

MAPPING THE BUSINESS AND HUMAN RIGHTS LANDSCAPE IN LUXEMBOURG

National Baseline Study

October 2019

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THE GOVERNMENT
OF THE GRAND DUCHY OF LUXEMBOURG
Ministry of Foreign and European Affairs

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List of Acronyms

ABBL	Assoxiation des Banques et Banquiers
ACA	Association des Compagnies d'Assurances et de Réassurances
ALFI	Association of the Luxembourg Fund Industry
ASTM	Action Solidarité Tiers Monde
BHRRC	Business and Human Rights Resource Centre
BLEU	Belgium-Luxembourg Economic Union
CAA	Commissariat aux Assurances
CAD	Commission d'accès aux documents
CASS	Conseil arbitral de la sécurité sociale
CC	Chambre de Commerce
CCDH	Commission consultative des Droits de l'Homme
CET	Centre for Equal Treatment
CFR-EU	Charter of Fundamental Rights of the European Union
CLC	Confédération Luxembourgeoise du Commerce
CMCC	Le Centre de Médiation Civile et Commerciale
CNDP	Commission Nationale pour la Protection des Données
CoE	Council of Europe
CSSS	Conseil supérieur de la sécurité sociale
CSSF	Commission de Surveillance du Secteur Financier
CSOs	Civil Society Organizations
CSR	Corporate Social Responsibility
DIHR	Danish Institute for Human Rights
EBA	Everything But Arms
ECC	Centre Européen des Consommateur
ECHR	European Convention on Human Rights
ECtHR	European Court on Human Rights
EIA	Environmental Impact Assessment
EITI	Extractive Industries Transparency Initiative

ESC	European Social Charter
EU	European Union
FEDIL	Fédération des industriels luxembourgeois
GDPR	General Data Protection Regulation
GRECO	Council of Europe's Group of States against Corruption
GSP	Generalised System of Preferences
HORESCA	Fédération Nationale des Hôteliers, Restaurateurs, et Cafetiers du Grand-Duché de Luxembourg
ICAR	International Corporate Accountability Roundtable
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICocA	International Code of Conduct for Private Security Service Providers Association
ICT	Information and Communication Technology
ILO	International Labour Organisation
IMS	Inspiring More Sustainability
INAP	Institut National de l'Administration Publique
INDR	Institut national pour le développement durable et la responsabilité sociale des entreprises
ITM	Inspection du travail et des mines
LuxFLAG	Luxembourg Finance Labeling Agency
LuxSE	Luxembourg Stock Exchange
MAEE	Ministère des Affaires Étrangères et Européennes
NAP	Ministère de la Culture
NBA	National Baseline Assessment
NCP	National Contact Point
NCPC	New code of Civil Procedure
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institution
NPSD	National Action Plan for Sustainable Development

ODL	Office du Ducroire
OECD	Organization for Economic Co-operation and Development
OEIGWG	The Open-ended Intergovernmental Working Group
OGBL	Confédération Syndicale Indépendante du Luxembourg
OGP	Open Government Partnership
OHCHR	Office of the United Nations High Commissioner for Human Rights
OLAI	Luxembourg Reception and Integration Agency
RBC	Responsible business conduct
SCAS	Le service central d'assistance sociale
SDGs	Sustainable development goals
SMEs	Small and medium-sized enterprises
SNCI	Société Nationale de Crédit et d'Investissement in Luxembourg
UDHR	Universal Declaration of Human Rights
UEL	Union des Entreprises Luxembourgeoises
ULC	Union Luxembourgeoise des Consommateurs
ULESS	Union luxembourgeoise de l'économie sociale et solidaire
UNGPs	UN Guiding Principles on Business and Human Rights
UPR	Universal Periodic Review
UNWG	UN Working Group on Business and Human Rights

Introduction

The UN Human Rights Council unanimously adopted the UN Guiding Principles on Business and Human Rights in June 2011.¹ Since their adoption, the UNGPs have become the authoritative global reference for preventing and addressing adverse human rights impacts of business activity and have generated an unprecedented convergence of stakeholders around the specific and detailed Principles and their implementation.² The UNGPs contain 31 principles, divided over three core pillars:

Pillar I (GPs 1-10) clarifies the **State duty to protect** against human rights abuses by businesses through effective policies, legislation, regulation and adjudication. The UNGPs also stipulate that States should ensure that policies are coherent across departments and functions, and that their participation in multilateral institutions is aligned with their human rights obligations. States are required to exercise extra vigilance in the regulation of business in conflict-affected areas or when there is a State-business nexus.

Pillar II (GPs 11-24), the **corporate responsibility to respect** human rights, requires businesses to adopt and embed a high-level policy commitment to respect human rights, develop and implement human rights due diligence processes and establish processes to remedy human rights harm that they have caused or contributed to. The corporate responsibility to respect human rights covers both direct and indirect impacts that are linked to the companies' operations, products, and services or through their business relationships 'even if they have not contributed to those impacts' (GP 13).

Pillar III (GPs 25-31), **access to an effective remedy**, emphasizes the need for greater access to judicial and non-judicial remedies for those affected by business-related human rights abuse. Businesses are also required to provide for or participate in effective mechanisms to identify and address grievances as early as possible before

¹ Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, Annex, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011) (by John Ruggie) [UNGPs].

² K Buhmann, 'Business and human rights: Understanding the UN Guiding Principles from the perspective of transnational business governance interactions' (2015) 6 *Transnational Legal Theory* 339, 415.

they escalate into human rights abuses.

Three years after the adoption of the UNGPs, the UNHRC called on all Member States to develop national action plans (NAPs) to support the implementation of the UNGPs within their respective national contexts.³ This development followed similar requests to Member States made by the European Union in 2011⁴ and 2012,⁵ and by the Council of Europe in 2014,⁶ among others.⁷ The UN Working Group on the issue of human rights and transnational corporations and other business enterprises (UNWG) also strongly encourages all states to develop, enact, and update NAPs on business and human rights.⁸ To date, twenty-two States have developed and adopted NAPs to support the implementation of the UNGPs and twenty-three are in the process of developing one.⁹

The Government of the Grand Duchy of Luxembourg developed its National Action Plan for the Implementation of the United Nation's Guiding Principles on Business and Human Rights (2018-2019) and adopted it on June 22nd 2018 (hereinafter 'NAP' or 'NAP 2018-19').¹⁰ In its current NAP, Luxembourg made several commitments under the heading of "A Joint Work Program", which include commissioning a study that analyzes "[t]he existing situation and mapping of the potential negative impacts of business activities on human rights on one hand, and of existing efforts to prevent these risks or to mitigate their consequences on the other...". The present Report has been prepared in furtherance of this commitment and assesses systematically the current level of implementation of the UNGPs in Luxembourg. The primary objectives of the Report are:

- (a) To identify and analyse gaps in legislation and policy that concern business and human rights;

³ Human Rights Council Res. 26/22, U.N. Doc. A/HRC/RES/26/22, at 2 (15 July 2014).

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Renewed EU Strategy 2011-14 for Corporate Social Responsibility, COM (2011) 681 final (October 25, 2011).

⁵ European Parliament, Committee on Foreign Affairs, Report on the Review of the EU's Human Rights Strategy, EUR. PARL. DOC. A7-0378/2012 (Nov. 19, 2012).

⁶ Eur. Consult. Ass., Declaration of the Committee of Ministers on the UN Guiding Principles on Business and Human Rights (Apr. 16, 2014).

⁷ See, e.g., *Organization of American States, Resolution Promotion and Protection of Human Rights*, OAS AG/RES. 2887 (June 14, 2016) (XLVI-O/16), encouraging members of the Organization of American States to implement the UNGPs.

⁸ <<https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>>

⁹ *Ibid.*

¹⁰ The Government of the Grand Duchy of Luxembourg, *Plan d'action national du Luxembourg sur la mise en œuvre des Principes directeurs des Nations Unies relatifs aux entreprises et aux droits de l'homme* <<https://maee.gouvernement.lu/dam-assets/directions/d1/PAN-LU-entreprises-et-DH.pdf>> (references to the English translation).

- (b) To identify business related human rights risks and impacts in Luxembourg, as well as practices that exist to address these impacts by businesses;
- (c) To provide key findings and recommendations that will inform the formulation and prioritization of actions for the upcoming revisions of the NAP.

The Report is divided into two main parts following this brief introduction. Part One addresses the methodology and the limitations of the study. Part Two lays out some of the key findings and recommendations related to business and human rights in Luxembourg. The detailed findings are included in the Annex I.

Methodology and Limitations

Methodology

The UNWG recommends States to conduct a national baseline assessment (NBA) to identify the gaps in UNGPs implementation by the State as well as by businesses in order to inform the content of the NAP.¹¹ A number of governments have conducted such mapping either prior to developing their NAPs or as a part of their NAP commitments to serve as a basis for identifying and informing further action points. Occasionally, these studies are also undertaken by civil society organizations or individual researchers in order to evaluate and analyse the State and corporate commitments and progress in implementing the UNGPs. In December 2014, the UNWG published a guide on NAPs in which it recommended the use of the detailed template for national baseline assessments developed by the Danish Institute for Human Rights (DIHR) and the International Corporate Accountability Roundtable (ICAR).¹² The present Report is based on this Template.

The DIHR-ICAR Template is a tool to assess the current level of implementation of the UNGPs in a given State. The template incorporates the three pillars of the UNGPs and “[p]rovides guiding questions aimed at helping users identify relevant information under each pillar of the UNGPs. The guiding questions [...] reflect the conceptual and methodological framework of indicators developed by the Office of the High Commission for Human Rights (OHCHR). In line with OHCHR’s framework, the guiding questions seek to support researchers in assessing progress of implementation at the structural, process, and outcome levels, which together provide a comprehensive picture of duty-bearers’ efforts to address their obligations

¹¹<https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf>

¹²<<https://www.icar.ngo/publications/2017/12/21/national-action-plans-naps-toolkit-2017-edition>>, (‘DIHR-ICAR Template’ or ‘Template’).

and responsibilities".¹³ The Template also indicates links to the Goals of the 2030 Agenda for Sustainable Development.

