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COMMISSION STAFF WORKING DOCUMENT

**2021 Rule of Law Report
Country Chapter on the rule of law situation in Luxembourg**

Accompanying the

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

**2021 Rule of Law Report
The rule of law situation in the European Union**

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ABSTRACT

The justice system of Luxembourg continues to operate with a high level of perceived judicial independence and an overall good level of efficiency. A constitutional revision procedure aimed at further strengthening judicial independence is advancing, and the latest draft includes the creation of a council for the judiciary and a clear reference to the independence of the judiciary and the prosecution service. This would lead to removing the power of the Minister of Justice to give instructions to prosecutors in individual cases. The COVID-19 pandemic has illustrated that digitalisation of justice remains to be further developed in order to ensure the resilience of the justice system, as well as the modernisation of justice, in general, in the longer term. Concrete proposals for amendments are being prepared to improve the legal aid system.

The Government is currently assessing the need to strengthen anti-corruption rules, its main focus being on corruption prevention. A code of conduct for members of the Parliament partially regulates lobbying activities but shortcomings remain as to the overall consistency and implementation. Room for improvement remains with regard to revolving doors, as specific provisions exist only for members of the Government. This has also been underlined by the Ethics Committee which is an external monitoring body. The political party financing regulation has been revised to ensure more transparency. Legislation to protect whistleblowers remains to be introduced, but specific reporting channels exist within the Grand Ducal Police. In the framework of the COVID-19 pandemic, the Grand Ducal Police addressed a reminder of the applicable ethical principles to all law enforcement officials after identifying potential corruption risks during the pandemic.

Luxembourg has strengthened further regulatory safeguards for the independence and effectiveness of the media regulator and increased its resources. These should allow to alleviate concerns raised in last year's report regarding its effectiveness. Furthermore, a reform of the press aid scheme, to make it technologically neutral and extend to online news media, is ongoing but at this stage it is unclear whether it will include freelance journalists as well. The framework for the protection of journalists remains robust. In order to alleviate the impact of the COVID-19 pandemic on the media, the authorities established a temporary aid scheme for publishers and journalists. Concerns remain about the lengthy procedures for access to official documents.

Parliament proposed two new constitutional revisions notably introducing direct access of citizens to the Constitutional Court and to streamline provisions related to the State, the Head of State and the Government. Both are currently debated at Parliament while consultations are ongoing. Luxembourg has relied mostly on ordinary legislative procedures to enact measures for addressing the COVID-19 pandemic, but concerns have been raised that the opportunities for involvement of stakeholders are limited. The "House of Human rights" project, aiming at fostering synergies and bringing together institutions protecting fundamental rights, was finalised. Although the COVID-19 pandemic has had an impact on the work of NGOs, the civic space in Luxembourg remains open, and the Government made grants available to support NGOs during this period.

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 Assembly¹, a Bar Council², a President of the Bar³ and for the whole profession, a Disciplinary and Administrative Council⁴. Luxembourg participates in the European Public Prosecutor's Office.

Independence

The level of perceived independence of the judiciary remains high. Among the population, 77% consider the level of independence of courts and judges to be 'fairly or very good', as well as 69% of businesses⁵. The level of perceived judicial independence remains consistently high since 2016 and has steadily increased for the general public, but it has gradually decreased for companies during the last five years⁶.

The revision procedure of the Constitution aiming at establishing a council for the judiciary is advancing. Between 2009 and 2019, a new draft Constitution was debated in Luxembourg⁷. This project was abandoned in 2020 and has been replaced by a proposal to make several targeted revisions of different parts of the Constitution. A revision of Chapter VI of the Constitution on Justice has been proposed with the goal of establishing a council for the judiciary and, more generally, to strengthen judicial independence⁸. The latest draft text of the Constitution outlines the main powers of the council for the judiciary, namely the selection of magistrates before their appointment by the Grand Duke and conducting disciplinary proceedings against magistrates. The specific conditions under which these powers will be exercised, as well as the composition, organisation and the other competencies of the council, are to be determined by law⁹. The current draft legislation envisages a

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

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

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

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

⁵ Figures 44 and 46, 2021 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

⁶ 2016, 2017, 2018, 2019, 2020, 2021 EU Justice Scoreboard.

⁷ Project No. 6030 - a new draft Constitution.

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

⁹ Art. 90, text of Project No. 7575.

composition of nine members: three *ex officio* members¹⁰, three judges elected by their peers, a lawyer¹¹ and two representatives of civil society and academia designated by the Parliament¹². The authorities are conducting consultations on further amendments to the draft, in particular to align the provisions on the composition of the future council with relevant Council of Europe standards, which provide that at least half of the members of the future council are judges (magistrates) elected by their peers¹³.

