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ANNEX 16

ANNEX

LUXEMBOURG

to the

EU Anti-Corruption Report

LUXEMBOURG

1. INTRODUCTION — MAIN FEATURES AND CONTEXT

Anti-corruption framework

Strategic approach. Corruption is not perceived to be a serious threat to society in Luxembourg. Although it lacks a national anti-corruption strategy, soft law instruments provide an ethical framework for judges and members of the government. Furthermore, soft law instruments and codes of conduct have been developed in some sectors by private companies, including the financial, accounting and auditing services. Codes of ethics are, however, yet to be adopted for elected officials. Awareness of the need for efficient control in public institutions has recently been increased: for instance, during the governmental crisis following allegations of misuse of power and corruption in the national intelligence agency.¹

Legal framework. Luxembourg's legal framework aiming at preventing and combating corruption underwent a number of significant changes over the past 12 years.² The criminal law provisions governing corruption were last amended in 2011 as part of an anti-corruption legislative package.³ After the amendment, Council of Europe's Group of States against Corruption (GRECO) noted that all of the seven recommendations from the third round evaluation on incriminations were fully implemented.⁴ Luxembourg adopted provisions on the criminal record for legal persons in 2013.⁵ Although accepting gifts in public office is expressly prohibited,⁶ a legal framework governing conflict of interest, lobbying and access to information of public interest is lacking, or subject only to limited monitoring.

Institutional framework. An inter-ministerial committee, the Corruption Prevention Committee, was established in 2007 and meets on average once a year.⁷ Within the police, the Economic and Financial Department is specialised in fighting economic and financial crime. The EU Fifth Round Evaluation noted that, given Luxembourg's importance as a financial centre and as regards the actual workload encountered, the Grand Duchy Police appeared to be critically understaffed in the financial sector.⁸ With the actual number of staff, the Service de Police Judiciaire (SPJ) seemed not to be in a position to adopt a pro-active approach. The Luxembourg public prosecutor's office has an economic and financial section, although its major tasks are related to financial crime in general rather than to corruption specifically.⁹

1 Rapport de la Commission d'enquête sur le Service de Renseignement de l'Etat in http://www.chamber.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/136/267/123656.pdf.

2 Overview of the main anti-corruption laws in Luxembourg: <http://www.transparence.lu/cadrecorruption.html>.

3 Loi du 13 février 2011 renforçant les moyens de lutte contre la corruption; Recueil de législation A-no. 32., 18 février 2011. <http://www.legilux.public.lu/leg/a/archives/2011/0032/a032.pdf#page=2>.

4 Third Evaluation Round Compliance Report on Luxembourg; Greco RC-III (2010) 4E, adopted in Strasbourg, 11 June 2010.; Second Compliance Report on Luxembourg 'Transparency of political party funding' Greco RC-III (2012) 8E.

5 Loi du 29 mars 2013 relative à l'organisation du casier judiciaire et aux échanges d'informations extraites du casier judiciaire entre les états membres de l'union européenne <http://eli.legilux.public.lu/eli/etat/leg/loi/2013/03/29/n10>.

6 Loi du 1er avril 1979 sur le statut de la fonction publique — it also refers to the principles of neutrality and impartiality.

7 See the OECD Phase 3 report on Luxembourg, paragraph 170.

8 Evaluation report on the fifth round of mutual evaluations 'Financial crime and financial investigations' Report on Luxembourg, p. 35, 75. 15644/3/10; REV 3., Brussels, 17 May 2011.

9 Evaluation report on the fifth round of mutual evaluations 'Financial crime and financial investigations' Report on Luxembourg, p.35, 75. 15644/3/10; REV 3., Brussels, 17 May 2011.

Opinion polling

Perception surveys. 42% of respondents on the Special Eurobarometer 2013 survey think corruption is widespread in Luxembourg (well below the EU average of 76%).¹⁰

Experience of corruption. Petty corruption seems to be non-existent, since almost none of the respondents declared to have been expected to pay a bribe over the last 12 months (1%) (EU average: 4%).¹¹ The overwhelming majority did not witness corruption (94%), and 92% of them did not feel affected by corruption in everyday life (EU average: 70%).