The data in this Report were gathered primarily through desk research and stakeholder consultations (by means of surveys, interviews and email exchanges), and included engagement with businesses, civil society and the Government authorities.

Broadly speaking, the following steps have been undertaken:

- Before the start of the research, the proposed structure and methodology of the Report together with the DIHR-ICAR Template were presented to the members of the Working Group on business and human rights (WG/GT)¹⁴ in order to obtain their feedback and comments (30 January 2019). It was agreed to send out a survey questionnaire to the thirty largest companies (defined by the number of their employees) in order to gather the data for the second part of the Template (See Annex II).
- The core of the company survey included 25 questions requesting information on the company, on their perception of human rights and on the UNGPs in general. Depending on their answers, the participants were asked to reply three further sets of questions which corresponded to their policy commitments (questions 26 to 31), human rights impact assessments (questions 31 to 37) and remedies (questions 38-46) (see Annex II). In addition to the DIHR-ICAR Template, the content of the questionnaire was inspired by the survey annexed to Scotland's NBA¹⁵ and the OHCHR Survey.¹⁶
- The relevant contact persons in the targeted companies were identified with the help of the representatives of the UEL and INDR who are also among the members of the WG/GT. English and French versions of the survey were sent out in March 2019. The UEL and INDR sent detailed emails to the companies informing them of the context and encouraging them to participate in the survey.
- In total, 16 out of 30 companies responded (53%). Of these 16 companies, four replied negatively ('lack of time', 'questions too difficult'). Twelve companies filled out the survey and returned it to us (thus the information in this Report is based on 40% response rate of 30 companies).

¹³ *Ibid.*

¹⁴ See, Annex I Section 2.1. For information on the WG/GT.

¹⁵ <<http://www.snaprights.info/action-areas/better-world/business-and-human-rights>>

¹⁶ <https://www.ohchr.org/Documents/Issues/Business/ForumSession1/Report_UNWGBusinessSurvey_Dec2012.pdf>

- In addition to the business survey, a focus group session was held with the representatives of the CSOs including the members of the *Initiative pour un devoir de vigilance au Luxembourg* on March 20, 2019. Before the meeting, list of questions were sent to the group requesting information on what they felt were the main human rights challenges related to Luxembourgish business activity, the sectors that posed human rights risks and the most vulnerable groups. The focus group meeting, attended by ten CSO members, including NGOs and trade union representatives, lasted three hours and was recorded. In addition to the survey questions, the position of the CSOs was discussed in detail. Following the meeting the representatives of the CSOs submitted detailed written feedback and various documents. They were encouraged to contact the researcher throughout the mapping process, which they have done so occasionally.
- The mapping phase was completed with the assistance of an intern at the MAEE.
- In addition to desk-based research, various consultations have taken place with the representatives of the public sector including the MAEE, the OECD NCP, the Département des Travaux publics, the INAP. Consultations were also held with the CCDH and the CMCC.
- Two telephone interviews were undertaken with companies that have responded to our survey to seek detailed examples based on their responses.

Based on the information gathered through the consultations and research, the present Report has been drafted. It has been submitted to the attention of the members of the WG/GT to ensure that no key considerations have been overlooked.

Limitations

The findings of the Report should be read bearing in mind the following limitations:

- The scope of the business survey is limited to the largest enterprises in Luxembourg.
 - Discussions were held at the WG/GT meetings on the selection criteria of the companies. Some members of the WG/GT raised concerns that the limited focus on the 30 largest companies might exclude businesses that have adverse human rights impacts and thus narrow the findings of the mapping. It was subsequently clarified that, for the purposes of the present Report, the intention of the company survey (which corresponds to the questions in the second part of the Template) was to measure the level of human rights awareness, commitment and practice of companies in Luxembourg. It was not intended to identify the companies that have

adverse human rights impacts as such. It was pointed out that the remainder of the Template had specific questions in order to identify businesses that have adverse human rights impacts.

- Nevertheless, the business survey's focus on the largest enterprises in Luxembourg does not suggest that small and medium sized enterprises are excluded from the business and human rights agenda in Luxembourg. On the contrary, the recommendations addressed to large businesses are applicable to SMEs whose responsibilities are proportional to their size and scale (Section 3.1).
- Following the discussions at the WG/GT meetings, the State-owned enterprises were excluded from the scope of the company survey on the grounds that the NAP 2018-19 has specific action points addressing those enterprises.¹⁷ This is an important limitation. Several issues should be considered:
 - UNGP 4 provides that States should take “additional” steps to protect against human rights abuses by business enterprises that are owned or controlled by the State. As the commentary to the UNGP 4 recalls “the closer a business enterprise is to the State, or the more it relies on statutory authority or taxpayer support, the stronger the State’s policy rationale becomes for ensuring that the enterprise respects human rights”. Thus, as a matter of policy coherence, legitimacy and credibility “the State should not ask less of companies that are closely associated with it than it asks of private businesses”.¹⁸
 - The UNGPs however, do not clarify the particular duties of States with respect to the enterprises that are owned or controlled by the State. On this point, the UN Working Group has noted “a general lack of attention, in practice, on the part of States and other actors to the implications of guiding principle 4 with respect to State-owned enterprises. *Policies, guidelines and good practices are lacking at both the national and international levels*”.¹⁹
 - This general comment is true in the context of Luxembourg. The researcher was not able to identify many examples of policies and guidelines regarding a State-business nexus. This is not to suggest that such examples do not exist. The limited time and resources available for

¹⁷ See NAP 2018-10, 31: “Put in place pilot projects on due diligence in enterprises in which the State is the main shareholder”; as well as “Raising human rights awareness of contracting authorities as part of their public procurement procedures”.

¹⁸ United Nations, General Assembly, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*, A/HRC/32/45 (4 May 2016).

¹⁹ *Ibid*, 3 (emphasis added).

the mapping suggest that not all relevant examples have been identified. Therefore, the author welcomes feedback from the members of the WG/GT on this particular topic, specifically on questions in the Sections 17, 18, 19, and 21 and 22 of the Annex I.

- There are five professional Chambers in Luxembourg which play an important role in particular in the development of the legislative framework in Luxembourg.²⁰ Regrettably, the researcher was not able to obtain their direct input during the mapping due to time constraints, which may explain the lack of examples in certain sections.

Key Findings and Recommendations²¹

PILLARS I & III: STATE DUTY TO PROTECT AND REMEDY

State Duty: Laws, Policy and Regulation

International and Regional Legal and Soft Law Instruments

Overall, the policies, legislation and regulation dealing with business and human rights are well-developed in Luxembourg, owing to its strong commitment to and compliance with the international human rights regime. Luxembourg's domestic legal order is founded on the primacy of international law. All courts in Luxembourg have accepted the full supremacy and direct effect of international law as well as EU law. Luxembourg is one of the founding member states of the United Nations, and also a signatory to most of the UN's Declarations and Conventions. It is a party to the 8 core ILO Conventions as well as various regional human rights legal instruments, including the ECHR, the ESC, and the CFR of the EU.

Notwithstanding Luxembourg's strong and dedicated commitment to the international and regional human rights regime, there are several relevant human rights instruments that Luxembourg has not signed or ratified. They include, notably, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the 2014 Protocol to the Forced Labour Convention (Po29) and the Additional Protocol to the European Social Charter Providing for a

²⁰ These are; Chambre des Salarié, Chambre de Commerce, Chambre des fonctionnaires et des employés publics, Chambre d'Agriculture, Chambre des Métiers.

²¹ For more detailed findings and recommendations, see Annex I. Note that not all findings are followed by specific recommendations. Nonetheless, the Government and the relevant authorities should strive to address these issues.

System of Collective Complaints. There are also Conventions that Luxembourg has signed but not ratified, as well as Conventions ratified with reservations that limit the applicability of certain provisions in Luxembourg (Section 1.1).

Luxembourg has also signed or issued formal statements of support to various instruments that are relevant in the context of business and human rights, including the OECD Guidelines for Multinational Enterprises and the OECD Anti-Bribery Convention (Section 1.4). Luxembourg also supports various initiatives and standards related to business and human rights (Section 1.5), but has failed to do so in regard to certain others. For instance, no evidence was found that the Government participates in or implements the *Extractive Industries Transparency Initiative* or *Voluntary Principles on Security and Human Rights*, both of which are relevant considering that the NAP 2018-19 has identified the *extractive industry* as one of the sectors with potential adverse human rights risks. Similarly, no evidence could be found that the Government encourages ICT companies to implement the *Principles on Freedom of Expression and Privacy* (the GNI Principles) despite the fact that the current NAP has identified the ICT sector as one of the “risk sectors”.

Formal Statement of Support for the UNGPs

Luxembourg has made a formal statement in support of the UNGPs in the first version of its NAP on business and human rights. Throughout the NAP 2018-19, Luxembourg shows a strong and explicit commitment to the UNGPs. The NAP underscores the UNGPs as “the primary vehicle to prevent negative human rights impacts of business activities and, where necessary, to address their consequences”.²² The UNGPs are annexed to the NAP 2018-19.

The NAP 2018-19 contains 13 action points that were adopted after consultations with the multi-stakeholder group created for this purpose. Most of the action points contain voluntary measures relating to the dissemination of information, awareness raising and capacity building with regards to the UNGPs (Section 1.2). Both the Government and the stakeholders have taken steps to implement the actions contained in the NAP 2018-19 (Section 1.2). However, various action points are still pending at the time of the writing. For the next revision of the NAP, more specific measures should be adopted with clear targets and timelines, and identifying of the responsible entity.

