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# FIFTH EVALUATION ROUND

Preventing corruption and promoting integrity in  
central governments (top executive functions) and  
law enforcement agencies

## EVALUATION REPORT

# LUXEMBOURG



Adopted by GRECO  
at its 80<sup>th</sup> Plenary Meeting (Strasbourg, 18-22 June 2018)



Group of States against Corruption  
Groupe d'États contre la corruption

COUNCIL OF EUROPE



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## **I. EXECUTIVE SUMMARY**

1. This report evaluates the effectiveness of the framework in place in Luxembourg to prevent corruption among persons with top executive functions (ministers and senior civil servants appointed to political positions) and members of the Grand Ducal Police. It is intended to support the on-going reflection in the country as to how to strengthen transparency, integrity and accountability in public life.

2. Luxembourg traditionally scores highly in international perception surveys on corruption, and risks of minor corruption or bribery seem virtually non-existent. That said, Luxembourg appears to take a more reactive than proactive approach to other forms of corruption in the broader sense, such as exchanges of services, favouritism etc. Even though some prevention measures and a committee for the prevention of corruption (COPRECO) exist, there is no general or sectoral strategy for preventing and combating corruption, or any codes of ethics applicable to officials or members of the Grand Ducal Police. Such codes must be adopted, and they must include a mechanism for supervising compliance with the obligations they set out and imposing sanctions for non-compliance.

3. The current government has expressed its desire to reinforce the ethical rules applicable to members of the government and, in 2014, it adopted a code of ethics, which was well received by GRECO on the whole. There is nevertheless room for improvement, particularly regarding rules on gifts, reporting obligations, lobbying and the management of conflicts of interest after ministers' terms of office have expired. It too must be accompanied by a mechanism for supervision and sanctions for non-compliance, including where declaration requirements are concerned. The privileges regarding prosecution and jurisdiction enjoyed by ministers must also be reviewed.

4. There are a number of good practices relating to access to information held by the government, such as the press releases published after each Government Council meeting or the granting of direct access to officials responsible for a given matter. This makes it all the more disappointing that citizens still have no general right of access to administrative documents in Luxembourg, and GRECO hopes that this major shortcoming will soon be remedied.

5. A reform of the Grand Ducal Police is currently being prepared. Among other things, it will involve a territorial reorganisation, the reinforcement of the administrative police, a revamping of careers to bring them into line with civil service careers and the introduction of specific disciplinary rules, with greater independence and a stronger role for the Inspectorate General of Police in investigating disciplinary matters. GRECO believes that this reform is moving in the right direction, particularly with regard to the requirements governing the recruitment of the Inspector General and the desire to provide the Inspectorate General of Police with its own staff and budget. However, these resources will have to be upgraded to match this institution's strengthened role, and the arrangements for recruiting and training its members will have to be stepped up.

6. In more general terms, GRECO believes that the Grand Ducal Police should improve its internal corruption prevention efforts, through better assessment and management of risks and the reinforcement of ethics-related in-service training and confidential counselling. In order to counter risks of breaches of integrity more effectively, GRECO calls *inter alia* for

the introduction of checks on the good moral character and integrity of candidates when decisions are taken on promotions, the implementation of the rules on abstention from acting in a case/matter and analysis of practices regarding activities conducted by police officers after leaving the force with a view to adopting stricter rules where necessary. Finally, GRECO recommends better protection for whistleblowers within the Grand Ducal Police.

## II. INTRODUCTION AND METHODOLOGY

7. Luxembourg is one of the founding members of GRECO, set up in 1999, and has been evaluated in the framework of GRECO's First (in June 2001), Second (in May 2004), Third (in June 2008) and Fourth (in June 2013) Evaluation Rounds. The resulting Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's website ([www.coe.int/greco](http://www.coe.int/greco)). This Fifth Evaluation Round was launched on 1 January 2017.<sup>1</sup>

8. The objective of this report is to evaluate the effectiveness of the measures adopted by the authorities of Luxembourg to prevent corruption and promote integrity in central governments (top executive functions) and law enforcement agencies. The report contains a critical analysis of the situation, reflecting on the efforts made by the actors concerned and the results achieved. It identifies possible shortcomings and makes recommendations for improvement. In keeping with the practice of GRECO, the recommendations are addressed, via the Head of delegation in GRECO, to the authorities of Luxembourg, which determine the national institutions/bodies that are to be responsible for taking the requisite action. Those authorities must report back on the action taken in response to the recommendations made within 18 months following the adoption of this report.

9. To prepare this report, a GRECO evaluation team (hereinafter "the GET") carried out an on-site visit to Luxembourg from 13 to 17 November 2017, and reference was made to Luxembourg's responses to the Evaluation Questionnaire, as well as other information received from civil society. The GET comprised Mr Peter DE ROECK, Auditor general of finances, Federal Public Budget Department, Integrity unit (Belgium), Mr Olivier GONIN, Scientific specialist, International Criminal Law Unit of the Federal Office of Justice (Switzerland), Mr Frédéric GUTIERREZ LE SAUX, Police Superintendent, Head of the Border, Immigration and Road Safety Police (Andorra), and Ms Isabelle LATOURNERIE WILLEMS, Member of the judiciary, Chief Counsellor, Court of Audit (France). The GET was supported by Ms Sophie MEUDAL LEENDERS from GRECO's Secretariat.

10. The GET held talks with the Prime Minister, the Minister of Justice, the Secretary General of the Government Council, the Director General of Police, the Inspector general of Police and the Ombudsman. It also met representatives of the Legal Department of the Ministry of State, the Police (police officers of various ranks, investigators from the Criminal Police Department, managers of training programmes and the Police College) and police trade unions, the Prosecution service, the Court of Audit, the Anti-Corruption Committee and the Ethics Committee. Finally, it held talks with representatives of the Association for promoting transparency in Luxembourg and the Press Council.

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<sup>1</sup> More information on the methodology is contained in the Evaluation Questionnaire which is available on GRECO's [website](http://www.coe.int/greco)

### III. CONTEXT

11. Luxembourg has been a member of GRECO since 1999 and has undergone four evaluation rounds focusing on different topics related to the prevention of and fight against corruption<sup>2</sup>. Luxembourg has achieved positive results on the whole, although they have been somewhat mixed, in terms of implementing GRECO's recommendations during each evaluation round: the findings of the Third Evaluation Round were the most positive, with 76% of recommendations fully implemented and 18% partly implemented (one recommendation was not implemented). Its next best performance was the First Evaluation Round, with 66% of recommendations fully implemented and 33% of recommendations partly implemented. The findings of the Second Evaluation Round were less encouraging, with only 46% of recommendations fully implemented and the majority of the recommendations (54%) partly implemented<sup>3</sup>. For the Fourth Cycle, the partial results comprised 29% of recommendations fully implemented, 43% of recommendations partly implemented and 29% of recommendations not implemented, prompting GRECO to find that the country was non-compliant and triggering an enhanced compliance procedure. It should be noted however that the compliance procedure for this round is still in progress.

12. Luxembourg is well placed in terms of the level of perceived corruption as established in the Transparency International index, ranking 8th in 2017. It tops the rankings of 30 advanced economies in the fight against corruption of the [Inclusive Growth and Development Report](#) (2017) of the World Economic Forum. The [Special Eurobarometer on corruption](#) (2013) also places Luxembourg among the EU countries least affected by corruption. According to this Eurobarometer, 42% of Luxembourg's population believe that corruption is widespread in their country (EU average: 76%) and 7% of Luxembourgish respondents claim to be personally affected by corruption in their daily lives (EU average: 26%). Around 45% of them think that the giving and taking of bribes and the abuse of power for personal gain are widespread among politicians at national, regional and local level (EU average: 56%). The police are viewed in more favourable terms, with only 31% of respondents thinking that such practices are widespread in this sector (EU average: 36%). Petty bribery appears to be virtually non-existent, with fewer than 1% of those surveyed stating that they had been in a situation in the last 12 months where a bribe had been asked or expected from them (EU average: 4%). According to the [Eurobarometer 2013 survey of businesses](#), corruption is seen as a problem when doing business by 30% of those questioned (EU average: 46%), while nepotism and favouritism are seen as a problem by 47% (EU average: 41%) and therefore appear to be a greater cause for concern.

13. The interviews carried out on the spot by the GET showed that while petty corruption or straightforward bribery do indeed appear to be very rare, the overall attitude seems rather more reactive than proactive where other forms of corruption in the broader sense,

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<sup>2</sup> Evaluation round I: Independence, specialisation and means available to national bodies engaged in the prevention and fight against corruption / Extent and scope of immunities; Evaluation round II: Identification, seizure and confiscation of corruption proceeds / Public administration and corruption / Prevention of legal persons being used as shields for corruption / Tax and financial legislation to counter corruption / Links between corruption, organised crime and money laundering; Evaluation round III: Criminalisation of corruption / Transparency of party funding; Evaluation round IV: Prevention of corruption in respect of members of parliament, judges and prosecutors.

<sup>3</sup> These figures provide a snapshot of the state of situation regarding the implementation of GRECO's recommendations at the time of formal closure of the compliance procedures. The country may therefore have implemented some of the remaining recommendations after the formal closure of the compliance procedure.

such as exchanges of services, favouritism, return favours etc., are concerned. When the authorities become aware of such acts, they take the necessary steps to investigate and punish the perpetrators, but there is no strategy – general or sectoral – aimed at identifying specific risks and taking the necessary preventive or remedial measures. Furthermore, the lack of any tradition of investigative journalism and legislation on access to public documents does not make it any easier to uncover such acts.

14. Among the sectors most vulnerable to such practices, real estate<sup>4</sup>, finance<sup>5</sup> and public tenders were mentioned. In this context, the fact that in January 2018 the Court of Cassation recognised that one of the protagonists in the LuxLeaks affair<sup>6</sup> should be protected as a whistleblower is undeniably a positive signal. The [Annex on Luxembourg to the EU anti-corruption report](#) (2014) adds to these risk factors the conflicts of interest of elected officials and civil servants at national and local levels, as well as the resources for combating financial economic crime available to the police and the judiciary, which are not in line with the importance of Luxembourg as a financial centre.

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<sup>4</sup> Notably the “Livange-Wickrange” case, which came to light in 2011 and concerned conflicts of interest relating to a large-scale urban development project. It was alleged that confidential agreements had been made in favour of one of the developers in exchange for largesse shown to elected representatives. The case was filed without further action being taken, which raised certain questions.

<sup>5</sup> The Panama Papers scandal uncovered in April 2016 by the International Consortium of Investigative Journalists (ICIJ) – which does not have any Luxembourg journalists among its membership – revealed that Luxembourg banks and tax advisers (lawyers, auditors etc) had played a leading role in many of the offshore schemes designed to conceal their clients’ money. A number of individuals and companies in Luxembourg refused to appear before or did not reply to the European Parliament’s inquiry committee regarding the case: see <http://www.lequotidien.lu/a-la-une/la-place-financiere-du-luxembourg-na-tire-aucune-consequence-des-panama-papers/>

<sup>6</sup> In November 2014, the ICIJ revealed tax deals struck between Luxembourg and 340 multinationals, representing lost revenue amounting to hundreds of billions of Euros for the States concerned. While “complying with international law” according to the Prime Minister Xavier Bettel, those agreements could run counter to EU rules on competition should the EU Court of Justice so decide in the case currently pending before it.

#### **IV. PREVENTING CORRUPTION IN CENTRAL GOVERNMENTS (TOP EXECUTIVE FUNCTIONS)**

##### **System of government and top executive functions**

###### *System of government*

15. Luxembourg is a parliamentary democracy, in the form of a constitutional monarchy. Its Head of State is the Grand Duke, who, under the 1868 Constitution, theoretically exercises executive power. In practice, as the person of the Grand Duke is inviolable under the Constitution, all his acts and decisions must be prepared and countersigned by at least one member of the government, who bears political, civil and criminal liability for them. It is the government, presided by the Prime Minister, which exercises executive power in concrete terms. It runs state affairs, has the power of legislative initiative and implements laws.

16. GRECO agreed that a head of State would be covered by the 5th evaluation round under the "central government (top executive functions)" topic where that individual actively participates on a regular basis in the development and/or the execution of governmental functions, or advises the government on such functions. These may include determining and implementing policies, enforcing laws, proposing and/or implementing legislation, adopting and implementing by-laws/normative decrees, taking decisions on government expenditure and taking decisions on the appointment of individuals to top executive functions.

17. The GET notes that in Luxembourg, the head of State does not actively participate on a regular basis in the development and/or the execution of governmental functions. The Grand Duke clearly has a representative and honorary role. All his acts and decisions must be prepared and countersigned by a member of the government, which prevents the Grand Duke from exercising discretionary executive powers. The application of the Constitution at the level of the executive may be summed by the adage: "the Grand Duke reigns but he no longer governs"<sup>7</sup>. Accordingly, the functions of the Grand Duke of Luxembourg do not fall within the scope of "persons entrusted with top executive functions" (PTEF) addressed by the present evaluation round.

18. The members of the government are theoretically appointed and dismissed by the Grand Duke. In reality, the government's composition reflects the political forces present within the Chamber of Deputies, whose members are elected by open list proportional representation. No political party has won an absolute majority in a parliamentary election since the 19th century. Traditionally, the Prime Minister is drawn from the party having won most votes in the Chamber of Deputies, and the post of Deputy Prime Minister is filled by its coalition partner. There is nothing to stop a coalition being formed from more than two parties, which is currently the case.

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<sup>7</sup> *Précis de droit constitutionnel, Commentaire de la Constitution luxembourgeoise* [Summary of constitutional law, commentary on the Luxembourg Constitution], Paul Schmit in collaboration with Emmanuel Servais, September 2009 edition, p.204.

*Status and remuneration of persons exercising top executive functions at national level*

19. A new government is formed after the parliamentary elections held every five years. The elections, based on an open list proportional representation model, systematically yield coalition governments. If the election results are clear-cut, the Grand Duke appoints a "formateur", who will become Prime Minister, from the party having secured the highest number of deputies. If there is no clear majority, the Grand Duke appoints an "informateur", who holds talks with the parties to sound out the likelihood of coalitions being formed and then informs the Grand Duke, who in turn appoints the "formateur".

20. The Prime Minister chooses his or her ministers, taking care to form a government that will receive the backing of the parliamentary majority. Therefore, the ministers reflect the make-up of the coalition. The governmental coalition parties sign a coalition agreement and devise a joint governmental programme. The Prime Minister submits the outcome of the negotiations to the Grand Duke, who formally appoints the chosen ministers.