The revision of the Constitution, removing the power of the Minister of Justice to give instructions to prosecutors in individual cases, is progressing. Prosecution is formally exercised under the authority of the Minister of Justice, who has the competence to instruct the prosecution service to prosecute an individual case, but may not order the prosecution to refrain from prosecution¹⁴. 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 service¹⁵. Given that the most recent draft amendments to the Constitution introduce¹⁶ the independence of the prosecution service in the text¹⁷, stakeholders consider that this would make the instruction power of the Minister unconstitutional¹⁸. It is also to be noted that the Minister of Justice has not given instructions in an individual case for more than 20 years¹⁹. Under the draft amendments, the Minister of Justice would still have a certain degree of authority over the prosecution service, giving direction to criminal policies. On 23 March 2021, the Council of State gave a positive opinion²⁰ on the reintroduced independence of the prosecution. However, the Council expressed its preference for the previous version of the amendments, which did not allow the Minister to give guidance to the prosecution²¹. The revision is currently at the level of the Parliament, subject to further discussions and possible new amendments.

¹⁰ The President of the Supreme Court, the President of the Administrative Court of Appeal, the State Prosecutor General.

¹¹ Designated by the two Bar Associations.

¹² Project No. 7323 – Draft law on the organisation of the Council for the judiciary.

¹³ 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.

¹⁴ Figure 55, 2020 EU Justice Scoreboard - In case a specific instruction to prosecute is given, it must be reasoned and issued in written form, and parties to the court proceedings have access to the instruction.

¹⁵ See 2020 Rule of Law Report, country chapter on the rule of law situation in Luxembourg, p. 3 - The legal safeguards in place, combined with the current practice, appear to mitigate the risk to the autonomy of the prosecution service.

¹⁶ The already abandoned Project No. 6030 for a new draft Constitution included the independence of the prosecution service. The new Project No. 7575 for revision of the Constitution from May 2020 did not include the independence of the prosecution service.

¹⁷ Project No. 7575 – new amendments from 23 February 2021.

¹⁸ Information received in the context of the country visit to Luxembourg. (e.g. *Groupement des magistrats luxembourgeois*; Prosecution service). The power of the Minister of Justice is based on Art. 19 of the Criminal Procedure Code.

¹⁹ Information received by the Luxembourgish authorities.

²⁰ The Council of State criticised the amendments for not explicitly ensuring the functional independence and for omitting to specify that the directions given by the Ministry of Justice on criminal policies should be “general”. Opinion No. CE 60.217, on Project No.7575.

²¹ Project No. 6030 - a draft new Constitution.

Quality

The COVID-19 pandemic uncovered shortcomings in the field of digitalisation of justice. In June 2020, at the beginning of the COVID-19 pandemic, temporary legislation was adopted to allow the use of already existing digital communication solutions, such as email, mainly for non-sensitive information²². The goal of this temporary legislation is to limit direct physical contact between judges, court staff and court users²³. Outside of the temporary COVID-19 pandemic related measures, the “paperless justice” project, that encompasses 13 sub-projects, aims to address present shortcomings by providing further information on the justice system to the public through the establishment a portal where citizens can connect with lawyers, judges and notaries, and through increasing the online publication rate of court judgments. However, the concrete results of the project are yet to materialise. Stakeholders have raised concerns that the temporary legal provisions and the current state of the “paperless justice” did not allow for working remotely and that videoconference hearings have not yet been organised²⁴. They described the email communication system in the justice system as a welcome new tool, but pointed out that most of the communication between courts and lawyers is still conducted through fax. Moreover, they stressed the limited scope of available online tools²⁵. The “paperless justice” project is envisaged to be completed and operational by 2026.

Concrete proposals for reforming the legal aid system are being prepared. The legal aid framework continues only to provide for the possibility to fully reimburse lawyers’ fees and covered legal costs, with the threshold for eligibility in a consumer case lying below the Eurostat poverty threshold²⁶. The first pre-draft of the new legislation has been prepared by the Ministry of Justice and consultations are taking place before its submission to the Parliament²⁷. According to the authorities, the reform would aim to simplify the administrative procedures and to offer partial legal aid, therefore making justice more accessible to citizens.

Efficiency

Civil justice continues to perform efficiently and steps were taken to mitigate the impact of the COVID-19 pandemic while criminal and administrative justice are less efficient. A temporary backlog of cases was caused by the onset of the COVID-19 pandemic. To reduce the backlog, the judiciary holidays were shortened. For civil matters, most cases continued in written procedures²⁸. As a result, the backlogs no longer exist²⁹. This is also proven by the

²² See two laws of 20 June 2020 - <http://legilux.public.lu/eli/etat/leg/loi/2020/06/20/a542/consolide/20201222>; <http://legilux.public.lu/eli/etat/leg/loi/2020/06/20/a523/consolide/20201125>

²³ Input of Luxembourg for the 2021 Rule of Law Report, p.5.

²⁴ Information received in the context of the country visit to Luxembourg. (e.g. *Groupement des Magistrats Luxembourgeois*; Supreme Court).

²⁵ Only two available online tools that they could use from their homes are a system that shows when a case was filed and a public database for access to anonymised decisions that is available for everyone, including citizens.

²⁶ Figure 23, 2021 EU Justice Scoreboard.

²⁷ Information received in the context of the country visit to Luxembourg (e.g. Ministry of Justice).

