this revision with positive opinions.

**Concerns regarding the inclusiveness of the decision-making process persist.** Since the publication of the 2021 Rule of Law Report, no action has been taken to address the concerns that have been raised as regards the regularity and extent of consultations of stakeholders in the decision-making process<sup>132</sup>. As mentioned in the 2021 Rule of Law Report<sup>133</sup>, 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 chambers<sup>134</sup>, which are consulted in their respective field of expertise. However, the process does not appear to be structurally open<sup>135</sup>, in particular to stakeholders<sup>136</sup>. The Consultative Commission for Human Rights (CCDH)<sup>137</sup> is regularly consulted on legislation potentially affecting the fundamental rights of citizens. Moreover, the CCDH can take its own initiative and publish opinions on draft laws. Nevertheless, the CCDH is not consulted when it comes to non-legislative measures, such as ordinances<sup>138</sup>. The Ombudsperson can give an opinion only when asked<sup>139</sup>, which has not happened for any of the public consultations since the publication of the 2021 report. To remedy this situation and introduce the right to an own-initiative opinion, but also to expand on some of the competencies of the institution, the Ombudsperson recommended modifying the law establishing the Ombudsperson<sup>140</sup>. The proposal has not received any follow-up from the authorities yet<sup>141</sup>. Finally, as already proposed in the initial draft for constitutional revision<sup>142</sup>, the new draft constitutional revision on the powers of the Parliament<sup>143</sup> would anchor the Ombudsperson in the Constitution.

**A series of COVID-19 pandemic related measures were challenged before the Constitutional Court.** On 1 March 2022, the Police Tribunal of Luxembourg sent a question to the Constitutional Court of Luxembourg regarding the constitutionality of several

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<sup>129</sup> Input from Luxembourg for the 2022 Rule of Law Report, p. 25.

<sup>130</sup> Opinion No. CE : 60.685 on Parliamentary file No. 7777, of 16 July 2021.

<sup>131</sup> Complementary Opinion No. CE : 60.685 on Parliamentary file No. 7777, of 26 April 2022.

<sup>132</sup> See contribution from ENNHRI for the 2022 Rule of Law Report, chapter on Luxembourg, p. 9. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, pp. 11-12.

<sup>133</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, pp. 11-12

<sup>134</sup> Chamber of Employees; Chamber of Civil Servants and Public Employees; Chamber of Agriculture; Chamber of Commerce; Chamber of Trades.

<sup>135</sup> 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 are not regularly followed. For the general public, it seems that there is no possibility to submit opinions on draft laws.

<sup>136</sup> OECD Regulatory Policy Outlook 2021, p.264. See also written contribution from ENNHRI on Luxembourg for the 2022 Rule of Law Report, p. 7; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, pp. 11-12.

<sup>137</sup> In March 2022, the CCDH received an A-status re-accreditation as a National Human Rights Institution by Global Alliance of National Human Rights Institutions (GANHRI).

<sup>138</sup> Information received from the CCDH in the context of the country visit to Luxembourg. See also written contribution from ENNHRI on Luxembourg for the 2022 Rule of Law Report, p. 3. Written contribution from ENNHRI for the 2021 Rule of Law Report. p. 235.

<sup>139</sup> Art. 1 to 4 of the Law of 22 August 2003 on the establishment of the Ombudsperson.

<sup>140</sup> Recommendation 51 – Modification of the Law of 22 August 2003 on the establishment of the Ombudsperson.

<sup>141</sup> Information received in the context of the country visit. (e.g. Ombudsperson).

<sup>142</sup> Project No. 6030. See also 2020 Rule of Law Report, chapter on Luxembourg, p. 10.

<sup>143</sup> Project No. 7777.

measures introduced to combat the spread of the COVID-19 pandemic, including the wearing of masks and the respect of minimal distance of 2 meters between people in cases of manifestations. In addition, the administrative courts have been seized for several COVID-19 pandemic related challenges. Fifteen of them concerned orders for isolation and quarantine measures and three of them the vaccination campaign<sup>144</sup>.