21. The current government resulting from the parliamentary elections of October 2013, in power since December 2013, comprises 18 members, including three secretaries of State. Where the ministers are concerned, there are three women and 12 men, and in the group of secretaries of State, there are two men and one woman. The three secretaries of State have power of signature delegated by their minister-in-charge. The breakdown of the Luxembourg government in terms of gender is 22% women and 78% men. In this connection, the GET draws attention to Recommendation Rec(2003)3 of the Committee of Ministers to member states on balanced participation of women and men in political and public decision-making, which states that balanced participation of women and men is taken to mean that the representation of either women or men in any decision-making body in political or public life should not fall below 40%.

22. The powers and responsibilities of each member of government are laid down, for each government taking office, in a Grand Ducal order, which may be amended by the government during the legislature. The ministers are in charge of one or more ministerial departments. The secretaries of State have either delegated power for a specific area or simply delegated power of signature enabling them to sign in the stead of their minister-in-charge. The ministers are assisted in their work by senior civil servants appointed to political positions.

23. There is no hierarchy between ministers, or between the Prime Minister and the other members of the government. However, the Prime Minister does exercise political authority over them, meaning that, among other things, he or she has the power to coordinate government action and arbitrate in the event of disagreements. The Prime Minister represents the government and speaks on its behalf, as well as chairing sittings of the Government Council and setting its agenda. The Deputy Prime Minister deputises for the Prime Minister if the latter is unavailable. The government's decisions are collegial.

24. The ministers may adopt administrative acts of a regulatory or individual nature on the basis of laws or regulations authorising them to do so. They have discretionary power only insofar as provided for in a law or regulation and such cases remain exceptional according to the authorities, which gave the example of appointments to posts of senior civil servants appointed to political positions (see below).

25. The ministers and secretaries of State are subject to the amended Law of 16 April 1979 establishing the general regulations governing civil servants (hereinafter the civil service regulations) and the amended Law of 25 March 2015 establishing the remuneration system and promotion conditions and procedures for civil servants, including for the calculation of their salaries. The latter text also governs the remuneration of senior civil servants appointed to political positions.

<b>GRADE</b>	<b>POST</b>	<b>INDEX POINTS (1 point = 18,9228970 Euros)</b>	<b>GROSS MONTHLY SALARY<sup>8</sup></b>
S4	PRIME MINISTER	940	17,787.5 Euros
S3	MINISTER	805	15,232.9 Euros
S2	SECRETARY OF STATE	720	13,624.5 Euros

26. Members of the government are also paid a representation allowance, which is part of their salary. Where a minister holds several portfolios, these allowances cannot be accumulated.

<b>POST</b>	<b>INDEX POINTS (1 point = 18,9228970 Euros)</b>	<b>GROSS MONTHLY REPRESENTATION ALLOWANCE</b>
PRIME MINISTER	400	7,569.2 Euros
DEPUTY PRIME MINISTER	400	7,569.2 Euros
MINISTER OF FOREIGN AFFAIRS	400	7,569.2 Euros
MINISTER	150	2,838.4 Euros
SECRETARY OF STATE	130	2,460 Euros

27. When leaving office, members of the government are entitled, where applicable, to a waiting allowance if they do not have another job and are not yet of retirement age. This allowance is set at 412 index points (7,796.2 Euros gross) per annum for the Prime Minister and 350 index points (6,623 Euros gross) for the other members of the government, for a maximum duration of two years. However, the first three monthly payments of the waiting allowance are equal to the final salary received, less the entertainment allowance.

28. In addition, members of the government are also provided with an official car and a member of security staff throughout their term in office. They are entitled to reimbursement of actual travel and subsistence costs upon submission of a detailed declaration.

29. Members of the government do not have at their disposal public funds to be used at their discretion. Some ministers who frequently travel abroad (Prime Minister, Deputy Prime Minister, Minister of Foreign and European Affairs, Minister of Finance) have a bank card for paying their travel and subsistence expenses for official journeys. They submit a six-monthly declaration, indicating the total amounts disbursed on each official trip, to the state accounts department. The ministers keep all the invoices, which may be required for an ad hoc inspection by the Chamber of Audit or a member of Parliament.

<sup>8</sup> Average gross monthly salary: 4,496 Euros (OECD, 2016)

30. The lawfulness of all payments made from the state budget is checked by state auditors. The information regarding ministerial salaries is public, which is not the case for their expenses. According to the authorities, given that the current government is keen to make the administration more transparent, the publication of ministers' expenses might also be envisaged. The GET strongly encourages this idea.

31. The government and its members are politically accountable before the Chamber of Deputies for any of their acts or measures in office. The government can resign at its own initiative at any time or be forced to do so by a motion of no-confidence or the rejection of a government bill or the annual budget by the Chamber of Deputies. In such a case the Prime Minister offers the resignation of the government to the Grand Duke, who dismisses the government by Grand Ducal order. A member of the government whose individual political responsibility is compromised offers in practice their resignation to the Prime Minister. A minister may also offer his or her resignation to the Prime Minister on grounds of a fundamental disagreement between them. The Prime Minister forwards this resignation to the Grand Duke, who issues a governmental order dismissing the minister in question.

32. Neither the State nor the government are criminally liable. Criminal liability is borne by ministers individually. They may be accused only by the Chamber of Deputies and judged only by the Superior Court of Justice, sitting in general assembly (Art. 116 of the Constitution). For further details, see the section on "criminal prosecution and immunity" of this report (see paragraphs 121 et seq.).

33. Given that it is solely the State that has legal personality, it is the State's civil liability that is incurred by damage caused by an act of government. The State's civil liability also protects the ministers individually, in respect of acts committed in the exercise of their functions. In this respect they enjoy the same immunity from prosecution and exemption from jurisdiction applicable in the area of criminal law. On the other hand, civil cases involving ministers relating to acts of a purely private nature fall within ordinary law.

34. The senior civil servants appointed to political positions who assist ministers are appointed by the Grand Duke. They are proposed by the competent minister, with the consent of the Prime Minister, who forwards the proposal for appointment to the Grand Duke. They are divided into five categories, and the number of posts is set by the government: a) Administrators General, currently numbering six; b) Principal Government Advisers, currently 43; c) First-class Government Advisers, currently 21; d) Government Advisers, currently 10; e) Deputy Government Advisers, currently two. Of these 82 posts in total, 73 were occupied at the time of the on-the-spot visit.

35. Each member of government has the discretionary power, within the limit of the posts available, to choose a trusted individual to be put forward for such a post without having to give reasons for their choice. Those appointed to these positions of trust may be classic career civil servants (which is currently the case for 59 of them) or people from outside the administration – currently numbering 14, of whom five were initially recruited as state employees for short periods and the other nine were directly appointed to a political position. Their role is to advise their minister, run the ministry and its departments, ensure that the minister's supervisory duties are exercised with regard to the administrations

coming under the ministry and ensure that government policy is implemented. To that end, they are generally assigned delegated power of signature for the minister, for acts not engaging the minister's political responsibility. Of the 73 senior civil servants appointed to political positions currently in post, 55 have power of signature: 52 for administrative and financial matters, two solely for financial matters and one for solely administrative matters. Power of signature for financial matters entitles senior civil servants appointed to political positions to commit up to 250 000 Euros of expenditure (125 000 Euros in the case of deputy government advisers).

36. Once appointed, senior civil servants appointed to political positions definitively acquire state civil servant status, which they retain even when the term of office of their minister-in-charge expires. They occupy their post indefinitely, except for the highest two grades to which appointments are for seven years and renewable. In practice, in case of non-renewal of the appointment, these civil servants are placed by law at the highest grade in the administrative career, while keeping their salary. It is to be noted that in Luxembourg there is not a high turnover of senior civil servants appointed to political positions when governments change.

37. Senior civil servants appointed to political positions are bound by the rules of conduct for civil servants and under the general supervision of their minister-in-charge. Their criminal liability is incurred under ordinary criminal law. Like members of the government and any civil servant, they are protected by the State's civil liability for anonymous departmental misconduct. Their individual civil liability can be incurred only if they commit misconduct of such seriousness that it is considered as being outside the normal performance of duties.

38. Senior civil servants appointed to political positions may be dismissed by a Grand Ducal order approved by the government sitting in council, where there is fundamental and persistent disagreement with the government over the performance of their assigned tasks or they are unable over a sustained period to carry out their duties. The initiative is taken by their minister-in-charge, with the prior endorsement of the Prime Minister. Loss of confidence provides sufficient grounds for dismissal, as confirmed by an Administrative Court judgment of 28 February 2017<sup>9</sup>. Dismissed senior civil servants do, however, keep their salary (Article 2.2 of the amended Law of 9 December 2005 establishing the appointment conditions and procedures for civil servants holding managerial positions in state administration and bodies).

39. The GET notes the total lack of requirements governing direct appointments of people outside the administration as senior civil servants appointed to political positions. They are selected on an entirely discretionary and non-transparent basis, they are not subject to the same conditions of recruitment and training as career civil servants and there is no procedure for checking on their integrity. When their minister-in-charge departs, most of them keep their responsibilities. Those who are discharged of them retain their status and grade within the civil service. Given the important role played by these persons, as we will see below, **GRECO recommends that a framework be provided to govern the direct recruitment of senior civil servants appointed to political positions, particularly in view of the risks private functions carried out before their appointment could cause to the impartiality and independence of public office.**

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<sup>9</sup> CA 28.02.2017, n°38190C

## **Anti-corruption and integrity policy, regulatory and institutional framework**

### *Anti-corruption and integrity policy*

40. In the governmental programme adopted on 10 December 2013 and in subsequent statements, the current government expressed its determination to improve the rules of conduct for members of the government and to clarify their rights and duties by introducing an effective, rigorous, regulated mechanism. A code of conduct was accordingly adopted by Grand Ducal order on 14 November 2014, establishing rules of conduct for members of the government and their duties and rights while in office (see below).

### *Institutional framework*

41. A committee for the prevention of corruption (hereinafter COPRECO) was set up under the Law of 1 August 2007 ratifying the United Nations Convention against Corruption. It is chaired by the Minister of Justice or his/her representative and includes representatives of all the ministries, the police, the prosecution service, the prosecution service's Financial Intelligence Unit and various major authorities such as the tax authorities and the Financial Sector Supervisory Commission. Its members and substitutes are appointed by the competent ministries. Civil society is not represented on the committee but outside experts may be invited to attend its meetings or assigned an information/advisory role. The committee meets at least twice a year. It does not have a budget of its own and its secretariat is provided by the Ministry of Justice. Its reports are not published.

42. COPRECO is a consultative body which advises the government on matters related to the fight against corruption. Its role is mainly preventive and aimed at raising awareness in the ministries and the administration. Responsibility for prosecuting corruption falls to the police and the judiciary. Effectively a multidisciplinary round table on corruption, COPRECO is instrumental in the development, co-ordination and evaluation of national policy in this area. It monitors compliance with the international conventions to which Luxembourg is a party and ensures that knowledge about preventing corruption is properly disseminated.

### *Regulatory framework and code of conduct*

43. There are two types of legislative provisions that apply to government members and senior civil servants appointed to political positions: firstly, the prohibitions found in the civil service regulations concerning *inter alia* incompatibilities and outside activities - Article 81 of the Law of 1979 on the status of civil servants states that these apply to ministers; and secondly, the section of the Criminal Code on public order crimes and offences committed by civil servants in the course of their duties, notably extortion by a public official, the unlawful taking of an interest, bribery and trading in influence.

44. Under the programme introduced by the current government coalition, a Code of Conduct for members of the government was adopted by the Grand Ducal order of 14 November 2014 (amended twice since its adoption) establishing rules of conduct for members of the government and their duties and rights while in office. This Code follows on from, and supersedes, the one adopted by the previous government, which the current government wished to expand. Set out in a Grand Ducal order, the Code, which came into effect on 25 November 2014, has force of law. Its provisions are binding and enforceable.

The Prime Minister, the Minister of State and the Minister of Justice are responsible for its implementation.

45. The Code of Conduct contains several sections dealing with potential conflicts of interest with respect to government members, their reporting obligations, outside activities, post-mandate employment, gifts, offers of hospitality, decorations and honours, the use of resources provided by the State and protection.

46. The Code also states that an ad hoc Ethics Committee is to be set up, consisting of three individuals chosen from among former members of the government, MPs, judges, members of the Council of State or senior civil servants. The persons in question are to be appointed by the government for non-renewable five-year terms, ending at different times. The Ethics Committee is tasked with giving opinions on the interpretation and application of the Code at the request of the Prime Minister. These opinions are in principle confidential but may be published if the government so orders. Where it is found that there has been a breach of the Code, the government is bound to make the Ethics Committee's opinion public. In practice, all the opinions delivered by the Committee – three to date – have been made public. The Code, the register of gifts received by government members and the opinions of the Ethics Committee are available online.<sup>10</sup>

47. The GET welcomes the Code of Conduct for members of the government. It lays down various important rules on *inter alia* conflicts of interest, gifts, revolving doors and reporting obligations and is sufficiently detailed. It is important that the text be updated and expanded or clarified whenever necessary, as the value of any code of conduct lies partly in its open-ended nature and its ability to adapt to the ethical dilemmas that are liable to arise during a term of office. The GET is pleased to note that steps have already been taken to this effect, the rules on gifts having been updated in response to opinions issued by the Ethics Committee. The fact that the Code is binding also sends an important signal to the government members to whom it applies and to the public at large. In the absence of an external oversight mechanism, however, compliance with the Code relies primarily on government members' self-discipline, as many of those with whom the GET spoke acknowledged.

48. The GET considers that the system could be further improved. There are certain gaps in the scope of the duty to abstain contained in Article 4 (see paragraph 81) and the rules on post-employment restrictions do not go as far as those contained in a former code of conduct which has now been repealed (see paragraph 108 and footnote 21). Moreover, at present, the Ethics Committee can receive applications only from the Prime Minister. Matters can also be referred to it by ministers, in confidence, if there is a potential conflict of interest, but this has yet to happen in practice. The GET also notes that the Ethics Committee has a very narrow understanding of its role and operates only on the basis of the information it receives from the Prime Minister at the time of referral. Its opinions are, in principle, confidential and are made public only if the government so orders, as indeed has happened in the past. One exception concerns opinions issued by the Ethics Committee about breaches of the code, which must be made public. The committee, however, has found no such breaches in the time that it has been operating.

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<sup>10</sup> <https://gouvernement.lu/fr/systeme-politique/gouvernement.html>

49. Although there is a code of conduct for members of the government, nothing of this kind exists for senior civil servants appointed to political positions, or indeed for the civil service as a whole. A draft prepared by the former government, which had been voted upon in March 2015, was strongly criticised by the Council of State<sup>11</sup>. It has not been amended or replaced by another draft. This is an obvious shortcoming, and one that has been highlighted by GRECO before, in 2004 in its second round evaluation report on Luxembourg.<sup>12</sup>

50. This shortcoming is of serious concern, given the central role played by senior civil servants appointed to political positions in Luxembourg. Such persons hold managerial posts in ministries, where they play a crucial part in the design and delivery of ministerial policy – typically in areas where they have background knowledge<sup>13</sup> – and can incur expenditure of up to 125 000 or 250 000 Euros through delegated powers of signature, depending on their grade. Therefore, **GRECO recommends that a Code of Conduct applicable to senior civil servants appointed to political positions be adopted**. This measure is of particular importance, as is the code's adoption process, which has to guarantee the necessary support and ownership of those it addresses.