²⁸ Information received in the context of the country visit to Luxembourg (e.g. Ministry of Justice).

²⁹ Information received in the context of the country visit to Luxembourg (*Groupement des magistrats luxembourgeois*)

latest data on the efficiency of civil justice, which continues to be consistently high, although the length of proceedings is significantly longer at second and third instances³⁰. The number of pending civil cases is low,³¹ and a consistent clearance rate of around 100% shows that civil justice deals with its caseload effectively³². However, backlogs in criminal matters were more prominent as most hearings were suspended between March and May 2020. Finally, there is still no available data as regards the length of court proceedings and the number of pending cases in administrative justice³³.

II. ANTI-CORRUPTION FRAMEWORK

The institutional framework to prevent and fight corruption has not changed since last year's 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. While there is no specialised anti-corruption prosecution authority as such, 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 perception among experts and business executives is that the level of corruption in the public sector remains low. In the 2020 Corruption Perceptions Index by Transparency International, Luxembourg scores 80/100 and ranks 4th in the European Union and 9th globally³⁴. This perception has deteriorated³⁵ over the past five years³⁶.

Inter-institutional cooperation is working well between all authorities involved, although there are challenges as regards human resources in the Prosecution service. The Prosecution service numbers 36 magistrates and among them one third are employed in the area of the fight against economic, financial and corruption offences. Additional resources have been requested by the Prosecution service but no significant increase has been granted so far. The latest available annual report³⁷ also highlights the lack of candidates to fill vacant positions and this trend has been confirmed this year, particularly in the Prosecution service's

³⁰ 2016, 2017, 2018, 2019, 2020, 2021 EU Justice Scoreboard.

³¹ Figure 14, 2021 EU Justice Scoreboard.

³² Figure 11, 2021 EU Justice Scoreboard.

³³ Figures 5, 8, 9, 13 and 15, 2021 EU Justice Scoreboard.

³⁴ Transparency International, Corruption Perceptions Index 2020 (2021), p. 2-3. 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).

³⁵ In 2015 the score was 85, while in 2020, the score was 80. 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.

³⁶ The Eurobarometer data on corruption perception and experience of citizens and businesses as reported last year is updated every second year. The latest data set is the Special Eurobarometer 502 (2020) and the Flash Eurobarometer 482 (2019).

³⁷ Luxembourg Government (2020), Jurisdictional and prosecutorial statistics 2019 (*Statistiques des juridictions et des parquets Année 2019*).

Economic and Financial section³⁸. Nevertheless, the authorities reported that for complex investigations, resources can be rapidly adapted to respond to specific needs ensuring the effectiveness of the Prosecution service³⁹. The most relevant development since last year is the improvement of the IT infrastructure that allows prosecutors to work and have full access to files remotely⁴⁰. No shortcomings are reported for what concerns the legal framework to fight financial crimes and the cooperation with the Financial Intelligence Unit is working well⁴¹.

The Government is currently assessing the need to strengthen the rules on the fight against corruption. The main focus of this exercise is on prevention. However, COPRECO has not recently met, neither in person nor online, and has not received any written feedback on possible shortcomings in the anti-corruption legislation by any ministry⁴². As regards specific anti-corruption training, all new civil servants must attend a dedicated module as part of their mandatory training. During the COVID-19 pandemic, this has been conducted online⁴³.

Room for improvement remains as regards the regulation of conflicts of interest and revolving doors. There are four codes of ethics in force⁴⁴ and their monitoring is ensured internally by the respective institutions, except for the code of conduct for the members of the Government, which is monitored by an external body, the Ethics Committee. Only this latter code includes provisions on revolving doors for Ministers⁴⁵, which was identified as a shortcoming in last year's Rule of Law Report. In 2020, the Ethics Committee examined two new cases related to the same high ranking official. This allowed the Committee to provide an opinion on the applicable legislative framework. The Committee argued that while article 12 of the code of ethics which prohibits former members of the Government to engage in activities that will bring them into contact with their former administration is easy to apply and to monitor, the application of article 11, which forbids former ministers to use or divulge information that is not publically accessible, is difficult to apply⁴⁶. In this regard, the Committee has submitted to the Prime Minister a recommendation to improve the rules⁴⁷.

Shortcomings remain in the area of lobbying and asset declarations. The lack of consistency and oversight of the obligation of members of the Parliament to disclose their assets and gifts received remain the main issues, as also pointed out by the Group of States against Corruption of the Council of Europe (GRECO)⁴⁸. Currently, there is no

³⁸ Contribution received by the Prosecution Service in the context of the country visit to Luxembourg.

³⁹ See previous reference.

⁴⁰ See previous reference.

⁴¹ See previous reference Annual statistics from the Financial Intelligence Unit do not specify the number of foreign bribery cases. The latest available annual report is from 2019. General Prosecutor Office (2020), Annual Report 2019.

⁴² Information received by COPRECO in the context of the country visit to Luxembourg.

⁴³ See previous reference.