²² National Action Plan of Luxembourg for the Implementation of the United Nations Guiding Principles on Business and Human Rights - 2018-2019, English version (herein after NAP 2018-19) p 20, (page numbers refer to the English version of the NAP) available; <<https://maee.gouvernement.lu/en/directions-du-ministere/affaires-politiques/droits-de-l-homme/NAP-Human-Rights.html>>

Some of the recommendations concerning the actions points in the existing NAP include:

- The organization of *training sessions*, which form an important part of raising awareness on business and human rights. Business organizations should be encouraged to provide guidance and training to their members, drawing attention to human rights risks associated with specific sectors. The WG/GT should consider adopting targeted action points to offer business and human rights trainings for judicial officials and other relevant authorities. The *Barreau* and the *INAP* can be useful interlocutors for this purpose.
- The current NAP contains an action point on *awareness raising, information and promotional campaigns on the UNGPs*, stating that “*a general communication, including through the media, should help to raise public awareness on the positive role that businesses can play in regards to human rights in their own activities, and their relationships with their suppliers and customers*”. No systematic communication campaign has been conducted yet.
 - o Attempts to raise awareness might include incorporating the UNGPs into the work of different agencies across the Government. A good example that already exists is a web reference to the SDGs at the main page of the Directorate for Development Cooperation and Humanitarian Affairs. The Government is advised to insert similar references to the UNGPs across relevant Government websites.
 - o Also, a more specific website dedicated to business and human rights should be developed. This website could profile the work of the WG/GT and provide information and guidance to businesses on the UNGPs, and offer advice on the development and implementation of human rights policies, due diligence processes and reporting practices. This website should provide tailored guidance on SMEs.
 - o The Government has a comprehensive web portal, *Guichet.lu* addressed to both private persons and businesses. It is recommended that references to the UNGPs and/or the NAP are included in this website to reach the general public.
 - o It is advised that references to the UNGPs are inserted in Government publications, such as the ones about investment opportunities in Luxembourg.
 - o The capacity of Luxembourgish embassies should be increased with regard to business and human rights. The embassies should be encouraged to use the UNGP framework when they work with local government officials and with the Luxembourgish companies that do

business or wish to do business in a given country (for comments on other action points, see Section 1.2).

National Laws, Policies and Regulations

In Luxembourg, the Inter-Ministerial Human Rights Committee, established in May 2015, is in charge of fostering inter-agency cooperation and coordination in the field of human rights. During the course of 2017, WG/GT (the Working Group on Business and Human Rights) was established within the Inter-Ministerial Human Rights Committee with the mandate to elaborate the NAP on business and human rights. Following the adoption of the NAP 2018-19 in June 2018, the WG/GT continued to oversee the implementation of the NAP and submitted its first annual report to the Government Council on 26 July 2019. The Government Council has extended the mandate of the WG/GT.

Both the Inter-Ministerial Human Rights Committee and the WG/GT is convened and coordinated by the Ministry of Foreign and European Affairs. The members of the Working Group include representatives of the public and private sector as well as members of national human rights institutions, civil society organizations and academia. The working group meets every six weeks and the meetings are presided by the Ambassador-at-Large for Human Rights (Section 2.1). Currently, the WG/GT group does not have a dedicated budget, but it was confirmed that it could use the general human rights budget of the Government when needed. Another criticism of the WG/GT concerns the lack of visibility of the activities of group. This could be addressed by various promotional activities referred to above.

“Risk Sectors”

According to the latest OECD figures, the Luxembourg economy is primarily based on the services sector (87.7%), followed by industry including construction (12.1%).²³ The NAP 2018-19 has identified the following sectors as having potential adverse impacts on human rights due to their general predominance in the Luxembourg economy, the national and international nature of their activities and the origin and number of their employees: the financial sector, the extractive industries, the information and communication technologies, including the field of artificial intelligence, the construction sector and the hotel and catering sector.²⁴ The

²³ OECD Economic Surveys: Luxembourg 2019, <https://www.oecd-ilibrary.org/economics/oecd-economic-surveys-luxembourg-2019_424839c1-en>.

²⁴ NAP 2018-19, p 28.

stakeholder consultation undertaken for this report also highlighted concerns in the following sectors:²⁵

- *Agribusiness*; numerous agribusiness companies registered in Luxembourg (or investment funds based in Luxembourg that provide financial support to agribusiness sector) have been documented for their adverse impacts on human rights in their overseas operations (see, Section 6.5. for non-exhaustive list of examples).
- *Logistics and maritime transport sectors*; the stakeholders have cited that these sectors will be promoted by Luxembourg according to the Coalition Agreement and will thus increase their predominance.
- *Food and textile distribution*: CSOs have noted the presence of one hundred textile companies and various big food distribution chains in Luxembourg and argued that they should be included in the risk mapping.

The NAP has identified the risk sectors based on a “preliminary observation” without **differentiating** among their existing and potential human rights impacts. While the present study has identified various issues that relate to different sectors mentioned in the NAP (see various sections in Annex I), it has not been possible to deal exhaustively with each sector given the limited time and resources assigned to complete the study. Therefore, in order to better understand the impact of specific sectors, the Government is advised to conduct further sector specific analysis.

Groups at risk of vulnerability

Several institutions in Luxembourg work to identify and assist particularly vulnerable groups including children (Section 26.3) and women (Section 15.1). The present report has also identified people living with in-work poverty and victims of human trafficking to be among the particularly vulnerable groups in Luxembourg (Section 5.1).

Human Rights Due Diligence

Human rights due diligence is one of the key components of the UNGPs. Currently, there are no laws in Luxembourg requiring business enterprises to conduct human rights due diligence. The Law of 23 July 2016, giving effect to EU Directive 2014/95/EU, obliges certain companies to provide a non-financial statement as part of their annual report (Section 4.3). While the companies are required to address

²⁵ Written feedback received from the CSOs, April 5, 2019 [hereinafter, “CSOs’ written feedback”]. CSOs have suggested that the reference to the “extractive industries” in the current NAP, should be replaced by “industry”).

respect for human rights alongside other non-financial considerations, conducting human rights due diligence is not one of the requirements.

The Coalition Agreement (2018) includes a commitment to explore the possibility of human rights due diligence legislation in Luxembourg and to support the adoption of binding EU legislation.

The NAP 2018-2019 also encourages companies to adopt policy instruments in order to fulfill their responsibility to respect human rights, in particular by introducing a due diligence process.²⁶ Moreover, the NAP 2018-2019 proposes to “put in place pilot projects on due diligence in enterprises in which the State is the main shareholder”.²⁷ Due diligence was the subject of a parliamentary question on 22 January 2019 (Section 10.3).

Stakeholders have different views on mandatory due diligence in Luxembourg. Luxembourg’s National Human Rights Commission (CCDH) and civil society groups, under the heading of the “Initiative pour un devoir de vigilance au Luxembourg”, which brings together 16 civil society organizations, have called for the introduction of binding due diligence legislation in Luxembourg.²⁸

However, some concerns were expressed about the impact of “new forms of regulation”, especially among smaller businesses due to the impact that such a regime may have on the resources of small and medium size enterprises.²⁹ It can also be inferred from the contributions of the business representatives at the WG/GT meetings that the preferred way to address human rights issues is a coordinated and collaborative approach that focuses on human rights guidance and awareness raising, rather than a mandatory regime. Concerns exist that legislative requirements will alter the level playing field and put Luxembourgish companies in a competitive disadvantage in comparison to companies based in jurisdictions where no such laws exist.

²⁶ NAP 2018-2019, 26.

²⁷ *Ibid*, 31.

²⁸ For further details, see: < <https://www.initiative-devoirdevigilance.org/>>. For the proposal of the initiative is see; <http://astm.lu/wp-content/uploads/2018/03/Proposition-devoir-de-vigilance_partis.pdf>

²⁹ Public intervention by the representative of SMEs in Luxembourg, Conference on Business and Human Rights (June 7, 2019).

These are legitimate concerns, but as the UN Working Group has emphasized, they *“do not negate the imperative for Governments to take steps to close governance gaps, including through legal means”*.³⁰

A strictly binary approach to business and human rights challenges appears misleading. In a recent statement, John Ruggie, the author of the UNGPs, has reiterated that: *“there is no inconsistency in states adopting measures that require businesses to meet their responsibility to respect human rights through legislation. States similarly may adopt legislative measures to encourage, support or incentivize businesses to do so. [...] States are expected to adopt a mix of measures - voluntary and mandatory, national and international- to foster respect for human rights in practice. [...]”*.³¹

Various Governments have adopted or are in the process of adopting human rights due diligence legislation (Section 3.1). Admittedly, limitations exist in these laws and it is too early to assess their impact on the ground. Nonetheless, the UN Working Group has already highlighted two positive effects: (i) that the legislation is helping to raise awareness of the corporate responsibility to respect human rights at the decision-making level within business enterprises, and (ii) that, despite the fact that the legislation applies only to larger companies, obligations shift down through value chains through business-to-business pressure.³²

In light of the above, the Government is advised to adopt *a mixed set of measures to ensure that human rights due diligence is embedded as part of standard business practice in Luxembourg*.

- Introducing legislation or amending existing legislation to require Luxembourg based companies, or companies that do business in Luxembourg to exercise human rights due diligence. This can be a stand-alone legislation, or the existing laws can be amended so as to include due diligence requirements. The Law of 23 July 2016 giving effect to the EU Directive 2014/95/EU could be a useful basis upon which mandatory due diligence could be developed providing that the scope of the law is expanded. Important consideration would be to clarify the extraterritoriality requirements in the legislation as Luxembourg is home to many MNCs that have operations in other jurisdictions.