### *Awareness*

51. There are no specific activities designed to raise government members' awareness of their ethical obligations. The authorities, however, make the point that, insofar as they are required, under the Code of Conduct, to provide a list of relevant information before swearing an oath (see below), government members are made aware of risk factors, rules of conduct and relevant legislation.

52. Immediately after they are recruited, state officials who are not members of the government embark on a traineeship which currently lasts three years. The compulsory training includes courses on the executive, covering the rules of conduct to be observed by government members; on the civil service regulations, including rights and obligations; and on specific criminal offences applicable to civil servants. Persons who are directly appointed to senior political positions in the civil service are not required to undergo this compulsory training. Later on, in the course of their careers, officials are required to complete a certain minimum number of training days in order to obtain a certificate in "public management" which paves the way for professional advancement. Some of the courses offered in this context deal specifically with preventing corruption in the public administration.

53. Ministers can obtain advice on ethical matters from the Ethics Committee, following a referral from the Prime Minister. The GET has been informed, however, that no use is

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<sup>11</sup> Draft bill 6457 foresaw the integration of a series of provisions from the civil service regulations into a Grand Ducal order on ethics, which would set out in detail the rules of conduct. The Council of State ruled that these provisions should be included in a law. Thus, they were integrated into the draft bill by amendments. In its complementary opinion on these amendments, the Council of State then took the view that these provisions did not need to be included in a law and could also take the form of soft law. Consequently, the provisions were removed again from the draft bill and no Grand Ducal order was adopted on this topic. Meanwhile, the government adopted in 2016 [Guidelines of proper conduct in administrative matters](#) [text in French only].

<sup>12</sup> <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c76a9>, see para 42 and recommendation v which has been only partly implemented by Luxembourg: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c76a9>

<sup>13</sup> Among the examples given was that of a former estate agent who was appointed housing minister.

made of this possibility in practice. As mentioned earlier, a discussion on the role and relevance of the Ethics Committee could help it to perform this ministerial advice role in the future.

54. Ministers can also obtain advice from the Secretariat General of the Government Council and from the legal department of the Ministry of State as to how the Code of Conduct is to be implemented in practice. There have, for example, been requests for advice about the level of detail required when declaring gifts or the correct way to complete the list of items to be submitted to the Prime Minister under the Code of Conduct.

55. In the case of civil servants, circulars issued by the Minister for the Civil Service and Administrative Reform can draw attention to the requirements and obligations in the field of ethics and integrity and also to the rules of conduct. A practical guide on gifts has been produced, for example. The heads of personnel in each ministry and the Ministry for the Civil Service and Administrative Reform also act as contact points for those seeking information.

56. The GET firmly believes that the government as an institution needs to be more proactive in developing the awareness of its members and other PTEF of their specific integrity challenges and in providing them with the necessary training and guidance in concrete ethical dilemmas. The Code of Conduct for members of the government is a step in the right direction, but is not sufficient in this regard. Therefore, **GRECO recommends developing efficient internal mechanisms to promote and raise awareness of integrity matters in the government, including confidential counselling and training at regular intervals for ministers and senior civil servants appointed to political positions.**

### **Transparency and oversight of executive activities of central government**

#### *Access to information*

57. Matters dealt with and documents adopted by the government in council, including the agendas and minutes of Government Council meetings, are confidential. The key points of the decisions adopted, however, are made available to the public through press releases<sup>14</sup> within a few hours after each Government Council session. These press releases contain *inter alia* details of draft legislation or regulations adopted in council. Certain specific decisions may be presented in a dedicated press kit or at a press conference given by the relevant minister. The GET welcomes this proactive practice of providing information on decisions taken by the government in council and considers it particularly important in a country where there is no legally enshrined general right of access to documents held by public authorities (see below).

58. Within each ministerial department, one or more officials are responsible for providing the media with any information they may request on any matter within the department's purview. It should also be noted that the contact details (surname, first name, title, position, telephone number and e-mail address) of all state officials and state employees are published on the website [www.etat.public.lu](http://www.etat.public.lu). Citizens thus have direct access to the officials responsible for a particular subject-area. Once again, such direct access is an example of good practice which has been highlighted by the GET. The website

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<sup>14</sup> Published on the website [www.gouvernement.lu](http://www.gouvernement.lu)

[www.budget.public.lu](http://www.budget.public.lu) also provides summary information on the various types of government spending and includes an FAQ section with a hyperlink so that members of the public can write to the authorities with their questions.

59. The GET also notes, however, that under current Luxembourg legislation, citizens have no general right of access to administrative documents. This gap was highlighted before, during the Second Evaluation Round, and was the subject of a recommendation.<sup>15</sup> No action having been taken on it to date, this recommendation remains fully relevant in the present evaluation when it comes to assessing the transparency of government and top executive functions. The aim is to ensure consistency between the principles governing the administration and those applicable to the government, to which the administration is politically and hierarchically subordinate.

60. The GET understands that a government bill (no. 6810) introducing a system whereby the administration would publish, without prior request, any documents intended to be freely accessible is currently being discussed in the Chamber of Deputies. It applies to all documents held by state administrations and services, municipalities, public institutions placed under their authority, and legal entities providing public services, insofar as the documents pertain to an administrative activity. It also applies to documents held by the Chamber of Deputies, the Council of State, the Chamber of Audit, the Ombudsman and state-owned enterprises, provided that they relate to an administrative activity. Exceptions are allowed in order to safeguard national security, public safety, intellectual property rights, legally protected secrets and personal data. In addition to the rule that administrative documents are to be shared online, bill no. 6810 establishes the right of any natural person or legal entity to ask for publicly accessible documents. It also introduces a procedure for internal review by a Commission on Access to Documents attached to the Prime Minister's Office, as a possible preliminary alternative to administrative litigation. According to the Luxembourg authorities, this draft legislation is expected to be enacted during the current parliament, probably in late June or early July 2018.

61. The GET notes that bill no. 6810 would help to address the shortcomings observed by GRECO as regards access to information held by the government and the administration and to incorporate into Luxembourg law the principles of the Council of Europe Convention on Access to Official Documents (CETS 205) and of Recommendation Rec(2002)2 of the Committee of Ministers to member States on access to official documents. **GRECO recommends that the principle of transparency of documents held by public authorities be enshrined in law.** This also implies that the right of every person to have access to these documents should be guaranteed and that responsibility for monitoring compliance with the rules in such matters should be assigned to an appropriate authority.

#### *Transparency of government/parliament bills and Grand Ducal regulations*

62. Government bills and parliament bills are published on the Chamber of Deputies website at the time when they are tabled in the Chamber, at the latest. The legislative procedure affords full access to all relevant documents (explanatory memorandum, text of the bill, commentary on the articles, financial statement, impact assessment form, opinion

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<sup>15</sup> See [Second Round Evaluation Report](#), paragraphs 29 and 48.

of the professional chambers, Council of State opinion). Once passed, the legislation is published in the Official Journal of the Grand Duchy of Luxembourg.<sup>16</sup>

63. Draft Grand Ducal regulations are available on the website of the Council of State, alongside the opinion which the latter is required to give on the draft in question. The final versions of the regulations are published in the Official Journal of the Grand Duchy of Luxembourg.

64. Any draft legislation or regulations submitted to the Government Council must be accompanied by an impact assessment form, which includes questions about the implications for gender equality. The GET welcomes this positive practice.

65. There is no systematic provision in Luxembourg law for public consultation on draft legislation. The professional chambers, which have an interest in defending certain sectors, must be consulted, however. The Council of State is also consulted as a matter of course. There is no requirement to disclose information about any outside consultants who might have been involved in the preparation of the draft legislation or regulation. The authorities point out, however, that where a draft receives a wider airing via a dedicated press release or press conference, such information is usually made available.

66. Citizens can also influence parliamentary business by presenting a public petition, which may relate to any subject, including one addressed in draft legislation that has been tabled in the Chamber. If a petition garners at least 4,500 signatures, the subject must be debated in parliament.

#### *Third parties and lobbyists*

67. There are no rules on contacts between PTEF and third parties or lobbyists. Activities and meetings of ministers and civil society are normally made public via the government's Press and Information Service. Meetings between senior civil servants appointed to political positions and third parties or lobbyists are not reported.

68. According to the interviews conducted during the on-site visit, lobbying as an institutionalised phenomenon does not exist in Luxembourg. The legislative procedure requires the professional chambers to be consulted about draft legislation and their opinions are published. Aside from these more formal consultations, some of those whom the GET met spoke of the ease with which third parties were able to access ministers and their advisers.

69. The GET considers that PTEF contacts with third parties ought to be regulated and made more transparent, given the importance of this issue in preventing corruption in government and top executive functions and European standards in this area.<sup>17</sup> It notes that the Chamber of Deputies received a recommendation to this effect during GRECO's Fourth Evaluation Round and that the work on implementing this recommendation highlighted the possibility that "interest groups may exert an influence both at the level of the executive

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<sup>16</sup> Available on the website [www.legilux.public.lu](http://www.legilux.public.lu)

<sup>17</sup> In particular [Recommendation CM/Rec\(2017\)2 of the Committee of Ministers on the legal regulation of lobbying activities in the context of public decision making.](#)

branch (the source of most legislation) and during the legislative procedure".<sup>18</sup> Therefore, **GRECO recommends (i) that detailed rules be introduced on the way in which ministers and senior civil servants appointed to political positions interact with lobbyists and other third parties seeking to influence the government's legislative and other activities; and (ii) that sufficient information about the purpose of these contacts be disclosed, such as the identity of the person(s) with whom (or on whose behalf) the meeting(s) took place and the specific subject matter(s) of the discussion.**

### *Control mechanisms*

70. The Secretary General of the Government Council has broad, cross-sectoral responsibility for monitoring and overseeing the implementation of decisions adopted by the Council.

71. In terms of budgetary implementation, each expenditure commitment decided by a minister is subject to scrutiny by a financial controller who is part of the Directorate of Financial Control, an authority that is independent from the ministers authorising expenditure. The financial controller can refuse to sign an expenditure commitment, in which case the minister can choose to resubmit it, with arguments justifying the expenditure. In the event of a second refusal by the financial controller, the minister can override this refusal by means of an order giving reasons. The minister's decision is then forwarded to the budget minister, the financial controller and the Chamber of Audit. According to the authorities, cases of ministers overriding refusals are a prime target for Chamber of Audit investigations. There is one circumstance in which ministers cannot ignore the financial controller's decision and that is where there are insufficient funds in the budget.

72. The public accountants in the State Treasury, who are responsible for executing payments, also carry out checks and have the power to suspend payments.

73. The Inspectorate General of Finance (IGF) may be invited by the Minister of Finance to investigate specific issues. As well as verifying the lawfulness of state revenues and expenditure, the IGF can check to ensure their sound financial management and compliance with general government policy. It also reviews ministerial departments' budget proposals when the annual state budget is being prepared, gives its opinion on any draft legislation that has budgetary implications, and can submit suggestions to the government about making savings, improving the organisation of the State or ensuring that it operates efficiently. It also considers any questions put to it by the government or ministers. The IGF's opinions are advisory in nature and are not binding on the government.

74. As the body responsible for external oversight of the state budget, the Chamber of Audit examines public expenditure to ensure that it is economically sound, effective and efficient, although it cannot comment on its appropriateness. It decides for itself the timing and types of audits to be conducted, and can request access to any document or information it needs to perform its task. Following a written, adversarial assessment with the departments being audited, the Chamber of Audit's reports are published on its website.<sup>19</sup> The Chamber of Audit may also, at any time, on its own initiative or at the request of the

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<sup>18</sup> See [Fourth Round Evaluation Report](#), paragraph 45 and [Compliance Report](#), paragraphs 25 to 31.

<sup>19</sup> [www.cour-des-comptes.lu](http://www.cour-des-comptes.lu)

Chamber of Deputies, present its findings and recommendations on specific areas of financial management in special reports, which are forwarded to the Chamber of Deputies.

75. At the request of the Chamber of Deputies, the Chamber of Audit can issue opinions on draft legislation that has significant financial implications for the State Treasury, on the provisions of the budget law and on draft legislation on state accounts and the accounts of legal entities governed by public law. With regard to draft legislation which has significant financial implications, Article 99 of the Constitution states that any major infrastructure or construction projects on behalf of the state and any major financial commitment must be approved by a special law. The threshold above which such approval is required is 40 million Euros (Article 80 of the amended Law of 8 June 1999 on the state budget, accounts and treasury).

76. As well as referring matters to the Chamber of Audit, the Chamber of Deputies has a permanent parliamentary commission, the Parliamentary Commission on Budget Execution, which monitors the government's execution of the budget and can carry out random checks. It is chaired by an opposition MP. More broadly, the Chamber of Deputies has a general responsibility to exercise supervision over government policy. It has various instruments for this purpose (written questions and answers, urgent questions, extended questions, question time, topical debate slot, motions and resolutions, interpellations, consultation debates and guidance debates). It also has a right to investigate matters of public interest that allows it to interview witnesses and consult experts. According to the authorities, however, so far little use has been made of this facility, and the last parliamentary inquiry was in 2013 following revelations about failings in the State Intelligence Service.

77. Lastly, individual administrative decisions and regulatory administrative acts may be challenged in the administrative courts.

### **Conflicts of interest**

78. The rules and procedures aimed at preventing and managing conflicts of interest with respect to PTEF are found partly in the Code of Conduct for members of the government and partly in the civil service regulations.

79. Article 7 of the Code of Conduct provides a general definition of conflicts of interest with respect to government members: *"A conflict of interest within the meaning of the present Grand Ducal order exists where a member of the government has a personal interest that could improperly influence the performance of his/her duties as a member of the government.*

*A conflict of interest does not exist where a member of the government benefits only as a member of the general public or of a broad class of persons."*

80. The Code of Conduct deals with various specific cases of conflicts of interest, including the following:

- ban on supporting or signing public petitions directly relating to the ministerial responsibilities of a member of the government (Article 3);

- ban on taking part in Government Council deliberations and decisions concerning matters in which ministers or their relatives by blood or marriage to the third degree have a direct interest (Article 4);
- obligation to report to the Prime Minister any paid work undertaken in the ten years before taking office, any financial interests, and any professional activities pursued by the government member's spouse or partner at the time of taking office (Article 8);
- incompatibility of membership of the government with the position of manager or membership of the board of directors of an association or foundation in the social, cultural, artistic, environmental, charity or sporting field;
- members of the government must not allow the prospect of other employment to create for them an actual or potential conflict of interest (Article 13).