⁴⁴ One for the members of the Parliament, one for the members of the Government, one for the Council of State and one for the Grand Ducal Police.

⁴⁵ Art. 11 and Art. 12 of the Government Code of Ethics.

⁴⁶ According to Art. 11 former Ministers are forbid to use or divulge information which are not publicly accessible. This provision has been identified as hard to apply as it is very difficult to identify information which became publicly available from the one which is still confidential.

⁴⁷ Ethics Committee (2020), Opinion of the Ethics Committee (*Avis du comité d'éthique*), (22.04.2020).

⁴⁸ GRECO(2020), Fourth Evaluation Round– Second Interim compliance report: Luxembourg.

comprehensive regulation on lobbying activities. Members of the Parliament apply their own code of conduct, which regulates in-house meetings but not informal contacts⁴⁹. At the same time, there are no lobbying rules in force for members of the Government and senior advisers⁵⁰.

The political party financing regulation has been revised. On 15 December 2020, the law on political party financing introduced an obligation for all candidates for national and European elections to declare all donations exceeding EUR 250⁵¹. The law also states that false declarations constitute a criminal offence pursuant to the Criminal Code⁵². It should be also noted that all political parties must submit their income and expenditure declarations, which are then forwarded to the Court of Auditors for verification⁵³.

The increased application of the transparency and open administration legal framework brought several improvements, although shortcomings as regards access to information remain. In the first years of application of the law of 14 September 2018 on access to documents⁵⁴, civil society has drawn attention to its narrow scope and the possibly negative impact on the effective fight against corruption⁵⁵. While the law grants the right to request access to documents, it does not provide for a general right to request information. Hence, the requesting party might not obtain any information unless they are aware of the existence of a specific document⁵⁶. The Commission on the access to documents (*CAD*) is an independent administrative body with an advisory role that lacks any power of oversight. The *CAD* is composed of five members⁵⁷ and can issue opinions in two cases: firstly, when requested by an administration seeking an opinion; and secondly, when considering an appeal in case a request for access to documents has been refused. A case can be filed through a dedicated website or in writing and filing a case to the *CAD* does not constitute a prerequisite to refer the case to the Administrative Court. Compared to 2019, requests to the *CAD* decreased in 2020⁵⁸. Among all opinions delivered by the *CAD*, three cases are pending in the Administrative Court with regards to opinions delivered in 2019 and one case is pending in the Court in relation to an opinion delivered in 2020⁵⁹. The absence of any reporting obligation by public entities to the *CAD* has been identified as a shortcoming⁶⁰.

⁴⁹ Parliament Official website, Parliament Internal Regulation, 2019 version, p. 61, Article 5.

⁵⁰ GRECO (2020), Fifth Evaluation Round – Compliance report.

⁵¹ Political Party Finance Law, Art. 9 para. 4.

⁵² Political Party Finance Law, Art. 17.

⁵³ Political Party Finance Law, Art. 12.

⁵⁴ Law of 14 September 2018 on a transparent and open administration (*Loi du 14 septembre 2018 relative à une administration transparente et ouverte*).

⁵⁵ Information received in the context of the Country visit to Luxembourg.

⁵⁶ Article 1 of the Law of 14 September 2018 states « Les personnes physiques et les personnes morales ont un droit d'accès aux documents ».

⁵⁷ Members are a magistrate who is also appointed as chair, a representative of the Prime Minister, a representative of the National Commission for Data Protection, a representative of the syndicate of Luxembourg's cities and municipalities Syvicol, a representative of the Information and Press Service (Service information et presse – SIP).

⁵⁸ Luxembourg Government (2021), Activity Report 2020 of the Commission for Access to Documents (*Rapport d'activité 2020 de la Commission d'accès aux documents*).

⁵⁹ Information received from the Commission on the access to documents in the context of the country visit to Luxembourg.

⁶⁰ Information received in the context of the country visit (e.g. *Commission d'accès aux documents*).

Whistleblower protection legislation currently in place is still limited to specific sectors such as private and public labour law. Sectoral provisions include those in the Grand Ducal Police's code of conduct, which provides the possibility for police officers to anonymously contact the legal department to report acts that may constitute an infringement in the course of duty⁶¹. The preparation of the new framework for whistleblowers protection is currently ongoing with the aim of allowing for a more general and effective protection of whistleblowers⁶².

No specific measures were reported to address corruption risks related to the COVID-19 pandemic. The Grand Ducal Police issued a reminder to all law enforcement officials of the applicable ethical principles after identifying potential corruption risks during the pandemic⁶³. Furthermore, police human resources were reassigned to support national authorities in the fight against the COVID-19 pandemic⁶⁴. Training for newly recruited public officials and police officers migrated online, something that has shown to be more time efficient and cost effective⁶⁵.

III. MEDIA PLURALISM AND MEDIA FREEDOM

The legal framework concerning media freedom⁶⁶ and pluralism is based on 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.