**On 1 January 2022, Luxembourg had no judgments of the European Court of Human Rights pending implementation.** At that time, the few judgments pronounced in respect of Luxembourg in the past 10 years had already been implemented and the supervision by the Committee of Ministers had ended. As of 1 January 2022, Luxembourg had no leading judgments of the European Court of Human Rights that were pending implementation<sup>145</sup>. However, the European Court of Human Rights issued a new leading judgment on 12 January 2022<sup>146</sup>. On 1 July 2022, the leading judgment of 12 January 2022 is the sole pending implementation<sup>147</sup>.

**The civic space in Luxembourg remains open<sup>148</sup> and a draft law that would simplify the procedures for the creation and governance of NGOs is being discussed in Parliament.** On 26 July 2021, the Government introduced new amendments to the draft law for non-profit organisations<sup>149</sup>. The draft was initially tabled in 2009 but no action had been taken by Parliament since then. The new amendments simplify the procedures recognising NGOs as public benefit organisations by increasing their transparency, reducing the required initial capital for creating a foundation, rendering the procedure more flexible, and making the governance of the organisations more efficient by adapting the framework to technological developments<sup>150</sup>.

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<sup>144</sup> Input from Luxembourg for the 2022 Rule of Law Report, p. 25.

<sup>145</sup> 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. It is the Committee's practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

<sup>146</sup> *Foyer Assurances S.A. v. Luxembourg*, pending implementation since January 2022. (European Court of Human Rights, judgment of 12 October 2021, *Foyer Assurances S.A. v. Luxembourg* 35245/18). 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 2022. See the Contribution from the European Implementation Network for the 2022 Rule of Law Report, p. 57.

<sup>147</sup> Data according to the online database of the Council of Europe (HUDOC)

<sup>148</sup> See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Luxembourg, p. 13. See also rating given by CIVICUS. Ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

<sup>149</sup> Project No. 6054, Draft law on the non-profit associations and foundations.

<sup>150</sup> Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights - Luxembourg, pp. 3-4.

## **Annex I: List of sources in alphabetical order\***

\* *The list of contributions received in the context of the consultation for the 2022 Rule of Law report can be found at [https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation\\_en](https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation_en).*

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Project No. 7323, *Draft law on the organisation of the Council for the judiciary <http://legilux.public.lu/eli/etat/projet/pl/10455>*.

Project No. 7323A, *Draft law on the organisation of the Council for the judiciary <https://beta.legilux.public.lu/eli/etat/projet/pl/20170534>*.

Project No. 7323B, *Draft law on the organisation of the Council for the judiciary <https://beta.legilux.public.lu/eli/etat/projet/pl/20170561>*.

Project No. 7575, *Revision of Chapter VI (on Justice) of the Constitution, full text of the project <http://data.legilux.public.lu/file2/2021-02-24/23>*.

Project No. 7620, *Draft revision of Art. 32 of the Constitution <https://beta.legilux.public.lu/eli/etat/projet/ppc/20130257>*.

Project No. 7749, *Draft law on the organisation of the public establishment "Public Service Media 100.7" and amending the amended law of July 27, 1991 on electronic media <https://beta.legilux.public.lu/eli/etat/projet/pl/20170398>*.

Project No. 7777 - *Proposition for revision of Chapters IV and Vbis of the Constitution <http://legilux.public.lu/eli/etat/projet/ppc/20130260>*.

Project No. 7959 – *Draft law on the organisation of legal aid and repealing article 37-1 of the amended law of 10 August 1991 on the legal profession. <https://beta.legilux.public.lu/eli/etat/projet/pl/20170566>*.

Recommendation 51 – Modification of the Law of 22 August 2003 on the establishment of the Ombudsperson. - <https://www.ombudsman.lu/uploads/RC/RC51.pdf>.

Reporters without Borders (2022) – Luxembourg, <https://rsf.org/en/country/luxembourg>.

Transparency International (2022), *2021 Corruption Perception Index*.

## **Annex II: Country visit to Luxembourg**

The Commission services held virtual meetings in February and March 2022 with:

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

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

- Amnesty International
- Article 19
- Civil Liberties Union for Europe
- Civil Society 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
- Human Rights Watch
- ILGA Europe
- International Federation for Human Rights (FIDH)
- International Press Institute
- Open Society European Policy Institute ( OSEPI)
- Osservatorio Balcani e Caucaso Transeuropa
- Philea

- Reporters Without Borders
- Transparency International Europe