81. The GET notes that some of these rules require further clarification. The terms "direct interest" and "relatives by marriage" in Article 4 are a case in point. "Relatives by marriage" clearly does not cover friends or persons close to ministers, but who have no family connection. The vague wording of Article 13 has also been mentioned above. The GET encourages the authorities to review and supplement the Code of Conduct accordingly.

82. The civil service regulations likewise contain various rules on cases of conflicts of interest, which apply to members of the government. These rules relate *inter alia* to outside activities and will be examined in detail below.

83. The primary responsibility for identifying and resolving conflicts of interest lies with government members themselves, who must immediately take the necessary steps to resolve the conflict (Article 7 of the Code of Conduct). The authorities point out that this provision is to be construed broadly, as it refers not only to conflicts of interest with respect to government members themselves, but also to conflicts stemming from private interests held or activities pursued by those close to them. If in doubt, government members can seek confidential advice from the Ethics Committee.

84. A further check to establish whether there are any conflicts of interest is carried out by the Prime Minister when ministers submit their declarations under Article 8 of the Code of Conduct (see below under declaration of assets, income, liabilities and interests). If in doubt, the Prime Minister can likewise seek advice from the Ethics Committee. If the Prime Minister concludes that there is a conflict of interest, he or she will ask the minister concerned to resolve it.

85. According to the authorities, there are no statistics on declarations of conflicts of interest or abstentions by PTEF. There have been several cases where government members have abstained when decisions concerning family members, or which had direct implications for family members, were being discussed and adopted by the Government Council. The absence of a government member is recorded in the minutes of the meeting, but not the reason for the absence. Some members of the current government, furthermore, gave up holdings in industrial or commercial enterprises on taking office.

86. As regards senior civil servants appointed to political positions and in the absence of a code of conduct, Article 15 of the civil service regulations lays down rules on conflicts of interest. Officials must inform their manager "where they may have a personal interest which may compromise their independence" in matters with which they are called upon to

deal in the course of their duties. Managers must relieve officials of their responsibilities in a particular matter if they believe that their independence is liable to be compromised. The GET notes that this article is worded very broadly and does not give details of specific circumstances such as marital or family ties, for example. It believes that making the general rule set out in Article 15 more specific, in legislation or the future code of conduct whose adoption is recommended above, would help to further clarify the circumstances in which officials are required to abstain. Accordingly, **GRECO recommends that the rules on abstention by senior civil servants appointed to political positions be defined more clearly by including specific criteria, in particular marital and family ties.**

### **Prohibition or restriction of certain activities**

#### *Incompatibilities, outside activities and financial interests*

87. Membership of the government is incompatible with various senior positions in the public sector. These include national parliamentary mandates (Art. 54.1 of the Constitution), European Parliament mandates (Art. 287 §2 of the amended electoral law of 18 February 2003), membership of the Council of State (Art. 10.2 of the amended law of 12 July 1996 reforming the Council of State) and any positions in the judiciary (Art. 100 and Art. 101 of the amended Law of 7 March 1980 on the organisation of the judiciary). The parliamentary mandate is also incompatible with the position of state official and state employee.

88. The other incompatibilities, in particular those concerning the private sector, may be deduced *a contrario* from the rules on outside activities, which are set out in Article 14 of the amended Law of 16 April 1979 establishing the civil service regulations. Under this article, it is prohibited for civil servants (including ministers) to engage in outside activities, unless they are authorised to do. Engaging in outside activities in the private sector is expressly prohibited, as no authorisation is available here. In the case of outside activities in the public sector, officials may engage in these if the activity in question is compatible with the conscientious and full performance of the person's official duties. In practice, such authorisation is not granted to ministers but may, where appropriate, be granted to other officials. According to the authorities, however, such cases are extremely rare and it was confirmed to the GET that there were no current or recent examples of such authorisation being granted.

89. Under the Code of Conduct, furthermore, members of the government must not accept remuneration for any activity whatsoever (Art. 9). Nor may they serve on the board of directors of an association or foundation in the social, cultural, artistic, environmental, charity or sporting field.

90. Any financial interests held must be reported to the Prime Minister at the time of taking office (see below). It is prohibited, however, for PTEF to have, either directly or through an intermediary, any interest whatsoever in an enterprise under the control of their administration or service, or related to their administration or service. (Art. 14§3 of the civil service regulations). The GET notes that there is no restriction to the holding of individual shares in banks' capital. Taking into account the importance of the banking sector in Luxembourg, transferring these shares to a blind trust for the duration of the PTEF's functions would be a good practice to be encouraged.

91. While senior civil servants appointed to political positions do not engage in paid outside activities in practice, they are frequently appointed to chair or serve on the governing bodies of various public institutions or limited companies in which the state or a public legal person participates. Such dual office holding is considered normal and an integral part of the responsibilities of the officials concerned. It also allows them to earn additional remuneration in a way that is wholly lacking in transparency and the GET was unable to gauge the scale of it. Remuneration received by senior civil servants appointed to political positions for their participation in the governing bodies of public institutions is set either by Grand Ducal regulation or by the governing bodies of the public institutions themselves and is not subject to any transparency rules. As for limited companies, under a law of 25 July 1990, any remuneration received by senior civil servants appointed to political positions in connection with their participation in the governing bodies of such companies must be repaid to the State, which then decides on the amount to be attributed to the senior official. However, this law remains unimplemented, despite the recommendations made by the Chamber of Audit. Every year, the government issues an order to the effect that any remuneration received for participation in the governing bodies of limited companies is to revert to the senior officials concerned.

92. The government is aware of the lack of transparency in the current system. On 20 January 2017 it adopted a Code of Conduct for state administrators which lays down various basic principles to be observed in the course of their duties. On 10 February 2017, the government also adopted Guidelines for establishing public institutions, which provide that in the case of new public institutions or existing ones which are restructured, the level of remuneration for members of the governing bodies is in future to be set by Grand Ducal regulation.

93. The GET acknowledges the government's intention to foster greater transparency and objectivity in a system that is singularly lacking in both at present. It also considers, however, that more can and should be done in this area. The Code of Conduct for state administrators is not enshrined in a Grand Ducal order and therefore has no legal force. As a result, the obligations which this text places on state administrators to be selfless and honest and to act with integrity and impartiality are unlikely to be accompanied by oversight and sanctions. More importantly, the Guidelines do not apply to existing public institutions, unless there is a change in their structure. The pay which their managers receive, therefore, will continue to go unregulated, unless such a change occurs. The authorities acknowledged, moreover, that developments in this area were not considered a priority. The GET encourages the authorities to give a higher priority to this matter, in order to put an end to the lack of transparency and the potential for arbitrary decision-making that surround the remuneration of heads of public institutions.

#### *Contracts with state authorities*

94. Under the civil service regulations, senior civil servants appointed to political positions have a general obligation to perform their duties in an independent and neutral manner and to act in the public interest, principles that must also be observed when entering into contracts with state authorities. The Code of Conduct (Art. 1.2) further requires government members to serve all citizens and to perform their duties with integrity and impartiality. Article 245 of the Criminal Code, moreover, specifically outlaws the unlawful

taking of interest by officials in the course of their duties, a provision which also applies to members of the government.

### *Gifts*

95. Gifts and hospitality are governed by section 8 of the Code of Conduct. It states that gifts and offers of hospitality bestowed on ministers in the performance of their duties are in principle acceptable, unless there is a risk of influence and provided that they comply with the customs and rules of diplomatic courtesy:

- if they originate from foreign or national public entities or individuals, excluding public entities or individuals operating in a competitive sector;
- If they originate from private entities or individuals or from public entities or individuals operating in a competitive sector and provided that the value of the gift or hospitality does not exceed 150 Euros (an estimate may be obtained from the Protocol Department of the Prime Minister's Office).

96. Any gifts or offers accepted must be reported to the Protocol Department of the Prime Minister's Office, together with the donor's name, the date on which they were received and the context, a description of the gift or offer and an indication of its value as estimated by the minister. This information is then entered in a public register on the government website.<sup>20</sup> The following need not be reported:

- gifts and offers received from a public entity or individual;
- gifts and offers received from a private entity or individual or from a public entity or individual operating in the competitive sector if the gift was bestowed in the context of a public event and if its value is not more than 100 Euros.

97. If a gift which is in principle prohibited cannot be refused in practice, it must be reported to the Protocol Department and entered in the public register.

98. Ministers are free to accept gifts and offers of hospitality received in the context of private relations, unconnected with their official duties, from persons in their usual close entourage. Such gifts and offers, however, must be assessed on a case-by-case basis to determine whether they might be seen as having a connection with the official duties, or as an attempt to influence the judgement, of the minister concerned (Article 19 of the Code of Conduct for ministers).

99. Lastly, the Prime Minister must be informed of any decoration, award or honorary distinction and of any sum of money or other valuables bestowed in this connection.

100. The GET acknowledges that the Code of Conduct for ministers contains detailed rules on gifts, but is of the opinion that these could be improved. Emphasis is placed on the value of the gift, yet neither multiple gifts worth less than 150 Euros from the same donor, nor the identity of that donor, are criteria for refusal or notification. There is no procedure for assessing the risk that a gift might influence a member of the government. What is meant by ministers' "usual close entourage" is not defined and is left to the discretion of the individual concerned, with no third-party involvement. The Prime Minister must be informed of any decoration, award or honorary distinction, but this information is not made public. The GET

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<sup>20</sup> <http://www.gouvernement.lu/1719075/gouvernement>

notes in this connection that Article 10.2 of the Code of Conduct, under which government members could accept new honorary positions only after they had been approved by the Ethics Committee, was deleted on 5 January 2018 on a proposal from the Ethics Committee, in order to avoid any ambiguity between the terms "functions" and "titles". This deletion contributes to reinforcing the mechanism, as it is now clear that the ban on exercising honorary functions after taking up office continues throughout the duration of the mandate; accordingly, the question of accepting a new honorary function during the term of office does not arise anymore as it is forbidden.

101. As regards senior civil servants appointed to political positions, the only applicable rule is the one in Article 10.3 of the civil service regulations, which states that: "Officials may not solicit, accept or seek promises from any source, directly or indirectly, of material benefits whose acceptance could place them in conflict with the obligations and safeguards imposed on them by the laws and regulations and in particular the present regulations." While certainly necessary, this rule is not sufficient in the opinion of the GET, as it leaves considerable room for interpretation as to what might create a conflict of interest. More detailed rules on the acceptance of gifts, along the lines of those applicable to ministers, including the improvements recommended above, would undoubtedly be helpful. They could be included in the future code of conduct, for example.

102. In the light of the foregoing paragraphs, **GRECO recommends (i) that the rules on gifts applicable to ministers be improved and (ii) that the rules on gifts applicable to senior civil servants appointed to political positions be clarified.**

#### *Misuse of public resources*

103. Any misuse of public resources by PTEF in relation to the misappropriation of funds is punishable under criminal law in accordance with Article 240 of the Criminal Code, whose provisions extend to all forms of the misappropriation and fraudulent allocation of funds.

104. Paragraph 2 of Article 9 of the code of ethics, which prohibits members of the government from accepting any remuneration other than their salaries, also provides that if members of the government are offered remuneration for the provision of a service, such as delivering a speech, they may accept it, on condition that they then donate it to a philanthropic, social or environmental cause and notify the Ethics Committee accordingly.

#### *Misuse of confidential information*

105. Article 3.2 of the code of ethics prohibits ministers from revealing the content of debates having taken place within the Government Council. Article 11 regulates the misuse of confidential information by members of the government having left office, whom it prohibits, for a period of two years after the end of their term, from using or divulging information that is not accessible to the public obtained in the performance of their duties and from giving advice based on that information and thus benefiting from it.

106. Article 11.1 of the civil service regulations prohibits civil servants from revealing secret information to which they were privy by virtue of their duties, unless they obtain a dispensation from the minister-in-charge. This provision is also applicable to civil servants having left the civil service.

## *Post-employment restrictions*

107. Members of the government are free to take up employment or other professional activity, which may be paid or unpaid, after the end of their term of office, subject to certain conditions stipulated in the code of ethics: for two years after the end of their term, former members of the government are prohibited from using or divulging information obtained in the performance of their duties and from exerting an influence over members of the government or the staff of their former department or pleading in favour of their enterprise, clients, associates or employer before the aforementioned. Moreover, during their term of office, ministers must not let prospective employment opportunities give rise to any real or potential conflict of interest (Articles 11 to 13). This last provision's lack of clarity has already been highlighted above. The only rule applicable to senior civil servants appointed to political positions is that contained in Article 11.1 of the civil service regulations regarding respect for official secrecy.

108. It is certainly a good thing that there are rules governing the professional activity of former members of the government. However, these rules exist only to protect official secrets and are in no way designed to handle potential conflicts of interest. The GET further notes that the current rules are a step backwards compared to those of the code of ethics compiled by the previous government, which went unpublished until 28 February 2014 and has now been repealed in its entirety.<sup>21</sup> The European Ombudsman, in a feature article published in GRECO's 2016 activity report,<sup>22</sup> stressed the important challenge of regulating the activities of members of the executive branch of government after they leave office.

109. The GET is of the opinion that the current regulations in Luxembourg are inadequate. There are no rules in place to prevent potential conflicts of interest arising from the professional activities of a minister once he or she has left office from denigrating that minister's integrity in the eyes of the public. Public opinion aside, interviews carried out during the country visit revealed that some senior civil servants appointed to political positions, and even some ministers, had returned to work in the sector that came under their supervision during their time in the public administration.

110. To improve the way in which potential conflicts of interest are handled and to make sure that the government is not caught short by the news of former ministers' new positions, former members of the government should be required to declare their acceptance of any new professional activity during a set time, for example two years. In addition to this disclosure requirement, some activities, particularly those subject to a system of authorisation or supervision administered by the entity that a member of government has just left, should not be permitted unless they have been carefully studied, to put to rest any suspicion of a conflict of interest. Senior civil servants appointed to political positions should also be bound by clear rules in this regard. Therefore, **GRECO**

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<sup>21</sup> Article 4.3.1: "Members of the Government may pursue the activity performed by them before they entered office immediately after leaving office. Any member of the Government who wishes to take up, within two years of having left office, a private professional activity other than that which he or she performed prior to his or her appointment as a member of Government shall inform the Prime Minister, who shall bring the matter before the ethics committee. If the desired activity is found to be linked to the department(s) formerly directed by the member of the Government, the ethics committee shall issue a written opinion on the matter, which is made public. The former member of Government is free to act upon the opinion or not."