Regulatory safeguards for the independence and effectiveness of the media regulator and its resources were strengthened. The law of 26 February 2021 amended the 1991 Law on Electronic Media⁶⁷, as well as the 2013 law establishing the audiovisual media regulator⁶⁸, the *Autorité Luxembourgeoise Indépendante de l'Audiovisuel* (ALIA), to transpose the revised Audiovisual Media Services Directive (AVMSD). In particular, the law has entrusted ALIA with new regulatory functions, such as establishing mechanisms to assess the measures taken by video-sharing platforms and encouraging the development of media literacy. The law now provides explicitly that ALIA shall carry out its tasks impartially, independently and transparently. Moreover, the law allows ALIA to request from media service providers the information necessary for the exercise of its functions, as well as to impose sanctions for the non-respect of its decisions. The Parliament has increased the budget allocation to ALIA by 70% compared to 2020. In addition, four new positions have been granted to fulfil the new

⁶¹ Grand Ducale Police (2019), Code of Ethics of the Police (*Code de déontologie de la police*). According to the information received during the country visit, in 2020 there was only one request through the internal reporting channel.

⁶² Information received from COPRECO in the context of the country visit to Luxembourg.

⁶³ Input from Luxembourg for the 2021 Rule of Law Report, p. 11.

⁶⁴ Information received by the Police Grand Ducal in the context of the country visit to Luxembourg.

⁶⁵ Information received by the Police Grand Ducal in the context of the country visit to Luxembourg.

⁶⁶ Despite increase in overall score, Luxembourg has moved down 3 positions in the 2021 World Press Freedom Index compiled by Reporters Without Borders (RSF), where it now appears in the 20th place vs 17th in 2020. Luxembourg ranks 11th among the 27 EU Member States. The drop in position could be due to overall increase of the score in other countries.

⁶⁷ Law on Electronic Media.

⁶⁸ For more information see <http://data.legilux.public.lu/eli/etat/leg/rect/2013/11/14/n1/jo>

tasks assigned to the regulator. ALIA also plays a role in supervising the audiovisual sector's political independence. ALIA notes in a report that television broadcasts produced by municipalities on a local level could potentially be used to push a political agenda as the editorial responsibility lies within the municipality itself⁶⁹. There is a highly concentrated media landscape in Luxembourg coupled with a small market size⁷⁰.

The Government has addressed concerns raised by stakeholders related to its communication and transparency during the COVID-19 pandemic. Two major organisations defending press freedom⁷¹ criticised the Government's communication and the lack of transparency towards journalists, especially during the COVID-19 pandemic. This concerned notably the limited access to information arising from the restricted physical presence of journalists during press conferences. Following these criticisms, after some weeks physical press conferences were reinstated⁷².

The authorities took some steps to address the impact of the COVID-19 pandemic on the media. To alleviate the economic impact on media, the authorities established a temporary aid scheme for media outlets and journalists⁷³. Media outlets could apply for aid that would amount to an annual EUR 5000 per journalist employed by them. The scheme concerned only professional journalists employed by eligible publishers, excluding freelance journalists who had to apply for support from a different aid scheme designed for independent professionals.

Legislative work progressed on the reform of the press aid scheme. Presented by the Government in July 2020, the future regime is aimed to be technologically neutral and apply equally to print and online news media. While welcoming the reform, stakeholders expressed some concerns about the limited public consultation process, the envisaged relatively small amount of support per journalist as well as the lack of precision on how online media and new or hybrid profiles in the media field (e.g. web content managers, fact-checkers) will be treated. The reform of the press aid scheme is of a structural nature and is still under discussion. Thus it is not possible to know at this stage whether it will include freelance journalists as well.

Access by journalists to official documents continues to raise concerns⁷⁴. Stakeholders pointed out particularly the negative effects of the Law of 14 September 2018 on a Transparent and Open Administration on the journalistic profession, due to the lengthy procedures for obtaining documents. Stakeholders have suggested that a fast-track procedure

⁶⁹ 2021 Media Pluralism Monitor Report for Luxembourg, p. 14.

⁷⁰ These two factors together could potentially have negative effects on the media pluralism landscape. See the 2021 Media Pluralism Monitoring Report, which highlights that one Group dominates the audiovisual and online sectors, and two Groups - the printed press. It also points to large consumption of foreign TV channels. See 2021 Media Pluralism Monitor Report for Luxembourg, pp 11 and 12.

⁷¹ *Association luxembourgeoise des journalistes professionnels* and *Conseil national de la presse* – contribution from ENNHRI for the 2021 Rule of Law Report, p. 235-236.

⁷² Press conferences went fully digital 18 March 2020 and stayed like this until the second week of May. Luxembourg Government (2020), *New practical arrangements for government press conferences*.

⁷³ Luxembourg Government, *Financial aid for publishers in the context of the COVID-19 pandemic*.