³⁰ United Nations, General Assembly, *Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms*, A/73/163 (16 July 2018).

³¹ John Ruggie, Letter addressed to Business and Human Rights Resource Center, 19 September 2019.

³² A/73/163 (16 July 2018).

Extra-territoriality is not a requirement under the UNGPs, although the Commentary acknowledges that ‘there are strong *policy reasons* for home States to set out clearly the expectation that businesses respect human rights *abroad*’.³³ In addition, it is important to note that, various treaty bodies overseeing international human rights conventions, to which Luxembourg is a party, have issued conclusions and general comments stating that the state parties obligations extend extraterritorially – also in the case of abuses by businesses.³⁴ While General Comments issued by the treaty bodies are not legally binding, they provide clarification, development and persuasive interpretations of the obligations contained in the respective treaties, and State parties are expected to bring their laws into conformity with the general comments issued by the treaty bodies. Therefore, it is advised that any due diligence policy or law gives due regard to the extra-territoriality requirements.

- Corporate governance laws also have a potential basis upon which due diligence requirements can be introduced. Considering various economic arguments for businesses to respect human rights –both in terms of mitigating risks and cost and gaining competitive advantage in the market place—³⁵ it is reasonable to argue that board of directors’ fiduciary duties to their shareholders require them to consider long term rights and interests of other stakeholders. An example along these lines can be found in Principle 2 of the *X Principles of Corporate Governance* of the Luxembourg Stock Exchange for listed companies: “The Board [...] shall act in the corporate interest, and shall serve all the shareholders by ensuring *the long-term success of the company*. They shall consider *corporate social responsibility aspects and shall take into account the interests of all stakeholders in their deliberations*”.³⁶

³³ The UNGPs, Principle 2, Commentary.

³⁴ Most notably, the Committee on Economic Social and Cultural Rights, in General Comment 24 has stated that “*States Parties’ obligations under the Covenant do not stop at their territorial borders*” instead States “are required to take the necessary steps to prevent human rights violations abroad by corporations domiciled in their territory and/or jurisdiction (whether they are incorporated under their laws, or have their statutory seat, central administration or principal place of business on the national territory), without infringing the sovereignty or diminishing the obligations of the host States under the Covenant”. See, CESCR, *General Comment No 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, UN Doc E/C.12/GC/24 (23 June 2017) para 26.

³⁵ B Bağlayan, I Landau, M McVey and K Wodajo, “*Good Business: The Economic Case for Protecting Human Rights*” (January 2019) <<https://corporatejustice.org/eccj-publications/12124-good-business-the-economic-case-for-protecting-human-rights>>.

³⁶ Luxembourg Stock Exchange, *Les XPrincipes de gouvernance d'entreprise de la Bourse du Luxembourg*, 4th edition-revised version (December 2017), emphasis added.

- State-owned or controlled enterprises, in particular, should be required to conduct human rights due diligence in Luxembourg and abroad. The attention to the State-owned or controlled businesses or those receiving State support is particularly important in light of the State-business nexus. As such, the Government is advised to implement without delay the action point in the current NAP that provides “putting in place pilot projects on due diligence in enterprises in which the State is the main shareholder”.
- Meanwhile, while exploring the possibilities of human rights due diligence legislation, as also was stated in 2018 Coalition Agreement, the Government is advised to disseminate guidance on business and human rights and human rights due diligence to both public and private companies. In addition, the Government may wish to consider using its economic leverage to incentivize companies to adopt human rights due diligence. Examples of such economic incentives might include inclusion of human rights due diligence as an eligibility criterion for public procurement, for export credit and investment support, for participation in trade missions and so on.

The NAP 2018-19 proposes to elaborate, adopt and implement a *National Pact on the Respect for Human Rights in the Activities of Business Enterprises*. The pact will be a formal declaration of intent to respect human rights from top executives of the signatory company. In its current formulation, the Pact involves a number of commitments by businesses including, trainings and reporting, among others. The structure of the Pact can prove very useful as an initial commitment, as it will allow individual companies to tailor their training and reporting needs to their particular sector and risk profile. The Government is advised to ensure that the Pact is adopted as soon as possible and to encourage as many businesses as possible to make formal commitment to the instrument. In particular, the Government is advised to ensure all companies that are owned or controlled by the State sign the pact and fulfill the commitments contained therein.³⁷

³⁷ For other findings concerning national laws, policy and regulation, see various other sections in Annex I.

In particular; on Corporate Structures and Governance (Section 4); Labour (Section 5); Environment and Land (Section 6); Community Consultation and Engagement (Section 7); Occupational Health and Safety (Section 8); Tax (Section 9); Trade and Investment (Section 10); Anti-bribery and Corruption (Section 11); Human Rights Defenders and Whistleblowers (Section 12); Information and Communication (Section 13); Consumer Protection (Section 14); Anti-discrimination (Section 15) and National Human Rights Institutions (Section 16).

State Business Nexus

The present study identified a general lack of human rights guidance that is aimed at corporations owned or controlled by the State or at businesses receiving substantial support from state agencies in Luxembourg. An exception may be the Luxembourg Export Credit Agency (Office du Ducroire – “ODL”), which has a dedicated portal to social responsibility. The ODL has established “*environmental and social guidelines for the selection of projects eligible for official support as well as a two-step process in the prevention of transactions involving bribery*”.³⁸ However, there are some issues in regards to the ODL’s formulation of the standards that makes it incompatible with the UNGPs (Section 17.4). Therefore, there is a room to develop guidance for public corporations that explicitly addresses human rights issues, and due diligence requirements (see above section on due diligence).

Regarding the Government contracting and public procurement; transparency, fair treatment and equal opportunities are among the basic principles of public procurement legislation pursuant to EU Directives. In addition, the Law of 8 April 2018 on Public Procurement, Article 12(2) requires the contracting authorities to take into account, aspects and problems relating to the environment and the promotion of sustainable development when awarding public contracts. Under Article 15(1); contracting authorities may restrict tenders to social enterprises, or to enterprises that favour the inclusion of disabled persons, or that participate in labour inclusion programmes. The e-procurement portal serves as an information and communication platform on public procurement. Although the general framework on public procurement addresses issues that overlap with human rights, there is a lack of explicit reference to human rights and the UNGPs, which may mean that public buyers may not be adequately informed about the potential human rights risks. A clear guidance should be provided to public buyers on business and human rights and the UNGPs.

Access to State-Based Remedy

Sanctions

There are various bodies that can issue administrative sanctions in Luxembourg, including; the CSSF and the CAA (Section 24.1). The CNDP also has various investigative, corrective and advisory powers including, among others, issuing

³⁸ <<https://odl.lu/en/about-us/ethics/>>

penalties for infringement set out by the GDPR, imposing penalty payments (*astreintes*) for delay to comply with an order by the CNPD to provide information or with a corrective measure issued by the CNPD.

State-Based Judicial Mechanisms

Legal persons can be held criminally liable pursuant to the Law of 3 March 2010.³⁹ The 2010 Law applies to most types of legal entities, apart from the State and municipalities which are expressly excluded (Article 34).

The Brussels I Regulation makes it mandatory for the national courts of the EU Member States to accept jurisdiction in civil liability cases filed against defendants domiciled in the forum State, whatever the nationality of the defendant or the plaintiff, and in cases of extra-contractual liability, wherever the damage occurred.⁴⁰ Article 60 (1) of the Regulation clarifies that “a company or other legal person or association of natural or legal persons is domiciled at the place where it has its: a) statutory seat, or b) central administration, or c) principal place of business”. In Luxembourg, it follows from articles 14 and 15 of the Civil Code (see, Section 24.1) that Luxembourg courts may be competent for any civil action brought against a Luxembourg national, in the absence of any other ground for jurisdiction (see, Section 24.1).

The website of the Ministry of Justice⁴¹ and various other portals (see, Section 24.5) provide information on laws, policies, and regulations as well as judicial mechanisms and how they can be accessed. However, none of these sources contain references to business related human rights grievances. One of the other existing gaps is that Luxembourg has no training institute for the judiciary and this research did not find any evidence of trainings on issues related to business and human rights offered to the members of the judiciary.

In terms of access to remedies, Luxembourg law offers the relatively uncommon possibility for NGOs to seek remedies in civil cases (in the form of punitive damages or awards for themselves- *in nome proprio*) when cases are in the public interest.⁴² Also, in Luxembourg, the statute of limitation period is 30 years (Article 2262 Civil Code), which is longer than many EU jurisdictions. A special time limit of ten years is

³⁹ <<http://legilux.public.lu/eli/etat/leg/loi/2010/03/03/n1/jo>>

⁴⁰ Council Regulation 44/2001, 2001 O.J. (L012).

⁴¹ <<http://mj.public.lu/>>

⁴² See, EU, *Training Manual for Judges and Prosecutors on Ensuring Women's Access to Justice* (2017).

applied to obligations derived from trade, between professionals and between professionals and consumers, unless they are subject to a shorter time limit (Article 189 Commercial Code).

One of the potential barriers for an alien who wants to bring a claim against a Luxembourgish defendant is the *cautio judicatum solvi*. This security payment is to cover the court fees and damages arising from the proceedings. It can potentially limit the access to court in Luxembourg for foreigners who want to litigate a case against a Luxembourgish defendant, but do not have the means to pay the security deposit. The Government is advised to consider abolishing the *cautio judicatum solvi* requirement.

Current legal framework in Luxembourg does not allow for class action (*'recours collectif'*) for claims arising from the same event. A *general joinder mechanism* exists. Under Art 206 of the NCPC, claims may be joined and it is possible to ask the court to rule on them together. The joining of the cases is procedural, and each claimant individually needs to have both sufficient standing (*qualité d'agir*) and a legitimate and direct interest (*intérêt d'agir*). The 2018 Coalition Agreement envisages a law on class action.