<sup>22</sup> <https://rm.coe.int/seventeenth-general-activity-report-2016-of-the-group-of-states-against/168071c885>

**recommends (i) that an obligation to inform, during a set period, an appropriate body of any new professional activity undertaken should be established for all former members of the government and former senior civil servants appointed to political positions and (ii) that all such activity should be studied and, if appropriate, supervised or prohibited to allay any suspicion of a conflict of interest, when the activity in question is subject to a system of authorisation or supervision by the entity that the former member of government or former senior civil servant has just left.**

### **Declaration of assets, income, liabilities and interests**

#### *Declaration/disclosure requirements*

111. With a view to preventing conflicts of interest, Article 8 of the code of ethics provides that members of the government must declare the following to the Prime Minister upon taking up office:

- All paid activities undertaken by them in the ten years before their entry into office.
- Any individual financial interests in business holdings, in the form of shares or other securities. It is not necessary to declare mutual funds, as they do not represent a direct interest in business holdings.
- The professional activities of their spouse or partner at the time of taking up office. The type of the professional activity, the title of the position held and, if appropriate, the name of the employer must be declared.

112. In the event of a change in the information provided, the member of the government must update it as soon as possible.

113. A list of the information declared is published as an annex to the biographies of each member of the government on the government's website.<sup>23</sup>

114. Members of the government must also declare their acceptance of any gifts and offers of hospitality in accordance with Article 18 of the code of ethics (see paragraph 95 onwards). These are published in a register kept by the Protocol Department of the Prime Minister. Members of the government must also notify the Prime Minister of any decoration, award or honorary distinction bestowed upon them and, if appropriate, of the money or valuable objects offered to them accordingly (Article 20 of the code of ethics).

115. Members of the government are not required to declare their income, given that they are not permitted to accept any remuneration other than their salary. Nor are they required to declare their liabilities.

116. According to information gathered by the GET, these disclosure requirements appear to be properly complied with by members of the government in practice. The requirement to declare all paid activity undertaken in the ten years before taking up office and all participation in financial activities are both positives. However, members of the government are not required to declare other categories of assets that could give rise to conflicts of interest, such as speculative or income-generating property assets, excluding property

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<sup>23</sup> <https://gouvernement.lu/en/gouvernement.html>

personally occupied by them. Significant debts and in particular their amount, conditions and the identity of the lender, could also give rise to conflicts of interest.

117. Senior civil servants appointed to political positions are not bound by reporting requirements. However, the information to which they have access and the matters they may be called upon to address are virtually as wide-ranging as those that pass through the hands of the ministers for whom they work. The GET is therefore of the opinion that senior civil servants appointed to political positions should be bound by reporting requirements similar to those that are binding on ministers to avoid conflicts of interest.

118. In the light of the above, **GRECO recommends (i) widening the scope of the disclosure and publication obligations of ministers to include speculative and income-generating property assets and significant debts, as well as considering providing information on their spouses and dependent family members (it being understood that such information would not necessarily need to be made public) and (ii) introducing a system of disclosure for senior civil servants appointed to political positions similar to that which is binding on ministers.**

#### *Review mechanisms*

119. There is no specific entity dedicated to auditing the information declared by members of the government. By signing the disclosure form, members of the government certify that the information contained therein is true and complete. The publication of that information on the Internet allows the public to verify its accuracy and to report any irregularities to the public prosecutor, the parliament or the press. Political consequences aside, if a member of government were to make a false declaration, he or she would face criminal charges and be prosecuted for falsification.

120. According to the Luxembourg authorities, at the time of writing, no irregularities in the declarations of members of the government have been discovered, reported to the public prosecutor or published in the media.

### **Accountability and enforcement mechanisms**

#### *Criminal proceedings and immunity*

121. Ministers have certain privileges of prosecution and jurisdiction, except in matters involving crimes that fall within the jurisdiction of the International Criminal Court. As such, they can only be indicted by the Chamber of Deputies and judged by the Supreme Court of Justice sitting in full court (Article 116 of the Constitution). The decisions of the Supreme Court of Justice are subject neither to ordinary appeal nor to an appeal for cassation. Following indictment, the rules governing the investigatory and examining stages of preliminary proceedings involving ministers are those of ordinary law. The Chamber of Deputies has the same prerogatives as an investigating judge but, in practice, leaves the judiciary to carry out the investigation and examination. Once this stage has come to an end, the Chamber of Deputies must simply decide whether to indict the minister under scrutiny.

122. The GET considers that the current rules are problematic on two accounts. First, they give rise to shortcomings in the prosecution procedure. By assigning the prerogative of

indictment to the Chamber of Deputies, they give this Chamber a judicial role at odds with the way it functions in Luxembourg's system. In a case heard in 2012, it was decided within the Chamber of Deputies itself that the Chamber was not fit to indict a minister because it was not a court. The rules are thus not workable as they stand. Although it is understandable that the requirement to obtain authorisation before instigating criminal proceedings could be considered, as it is in many countries, to be a necessary step in guaranteeing that prosecution is not carried out for political ends, assigning that authorising power to a judicial, non-political body, such as a high-level court, is an example of best practice that could be promoted here. The GET notes that work is under way on a draft constitutional reform that would transfer the power to instigate criminal proceedings against ministers, even after their term of office, to the public prosecutor. It has not yet been determined in which court such cases would be judged.

123. Secondly, the privileges of prosecution and jurisdiction enjoyed by ministers extend to acts performed outside their official capacity. The GET is of the opinion that the scope of those privileges is thus far too wide. Therefore, **GRECO recommends that the powers of prosecution and jurisdiction in matters involving ministers be assigned to a judicial authority.**

124. Senior civil servants appointed to political positions enjoy no immunities and are not subject to special criminal procedure. The Code of Criminal Procedure requires public officials to notify the state prosecutor without delay of any offence they become aware of (Art. 23).

125. In the last five years, no minister has faced criminal prosecution or has been suspected of committing a criminal offence. A corruption case in which several civil servants and state employees were implicated for acts committed between 2002 and 2007 was recently decided at first-instance level. The senior civil servant implicated in the case was handed a suspended prison sentence of four years and ordered to pay a fine of 130,000 Euros.

#### *Non-criminal accountability mechanisms*

126. There are no special non-criminal accountability mechanisms in place for PTEF. The Ethics Committee, at the Prime Minister's request, may determine whether a breach of the code of ethics has occurred, for which ministers may be liable politically. Written opinions of the Ethics Committee pointing to breaches of the code of ethics must be made public.

127. According to the authorities, no breach of the rules contained in the code of conduct has ever been reported. No alleged or confirmed cases of corruption or associated misconduct involving PTEF have been reported in the last five years.

128. The GET's doubts concerning the narrow role of the Ethics Committee have already been expressed above. Given that the Ethics Committee may only be called upon to examine a case at the Prime Minister's request, it is likely to be consulted only if a minister's breach of the code of conduct becomes known to the public, forcing the Prime Minister to act. This is yet to happen, doubtless as a result of the absence of mechanisms monitoring ministers' compliance with their obligations. All persons consulted by the GET agreed that, as things stand, compliance with the code of conduct is contingent upon the self-discipline of members of the government. This is clearly inadequate, as pointed out by a considerable

number of the GET's talking partners. GRECO has, on a number of occasions and particularly in its Fourth Evaluation Round reports, highlighted the importance of establishing mechanisms to monitor compliance with ethical obligations – including disclosure requirements – and to impose sanctions for violations thereof. **GRECO therefore recommends the establishment of a reliable and effective monitoring and enforcement mechanism for breaches of the rules of the code of conduct applicable to members of the government and breaches of any future code of conduct applicable to senior civil servants appointed to political positions.**

129. Senior civil servants appointed to political positions are subject to the disciplinary procedures established in Articles 44 to 79 of the civil service regulations. These sanctions range from a formal warning to dismissal. The Government Commissariat for Disciplinary Investigation issues an activity report every year in which it presents an anonymised summary of the cases brought before it. To preserve anonymity, the acts for which the cases were brought before the Commissariat are omitted. The Commissariat's report, part of the activity report of the Ministry of the Civil Service, is published online.<sup>24</sup>

130. In recent years (2011-2017), 38 cases involving high-ranking members of government staff have been brought before the Commissariat, 11 of which involved members of government staff in management positions. None of those cases involved corruption. Proceedings were instigated against two PTEF in three cases involving associated misconduct, including stealing from the workplace, misappropriating funds, fraud and falsification.

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<sup>24</sup> <http://www.fonction-publique.public.lu/fr/publications/circulaires-rapports/index.html>

## V. PREVENTING CORRUPTION AND PROMOTING INTEGRITY IN LAW ENFORCEMENT AGENCIES

### Organisation and accountability of law enforcement/police authorities

#### *Overview of various law enforcement authorities*

131. The Grand Ducal Police is the only police force which has national competence in Luxembourg. It was set up on 1 January 2000 by the amended Law of 31 May 1999 on the Police and the General Police Inspectorate, following the merger of the two previously existing police forces, ie the *Gendarmerie Grand Ducale* and the *Police Grande Ducale*. The Grand Ducal police force currently comprises some 2,100 persons, including both police officers and administrative staff. They are responsible for maintaining law and order, including with regard to migration and border controls, under the authority of the Minister for Internal Security.

#### *No. of police employed by the Grand Ducal Police*

Position	Total number	Percentage of women
Senior police officer	73	21.91
Inspector	1 485	12.65
Sergeant	252	3.57

#### *Breakdown of administrative and technical staff employed by the Grand Ducal Police*

Position	Total number	Percentage of women
Research officer	16	0
Attaché	5	60
Psychologist	2	50
Administrator	14	0
Technical manager	2	0
Technical writer	7	42.8
Shipping clerk	5	100
Craftsman	18	0
Grade A1	24	33.3
Grade A2	11	27.3
Grade B1	38	73.7
Grade C1	45	62.2
Grade D1	43	65.1
Grade D2	4	75
Grade D3	3	0
Total	237	47.3

132. Women have only been recruited to the police since 1982, which according to the Luxembourg authorities, explains their low numbers as a percentage of all employees, particularly in the higher grades. They point out that since the latest reorganisation of the police in 2000, an equal number of women and men have been recruited. There are

currently no regulations to foster the recruitment of the under-represented sex to a specific post or grade. The GET encourages the Luxembourg authorities to introduce such regulations, for example in the context of the current reform of the police (see below).

133. The Grand Ducal Police is organised in a hierarchical manner. It is headed by a Director General, assisted by two deputy directors. It comprises a directorate general, central departments and regional departments.

134. The central department includes the following operational services: the criminal police department; departments whose tasks are to provide support at national level or in specific cases, for example guard services, protection, special intervention and traffic supervision, air police; the police academy.

135. The national territory is subdivided into six regional police districts, which make up the regional services. Each regional district, managed by a regional director, comprises a variable number of local police stations, dealing with local work and crime prevention, and intervention centres, dealing mainly with emergencies. Each of these also has a criminal research and investigation department and departments responsible for traffic supervision, environmental police work, relations and coordination of police work with the municipalities, as well as assistance to victims.

136. The criminal police departments are also divided into two levels: a central level, the criminal police department (SPJ), and a regional level, the criminal research and investigation services (SREC). In principle, the SREC are responsible for regional criminal affairs and the SPJ for national and international criminal affairs. But the interviews held in Luxembourg revealed that, in practice, it was difficult to make this distinction between cases. Consequently, cases are currently divided up according to field of expertise: burglaries for example are dealt with by the SREC whereas the SPJ deals with corruption. Under the police reform currently taking place, and with a view to addressing these concerns, the SPJ will be national, with three regional branches, under the authority of the director of the SPJ.

137. During the GET's visit to Luxembourg its interlocutors acknowledged that the SPJ did not have enough human or financial resources to make proactive investigations into corruption or economic and financial crimes at national level. The SPJ's resources are used in a reactive manner to deal with requests from the prosecution service and priority is given to cases of international corruption - 100% of such cases are dealt with as soon as they are submitted to the SPJ, to the detriment of national investigations, only 75% of which are undertaken immediately. Since 2015, the SPJ has processed 50 requests for international legal assistance involving some degree of corruption. By way of comparison, 32 cases of corruption with no international elements have been processed since 2002. The SPJ also experiences some difficulties in accessing the financial information it requires for its investigations. In Luxembourg there is no database containing information about company shareholders and at national level there are no lists of clients of life-insurance companies and no legislation making it possible to conduct an "all banks" search without first charging the suspect – which is not the case in respect of requests for international legal assistance. Although the aim of the present report is to prevent corruption within the police, the GET encourages the Luxembourg authorities to make every effort to increase the number of persons assigned to combating corruption within the criminal police services and to facilitate access to financial information.

138. As mentioned above, a [reform of the police](#) and of the General Police Inspectorate (government bills nos. 7044 and No. 7045) is currently being prepared. A government bill was approved by the Government Council on 29 July 2016 and submitted to Parliament. In addition to the above-mentioned police reform, this will also lead to territorial reorganisation, a strengthening of the administrative police, a reappraisal of posts to bring them into line with those in civil service and an enhanced role for the General Police Inspectorate in investigating disciplinary matters. It will also ensure that the police have their own rules and regulations concerning discipline.

139. As regards organisation, administration, investigation and discipline, the police come under answerable to the Minister for Internal Security. Consequently any instructions which the Minister of the Interior or the Minister of Justice might give the police in the context of their respective missions must be communicated to the Minister for Internal Security. On the other hand, in the performance of its criminal police duties, the Police is directly answerable to the judicial authorities and in particular the public prosecutors.

140. The Minister for Internal Security cannot in any circumstances give the police instructions that are negative or propose that they refrain from taking action. This principle derives from the Constitution and from Article 19 of the Code of Criminal Procedure, which provides solely for the possibility of issuing positive instructions. The minister may issue positive orders in administrative police matters and take political decisions in the context of internal security strategy. In criminal police matters, the Minister of Justice must issue positive instructions and address them to the State Prosecutor General. The relevant texts also stipulate that a work programme must be drawn up by the Director General and submitted to the Minister for Internal Security for approval. This provision, which derives from a reform of the civil service which came into force on 1 October 2015, has, however, not yet been applied. Finally, the police is fully independent with regard to how it operates and the Minister for Internal Security does not interfere with its day-to-day administrative management. All of those to whom the GET spoke confirmed that police independence was respected in practice.

#### *Access to information*

141. Under existing legislation, persons seeking access to administrative documents must show that they have a direct personal interest in such documents. In the first part of this report (see paragraph 61) GRECO has made a recommendation that the principle of the transparency of administrative documents be enshrined in the law and that everyone have right of access to public documents. A government bill (no. 6810) currently under discussion in Parliament would satisfy this recommendation (see paragraph 60).