⁷⁴ 2020 Rule of Law Report country chapter on the rule of law situation in Luxembourg, page 8.

for journalists should be put in place⁷⁵. In this context, journalists recalled that Luxembourg is still one of the Member States not to guarantee a fast-track access to information for the press that would be different from the right to access to information for citizens, and called on the Government to introduce such a procedure. Moreover, stakeholders⁷⁶ have raised concerns about the selective approach in disclosing information on the part of the authorities. The *Commission consultative des Droits de l'Homme* (CCDH) similarly appealed to the Government to guarantee journalists access to information in all circumstances. Moreover, as recalled during stakeholder consultation of the aforementioned reform of the press aid scheme⁷⁷, this access to information was included in the Government's programme declaration for 2018-2023⁷⁸.

The framework for the protection of journalists remains robust. Since the 2020 Rule of Law Report, the Commission has not received any indications concerning a weakening of the framework for the protection of journalists. In this regard, no alerts concerning Luxembourg have been created in the Council of Europe Platform to promote the protection of journalism and safety of journalists⁷⁹ since 2015. While criminal defamation prosecutions against the media are still scarce, a concern remains amongst professionals and NGOs that these cases may be used as a means to intimidate media and journalists, as a new case was brought before the courts this year⁸⁰.

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Luxembourg is a unicameral⁸¹ 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 play an important role in the system of checks and balances.

Two new constitutional revisions were proposed to give direct access of citizens to the Constitutional Court and to streamline the old provisions related to the State, the Head of State and the Government. The first constitutional revision tabled in June 2020⁸² aims to give citizens direct access to the Constitutional Court for regulatory measures taken by the Government in case of state of emergency⁸³. The aim of the revision is to protect fundamental

⁷⁵ In April 2021, the Luxembourg Association of Professional Journalists (ALJP) started a campaign for an additional article to the press law that would oblige the authorities to provide information to the media within a specific timeframe. Journalists and their organisations have been advocating for a solid access to information and transparency since the 2004 Freedom of Expression Act. Currently, access to information is covered by the 2018 law on "open and transparent administration", which was designed for any citizen and does not provide a statutory right to information for journalists specifically. See also contribution from ENNHRI for the 2021 Rule of Law Report, p. 235.

⁷⁶ See Reporters Without Borders, 2020 World Press Freedom Index.

⁷⁷ *Projet de loi relatif à un régime d'aides en faveur du journalisme professionnel et abrogeant la loi modifiée du 3 août 1998 sur la promotion de la presse écrite – Opinion of the "l'Association luxembourgeoise des journalistes professionnels"*.

⁷⁸ Luxembourg Government (2018), Government's programme declaration for 2018-2023, p. 24.

⁷⁹ Council of Europe: Platform to promote the protection of journalism and safety of journalists– Luxembourg.

⁸⁰ Information received in the context of the country visit to Luxembourg (e.g. ALJP).

⁸¹ The parliament is composed of the Chamber of Deputies.

⁸² Project No. 7620 – Draft revision of Art. 32 of the Constitution.

⁸³ Art. 32(4) of the Constitution.

rights. On 9 March 2021, the Council of State gave its opinion on this revision⁸⁴ expressing that it sees no need for such reform considering that the regulatory measures adopted in the state of emergency do not escape the review of legality carried out by any judge⁸⁵. Following this opinion, the Parliament has to discuss and decide how to proceed, based on the comments and assessment received.⁸⁶ The second constitutional revision tabled on 17 November 2020⁸⁷ aims at amending the organisation of the State⁸⁸, the Head of State⁸⁹, the constitutional monarchy, the Government⁹⁰, relations between the State and religious communities⁹¹, and municipalities⁹². The goal of this revision is to modernise the Constitution through streamlining the old provisions related to the State, the Head of State and the Government. Moreover, it would clarify that the role of the Grand Duke is symbolic and formal, while the political responsibility for the acts of the Grand Duke is ensured by the members of the Government. On 9 March 2021, the Council of State gave a positive opinion on this revision⁹³ noting that many of the provisions were already approved by the Council under the abandoned draft Constitution⁹⁴.

The decision-making process appears to be inclusive but stakeholders' recommendations are often not followed. Concerns have been raised as regards the regularity and extent of consultation of stakeholders in the decision-making process. Throughout the ordinary legislative procedure, a consultative opinion of the Council of State

⁸⁴ Opinion No. CE 60.288 on Project No. 7620.

⁸⁵ See Art.32(4), Art. 95 and Art. 95ter of the Constitution - the specific mission of the Constitutional Court is to control the constitutionality of laws while the jurisdictional control of regulatory acts fall, for direct recourse, to the administrative judge and, for incidental control, to any judge.

⁸⁶ The Parliament can propose additional amendments to align the text with the opinion of the Council of State; can decide to pursue the reform regardless of the opinion; can decide to not further pursue the reform.

⁸⁷ Project No. 7700 - Revision of Chapters I, III, V, VII, IX, X, XI and XII of the Constitution.

⁸⁸ E.g. Chapter I of the draft text brings together various provisions which are currently dispersed in other places of the constitutional text. Moreover, it explicitly enshrines the notion of the rule of law in the Constitution.

⁸⁹ E.g. Chapter III of the draft text brings together all the provisions relating to the Grand Duke, with the exception of those relating to Parliament. Moreover, the formal powers that the new text gives to the Head of State can only be exercised with the signature of the competent minister.