State-Based Non-Judicial Mechanisms

Concerning non-judicial remedies, OECD National Contact Point ("NCP") is the only grievance mechanism in Luxembourg which has an explicit mandate to handle disputes related to business and human rights, and more generally on responsible business conduct. The NCP has an *individualised decision-making* structure. Individualised decision-making means decisions are taken either by one individual in a single ministry, or by a group of individuals belonging to the same service in the same ministry. The NCP is based, managed and coordinated in and by the Ministry of Economy. It has taken various *activities to promote responsible business conduct* as mandated by the Guidelines (for a list of various promotional activities conducted by the NCP, see Section 27.1). The NCP has a website that contains links to a number of useful resources. The website also contains the NCP's rules of procedure, an ad-hoc form for submitting complaints, list of closed and ongoing specific instances with relevant documents, and the contact details of a dedicated person.

Regarding *handling enquiries and contributing to the resolution of issues* (known as the '*specific instances*'), the Rules of Procedure of the NCP contains various information, including; the timeframe, scope, rules on transparency and confidentiality, assistance available to the parties, and the different phases of the

complaints procedure. In one of the complaints, the NCP has conducted two fact-finding missions assisted by a mediator assigned by the NCP. The recommendations of the mediator were subsequently accepted by both of the parties. In general, the OECD recognizes that fact-finding missions could impose considerable burden on NCP resources. Therefore, in general, it does not require the NCPs to conduct fact-finding. Therefore, the Luxembourg NCP's practice can be considered among good practices (for other positive practices of the NCP, see, Section 27.1).

Nevertheless, the CSOs consulted for this study have raised various issues with regard to the practice of the NCP. The primary concern relates to the lack of collaboration between the NCP and the civil society and the lack of impartiality of the NCP. It is noted that the position of the NCP at the "Comité de Conjoncture" within the Ministry of Economy contributes to the perception of lack of impartiality. A distinction can be drawn between the notions of "impartiality" and "independence". Concerning the former concept, the specific instances handled by the NCP at this time are too few (with varying stages and outcomes) to suggest that NCP lacks impartiality (for definitions of these concepts, see Section 27.1). Nonetheless, it is recommended that the NCP takes steps to mitigate this perception. The NCP is advised to establish and maintain a regular dialogue with broader set of stakeholders to improve their confidence, including CSOs. The NCP is advised to consider establishing a multi-stakeholder advisory and/or oversight body to promote impartiality, as recommended by the OECD (see Section 27.1 for details and references).

The NCP thus far has handled only five specific instances despite its broad mandate and despite the presence of many companies in Luxembourg. This may be partially explained with a lack of general awareness on the role of the NCP. Therefore, the NCP is advised to develop a more active promotional strategy which raises awareness on the role of the NCP as a grievance mechanism (for other recommendations, see Section 27.1).

In addition to the NCP, Luxembourg offers various non-judicial dispute resolution mechanisms. These, in principle, can be used to address business related human rights abuses including the ones that occurred outside of Luxembourg. In general, these mechanisms are not bound by the nationality of the parties neither by the location of the conduct. As such, they have a wide scope of applicability.

Luxembourg offers other advantages such as geographical accessibility and linguistic diversity.⁴³

Despite the above advantages, however, to our knowledge the existing procedures have not been used to address business related human rights abuses. This might be due to a lack of awareness about the potential use of these mechanisms. In addition, no legal aid exists for conventional mediation in Luxembourg which can create an obstacle for parties to access mediation based non-judicial mechanisms. Note, however, that the 2018 Coalition Agreement envisages extending legal aid to conventional mediation.

PILLARS II & III: BUSINESS RESPONSIBILITY TO RESPECT AND REMEDY

Human Rights Policy Commitment

The UNGPs state that *“the responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations”*. Bearing in mind the limited parameters of our survey, one can argue that there is an emerging awareness and engagement with human rights issues among the largest business enterprises in Luxembourg. However, this awareness and engagement remains limited.

Of the twelve business enterprises that responded to our survey, seven (60%) of them confirmed that they have a human rights policy commitment in place. One company stated that it is “in the process” of approving a human rights policy commitment. However, based on the information provided by the companies, many of the policy commitments do not appear to be in line with the UNGPs. For example, of the seven human rights policy commitments, only five “refers to internationally recognized human rights standards.

There appears to be a general lack of knowledge and understanding of the corporate responsibility to respect human rights among companies in Luxembourg. Company consultations reveal that businesses in Luxembourg often conflate corporate

⁴³ Consultations, Representative of the CMCC.

responsibility to respect human rights with traditional notions of CSR. The CSR focuses on companies' voluntary contributions to community development, charity and other social and environmental efforts, as traditionally understood. The examples of initiatives of corporate responsibility to respect human rights given by Luxembourg companies included; "financial contributions and volunteering", "sponsoring an initiative working towards ending sexual violence in fragile environments", "supporting non-profitable associations active in social area" and similar others. While such efforts are relevant, the fundamental difference between them and the corporate responsibility to respect under the UNGPs is that implementation of the latter is a global expectation of all companies and that having CSR policies in place does not offset a failure to respect human rights.

Human Rights Due Diligence

Human rights due diligence refers to the processes that all business enterprises should undertake to identify, prevent, mitigate and account for how they address potential and actual impacts on human rights. This impact can be caused by or contributed to through their own activities, or directly linked to their operations, products *or* services by their business relationships. Impact assessment is the first component of human rights due diligence.

The consultations with the businesses reveal that significant efforts are needed to make human rights due diligence a part of standard business practice in Luxembourg. Among the twelve responding companies, only five of them stated that they carry out human rights impact assessments (four routinely, one occasionally). The Companies were asked whether they seek external and internal feedback when tracking their human rights performance. Only three of them stated that they do. Again, only three businesses confirmed that they publicly communicate on how they address adverse human rights impacts. Companies' practice seems to be particularly weak on seeking independent verification and communicating the results to broader audiences: Only two businesses confirmed that they seek independent verification of their human rights reporting and the same two businesses confirmed that they take steps to ensure their human rights communications are accessible to the intended audiences.

Our survey results demonstrate that the number of businesses that conduct human rights due diligence is limited in Luxembourg. And even among those businesses that conduct human rights due diligence, their practice generally do not meet the requirements set out by the UNGPs. In general, there is much room for improvement

regarding the human rights due diligence processes.

Remediation

In comparison to the human rights policy commitment and impact assessment, the responses that we received for grievance mechanisms revealed surprising results. Ten out of twelve businesses stated that they have established procedures for hearing processing and settling internal and external concerns/complaints. All ten businesses stated that this procedure was clear and easily accessible.

The grievance procedures that are in place generally appear to be in the form of “consultation desks” and “whistle blowing systems”. One company stated that it has a “consultation desk” which is “not anonymous and is available to all employees, customers and suppliers and a “whistleblowing system” with an external supplier” which is anonymous. Another company, during a follow-up interview, stated that it has an internal procedure which is clear and easy to understand for employees who want to file a complaint internally.

A key part of business’ responsibility is to provide for or cooperate in the remediation of its impacts on human rights through legitimate processes. This may involve State-based judicial and non-judicial mechanisms, as well as non-State-based grievance mechanisms. Only three businesses stated that they provide for or cooperate in remediation in cases of adverse human rights impacts that they are linked to. Also, only two businesses confirmed that they take measures against forms of retaliation against individuals and groups raising complaints. Overall, the remedies provided by the companies also appear not to be in line with the international standards.

Businesses are advised to seek guidance and information about the UNGPs, and should adopt appropriate policies and processes to address human rights issues throughout their operations.

Business and employer associations are advised to build capacity and offer guidance and training to their members on responsibility to respect human rights in accordance with international standards.

Acknowledgements

This work could not have been completed without the support of numerous individuals and organizations. I would like to thank them all. First and foremost, I wish to thank each member of our working group *Entreprises et droits de l'Homme* and our chair Marc Bichler for putting their trust and confidence in me to complete this task and for their support throughout. I feel lucky to have so many colleagues at the University of Luxembourg who have generously provided their time for many insightful discussions. Members of the *Initiative pour un devoir de vigilance* as well as the *Commission consultative des Droits de l'Homme* provided valuable feedback for which I am thankful. Representatives of the *Institut national pour le développement durable* and *Union des Entreprises Luxembourgeoises* were instrumental in reaching out to businesses. They constantly encouraged the companies to engage with the study and complete the survey questionnaire for which I remain deeply grateful. I also wish to thank all the companies who have filled out the survey questionnaire as well as everyone who has been willing to be interviewed.

I wish to thank the following individuals in particular; Sarah Gentili, Christian Deprez, Antoniya Argirova, Jean-Claude Berardini, Stefan Braum, Fatima Chaouche, Isabelle Corbisier, Gilles Cuniberti, Luc Dockendorf, Johannes H. Fahner, Norman Fisch, Jörg Gerkrath, Gilles Hauben, Dimitrios Kafteranis, Jan Kayser, Tine Larsen, Séverine Menetrey, Max Mousel, Martine Peters, Luca Ratti, Fabienne Rossler, Christian Schuller, Anamarija Tunjic, Annelies Vandendriessche, Véronique Wiot and Jean-Louis Zeien.

Annex I: National Baseline Assessment Template ¹

Please note that limited time and resources available for this research as well as the parameters of the research methodology precludes from all the relevant examples to be incorporated in the research results. Lack of examples in this study does not necessarily suggest that such examples or references do not exist.