142. Each year the Director General of Police presents a report on the activities of the criminal police and on the problems encountered to the State Prosecutor General and to the Minister for Internal Security. Statistics are presented at a press conference and the report is published on the portal of the Grand Ducal Police.

143. In the framework of its activities, the police also prepares non-public judicial reports, which are addressed to the relevant judicial authorities, as well as external administrative

reports, which are addressed to the Minister of Interior, who forwards them, where appropriate, to other ministries or administrative authorities.

#### *Public trust in law enforcement authorities*

144. Several studies on trust in the police have been carried out since the reorganisation of the police in 2000. A study on the feeling of insecurity in Luxembourg, including a chapter concerning satisfaction with contact with the police and satisfaction with their work, was carried out in 2007<sup>25</sup>. It showed a rate of satisfaction with contact with the police of between 75% and 83% between 2001 and 2007 and 78% satisfaction in 2007. Satisfaction with the work carried out by the police increased over the period under consideration and rose from 75% in 2001 to 81% in 2007. According to a study on trust in national organisations, carried out in 2015, 82% of the persons questioned said they trusted the police; the police force came second in the ranking of national organisations. International studies, such as the [Global Competitiveness Report \(2015-2016\)](#), confirm this high level of trust. The [Special Eurobarometer on corruption \(2013\)](#) shows that a smaller proportion of Luxembourg nationals (31%) than the EU average (36%) think that bribes and abuse of authority are rife among the police .

#### *Trade unions and professional organisations*

145. Six trade unions and professional associations exist within the Grand Ducal Police, the highest number of members being the *Syndicat National de la Police Grande Ducale de Luxembourg* (SNPGL), which mainly represents the two most numerous groups of employees ie inspectors and sergeants.

### **Anti-corruption and integrity policy, regulatory and institutional framework**

#### *Regulatory framework*

146. The legal framework governing the employees of the Grand Ducal police is fixed by the amended Law of 16 April 1979 establishing the status of civil servants (hereinafter referred to as the civil service regulations) and the amended law of 16 April 1979 on discipline in the security forces. Each of these texts contains an article prohibiting the police force from soliciting or accepting bribes. The Law of 13 February 2011 also increases the means of combating corruption by adding an article to the civil service regulations, stipulating that no action can be taken against whistleblowers. In 2006, a Grand Ducal Police Charter of Values was published, which mentions corruption in one of its articles.

#### *Institutional framework*

147. The General Police Inspectorate (hereinafter IGP), which was set up when the law enforcement agencies were reorganised in 1999, is responsible for preventing and investigating corruption among the police. As part of its prevention work, the IGP takes part in basic and in-service training and carries out studies and audits<sup>26</sup> at the request of the

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<sup>25</sup> TNS ILRES, 25 July 2007, image of the Grand Ducal Police

<sup>26</sup> For example it carried out a study on over-indebtedness in the police and another on public procurement in the police.

Minister for Internal Security, the Minister of Justice or the State Prosecutor General. The IGP also carries out inquiries and investigations into cases of corruption involving members of the police (civilians or police officers). At present it does not have any authority with regard to discipline but it is kept informed of any proceedings and convictions. Every year it draws up a report on police discipline.

148. The IGP is an independent body quite separate from the police, for whose oversight it is responsible. It is answerable to the Minister for Internal Security where monitoring lawfulness and quality is concerned and to the judicial authorities with regard to criminal issues. The IGP is headed by an Inspector General jointly appointed by the Minister for the Civil Service and the Minister of Justice for a renewable seven-year term of office. This post can be held by a senior police officer or a senior civil servant working for the administrative authorities who meets the requirements in terms of length of service and qualifications. The current Director of the IGP is a former member of the judiciary.

149. With the exception of the Inspector General, the members of the IGP are seconded from the police. It has 21 members of staff, including three civil auditors and 11 criminal investigators, most of whom are former members of the criminal investigations units of the Grand Ducal Police. It has a budget of some 136 000 Euros and its members' salaries are currently paid out of the police budget. It is responsible for monitoring legality by means of administrative investigations, for quality control and for judicial investigations.

150. The planned reform of the IGP (government bill no. 7044), which is currently in progress parallel to the police reform, is aimed at strengthening its role in disciplinary matters and at increasing its independence from the police. It is envisaged that the IGP will carry out all disciplinary investigations at the request of the Director General of Police. It will not have authority to impose penalties. The Inspector General will have to be recruited from among judges who have at least fifteen years' experience and the IGP will have its own budget and its own staff, who will no longer be able to work as police officers (principle of "no return"). The IGP will be directly answerable to the Minister for Internal Security.

151. The IGP is a relatively recent institution and a positive element in the mechanism for fighting corruption in the Luxembourg police. All the more so since the authorities have become aware of the problems of the independence and effectiveness of this institution, linked in particular to difficulties in recruitment, exchange of staff between the police and the IGP and a lack of resources. Steps have been taken to remedy these problems, such as the appointment in 2015 of a former judge and not a former police officer as Inspector General. The current reform is the outcome of this process and is aimed at ensuring that the IGP is independent of the Grand Ducal Police both as a body and in its functioning. The GET believes that the reform is undeniably a step in the right direction, particularly where the conditions for the recruitment of the Inspector General are concerned and the intention of ensuring that this institution has its own staff and budget. Granting the inspectors of the IGP the status of criminal investigators is also positive as it allows them to instigate criminal investigations without first having to refer to the public prosecutor's office, thereby improving their effectiveness.

152. The GET wishes nevertheless to point out that the IGP must be given sufficient human and material resources to allow it to carry out its work. These seem to be relatively limited given the current activities of the IGP, whose staff only amounts to approximately 1%

of the total number of police officers they are required to oversee, an operating budget of less than 100 000 euros and a limited investment budget. These limited resources might explain why the IGP is currently more reactive than proactive. Indeed it instigates only a very small number of the investigations into corruption and most of them are passed on to it from the police or the prosecution service. If, as provided for in the reform, the IGP is entrusted with conducting all disciplinary investigations involving a police officer, its resources will have to be increased and that should enable it to have a more proactive approach in detecting corruption in the Grand Ducal Police.

153. The GET also notes that there are currently a number of shortcomings in the recruitment and training of members of the IGP, which do not seem to be addressed by the reform. No specific procedure has been established for selecting candidates for posts in the IGP and the GET has discovered that, in the past, some posts were filled through cronyism or as a means of getting rid of certain people who had difficulties in the department where they were originally working. Moreover, the members of the IGP do not receive any special training in integrity and preventing corruption. This is a particular cause for concern given that, once the reform has been completed, the IGP will be responsible for training police officers in ethical conduct.

154. In view of the above, **GRECO recommends (i) that the General Police Inspectorate be given the necessary resources to perform its tasks and (ii) that appropriate methods be established for recruiting qualified staff of integrity and training them.**

*Anti-corruption and integrity policy, risk management measures for corruption prone areas*

155. The Grand Ducal Police has no anti-corruption and integrity policy. Nor is the police currently carrying out any systematic preventive analysis of police departments or of situations where there are risks of corruption. The authorities have stated that, in cases of petty corruption, although there are many opportunities, the amounts are low and the risks of detection high. The risks are also limited by the "four eyes" principle, as police officers usually work in pairs. According to the authorities, the risks of large-scale corruption are limited by the fact that decisions are never taken by a single person and because there is external oversight. Moreover, the size of the country means that the operational units are, as a rule, involved in major acquisitions, with the result that the persons involved in the decisions change according to the case.

156. As indicated above, the Grand Ducal Police have a positive image and the public trust them. The small number of cases of corruption that occur in the police appear to be isolated. Notwithstanding this finding, the GET is of the opinion that the police should step up their efforts to prevent corruption within the force, as no such efforts are currently being made. The police consider corruption to be a general offence, to be dealt with in the same way as all other criminal offences and it generally takes a reactive rather than a proactive approach. No analysis has been undertaken in Luxembourg of the specific characteristics of corruption, which seldom comprises mere bribery. The GET has been informed that some criminal offences committed by the police may have entailed some form of corruption, but this has not been followed up. It firmly believes that further steps need to be taken to better assess the risks of corruption and breaches of the integrity in the profession and to strengthen the determination and the capacity to address existing problems in this field. **GRECO recommends that risk management be improved within the police force, by devising a plan**

**for gathering intelligence which will help identify problems, new trends in corruption and breaches of integrity, combined with a mechanism of regular assessment with a view to reducing or eliminating the risks identified.** Such efforts must go hand in hand with improvements in in-service training on all forms of corruption (see recommendation in paragraph 167).

#### *Handling undercover operations and contacts with informants and witnesses*

157. Undercover operations are regulated by the Code of Criminal Procedure (Art. 48-17 to 48-23). Informants are, as a rule, paid in cash but a series of safeguards exist to avoid abuse. The amounts which can be made available to pay an informant are placed on a bank account in respect of which only the State Prosecutor General has the signature. If it is decided internally to pay an informant, the amount agreed on is transferred to another account to which the police officer responsible for dealings with informants ("the controller") has access. The amount is then withdrawn from the account in cash and handed over to the police officer in contact with the informant (the "handler"), in the presence of a second officer involved in the case ("four eyes" principle). If the sum to be paid is higher than 3 000 Euros, the controller must be present when the money is handed over.

158. The informant acknowledges receipt of the money and the handler passes on the receipt to the controller, who has at his disposal a specimen of the informant's signature. The controller also draws up a receipt for the handlers, who indicate the informant's code number and the investigation reference number used by the police and the prosecution service. Informants cannot receive payment unless their name is entered in a register, under the written authorisation of the judge in charge of overseeing the handling of informants.

#### *Ethical principles and codes of conduct*

159. The [Charter of Values of the Grand Ducal police](#) was published in January 2006. It was drawn up by the Directorate General of Police, with the agreement of staff associations, on the basis of the Council of Europe "European Code of Police Ethics". The charter comprises 15 articles. It is not in itself directly binding and there are no specific arrangements for its implementation. According to the replies to the questionnaire, its binding nature derives from the application of the law on discipline in law-enforcement agencies, which imposes "irreproachable conduct both during and outside working hours" (Art. 2). The charter is available on the Intranet of the Grand Ducal Police and is presented in the preamble to the compilation of service regulations.

160. The Charter of Values is a first step in the right direction and is to be welcomed. In particular it mentions impartiality and incorruptibility (Art. 6), prohibition on obeying an order whose execution constitutes a crime or an offence (Art. 12), as well as basic and in-service training (Art. 4). This first step must however be taken further, particularly as in Luxembourg there is no code of conduct for the whole civil service which police officers could also consult.

161. The GET underlines the interest for the Grand Ducal Police of having a set of clear, specific ethical rules, illustrated by examples or explanations, which would not only provide it with valuable guidance on ethical issues but would also serve to inform the public of existing rules and regulations. This instrument, which should be jointly prepared by the

management, the employees, the trade unions and other stakeholders, should take account of the specific risks of corruption that police officers may encounter, as identified in the context of the risk management policy recommended above. Finally, in keeping with Recommendation Rec(2001)10 of the Committee of Ministers to Member States on the European Code of Police Ethics, such codes should be "overseen by appropriate bodies". The IGP could be such a body, once the reform has been completed. That would also require that measures can be taken to address situations where a police officer fails to comply with the obligations enshrined in the code.

162. Consequently, **GRECO recommends (i) that a code of conduct for the Grand Ducal Police be adopted and published, with concrete examples and explanations regarding the conduct expected of police officers and (ii) that it be accompanied by credible and effective oversight and enforcement.**

#### *Advice, training and awareness*

163. During the basic training of new police recruits, a course on ethical conduct is taught at the Police Academy. The course lasts 12 hours for future inspectors and 10 hours for future sergeants. It is compulsory and is one of the subjects that must be studied in preparation for the final exam for admission to the police. The subject of ethical conduct, in particular the acceptance of gifts and advantages, and conflicts of interest, is also addressed in a cross-sectoral manner in several other courses, for example those concerning the conduct of investigations, the Criminal Code and the Code of Criminal Investigation. In recent years values have also been one of the cross-sectoral and vertical themes addressed during initial training.

164. In-service training does not currently comprise any courses on ethical conduct. This situation should change once the government bills on the reform of the police and the General Police Inspectorate have been enacted, given that the latter will officially become the main trainer in police ethics and human rights.

165. Police officers may refer to their superiors or to the legal department of the Directorate General of Police if they wish to obtain advice on appropriate conduct. In practice they often turn to the human resources department, which, in case of doubt, contacts the legal department. The GET was also informed that the prosecution service had sometimes been contacted by police officers in the event of an ethical dilemma. The questions raised generally concern acceptance of hospitality, whether certain additional paid activities are compatible with their post, and political commitments. The GET thinks that it would be more appropriate if an expert body or persons with no daily contact with law enforcement officials were responsible for providing confidential advice to police officers in the event of an ethical dilemma. Such a body could be established by the future code of conduct.

166. The GET finds the basic ethical conduct training arrangements satisfactory. The regular publication of study materials on the Intranet of the Grand Ducal Police is a good practice that is welcome. Of course the code of good conduct whose adoption is recommended above should, in due course, be incorporated into the training provided in the form of practical discussions, workshops and case-studies.

167. However, the fact that there is currently no in-service training in ethical conduct is undeniably a problem. The GET has learnt that the themes taught each year in the context of the four hours' compulsory in-service theoretical training are chosen on the basis of a survey among senior police. This responds to needs in the field but raises the risk that ethical subjects take second place. The prevention of corruption is like a vaccination and boosters are regularly required. The more important role to be played by the IGP in ethical training as a result of the current reform will certainly make it possible to include more of the practical problems it has noted in its training programme. More generally speaking, a pluriannual identification – and not merely annual as is currently the case – of in-service training needs will help to ensure that a wider range of training needs are met in rotation and should remedy the absence of ethical conduct as a training subject in recent years. Consequently, **GRECO recommends (i) that a pluriannual programme of in-service training for police officers include ethical training and (ii) a mechanism be introduced for providing confidential advice to police officers with ethical dilemmas and issues.**

## **Recruitment and career**

### *Employment regimes*

168. The police force comprises police officers and administrative and technical staff. The former comprise senior officers, inspectors and sergeants. The administrative and technical staff consist of civilian staff responsible for performing non-police duties. In addition, senior and middle-management civilian staff with civil servant status and career contractual staff of grades A1, A2 and B1 may be called on to perform criminal police duties provided that they have been assigned to one of the sections or units of the criminal police department.

169. Under the Constitution, police officers of the Grand Ducal Police have military status. They are subject to the Military Criminal Code and the amended Law of 16 April 1979 on discipline in the security forces. However, since the establishment of the current police force in 2000, military grades have been replaced by civilian grades.