⁹⁰ E.g. Chapter V of the draft text confirms the Government's institutional place in a parliamentary democracy. This is in accordance with the monist theory in parliamentary law, according to which the Government only exists under the sole condition of being supported by a majority in the Chamber of Deputies, even if the appointment of members of the Government is carried out by grand-ducal decree.

⁹¹ E.g. Chapter VII of the draft text introduces three guiding principles for the relations between the State and the Church and religious communities: churches and religious communities are separated from the State; relations between the churches and the religious communities and the State will be regulated by law; the law can also trace the outlines of the conventions to be concluded between the State and the churches and religious communities.

⁹² E.g. Chapter IX of the draft text determines the constitutional regime under which the municipalities operate. It concerns topics such as finances of the municipalities, regulatory power and the creation of municipal public enterprises.

⁹³ Opinion No. CE 60.469 on Project No. 7700.

⁹⁴ With the decision to not further pursue the previous constitutional reform that ran from 2009 to 2019, the anchoring of the Ombudsman institution at the constitutional level is not currently discussed. As explained before, the present approach is to introduce targeted revisions on specific topics, in this context the reform as regards the Ombudsman could be reintroduced. On 29 June 2021, a new revision of the Constitution was tabled in Parliament. It focuses on the role of the Parliament and aims at strengthening its role. The text will now be sent for the opinion of the Council of State and will be open for public consultation. See Project No. 7777 - Proposition for revision of Chapters IV and Vbis of the Constitution.

is mandatory for every proposed legislation. In addition, there are five professional chambers⁹⁵, which are consulted for an opinion in their respective field of expertise. Their opinions are an integral part of the legislative proposal and are taken into account when preparing amendments to the draft legislation⁹⁶. However, while it is possible for other stakeholders⁹⁷ to submit opinions, their recommendations are not regularly followed⁹⁸. As regards the regulatory procedure, the opinion of the Council of State is also mandatory, except for regulatory measures taken during a state of emergency, where requesting such opinion is facultative⁹⁹. The opinion of the professional chambers must also be requested for any draft regulatory measure in their respective field of expertise. Furthermore, failure to consult the competent professional chambers on a draft regulation entails legal sanctions¹⁰⁰. As to the role of the Consultative Commission for Human Rights (CCDH) in the regulatory process, although there is no obligation for the Government to reply or follow the CCDH's recommendations, certain stakeholders reported that the Government rarely takes them into account, in particular during the COVID-19 pandemic¹⁰¹. Furthermore, the CCDH consultation in the legislative process by a parliamentary committee remains rare as well. Regarding the involvement of other human rights bodies (e.g. the Ombudsman), the Government occasionally conducts consultations on a bilateral basis or within the framework of the inter-ministerial human rights Committee. However, their input and recommendations are rarely taken into account¹⁰².

Ordinary legislative procedures are currently used to enact measures to respond to the COVID-19 pandemic. Between 18 March 2020 and 24 June 2020, Luxembourg relied on a state of emergency for addressing the COVID-19 pandemic. This constitutional regime¹⁰³ allowed the Government to adopt adequate, necessary and proportionate measures in all matters for a limited amount of time. Subsequently, the Parliament has been using the ordinary legislative procedure, accompanied with shorter deadlines, to address the challenges related to the COVID-19 pandemic. In spite of the fact that the amendments are introduced in an accelerated manner, the Parliament seeks to carry out stakeholder consultations. However, stakeholders have concerns about the inclusiveness of the consultation process, especially

⁹⁵ *Chambre des salariés; Chambre des fonctionnaires et employés publics; Chambre d'agriculture; Chambre de commerce; Chambre des métiers.*

⁹⁶ The requests for such opinions are mandatory for the Parliament, but obtaining their opinion is not. Moreover, the omission to consult these organisations is not a condition for legality of the legislation. – Information received in the context of the country visit to Luxembourg.

⁹⁷ E.g. CCDH; Ombudsman; Non-governmental Organisations (Civil Society Organisations); Other professional organisations, outside of the professional chambers that are already consulted.

⁹⁸ The Parliament can receive contributions from stakeholders and when they are related to a specific case, they will be forwarded to the relevant committees. – Information received in the context of the country visit to Luxembourg. See also Contribution from ENNHRI for the 2021 Rule of Law Report. p. 235.

⁹⁹ Art. 1(1) Law on the organisation of the Council of State of 16 June 2017 - The Government decides whether an opinion of the Council of State is necessary or not. Also confirmed in the context of the country visit to Luxembourg.

¹⁰⁰ Consultation of the professional chambers concerned is therefore a condition of legality for a Grand-Ducal regulation or a ministerial regulation.

¹⁰¹ For instance, very few of the CCDH's recommendations regarding COVID-19 laws have been taken into account (10 opinions were issued in 2020, 4 in 2021 at the time of the submission of the contribution). - Contribution from ENNHRI for the 2021 Rule of Law report. p.235 covering 2020 and 2021.

¹⁰² See previous reference.