Business surveys. According to the 2013 Eurobarometer business survey¹², corruption was an obstacle to doing business for 30% of respondents (against the EU average of 46%), while nepotism and patronage seems to create more concerns, given that 47% of respondents think this constitutes an obstacle to doing business, above the EU average of 41%. The same survey revealed that 22% of those who participated in public procurement in the past three years reported that they were prevented from winning because of corruption, as opposed to the EU average of 32%. Respondents in Luxembourg reported tailor-made specifications for particular companies in 44% of cases. Collusive bidding is reported by 40% as a widespread practice, 42% of respondents noted conflicts of interest in the evaluation of bids and 36% pointed to unclear selection or evaluation criteria. These figures are all below the EU average. According to the World Economic Forum's Global Competitiveness Report 2013-14, Luxembourg is ranked the 22nd most competitive economy of the world out of 152 countries.¹³

Background issues

Private sector. Luxembourg transposed Framework Decision 2003/568/JHA on corruption in the private sector.¹⁴ As regards foreign bribery, in 2011, the OECD acknowledged Luxembourg's efforts to comply with the Anti-bribery Convention, but also called upon Luxembourg to step up its efforts to detect and prosecute cases of bribery of foreign public officials. Since March 2010, the Luxembourgish legal framework allows criminal proceedings to be taken, also against companies involved in such offences.¹⁵ OECD raised concerns regarding the capacity and effectiveness of law enforcement in pursuing foreign bribery cases and noted shortcomings in the criminal legislation.¹⁶ It recommended reviewing the applicability of the offence of bribery of foreign public officials, reviewing the protection afforded under Luxembourg legislation to whistleblowers and increasing awareness of both public and business sectors reporting foreign bribery.¹⁷ In 2013, the OECD acknowledged efforts to raise awareness. However, it also noted that no measure has been taken to amend the criminal code and the provisions on the liability of legal persons.¹⁸

10 2013 Special Eurobarometer 397.

11 2013 Special Eurobarometer 397.

12 2013 Flash Eurobarometer 374.

13 http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf.

14 Report from the Commission to the European Parliament and the Council based on Article 9 of Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0309:EN:HTML>.

15 Act of 3 March 2010 amending the criminal code and the Criminal Procedure Code.

16 <http://www.oecd.org/daf/briberyininternationalbusiness/anti-briberyconvention/48270224.pdf> see p. 58-62.

17 To be followed up: written follow up is due to be published in October, some recommendations have reportedly been implemented.

18 Luxembourg: Follow up to Phase 3 Report and Recommendations (2013 September)

<http://search.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/WGB%282013%2920/FINAL&docLanguage=En>.

Banking data and law enforcement. Breaching bank secrecy is a crime. An exception allows the transfer of banking data for cases defined by law, including for criminal procedures.¹⁹ Luxembourg's legal and regulatory framework provides for the availability of ownership, accounting and bank information, but the authorities did not use their information gathering and enforcement powers to obtain the requested information in all instances.²⁰ The anti-corruption report of the OECD confirmed in September 2013 that in relation to investigations and prosecutions, Luxembourg had not taken any measures to facilitate access to bank and tax information by law enforcement authorities, including by clarifying the criteria of 'exceptionally', a condition for authorising access to this information by the investigating judge.²¹ The government pledged to issue new rules allowing the automatic exchange of information in the EU starting from 2015.²²

Whistleblowing. In February 2011, Luxembourg adopted legislation on whistleblowing as part of an anti-corruption package, which included amendments to the Labour Code and the law on public service.²³ The law does not provide for an independent body dealing with allegations of corruption by the whistleblower, but bans prejudice and repressive actions towards the employee reporting corruption.

Good practice: active involvement of the civil sector in protecting whistleblowers

A hotline enabling the public to submit anonymous reports is run by Transparency International Luxembourg. It receives a state subsidy.

Under the laws of Luxembourg, registered associations representing public interests have the right to participate in criminal proceedings in cases involving the unlawful taking of interest, corruption or the abuse of influence. Any association wishing to exercise this right in a criminal proceeding has to submit a request for approval to the Ministry of Justice. Since Transparency International Luxembourg has obtained this status, it is able to process cases presented to them by potential whistleblowers, and then represent the public interest in criminal proceedings, while keeping the identity of the whistleblower confidential.

Transparency of lobbying. Lobbying is not regulated in Luxembourg. There is no specific obligation to register lobbyists or report contacts between public officials and lobbyists.

2. ISSUES IN FOCUS

Financing of political parties

Political parties are mostly financed by the state, only a small proportion of the budget comes from donations by natural persons. Donations from anonymous donors and from legal persons to parties are prohibited. Under the law on party financing adopted in 2007, the donors and

19 Article 41. 'L'obligation au secret professionnel'; Loi du 5 avril 1993 relative au secteur financier. <http://eli.legilux.public.lu/eli/etat/leg/loi/1993/04/05/n1>.