### *Appointment and promotion procedure*

170. Senior police officers are appointed and promoted by the Grand Duke on the recommendation of the Government Council. Other staff are appointed and promoted by the Minister for Internal Security, who assigns them to or from posts. To be appointed, they must meet the admission requirements for their respective career paths, which are set out in the Grand Ducal regulation of 27 April 2007 establishing the conditions for recruitment, instruction and promotion of police personnel. Examinations for admission to the police or certain police departments are conducted by examination boards, the members of which are appointed by the minister. There is a provision that board members may not be involved in examinations in which blood relatives or relatives by marriage of up to the fourth degree take part.

171. There are separate career paths for police officers. Candidates for each one must pass a competitive entrance examination. The examinations and the marking coefficients vary depending on the career paths, but all include aptitude or knowledge tests, psychological tests and a sports test. At least one interview is also conducted. Candidates are ranked according to the results obtained, within the limit of the number of posts to be filled,

which is determined before the examinations by the Minister for Internal Security. The regulation of 27 April 2007 also makes provision for recruitment by competitive examination for admission to the criminal police department and the airport border guard force.

172. One of the criteria for being allowed to take the competitive examinations is to provide the necessary evidence of good character. That is assessed on the basis of copies of criminal records provided by the candidates. In addition, the Minister for Internal Security sends the list of candidates who meet the admission requirements for further checks in police records. These checks concern any offences which have not yet led to final criminal convictions and any drug offences. Moreover, the Administrative Court has ruled that the necessary confirmation of good character is not confined solely to consideration of criminal offences and that the minister is not bound by the assessments of misdemeanour courts. Candidates may appeal against the relevant decisions.

173. Candidates then undertake theoretical and practical training lasting one year (for sergeants) to two years (for inspectors and senior officers). Under the reform process, the period of initial training for inspectors and senior officers will be increased to three years. Part of the theoretical or practical training takes place abroad. Upon completion of training, the candidates are ranked on the basis either of the marks achieved during training (inspectors) or of a leaving examination (senior officers and sergeants). This determines their appointment to the grade of sergeant or deputy inspector, and the seniority ranking for senior officer career paths.

174. Promotion is usually automatic on the basis of seniority, but there is also provision for promotion examinations for promotion to certain grades. Promotion from sergeant to inspector and from inspector to senior officer positions is also by examination. Appraisal also plays a part in appointment to certain posts or grades, in particular for the appointment of heads of department/positions of particular responsibility (since 2015).

175. It is the view of the GET that the rules on recruitment of entry-level police officers are clear and include sufficiently extensive checks on integrity, which is to be welcomed. Promotion is mainly based on seniority, although there is a declared intention to take greater account of the results of appraisal and of officers' skills, in particular under the reform process. However, there are no checks on the integrity of candidates in the case of promotion or, more generally, throughout police careers. In the GET's view, this is a shortcoming from the point of view of preventing corruption. Integrity risks affecting police officers and/or attempted corruption may also occur after recruitment during day-to-day duties and it is important that they be taken into account. Therefore, **GRECO recommends that integrity checks be introduced not only in the case of promotion decisions but also at regular intervals throughout police careers.**

#### *Performance appraisal*

176. An appraisal system was introduced in the civil service regulations in 2015. It is designed to assess both work performance based on the skills set out in job descriptions and also the achievement of individual work targets. Staff have appraisal interviews with their line managers during the last three months of each reference period, which, in principle, is three years for police officers in post and one year for trainee police. Following the

interviews, line managers submit reasoned draft written appraisals to heads of department, including the comments of the appraisees. The reasoned decisions by the heads of department are communicated to the appraisees in writing.

177. Staff with the best appraisal rating (four on a scale of one to four) are granted three days' additional leave. Appraisal rating two entails a recommendation to undergo training in the areas deemed to be inadequate. Rating one triggers a skills improvement procedure. If that procedure fails, an underperformance procedure is triggered, which may lead to moves, transfers or dismissal.

#### *Rotation and mobility*

178. There is no system of regular or periodic rotation in the police force. The GET encourages the Luxembourg authorities to give consideration to introducing a measure of this kind for certain high-risk posts that may be identified in connection with the improvements to risk management recommended in this report.

179. Police officers may be moved to new duties or assigned to new posts at their request or in the interests of the service. In the former case, the decisions are taken by the heads of the relevant administrative departments and, in the latter, by the authority with responsibility for making appointments (Minister for Internal Security or the Grand Duke for senior positions).

180. Internal transfers within the police are based on the publication of vacancy notices in internal memorandums. The notices indicate the requirements to be met, which may involve seniority or grade. A general rule within the police is that after accepting new posts, individuals may not request fresh transfers for three years. However, some exceptions are made to the rule in the interests of the service or for personal reasons.

#### *Termination of service and dismissal from office*

181. Termination of service occurs when the individual concerned reaches retirement age or resigns voluntarily, or ex officio upon loss of nationality or civil and political rights or dismissal (Art. 38 and 40 of the civil service regulations). Dismissal is a disciplinary measure. It is ordered by the appointing authority, ie the Grand Duke in the case of senior officers and by the Minister for Internal Security in the case of inspectors and sergeants. Dismissed police officers may appeal to the Administrative Court, which rules as trial court. Dismissal is automatic when police officers are sentenced to prison terms exceeding one year or deprivation of all or some of the rights listed in Article 31 of the Criminal Code.

#### *Salaries and benefits*

182. Police salaries are determined by the amended Law of 25 March 2015 establishing the remuneration system and promotion conditions and procedures for civil servants. They are supplemented by on-call and military regime allowances, which are considered part of the salaries because they are linked to police status and are paid to all members of the police force, regardless of their duties.

ENTRY-LEVEL SALARY	MONTHLY (INDEX POINTS*)	ON-CALL (INDEX POINTS)	MILITARY (INDEX POINTS)	TOTAL	GROSS MONTHLY (EUROS)	GROSS ANNUAL (EUROS)
SERGEANT	142	22	35	199	3 765.66	48 953.53
INSPECTOR	156	22	35	213	4 030.58	52 397.50
SENIOR OFFICER	320	0	15	335	6 339.17	82 409.22

\*: 1 index point = 18.9228970 Euros (reference date: 1.4.2017)

183. Salaries increase throughout police members' careers, depending on step and grade advancement. Step advancement is automatic by seniority. Grade advancement is by seniority or promotion. The appraisal system does not influence remuneration directly. It may, however, have an indirect impact insofar as the lowest performance rating triggers an underperformance procedure which may result in demotion to a lower grade. Similarly, appraisal plays a part in decisions to appoint police officers to positions of particular responsibility, which entail step advancements.

184. All police also receive a clothing allowance and some are provided with accommodation. Police housing is, however, gradually being discontinued, following a government decision to end the requirement for police to live near their squads and hence the corresponding right to accommodation. Lastly, those working in the criminal police department, the regional criminal investigation and research departments and the technical police receive an allowance of 15 index points to cover expenses relating to investigative duties.

### Conflicts of interest

185. To prevent conflicts of interest, police officers are subject to rules on outside activities, which must be declared and authorised (see below). In the case of ad hoc conflicts of interest, Article 15 of the civil service regulations lays down the rules on refraining from action and also applies to the police. Officials must inform their line managers when they "may have a personal interest which may compromise their independence" in cases which they are required to deal with in the course of their duties. Line managers must remove officials from the cases if they believe that there is a risk of the latter's independence being compromised. Police officers who fail to refrain from acting in cases in which they have a private interest are liable to disciplinary or criminal penalties (offence of unlawful taking of an interest).

186. The GET acknowledges that Article 15 of the civil service regulations does in itself deal with cases of recusal and refraining from action, even though the authorities have not indicated any specific cases of the application of the rule. Nevertheless, it is worded very generally and does not include any clarification regarding particular scenarios such as family or conjugal ties, for instance. The possibility of personal ties between members of the criminal police and lawyers defending persons under investigation should also be examined. Fleshing out the general rule laid down in Article 15 would therefore help to clarify, for police officers and their line managers, those cases in which they must refrain from action. This could be done by statute or in the future code of conduct. Accordingly, **GRECO recommends that the rules on abstention be defined more clearly by including specific criteria, in particular marital and family ties.**

## **Prohibition or restriction of certain activities**

### *Incompatibilities, outside activities and financial interests*

187. There are no specific incompatibilities concerning duties of members of the police. The only incompatibility rule is set out in the civil service regulations (Art. 17), under which civil servants may not be members of parliament.

188. The exercise of any paid activity must be authorised beforehand by the Government Council (Art. 13 of the Law on discipline in the security forces). In practice, requests are submitted to the human resources directorate of the Grand Ducal Police, which forwards them to the Ministry for Internal Security with a view to approval in cabinet. There is no explicit verification procedure for authorisation requests; however, if the human resources directorate believes that the activity may give rise to a conflict of interest, it seeks additional information from the requesters. If doubts persist, it forwards the requests with the recommendation that they be refused.

189. The GET notes that conflicts of interest may also arise from the exercise of unpaid activities which are not subject to prior authorisation by the relevant minister. While the general rule in Article 15 of the civil service regulations could be used to deal with that eventuality, the GET nevertheless encourages the authorities to clarify this point in the future code of conduct. It would also be useful for the code to clarify the position of the Grand Ducal Police regarding the exercise of political activities. Apart from the above-mentioned incompatibility with membership of parliament and the duty of discretion in the exercise of their duties (Art. 11 of the Law on discipline in the security forces), it seems possible for police officers to combine their duties with paid political activities, subject to government authorisation.

190. There are some exceptions to the requirement for declarations and prior authorisation in the case of scientific research, the publication of books and articles, artistic activity and trade union activity.

191. According to the information provided during the on-site visit, there seem to have been few authorisation requests for outside activities and practice in terms of granting authorisation has traditionally been restrictive. Nevertheless, the GET's discussion partners were perplexed by the authorisation granted recently to a police officer to work on a half-time basis to open a clothes shop and then a grocery. The GET is similarly perplexed. This case nevertheless seems to be an exception in a system which would appear to work well in general and was resolved by the police officer's placement on unpaid leave.

192. Under the regulations, the notification requirement also applies to the professional activities of police officers' spouses (Art. 13.4 of the civil service regulations). If the latter activities are incompatible with the police officers' duties and the police officers cannot guarantee that they will end by a given deadline, the appointing authority must decide whether the police officers should remain in their posts, whether their places of residence, their duties or assignments should be altered or whether they should be dismissed ex officio. In practice, however, this requirement no longer seems to apply. The GET encourages the authorities to clarify the need for and scope of the rule. If it is no longer wanted, it

encourages them to repeal it so as to clarify police officers' legal obligations and prevent obsolescent rules persisting in the Luxembourg legal order.

193. There are no specific regulations on the holding of financial interests, provided they do not compromise the independence of officials (Art. 13 of the Law on discipline in the security forces). That would apply, for instance, if an investment gave a police officer real decision-making authority in the business concerned.

#### *Gifts*

194. There are no explicit rules governing the acceptance of gifts. This shortcoming was already highlighted by GRECO in the [Second Evaluation Round report](#) regarding civil servants and covered in part of a recommendation, which was not implemented on this point. The GET nevertheless noted that, in practice, the principle of the prohibition of gifts seemed clear for all the discussion partners it met in the country. The issue also appears to be addressed during training. The ban on police officers accepting any gifts or invitations should nevertheless be explicitly set out by statute or in the future code of conduct. Therefore, **GRECO recommends that the ban on accepting any gifts be set out in writing.**

#### *Misuse of public resources*

195. The misuse of public resources is not a specific punishable offence. The Law on discipline in the security forces does nevertheless include a provision that items which police officers are entrusted with in the interests of the service may not be removed without the permission of their line managers. The authorities also state that the general principles of military discipline (Art. 2 of the Law on discipline in the security forces) should apply to most types of conduct. In addition, some articles of the Criminal Code, for instance concerning embezzlement (Art. 240), destruction of deeds and documents (Art. 241 and 242) and breach of trust (Art. 491), might apply.

#### *Third party contacts, confidential information*

196. There is no specific provision governing third party contacts outside official procedures. If the purpose of the contacts is to influence police officers' actions, the police officers are liable to disciplinary or criminal penalties. Cases where police officers are required to carry out procedures involving individuals with whom they have private contacts are harder to deal with. Article 15 of the civil service regulations on ad hoc conflicts of interest applies and should result in police officers refraining from carrying out the procedures themselves. The data provided by the IGP refer to some cases, mainly involving expenses charged to the state budget for no real reason, the payment of excessively high allowances or the declaration of overtime not actually worked.

197. The police are all bound by professional secrecy. The confidentiality of investigations also applies in the case of judicial investigations. Lastly, data protection legislation applies, meaning that the transmission of information constitutes data processing, which is permissible only for lawful purposes. The data provided by the IGP refer to several cases of breaches of professional secrecy every year. They mainly involve police officers passing confidential data to relatives or acquaintances or using such data themselves, for instance in divorce proceedings.

### *Post-employment restrictions*

198. There are no post-employment restrictions. The Law on discipline in the security forces continues to apply to police officers who have left the force, but only if proceedings are brought within six months of their leaving and in respect of serious misconduct which would entail dismissal (Art. 23 of the law on discipline in the security forces).

199. The lack of rules on revolving doors in the public sector was already noted by GRECO in the Second Evaluation Round. In the case of the police, the GET underlines the risks this poses to integrity (offers of jobs as rewards, use of communication channels with former police colleagues for the benefit of new employers, etc.). These risks and the scale of the problem have not been studied in Luxembourg. According to the information gathered by the GET, the practice of moving to the private sector and then possibly returning to the police does seem to exist, in particular by means of unpaid leave, although cases seem to be infrequent. The GET points out that Recommendation No. R(2000)10 on codes of conduct for public officials includes specific guidelines on leaving the public service (Art. 26). In particular, it provides that "the public official should not take improper advantage of his or her public office to obtain the opportunity of employment outside the public service". In order to gain a clearer picture of the scale of the problem and regulate it more effectively, **GRECO recommends that a study be conducted concerning activities by police officers after they leave the force and that, in the light of the findings, rules be adopted to ensure transparency and limit the risks of conflicts of interest.**

### **Declaration of assets, income, liabilities and interests**

200. Police officers are not required to declare their assets, income, liabilities or interests.

201. The GET notes that financial disclosure requirements can play a part in preventing risks of corruption in the police, for instance for senior posts or individuals involved in public procurement, where there may be a greater risk of corruption. Declarations may also be a means of identifying cases of debt problems – which have been acknowledged as possibly existing in the Grand Ducal Police – and introducing social assistance measures. The GET encourages the authorities to examine the issue in connection with the improvements to risk management recommended above.

### **Supervision and enforcement**

#### *Internal oversight and control*

202. In the absence of a police code of conduct, there is no specific internal control mechanism for ethical obligations either. In general, internal control is performed by line managers, who may if necessary decide that disciplinary measures be taken. The mechanism seems to be more reactive than proactive and, as the GET was told, is "subject to the commitment of line managers". The GET refers to the recommendation in paragraph 162 above on the need to introduce a credible mechanism for supervision of police officers' compliance with their ethical obligations.