¹⁰³ Article 32(4) of the Luxembourgish Constitution.

when legislation is being adopted very rapidly¹⁰⁴ which often limits consultation to the Council of State and the professional chambers¹⁰⁵.

The “House of Human Rights” was established. The initiative¹⁰⁶ to unite the key independent authorities fulfilling key roles in safeguarding fundamental rights in one location was finalised in 2020. The House of Human Rights brings together the CCDH, the Ombudsman for the Rights of the Child, and the Centre for Equal Treatment. The goal of the House of Human Rights is to facilitate citizens’ access to the institutions protecting fundamental rights and to increase the synergies between the different institutions. The CCDH is the accredited National Human Rights Institution of Luxembourg¹⁰⁷. The Ombudsman for the Rights of the Child is specifically tasked with the protection of the rights of every person under 18 years of age¹⁰⁸. The Centre for Equal Treatment is the equality body of Luxembourg¹⁰⁹.

Although the COVID-19 pandemic has had an impact the work of NGOs, the civic space in Luxembourg remains open¹¹⁰. Since April 2020 fundraising campaigns as well as advocacy and awareness activities had to be cancelled due to the COVID-19 pandemic. NGOs reported that the interruption of associative activity was accompanied by consequences at the financial level¹¹¹. However, in November 2020, the Government presented various grants projects and the eligibility criteria for obtaining a grant¹¹².

¹⁰⁴ Often within a week after being proposed.

¹⁰⁵ E.g. Draft law on the amended law of July 17, 2020 on measures to combat the COVID-19 pandemic.

¹⁰⁶ Initiative started in 2007-08.

¹⁰⁷ It gives opinions and recommendations on matters related to fundamental rights, either on its own initiative or at the request of the Government For more information see 2020 Rule of Law Report, country chapter on the rule of law situation in Luxembourg, p. 9. See also <https://ganhri.org/membership/>

¹⁰⁸ It examines complaints, makes recommendations for better protection and promotion of the rights of the child and advises on the implementation of children’s rights. For more information see <http://ork.lu/index.php/fr/missionsork>

¹⁰⁹ Its purpose is to promote, analyse and monitor equal treatment between all persons without discrimination on the basis of race, ethnic origin, sex, sexual orientation, religion or beliefs, handicap or age. For more information see <https://equineteurope.org/what-are-equality-bodies/european-directory-of-equality-bodies/> and <https://cet.lu/missions/>

¹¹⁰ See 2020 Rule of Law Report, country chapter on the rule of law situation in Luxembourg, p. 9. See also rating given by CIVICUS. Ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

¹¹¹ CLAE (2020), Investigation into the associative difficulties linked to the Covid-19 pandemic in Luxembourg (Enquête sur les difficultés associatives liées à la pandémie du Covid-19 au Luxembourg), May 2020.

¹¹² CLAE (2020), Ministry of Culture: what financial support for associations? (Ministère de la culture : quel soutien financier pour les associations?), 26 November 2020.

Annex I: List of sources in alphabetical order*

* The list of contributions received in the context of the consultation for the 2021 Rule of Law report can be found at <https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2021-rule-law-report-targeted-stakeholder-consultation>.

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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. 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. 7575 – revision of Chapter VI (on Justice) of the Constitution, full text of the project, new amendments from 23 February 2021 - <http://data.legilux.public.lu/file2/2021-02-24/23>

Project No. 7575 – revision of Chapter VI (on Justice) of the Constitution - <http://legilux.public.lu/eli/etat/projet/ppc/20130254>

Project No. 7620 – Draft revision of Art. 32 of the Constitution - <http://legilux.public.lu/eli/etat/projet/ppc/20130257>

Project No. 7700 - Revision of Chapters I, III, V, VII, IX, X, XI and XII of the Constitution <http://legilux.public.lu/eli/etat/projet/ppc/20130258>

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

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Annex II: Country visit to Luxembourg

The Commission services held virtual meetings in March 2021 with:

- Chambre des Députés (Parliament)
- Committee for the Prevention of Corruption (COPRECO)
- Consultative Commission for Human Rights (CCDH)
- Council of State
- Ethics Committee
- Finance & Human Rights
- Groupement des magistrats Luxembourgeois
- Luxembourg Association of Journalists (ALJP)
- Luxembourgish Media Regulator (ALIA)
- Ministry of Culture
- Ministry of Foreign Affairs
- Ministry of Interior
- Ministry of Justice
- Ministry of State
- Ombudsman
- Police Grand Ducal
- 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
- Center for Reproductive Rights
- CIVICUS
- Civil Liberties Union for Europe
- Civil Society Europe
- Conference of European Churches
- EuroCommerce
- European Center for Not-for-Profit Law
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Front Line Defenders
- Human Rights House Foundation
- Human Rights Watch
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Planned Parenthood Federation European Network (IPPF EN)
- International Press Institute

- Netherlands Helsinki Committee
- Open Society European Policy Institute
- Philanthropy Advocacy
- Protection International
- Reporters without Borders
- Transparency International EU