20 OECD 'Global Forum on Tax Transparency: New reports review jurisdictions' information exchange' report dated 31 July 2013

<http://www.oecd.org/newsroom/globalforumontaxtransparencynewreportsreviewjurisdictionsinformationexchange.htm> and for the country report on Luxembourg OECD on 31 July 2013 in <http://www.eoi-tax.org/jurisdictions/LU>.

21 See the follow up to recommendation 4(a); in: Luxembourg: Follow up to Phase 3 Report and Recommendations (2013 September) <http://search.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/WGB%282013%2920/FINAL&docLanguage=En>.

22 <http://www.gouvernement.lu/3352618/10-gramegna-ecofin>.

23 Loi du 13 février 2011 renforçant les moyens de lutte contre la corruption; Recueil de législation A-no. 32., 18 février 2011. <http://www.legilux.public.lu/leg/a/archives/2011/0032/a032.pdf#page=2>.

the financial balance of the parties are published and accessible on the website of the Chamber of Deputies.²⁴ Compliance with the rules of transparency is a condition for public funding.²⁵ The global balance, expenses and incomes, including all donations above EUR 250, are also subject to audit by the Court of Audit. In the most recent Eurobarometer survey, 57% of respondents thought that there was insufficient transparency and supervision of political party financing, less than the EU average of 67%.²⁶

The third evaluation round of GRECO on party financing made 10 recommendations in 2007. One of the major shortcomings of the system at the time of the adoption of the law on party financing in 2007 was that independent candidates were not subject to the regulations and that the financing of election campaigns conducted by political parties was not regulated in a sufficiently detailed manner, as noted by GRECO.²⁷ Mainly as a result of changes in the law in 2011, Luxembourg has increased the applicable penalties and further increased transparency.²⁸ In 2012, GRECO noted that four of the 10 recommendations had not been fully met²⁹ but commended the considerable progress made thanks to legislative amendments in 2011. Progress included the adoption of a standardised format for political party accounts, training for party personnel, and amendments of the Electoral Law regulating election campaign funding.

Nevertheless, GRECO pointed out that Luxembourg still failed to address a number of issues related to financing electoral campaigns (including at local level), and noted that the exact scope of political parties' accounting duties has still not been sufficiently spelt out in terms of the various structures directly or indirectly attached to the parties (e.g. press bodies and the associations responsible for managing party affairs). GRECO noted that parties, lists and candidates not receiving a public grant were not subject to the legislation, and the latter still do not cover local elections or specify the extent to which income and expenditure linked to such elections should be taken into account. Furthermore, it stressed the absence of a supervisory mechanism specifically applicable to campaign accounts, highlighted inconsistencies in the rules for penalties, raised the lack of clarity on the scope of political parties' accounting duties, called for granting legal personality to political parties, and referred to gaps in the tools for supervising declarations of donations received by parliamentarians. GRECO therefore recommended making donations to elected representatives subject to the general legislation on party funding and financing of campaigns, or prohibiting donations from legal persons to parliamentarians.³⁰

Conflicts of interest

The members of the Parliamentary Assembly are obliged to declare their remunerated activities. Since MPs do not hold a professional mandate, they can maintain their original

24 <http://www.chd.lu/wps/portal/public/FinancementDesPartisPolitiques>.

25 Loi du 21 décembre 2007 portant réglementation du financement des partis politiques.
http://www.chd.lu/wps/PA_Archive/FTSShowAttachment?mime=application%2fpdf&id=923883&fn=923883.pdf.

26 2013 Special Eurobarometer 397.

27 Third Evaluation Round, Evaluation Report on Luxembourg on the 'Transparency of Political Party Funding'; Greco Eval III Rep (2007) 6E Theme II; Strasbourg, 13 June 2008.

28 Loi du 16 décembre 2011 1. portant modification de la loi du 21 décembre 2007 portant réglementation du financement des partis politiques; 2. portant modification de la loi électorale modifiée du 18 février 2003.
<http://www.legilux.public.lu/leg/a/archives/2011/0261/2011A4326A.html>.

29 Second compliance report on Luxembourg
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2012\)8_Second_Luxembourg_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2012)8_Second_Luxembourg_EN.pdf).