I. PILLARS I & III: STATE DUTY TO PROTECT & REMEDY

STATE DUTY: LAWS, POLICIES, AND REGULATION
Guiding Principle 1: States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication. Guiding Principle 2: States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations. Guiding Principle 3: In meeting their duty to protect, states should: (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps; (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights; (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations; (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

Relevant Sustainable Development Goals and Targets	
• Goal 1: End poverty in all its forms everywhere (Target 1.4) • Goal 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture (Target 2.3) • Goal 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all (Target 8.5, Target 8.7, Target 8.8) • Goal 12: Ensure sustainable consumption and production patterns (Target 12.4) • Goal 10: Reduce inequality within and among countries (Target 10.3) • Goal 17: Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development (Target 17.1, Target 17.5, Target 17.11) • Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels (Target 16.7, 16.10, Target 16.a, Target 16.b)	
1. International and Regional Legal and Soft Law Instruments	
Guiding Questions	Status and Gaps
1.1. Has the state signed and ratified relevant international and regional human rights legal instruments and any corresponding protocols?	Status A long established jurisprudence of Luxembourg's Superior Courts states that generally accepted rules of international law and international conventions, when they have been ratified by an act and have come into effect, shall form an integral part of Luxembourg's domestic law and shall override any other contrary provision of domestic law.² International law has a clear supremacy over domestic law in Luxembourg. Accordingly, the below international and regional human rights instruments list the human rights obligations to which the Government has consented to. The following is a non-exhaustive list of international human rights conventions that Luxembourg has signed or acceded to: • International Covenant on Civil and Political Rights - ICCPR (signed 26 Nov 1974,

	ratified 18 Aug 1983); • International Covenant on Economic, Social and Cultural Rights - ICESCR (signed 26 Nov 1974, ratified 18 Aug 1983); • Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment - CAT (signed 28 Feb 1985, ratified 29 September 1987); • Optional Protocol of the Convention against Torture - CAT-OP (signed 13 Jan 2005, ratified 19 May 2010); • Convention on the Elimination of All Forms of Discrimination against Women - CEDAW (signed 17 Jul 1980, ratified 02 Feb 1989); • International Convention on the Elimination of All Forms of Racial Discrimination - ICERD (signed 12 Dec 1967, ratified 01 May 1978); • Convention on the Rights of the Child - CRC (signed 21 Mar 1990, ratified 07 Mar 1994); • Convention on the Rights of Persons with Disabilities - CRPD (signed 30 Mar 2007, ratified 26 Sep 2011); • Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict - CRC-OP-AC (signed 08 Sep 2000, ratified 04 Aug 2004); • Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography- CRC-OP-SC (signed 08 Sep 2000, ratified 02 Aug 2011); • Of the 8 ILO Fundamental Conventions, Luxembourg has ratified all 8 of them. Luxembourg has also ratified 91 of 178 ILO Technical Conventions.³ The following is a non-exhaustive list of regional human rights legal instruments that Luxembourg has signed:
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	• European Convention for the Protection of Human Rights and Fundamental Freedoms - ECHR (signed 4 Nov 1950, ratified 3 Sep 1953); • European Social Charter - ESC (signed 18 Oct 1961, ratified 10 Oct 1991); • Convention on Action against Trafficking in Human Beings - CoE (signed 16 May 2005, ratified 09 April 2009); • European Charter for Regional or Minority Languages (signed 05 Nov 1992, ratified 22 June 2005); • European Convention for the Prevention of Torture and Inhuman or Degrading Treatments or Punishment (signed 26 Nov 1987, ratified 6 Sep 1988); • Luxembourg is also party to the Charter of Fundamental Rights of the European Union. Gaps Luxembourg has neither signed nor ratified the following international or regional human rights legal instruments:⁴ • International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families – ICMW; • Total number of 32 ILO Conventions or Protocols, including notably the Protocol of 2014 to the Forced Labour Convention (Po29).⁵ The NAP 2018-19 pledges to sign the Convention; • Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.⁶ Luxembourg has signed but not ratified the following international or regional human rights legal instruments: • Convention for the Protection of All Persons from Enforced Disappearance - CED (Signed 06 February 2007).⁷ • Framework Convention for the Protection of National Minorities (signed 20 July 1995);
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	• European Convention on the Academic Recognition of University Qualifications (signed 14 December 1959); • European Convention on the Legal Status of Migrant Workers (signed 24 Nov 1977);⁸ • Additional Protocol to the European Social Charter (05 May 1988); • Protocol amending the European Social Charter (21 October 1991); • European Convention on the Exercise of Children's Rights (signed 25 Jan 1996); • European Social Charter (revised) (signed 11 Feb 1998). Luxembourg has issued reservations, declarations or understandings to the following international and regional human rights legal instruments which limits the domestic applicability of certain provisions:⁹ • ICERD • ICCPR • ICCPR-OP1 • CAT • CRC • OP-CRC-AC
1.2. Has the state given a formal statement of support for the UNGPs? Has the state disseminated information about the UNGPs through public media sources, internal guidance documents, or other materials? Has the state put in place measures to capacitate state actors and local citizens with knowledge and information on the UNGPs, for example, through	Status Luxembourg has made a formal statement of support for the UNGPs most notably in the first version of its NAP on business and human rights adopted on June 22nd, 2018. Throughout the NAP 2018-19 Luxembourg shows a strong and express commitment to the UNGPs. The NAP underscores the UNGPs as “the primary vehicle to prevent negative human rights impacts of business activities and, where necessary, to address their consequences”.¹⁰ The UNGPs are annexed to the NAP 2018-19. The NAP 2018-19 contains 13 action points almost all of which relate to dissemination of information, awareness raising and capacity building with regards

workshops, conferences, or other events?	to the UNGPs. These are; • Action point: Executing a mapping exercise to identify the gaps in the implementation of the UNGPs which will be shared with “the business and human rights working group, Inter-Ministerial Committee, and the broader public, including the press”¹¹. • Action point: Organizing a structured dialogue within the Inter-ministerial Committee between all the actors involved. This dialogue comprises regular multi-stakeholder meetings of the Working Group on business and human rights (<i>Groupe de Travail Entreprises et droits de l’Homme – WG/GT</i>) where information is exchanged among the members on the implementation of the NAP (see Section 2.1. for information on the WG/GT). The meetings are held in regular intervals. The first annual report of the WG/GT was approved by the Government in June 2019. • Action point: “Awareness-raising, information and promotional campaigns on the UN Guiding Principles [in order to] provide companies with a better understanding of the scope of their obligations and of what is expected of them, but also the opportunities that respecting the UN Guiding Principles can present in terms of risk management and competitiveness”¹². To this end; - o The current NAP has been translated into English and published in the Governmental website together with the original French version.¹³ - o The NAP has been communicated to the Steering Committee for Human Rights of the Council of Europe. - o A presentation of the study “Good Business: the Economic Case for Protecting Human Rights”¹⁴ took place in a Working Group meeting followed by discussions among the WG/GT members. - o The Ministry of Foreign and European Affairs, which is overseeing the implementation of the NAP, co-organized a conference with the University of Luxembourg, entitled <i>Business and Human Rights</i> to
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	facilitate the knowledge exchange among international experts and local stakeholders. - o The Ministries of Foreign and European Affairs and Economy, together with the UEL and INDR are planning to organize a conference on business and human rights in October 2019.¹⁵ The conference website has a link to the NAP 2018-19. Other stakeholders have also initiated activities to promote the UNGPs and business and human rights more broadly. Notably; - o Luxembourg Bar Association, which is hosting the International Association of Lawyers' annual congress in 2019, has included business and human rights as one of the two principal themes in their annual programme.¹⁶ - o ABBL has extended information on business and human rights to all its members via email, in particular at the level of Social Commission, the CEOs and the director of human resources.¹⁷ - o UEL and INDR have engaged in promotion and awareness raising through their Executive Committee. The issue has been in the agenda of the board of directors' meetings. Business and human rights topic has been included in the INDR's newsletters reaching out to two thousand contacts. The UEL has disseminated information on business and human rights to its internal communication network, which was subsequently shared with all the members.¹⁸ - o <i>Finance and Human Rights</i>, a non-profit organization, has been launched by private stakeholders which received a wide coverage in local press. The Organization has disseminated information among the public through various information sessions and publications.¹⁹
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	- o Local CSOs have organized various activities in order to raise awareness, one of which is a workshop titled “Towards mandatory human rights due diligence legislation in Europe” (to be held on 24 October 2019). - o The CCDH held a press release on October 3, 2019 detailing its position concerning the current NAP and providing recommendations to the Government for future action.
	• Action Point: Adopting and implementing a National Pact on the Respect for Human Rights in the Activities of Business Enterprises in order to “[formalize] the partnership and the joint commitment between the State and the businesses in order to honour their respective obligations under the UN Guiding Principles”.²⁰ The Pact will involve a number of concrete undertakings by business enterprises, particularly in terms of training activities. The Pact has been drafted by a sub-group within the WG/GT consisting of the representatives of the Government, business, CSOs and the academia. At the time of the writing, the final draft is being circulated among the WG/GT members to generate comments. The intention is to formally launch the Pact before the end of the year. • Action point: Proposing training sessions based on the UNGPs for the subscribing companies as a way to ensure a concrete follow-up and to measure the commitment made by the parties.²¹ - o IMS (together with ASTM and Fairtrade Lëtzebuerg) has offered a two day training on “Human Rights: From Risk to Opportunity”. Fourteen companies participated in the first session of the training (second session has not yet taken place as of writing of this report). - o The non-profit Finance and Human Rights, in collaboration with HoT, has offered a training module (on 06 June 2019) that has been