203. Disciplinary procedure is described in Chapter IV of the Law on discipline in the security forces. Disciplinary investigations are instituted if line managers have grounds for

believing that police officers have breached their duties. The line managers collect all the incriminating and exonerating evidence capable of helping to establish the truth. Police officers are notified of the allegations against them and have ten days to make submissions and request additional inquiries. Line managers decide whether such requests may be granted. If police officers are suspected of misconduct entailing serious disciplinary sanctions, line managers may suspend them.

204. At the end of the investigations, line managers forward the files with their conclusions to their commanding officers, who may drop the cases, impose sanctions for which they are responsible<sup>27</sup> or forward the files to the armed forces disciplinary board if they believe that harsher penalties are required.<sup>28</sup> The commanding officers report their decisions immediately to the Minister for Internal Security, who may set them aside and impose his/her own sanctions or forward the files to the disciplinary board. All decisions must be reasoned and the police officers concerned must be properly notified. They may appeal against the decisions to the next-highest disciplinary authority or to the Minister for Internal Security in the case of decisions by commanding officers. If these appeals are dismissed, they may appeal to the Administrative Court.

205. The armed forces disciplinary board is required to investigate the more serious cases and make recommendations on the penalties to be imposed by the relevant disciplinary authorities. It is chaired by a court judge. It also comprises a senior government official, an army officer, a senior member of the police force and a senior member of the IGP. They are appointed by the Grand Duke for renewable three-year terms. The board's hearings are not held in public. It investigates the cases, hears the police officers and also experts and witnesses if it deems necessary. Its decisions are taken by majority votes of its members.

206. The authority responsible for imposing disciplinary sanctions – the disciplinary superior – varies depending on the seriousness of the sanctions concerned (Art. 25 of the Law on discipline in the security forces). For most sanctions, several line managers are responsible and the rule is that disciplinary authority is exercised by the direct disciplinary superior (Art. 26).

207. The limitation period for offences not serious enough to warrant the involvement of the disciplinary board is one year. For those requiring the involvement of the disciplinary board, it is three years. After the reform, the limitation period will be three years for all disciplinary procedures.

#### *External oversight and control*

208. As explained above, the IGP is responsible for investigating allegations of corruption involving members of the police. It is also notified of disciplinary proceedings and draws up annual reports on police discipline. Under the ongoing reform of the police and the IGP, it is planned that it will conduct all disciplinary investigations on referral from the Director

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<sup>27</sup> warning; reprimand; arrest; or fine not exceeding one fifth of gross basic monthly salary or average allowance

<sup>28</sup> fine of up to one month's gross basic salary or average allowance; appointment of special commissioners to complete, at the police officers' expense, work which they had not done on time; transfer; suspension of biennial increases for periods of one to three years; deferral of promotion or salary advancement for a maximum of one year; demotion; temporary suspension; compulsory retirement; dismissal

General of Police. It will not have responsibility for issuing sanctions, which will be imposed by the Director General of Police or the Minister for Internal Security depending on their severity.

209. Given that the IGP does not have exclusive powers in judicial matters and still has no disciplinary powers, rather than performing external oversight aimed at detecting inappropriate conduct in advance, it serves as a body that reacts to reports or complaints against police officers. The GET refers to its comments concerning the IGP's current shortage of human and financial resources and to the recommendation set out in paragraph 154 above.

210. Police officers in the criminal police also come under the oversight of the state prosecutor. This oversight, which is confined to breaches of the duties and obligations of criminal police officers, may give rise to warnings and, in the case of more serious breaches or repeated breaches, appearances before the court of appeal. The latter may issue reprimands or order suspensions or withdrawal of criminal police officer status. Its decisions are not subject to appeal.

#### *Public/civil society oversight*

211. Any individuals with knowledge of problems in the police may contact the police, the IGP or the judicial authorities. A "virtual police station" app ([commissariat virtuel](#)) is available for that purpose on the police website. Although the online contact form requires individuals to identify themselves, according to the authorities, it is possible to submit anonymous reports using fictitious data. It is also possible to contact the IGP. According to the information provided to the GET, 47% of the 251 investigation and complaint files dealt with by the IGP in 2015 were based on reports by citizens.

212. Matters of a clearly criminal nature are referred to the state prosecutor, who assesses the action to be taken and may instruct the IGP or the police to conduct investigations. The interviews held in the country showed that these cases are always referred to the IGP. It carries out the necessary investigations, possibly with assistance from the criminal police regarding technical aspects. In the case of disciplinary matters, both the IGP and the police have jurisdiction at present. As explained above, under the ongoing reform, the IGP is to have sole responsibility for disciplinary investigations.

213. Individual citizens' options for formally challenging inaction on the part of authorities responsible for disciplinary inquiries are limited. If they contacted the police first, they can contact the IGP. This presupposes, however, that the conduct reported persists, as they are not officially notified of the action taken on their reports. In the event of reports made to the state prosecutor, they are notified of decisions to discontinue the proceedings if they claimed to be victims and as such, have access to a remedy. Regarding complaints lodged in disciplinary matters, according to the Ombudsman, many citizens have complained about not being notified of the action taken. Citizens appear to have no possibility of appealing to a higher administrative authority if proceedings are discontinued by the IGP or the police. The GET encourages the authorities to systematically inform complainants of follow-up given to their report or complaint.

214. The GET was also informed during the visit that uniformed police officers in Luxembourg do not wear any identification numbers or indications of their names. This may be regarded as a shortcoming, as it makes it more difficult to establish the facts which citizens wish to complain about and may give the police the impression that they enjoy a degree of anonymity. Although there are incident logs which give indications of the identities of the police officers deployed in given areas, citizens believe that the wearing of identification numbers would increase transparency while respecting police officers' privacy. The GET points out that Recommendation Rec(2001)10 of the Committee of Ministers to member States on the European Code of Police Ethics requires police personnel to be in a position to give evidence of their professional identity during interventions. Accordingly, **GRECO recommends that uniformed police officers be individually identifiable, for instance by means of identification numbers.**

#### *Reporting obligations and whistleblower protection*

215. The Code of Criminal Procedure requires public officials (Art. 23) and criminal police officers (Art. 12) to notify the state prosecutor without delay of any offences of which they become aware. Police officers are liable to criminal sanctions (Art. 141 of the Criminal Code) if they fail to do so. Lastly, the Law of 13 February 2011 amending and reinforcing the means to fight corruption introduced into the civil service regulations a provision according to which civil servants may not be subjected to reprisals for giving evidence of or relating such offences (Art. 44bis, paragraph 2). Case-law of the Court of Cassation of January 2018 (see paragraph 14), which recognised that one of the protagonists in the LuxLeaks affair should be protected as a whistleblower by applying strictly the criteria of the European Court of Human Rights (*Guja v. Moldova*, 12 February 2008), also applies to police officers.

216. There is a positive obligation to report conduct of a criminal nature involving police officers. However, in the case of disciplinary matters, the obligation appears only to apply to line managers in relation to their subordinates. The lack of a corresponding obligation is a source of concern from the point of view of police officers sharing responsibility and being fully involved in compliance with standards of ethics and conduct by the Grand Ducal Police. The GET therefore invites the Luxembourg authorities to introduce a requirement for all police officers to report any matters of a disciplinary nature of which they become aware. This could be done in the future code of conduct, the adoption of which is recommended in this report.

217. The GET further notes that in terms of whistleblower protection, there are no specific provisions concerning the police and only the above-mentioned general rule from the civil service regulations applies. This rule on its own seems inadequate, and the GET underlines that whistleblower protection is particularly important in hierarchical organisations like the police, where an informal "code of silence" sometimes prevails. When police officers decide to report a matter, they sometimes prefer to remain anonymous. According to the information gathered by the GET, while anonymous reporting of conduct of a criminal nature does seem to lead to investigations, that does not always seem to be true of anonymous complaints regarding administrative or disciplinary matters. Yet in the absence of adequate rules on whistleblower protection, the number of anonymous complaints may tend to increase. **GRECO recommends that whistleblower protection be improved in the Grand Ducal Police.** Such an improvement could entail for instance dedicated awareness-raising activities for all levels of the hierarchy.

### *Criminal prosecution and immunity*

218. Police officers do not have any immunity or other procedural privileges. They are subject to ordinary criminal procedure.

### *Statistics*

219. The statistics provided by the authorities refer to eight criminal cases in progress or completed over the last five years, in particular involving forgery and use of forged documents. 31 disciplinary inquiries (involving minor misconduct) were conducted over the same period, as were 39 disciplinary investigations (involving more serious matters, which could be referred to the disciplinary board).

## **VI. RECOMMENDATIONS AND FOLLOW-UP**

220. In view of the findings of the present report, GRECO addresses the following recommendations to Luxembourg:

*Regarding central governments (top executive functions)*

- i. **that a framework be provided to govern the direct recruitment of senior civil servants appointed to political positions, particularly in view of the risks private functions carried out before their appointment could cause to the impartiality and independence of public office (paragraph 39);**
- ii. **that a Code of Conduct applicable to senior civil servants appointed to political positions be adopted (paragraph 50);**
- iii. **developing efficient internal mechanisms to promote and raise awareness of integrity matters in the government, including confidential counselling and training at regular intervals for ministers and senior civil servants appointed to political positions (paragraph 56);**
- iv. **that the principle of transparency of documents held by public authorities be enshrined in law, that the right of every person to have access to these documents be guaranteed and that responsibility for monitoring compliance with the rules in such matters be assigned to an appropriate authority (paragraph 61);**
- v. **(i) that detailed rules be introduced on the way in which ministers and senior civil servants appointed to political positions interact with lobbyists and other third parties seeking to influence the government's legislative and other activities; and (ii) that sufficient information about the purpose of these contacts be disclosed, such as the identity of the person(s) with whom (or on whose behalf) the meeting(s) took place and the specific subject matter(s) of the discussion (paragraph 69);**
- vi. **that the rules on abstention by senior civil servants appointed to political positions be defined more clearly by including specific criteria, in particular marital and family ties (paragraph 86);**
- vii. **(i) that the rules on gifts applicable to ministers be improved and (ii) that the rules on gifts applicable to senior civil servants appointed to political positions be clarified (paragraph 102);**
- viii. **(i) that an obligation to inform, during a set period, an appropriate body of any new professional activity undertaken should be established for all former members of the government and former senior civil servants appointed to political positions and (ii) that all such activity should be studied and, if appropriate, supervised or prohibited to allay any suspicion of a conflict of interest, when the activity in question is subject to a system of authorisation or supervision by the entity that the former member of government or former senior civil servant has just left (paragraph 110);**

- ix. **(i) widening the scope of the disclosure and publication obligations of ministers to include speculative and income-generating property assets and significant debts, as well as considering providing information on their spouses and dependent family members (it being understood that such information would not necessarily need to be made public) and (ii) introducing a system of disclosure for senior civil servants appointed to political positions similar to that which is binding on ministers (paragraph 118);**
- x. **that the powers of prosecution and jurisdiction in matters involving ministers be assigned to a judicial authority (paragraph 123);**
- xi. **the establishment of a reliable and effective monitoring and enforcement mechanism for breaches of the rules of the code of conduct applicable to members of the government and breaches of any future code of conduct applicable to senior civil servants appointed to political positions (paragraph 128);**

*Regarding law enforcement agencies*

- xii. **(i) that the General Police Inspectorate be given the necessary resources to perform its tasks and (ii) that appropriate methods be established for recruiting qualified staff of integrity and training them (paragraph 154);**
- xiii. **that risk management be improved within the police force, by devising a plan for gathering intelligence which will help identify problems, new trends in corruption and breaches of integrity, combined with a mechanism of regular assessment with a view to reducing or eliminating the risks identified (paragraph 156);**
- xiv. **(i) that a code of conduct for the Grand Ducal Police be adopted and published, with concrete examples and explanations regarding the conduct expected of police officers and (ii) that it be accompanied by credible and effective oversight and enforcement (paragraph 162);**
- xv. **(i) that a pluriannual programme of in-service training for police officers include ethical training and (ii) a mechanism be introduced for providing confidential advice to police officers with ethical dilemmas and issues (paragraph 167);**
- xvi. **that integrity checks be introduced not only in the case of promotion decisions but also at regular intervals throughout police careers (paragraph 175);**
- xvii. **that the rules on abstention be defined more clearly by including specific criteria, in particular marital and family ties (paragraph 186);**
- xviii. **that the ban on accepting any gifts be set out in writing (paragraph 194);**
- xix. **that a study be conducted concerning activities by police officers after they leave the force and that, in the light of the findings, rules be adopted to ensure transparency and limit the risks of conflicts of interest (paragraph 199);**

- xx. that uniformed police officers be individually identifiable, for instance by means of identification numbers** (paragraph 214);
- xxi. that whistleblower protection be improved in the Grand Ducal Police** (paragraph 217).

221. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Luxembourg to submit a report on the measures taken to implement the above-mentioned recommendations by 31 December 2019. The measures will be assessed by GRECO through its specific compliance procedure.

222. GRECO invites the authorities of Luxembourg to authorise, at their earliest convenience, the publication of this report.

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## Le GRECO

Le Groupe d'États contre la corruption (GRECO) assure le suivi de la conformité de ses 49 États membres avec les instruments de lutte contre la corruption élaborés par le Conseil de l'Europe. L'activité de suivi du GRECO comporte une « procédure d'évaluation », qui repose sur les réponses données par un pays à un questionnaire et sur des visites effectuées sur place, puis une étude d'impact (« procédure de conformité »), qui donne lieu à l'examen des mesures prises par le pays concerné pour mettre en œuvre les recommandations formulées lors de son évaluation. Un processus dynamique d'évaluation mutuelle et de pressions réciproques est appliqué, qui associe l'expertise de professionnels chargés de l'évaluation et la présence de représentants des États qui siègent en plénière.

L'action menée par le GRECO a conduit à l'adoption d'un nombre considérable de rapports, qui regorgent d'informations factuelles sur les politiques et les pratiques de lutte contre la corruption en Europe. Ces rapports identifient les réussites et les défaillances de la législation, de la réglementation, des politiques et des dispositifs institutionnels nationaux et formulent des recommandations qui visent à renforcer la capacité des États à lutter contre la corruption et à promouvoir l'intégrité.

L'adhésion au GRECO est ouverte, sur un pied d'égalité, aux États membres du Conseil de l'Europe et aux États tiers. Les rapports d'évaluation et de conformité adoptés par le GRECO, ainsi que d'autres informations sur le GRECO, sont disponibles sur [www.coe.int/greco](http://www.coe.int/greco).

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