30 Second compliance report on Luxembourg
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2012\)8_Second_Luxembourg_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2012)8_Second_Luxembourg_EN.pdf). Para 23-30. Urging Luxembourg to resume its examination of this matter, this argument was repeated in the Fourth Evaluation Round, see page 18.

occupation, as long as it is not in the public sector, and are granted leave in order to be able to carry out their duties related to being a deputy. It is also possible to hold office simultaneously in the national parliament and in local government, and it is common practice. It is not compulsory to abstain from participation in decision making in the event of a conflict of interest, whether declared or not, and there are no general rules on managing conflicts of interest.³¹ The declaration of income is therefore used to provide transparency on the income of the deputy from diverse sources. However, such declarations do not provide information about the assets of MPs. There are no rules on receiving valuable gifts or similar benefits by elected officials.

There is no asset disclosure system for local elected officials either. Furthermore, as opposed to MPs, local elected officials do not have to declare their other incomes. The former Luxembourg Ombudsman in his activity report 2009-2010 highlighted the increase in numbers of complaints related to potential conflicts of interest, above all at local level. He called for more vigilance and for taking each of these complaints seriously.³²

In its recent Fourth Round Evaluation, GRECO expressed concerns about the lack of rules on gifts and similar benefits. GRECO also found that rules on declarations of interests and assets still needed to be extended to give more clarity on incompatibilities, in particular in respect to politicians that are members of boards of private companies. The weakness of the system was also partly attributed to its voluntary nature, as under the rules of procedure of the Chamber of Deputies, all members must disclose their occupations or any other remunerated posts or activities and financial support from third parties under their personal responsibility. Especially because there is no verification mechanism to check conflicts of interest and undue enrichment, GRECO regarded the system income declaration as ‘neither efficient nor reliable.’³³ The system also disregards the interests of relatives or other persons close to the MP. Some of these concerns may be solved once the code of conduct, drafted in 2013 with a view to preventing conflicts of interest, is adopted for the Chamber of Deputies.³⁴ The preparation of the draft code of conduct was triggered by a parliamentary inquiry into the context of alleged bribery in two competing building projects, which led to calls for more transparency and accountability in the decision-making process.³⁵ On 13 October 2011, the Chamber of Deputies unanimously adopted a resolution calling for the establishment of a code of ethics for ‘public officials, political representatives and local and national government members to preserve the values of the Luxembourg civil service and to avoid future conflicts of interest’.³⁶ The new government coalition once again pledged for the adoption of a code of conduct for the deputies.³⁷

31 Fourth Evaluation Round — Corruption prevention in respect of members of parliament, judges and prosecutors. Para 31, 39, 41, 50 et seq. Greco Eval IV Rep (2012) 9E.

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2012\)9_Luxembourg_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2012)9_Luxembourg_EN.pdf).

32 http://www.ombudsman.lu/doc/doc_accueil_124.pdf, p. 41-42.

33 Corruption prevention in respect of members of parliament, judges and prosecutors. Fourth Evaluation Round, Greco Eval IV Rep (2012) 9E, p. 15.

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2012\)9_Luxembourg_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2012)9_Luxembourg_EN.pdf).

34 Avant-projet d'un Code de conduite des députés luxembourgeois en matière d'intérêts financiers et de conflits d'intérêts ; 5 March 2013; <http://www.chd.lu>.

35 Exposé des motifs — Avant-projet d'un Code de conduite des députés luxembourgeois en matière d'intérêts financiers et de conflits d'intérêts ; 5 March 2013; <http://www.chd.lu>.

36 ‘Se racheter une bonne conduite’, <http://www.lejeudi.lu/index.php/l-actualite/4619.html> — Le Jeudi, 2012. 08.23.

37 <http://www.gouvernement.lu/3322796/Programme-gouvernemental.pdf>.

The code of conduct for government members, adopted by the previous government in March 2013, was due to enter into force on 1 January 2014.³⁸ The new government is considering introducing legislation instead of guidelines to cover this area.³⁹

In addition, Luxembourg law does not ban conflicts of interest in public procurement or set rules on cooling-off periods for public servants taking up employment in the private sector. Codes of conduct for civil servants (with the exception of the financial services regulator) and mechanisms for checking conflicts of interest for civil servants are also lacking. The absence of such rules and mechanisms, combined with the absence of rules on access to public interest information (see below) raises questions about overall transparency and about resilience to the risk of corruption in interactions between the state and the private sector.

In September 2013, potential conflicts of interest between the financial services sector regulator and the public sector led to an exchange of letters between European Commission and Luxembourg. It appeared that a high level official of the Ministry of Finance, who is also the chair of the financial services sector regulator (CSSF) is at the same time a member of the Board of Directors of one of three systemic banks and member of the Board of Directors of the Luxembourg Stock Exchange company. The regulator, the Prime Minister⁴⁰ and the Minister of Finance do not consider there to be a conflict of interest, but they do not dispute the fact that this civil servant holds these positions.⁴¹ This was followed by an exchange of views between the authorities and European Commission by letter of 20 September 2013.⁴² The government concluded that the person in question complied with the legal rules and did not breach any duty, despite the fact that the person undertook various activities in both the private and the public sector in the financial services sector.