	attended by 6 companies. - o Two training modules proposed by INDR together with an expert from the University of Luxembourg were postponed due to insufficient number of registrations. • Action point: Proposing to update the CSR labeling process of INDR with a module on the respect of human rights in order to give visibility to those enterprises that live up to their human rights obligations. Ongoing contacts with the INDR as well as the LuxFLAG (regarding the human rights labeling of investment funds) have taken place. • Action Point: Promoting the UNGPs in international fora and international relations, including in international economic relations and relations with the Luxembourg Development Cooperation partner countries: - o A delegation of the WG/GT attended the UN Forum on Business and Human Rights in 2018. Another delegation is expected to attend to the Forum in 2019. - o Contacts were made with the Department of Development Cooperation of the MAEE, particularly in relation to the cooperation program of the Business Partnership Facility. - o Members of the Development Cooperation Department have been attending the WG/GT meetings and making presentations regarding their work. - o A meeting was held with the Minister of Development Cooperation on 4 March 2019 who has expressed interest in developing a Business and Human Rights Pact for companies from partner countries involved in Luxembourg Cooperation projects. • Action point: Putting in place pilot projects on due diligence in enterprises in which the State is the main shareholder. To this end, letters signed by the Minister of the MAEE were sent to the directors of the State owned companies
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	in August 28, 2019. The letter provided background information on the UNGPs and the NAP. It drew attention to the fact that “the State has to lead by example” in implementing the principles expressed therein. It informed the companies that they will be contacted further to discuss the follow-up of the UNGPs’ implementation within their companies, and encouraged them to engage constructively with the UNGPs.²² • Action point: Raising human rights awareness of contracting authorities as a part of their public procurement procedures. • Action point: Inserting language that will raise human rights and CSR awareness into the files of economic missions; Gaps Both the Government and the relevant stakeholders have taken steps to implement the UNGPs in Luxembourg, notably through the NAP 2018-29. Their efforts are growing with the upcoming revision and update of the NAP 2018-19. Despite the increased attention, however, certain gaps remain regarding the dissemination of information and capacity-building efforts: • Regarding the action point on awareness raising, information and promotional campaigns on the UNGPs, the NAP states that a “special emphasis will be placed, inter alia, on <i>human trafficking for forced labour</i>” . No concrete action in this regard has been taken yet. • The same action point states that “<i>a general communication, including through the media, should help to raise public awareness on the positive role that businesses can play in regards to human rights in their own activities, and their relationships with their suppliers and customers</i>” . No systematic communication campaign has been conducted yet. Some members of the WG/GT have raised the point that the media was not sufficiently informed about the conference held by the MAEE and University of Luxembourg in June 2019.
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	• The training sessions were not promoted sufficiently enough as evidenced by the low number of turn out in the training sessions –and the fact that some of the sessions were cancelled due to insufficient number of registrations. • Proposition to consider development of specific training modules, with the participation of NGOs has not been realized yet. • While several contacts (both international and domestic) have been established regarding the promotion of the UNGPs that relate to the several of the action points in the NAP, more concrete action is needed in order to argue that these action points are fulfilled. • Attempts to raise awareness might include, but is not limited to, incorporating the UNGPs into the work of different agencies across the Government. A good example that already exists is the web-link to the SDGs at the main page of the Directorate for Development Cooperation and Humanitarian Affairs.²³ The Government is advised to insert similar references to the UNGPs across all relevant Government websites. • The Government has a comprehensive web portal, <i>Guichet.lu</i> addressed to both public and private entities. It is recommended that references to the UNGPs and/or the NAP to be included in this website to reach broad public. • The Government is advised to insert references to the UNGPs in its publications, for example, the ones that concern investment opportunities in Luxembourg. • The Government should increase the capacity of Luxembourg embassies with regards to business and human rights by informing them about the UNGPs. The embassies should be encouraged to use the UNGP framework when they work with local government officials and with the Luxembourgish companies that do business or wish to do business in a given country.
1.3. Has the state participated in international efforts	Luxembourg has been following the activities of the OEIGWG on binding instrument

to develop a binding instrument on human rights and business?	as a EU member state.²⁴ Note that the Revised Draft of the binding treaty, released in 16 July 2019, has taken into account EU's primary criticism and has widen the scope of the instrument to include "all business activities" (Art. 3.1) and not only transnational enterprises'.²⁵ The negotiations of the instrument are still ongoing. Authorities consulted at the MAEE have stated that "with the formation of the government that resulted from the October 2018 legislative elections, the MAEE participated more actively in the internal EU consultations ahead of the OEIWG negotiations and will engage constructively during the fifth session of the OEIGWG in October 2019".²⁶
1.4. Which other relevant instruments has the state signed or made a formal statement of support? For example: • The Sustainable Development Goals; • The OECD Guidelines for Multinational Enterprises; • The OECD Anti-Bribery Convention; • The UN Convention against Corruption; or • Open Government Partnership.	The following is a non-exhaustive list of instruments that the Government has signed and/or issued a formal statement of support: Sustainable Development Goals The Government has been a steady supporter of the 2030 Agenda for Sustainable Development and the SDGs. Luxembourg published its first <i>National Plan for Sustainable Development</i> (NPSD) in 1999. On 25 June 2004, the Government adopted the Law on the Coordination of National Policies for Sustainable Development that forms the basis of Government's institutional structure on Sustainable Development.²⁷ Second NPSD was published in 2010. The draft of the third NPSD was presented in July 2018 and is currently under review. Luxembourg was also a part of the 2017 Voluntary National Review of the High-Level Political Forum on Sustainable Development. The NAP 2018-19 reiterates the important role that the businesses are expected to play in the implementation of the SDGs, and states that the NAP "is designed to complement the efforts of the Luxembourg Government to achieve the SDGs by

	<i>providing businesses with the information and means to enable them to respect human rights internally and throughout their economic value chains”</i>.²⁸ OECD Guidelines for Multinational Enterprises The Government adheres to the <i>OECD Guidelines for MNEs</i> and has established a National Contact Point (NCP). The NCP is overseeing the promotion and implementation of the Guidelines.²⁹ The activities of the NCP are coordinated by the secretariat of the <i>Comité de conjuncture</i> under the supervision of the Ministry of Economy (see Section 27.1. for further information on the NCP). OECD Anti-Bribery Convention Luxembourg signed the <i>OECD Anti-Bribery Convention</i> on 17 December 1997 (see below, Section 11.).³⁰ UN Convention against Corruption Luxembourg signed the <i>United Nations Convention against Corruption</i> (UNCAC) on 10 December 2003. Luxembourg is a member of the Council of Europe’s Group of States against Corruption (GRECO), the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) and the Financial Action Task Force (FATF), an intergovernmental organization mandated to combat money laundering and terrorism financing. Open Government Partnership (OGP) Luxembourg is a member of the OGP since 2016. The Government has approved the first OGP NAP on 26 July 2019.
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	Notably, also, Luxembourg has indicated its support for the following legally non-binding instruments: UN Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007); UN Basic principles and Guidelines on the right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005) Gaps A recent OECD study has noted that Luxembourg’s enforcement of the OECD Anti-bribery Convention remains very modest, with only one criminal case concluded over 1999-2017, and only one individual sanctioned (see Section 11.1.).³¹
1.5. Does the state support and participate in other relevant initiatives on business and human rights? For example: • The Extractive Industries Transparency Initiative (EITI); • The International Code of Conduct for Private Security Service Providers Association (ICoCA); and • The Voluntary Principles on Security and Human Rights (VPs)	<i>UN Global Compact</i>, ISO 26000, <i>International Financial Corporation Performance Standard</i>, <i>Equator Principles</i>, and <i>Global Reporting Initiative</i> are mentioned as best practices in the NAP 2018-19. UN Global Compact (UNGC) is a non-binding United Nations pact to encourage businesses worldwide to align their strategies and operations with ten principles on human rights, labour, environment and anti-corruption.³² There are 12 thousands plus participants in over 160 countries. In addition to businesses, the UNGC encourages applications from non-businesses, including academic institutions, business associations, cities and municipalities, civil society organizations, foundations, labour organizations, public sector organizations and CSR organizations. ISO 26000 is an International Standard offering voluntary guidance to any organization regardless of type, size or location, on the issues of social responsibility.³³ 80 out of more than 160 ISO member countries have adopted ISO 26000 and 21 are in the process of adoption. National adoption of an ISO standard means that “stakeholders in that country have decided, through the National Standards Body, that a standard is relevant to their market/society and needs to be

translated and made available”³⁴.

International Financial Corporation (IFC), a member of the World Bank Group, is the largest global development institution focused on the private sector in emerging markets.³⁵ **IFC Performance Standards (IFC-PS)** define IFC clients’ responsibilities for managing their environmental and social risks. The Government has a strategic partnership with the IFC that covers business development and donor funded initiatives.³⁶

Equator Principles (EPs) “is a risk management framework, adopted by financial institutions, for determining, assessing and managing environmental and social risk in projects and is primarily intended to provide a minimum standard for due diligence and monitoring to support responsible risk decision-making”³⁷.

Global Reporting Initiative (GRI) is an independent international organization that specializes in sustainability reporting on issues such as climate change, human rights, governance and social well-being.³⁸ Certain companies in Luxembourg use the GRI Reporting framework to disclose their non-financial and diversity information in accordance with the Law of 23 July 2016 on disclosure of non-financial and diversity information implementing the EU Directive 2014/95.

In addition;

Luxembourg participates in the **Kimberley process (KP)** as a EU member state. The KP is a multilateral trade regime established in 2003 with the goal of preventing the flow of conflict diamonds.³⁹ In 2002, the EU adopted Regulation (EC) No 2368/2002, implementing the Kimberley Process Certification Scheme for the international trade in rough diamonds.