Transparency and access to information

Luxembourg is one of the very few remaining EU Member States that does not regulate the conditions of access to information of public interest. As early as in June 2000⁴³ a first draft of freedom of access to information law was submitted to Parliament, but it had never been adopted.⁴⁴ In December 2011, the Conseil d'Etat issued an opinion on the draft and sent it back to the specialised parliamentary committee in March 2012; where it still remains. Another bill on access to documents was filed with Parliament on 5 February 2013 but by January 2014 it had not yet been adopted.⁴⁵ The bill would bring in free access to administrative documents without requiring any personal interest on behalf of the requesting person. The bill limits access in a number of cases, including when the request represents a

38 While the new government implies that it feels bound by the code of conduct, the code has not been officially published in its final version, and no measure has been taken to declare its entry into force either. The draft version is available at: http://www.mj.public.lu/actualites/2013/03/Code_deontologie/Dossier_de_presse_Code_de_deontologie_12-3-13.pdf.

39 <http://www.gouvernement.lu/3323377>.

40 Government on 20 September 2013 in http://www.gouvernement.lu/salle_presse/communiqués/2013/09-septembre/20-reponse-premier-barnier/index.html.

41 CSSF on 13 September 2013 in http://www.cssf.lu/fileadmin/files/Publications/Communiqués/Communiqués_2013/CP1339_130913.pdf.

42 Government on 20 September 2013 in http://www.gouvernement.lu/salle_presse/communiqués/2013/09-septembre/20-reponse-premier-barnier/Barnier-Protinvest_20_09_13.pdf.

43 Proposition de loi concernant la liberté d'accès à l'information http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=4676&backto=/wps/portal/public/!ut/p/c/0/04_SB8K8xLLM9MSSzPy8xBz9CP0os3gXI5ewIE8TIwN302BXA6Og0CDPIF8TY_cQA_2CbEdFAF1Ik60!/.

44 Waiting for Transparency in Luxembourg: Eleven Years and Counting — *Madrid, 20 June 2011* <http://www.access-info.org/en/european-union/176-luxembourg-transparency-eleven-years-and-counting>
Luxembourg Urged to Revive Effort to Pass FOI Law — 24 June 2011 <http://www.freedominfo.org/2011/06/luxembourg-urged-to-revive-effort-to-pass-foi-law/>.

45 Projet de loi relative à l'accès des citoyens aux documents détenus par l'administration; no. 6540. Chambre des députés; for the work in progress, see <http://www.chd.lu>.

threat to someone's privacy, to legally protected secrets, to the secrecy of the decision-making process of the government and other authorities, and also to the commercial and economic interests of Luxembourg. Under the bill, the authorities would have to process the request within a month.

Until this legislation is adopted, many questions remain on access to information and documents of public interest, such as who is entitled to have access to what kind of administrative documents, conditions of refusal and deadlines. In most cases, when the person is unable to show evidence of a personal interest in accessing the document, the request is now likely to be declined.⁴⁶

3. FUTURE STEPS

Luxembourg is perceived to be a country where petty corruption is not a problem and systems are in place to deter corruption in public services. However, the absence of rules on access to information, lobbying, and the lack of a revolving-doors policy raise the risk of conflicts of interest and other undetected instances of corruption. Further progress could be made to improve the rules on public officials' conflicts of interest and to reinforce transparency and access to information of public interest.

The following points require further attention:

- Clarifying the applicable accounting obligations and the scope of **political parties' accounting duties** to include all structures directly or indirectly attached to the parties. Introducing a supervisory mechanism specifically applicable to campaign accounts and to the financing of individual candidates, and making the rules on donations from legal persons to individual candidates consistent with the rules applicable to parties.
- Ensuring verification by an independent mechanism of **conflicts of interest of elected officials and civil servants** at national and local levels. Adopting legislation on **access to public information** that clearly establishes the obligation of the public authorities to provide access to information and documents of public interest, and defining the conditions under which requests may be refused.
- Increasing the resources used to **combat financial and economic crime**, including those within the judiciary and the police, to ensure a proportional response to the risks, in line with the importance of Luxembourg as a financial centre.

⁴⁶ For the description of the current situation, including the condition of presenting a personal interest, see the explanatory report attached to the bill mentioned above.