	Guichet.Lu has a dedicated CSR page in its business portal that refers to several local initiatives, including labels and Charters. These include: the ESR quality label of INDR; the EcoLabel for tourist establishments of the General Directorate for Tourism; the quality label SuperDrecksKëscht fir Betriber; the eco-label of the European Union; the Diversity Charter Lëtzebuerg.⁴⁰ Gaps There is no evidence that the Government participates or implements the following initiatives which are relevant considering that the NAP 2018–19 identified <i>extractive industry</i> as one of the sectors with potential adverse human rights risks: Extractive Industries Transparency Initiative (EITI)⁴¹ and Voluntary Principles on Security and Human Rights (VPs).⁴² Regarding the UNGC; there are 32 active participants from Luxembourg all of which are business enterprises (3 publicly listed and the remaining privately owned companies). One state-owned company, P&T Luxembourg, has made a commitment to participate in the UNGC in August 2009. However the company subsequently made a request for withdrawal and was delisted in August 2013.⁴³ No evidence could be found that any public sector institution or municipality participates in the UNGC. No reference to the UNGC could be found on the Government’s website. According to ISO 26000 website, Luxembourg has not adopted ISO 26000 as a national standard.⁴⁴ Regarding the Equator Principles; 97 financial institutions in 37 countries have adopted the EPs. While some of these institutions have their operations in
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	Luxembourg, none of the financial institutions headquartered in Luxembourg are members to the initiative as of July 2019.⁴⁵ No evidence could be found that the Government encourages ICT companies to implement the <i>Principles on Freedom of Expression and Privacy</i> (the GNI Principles) despite the current NAP identifies ICT as one of the “risk sectors” (see Section 13.). The GNI Principles provide direction and guidance to the ICT industry and its stakeholders in protecting and advancing the enjoyment of rights to freedom of expression and privacy globally.⁴⁶ It is advised that the government supports the above mentioned frameworks and initiatives and encourages businesses to adopt and implement them.
1.6. Has the state noted and accepted recommendations from the UN Human Rights Council, such as through the Universal Periodic Review (UPR) process, or from other UN treaty bodies that are relevant to preventing adverse human rights impacts by businesses domiciled within the state’s territory or jurisdiction, operating at home or abroad? How has the state followed up on these recommendations and has the state monitored its implementation of the recommendations?	The UPR is a review of the human rights records of all 193 UN Member States once every four and a half years by the UN Human Rights Council. Luxembourg had undergone all three review cycles of the UPR. The third UPR of Luxembourg was conducted on January 18, 2018. The two previous reviews were conducted in January 24, 2013 and December 2, 2008 respectively. In the latest review, Luxembourg received total number of 149 recommendations three of which concerned development of a national action plan on business and human rights. Luxembourg accepted these three recommendations and responded that it “is planning to adopt the first action plan for the implementation of the United Nations Guiding Principles on Business and Human Rights in the coming weeks”.⁴⁷ The NAP was adopted on June 22, 2018. Gaps The recommendation received from the State of Palestine during the third review cycle reads: “Take the necessary steps to ensure that its national action plan to implement the Guiding Principles on Business and Human Rights includes

	provisions that would ensure that Luxembourg's companies are not involved in any activity that has a negative impact on the enjoyment of human rights, <i>particularly in conflict areas; this includes situations of foreign occupation, in which there are heightened risks of human rights abuses</i>"⁴⁸. This recommendation mirrors the UNGP 7 which concerns the state duty to protect in conflict-affected areas where there is a heightened risk of gross human rights abuse. There is no specific reference in the NAP 2018-19 to state's duty to protect form business related human rights abuses in <i>conflict-affected areas</i> (see Section 20). Luxembourg is one of the founding members of both the Council of Europe and the European Union. Both organizations have issued recommendations to their member states to develop NAP for the implementation of the UNGPs. In its NAP 2018-19, Luxembourg refers to these recommendations as a part of the international rational framework paving way to the adoption of the NAP.
1.7. Has the state noted and followed up on recommendations by any other international or regional bodies regarding steps to prevent business-related adverse human rights impacts?	
2. National Laws, Policies, and Regulations	
Guiding Questions	
2.1. Has the state put in place relevant structures to ensure implementation of the UNGPs, for example, through the establishment or designation of a body tasked with implementation measures or through the allocation of internal resources?	In Luxembourg, the Inter-Ministerial Human Rights Committee is in charge of fostering inter-agency cooperation and coordination in the field of human rights. The Committee was established in May 2015. In 2017, Working Group on Business and Human Rights (WG/GT) was created within the Inter-Ministerial Human Rights Committee. The mandate of the WG/GT included elaborating the NAP on business and human rights. Following the adoption of the NAP 2018-19, the WG/GT continued to oversee the implementation of the NAP and submitted its first annual report to the Government Council on 26 July 2019. The Government Council extended the mandate of the WG/GT. Both the Inter-Ministerial Human Rights Committee and the WG/GT is convened and coordinated by the Ministry of Foreign and European Affairs. The members of the

	working group include representatives of the public and private sector, national human rights institutions, civil society organizations and the academia. The working group meets every 6 weeks and the meetings are presided by the Ambassador-at-Large for Human Rights. Gaps There is no website dedicated to the work of the WG/GT. The Government is advised to create a dedicated website and update it regularly. The WG/GT does not have its own budget. However, it was confirmed that it can resort to the general human rights budget of the Government when needed.⁴⁹ Nonetheless, the Government should consider allocating a specific budget for the activities of the WG/GT to ensure to continuity of the work of the Group, including various promotional activities of the NAP.
2.2. Has the state introduced and/or implemented policies to help facilitate business respect for human rights through the adoption of National Action Plans (NAPs) on business and human rights, corporate social responsibility, development, anti-discrimination, government transparency, women's rights, or human rights in general?	Luxembourg has adopted first version of its NAP on business and human rights on June 22nd, 2018. The NAP is entitled: “<i>Plan d'action national du Luxembourg pour la mise en oeuvre des Principes directeurs des Nations Unies relatifs aux entreprises et aux droits de l'homme 2018-2019</i>”. The following is a non-exhaustive list of other relevant national action plans that Luxembourg has issued: • National Plan for Sustainable Development⁵⁰ • National Action Plan on Women and Peace and Security 2018-2023⁵¹ • National Action Plan on Equality between Women and Men⁵² • National Action Plan on Human Trafficking⁵³ • National Action Plan on Integration⁵⁴ • National Action Plan on Prostitution⁵⁵

	• National Action Plan on Promotion of LGBT Rights⁵⁶ • National Action Plan for the Implementation of the United Nations Convention on the Rights of Persons with Disabilities⁵⁷ • National Action Plan on HIV⁵⁸ • National Action Plan for the Open Government Partnership⁵⁹ Gaps NAP 2018-19 notes that a NAP on CSR is being developed under the auspices of the Ministry of Economy that identifies human rights explicitly as a national issue for businesses.⁶⁰ No follow-up on the NAP on CSR could be found. CSR can be very valuable in advancing business and human rights, including the UNGPs. Therefore, the Government is advised to follow-up the work that has already started on the NAP on CSR, ensuring that the content of the NAP is coherent with the NAP on business and human rights. In general, the Government is advised to ensure a policy coherence that builds on common and consistent approach among all of the NAPs. The public officials consulted for this study have stated that: <i>“All diplomatic missions are briefed on a regular basis about Luxembourg’s commitments to the protection and promotion of human rights, both through official policy statements, like the Minister of Foreign and European Affairs’ annual statement on foreign policy to Parliament (B&HRs has been a topic in recent years), as well as through the Directorate of Political Affairs”</i>.⁶¹ Gaps There is a clear for improvement in relation to increasing the capacity of foreign embassies and consulates in regards to the UNGPs. Embassies should be informed
2.3. Has the state set out and fully disseminated to relevant government agencies (including foreign embassies and consulates) clear policy statements on the expectation that all businesses domiciled in its territory and/or jurisdiction respect human rights?	

2.4. Is the state undertaking or supporting activities to identify specific business sectors or activities that may have particularly negative impacts on human rights, such as the extractive, apparel, and other sectors?	about the UNGPs and should be encouraged to use the UNGP framework when they work with local government officials and with the Luxembourgish companies that do business or wish to do business in a given country. Note that, in its NAP Guidance, the UN Working Group has underlined that the mapping of risk sectors should include adverse business-related human rights impacts occurring <i>on the State's territory as well as abroad</i> with the involvement of a company domiciled in the country.⁶² Moreover, it should also comprise <i>impacts occurring at the time of assessment as well as potential future impacts</i>.⁶³ The NAP 2018-19 has identified the following as having potential adverse impact on human rights due to their general predominance in the Luxembourg economy, the national and international nature of their activities and the origin and number of their employees: Financial sector, extractive industries, information and communication technologies – including the field of artificial intelligence – data protection, the construction sector and the hotel and catering sector.⁶⁴ The CSOs consulted for this study, in addition to the above commercial activities, referred to the following sectors as posing actual or potential risks to human rights and commented that in-depth analysis of these sectors is needed:⁶⁵ • <i>Agribusiness</i>; since numerous agribusiness companies registered in Luxembourg (or investment funds based in Luxembourg that provide financial support to agribusiness sector) have been documented for their adverse impacts on human rights in their overseas operations (see Section 6.5. for non-exhaustive list of examples). - In addition, agribusiness sector plays a predominant role in Luxembourg due to the presence of a “global player”, Ferro Group, whose international headquarters are located in Luxembourg. • <i>Logistics and maritime transport sectors</i>;⁶⁶ the CSOs have cited that these sectors
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	will be promoted by Luxembourg in the years to come according to the Coalition Agreement and that their predominance will thus increase. • <i>Food and textile distribution</i>: the CSOs have noted presence of one hundred textile companies and various big food distribution chains in Luxembourg and argued that they should be included in the risk mapping in light of their potential impact on human rights. Gaps The NAP has identified the risk sectors based on a “preliminary observation” without differentiating among their existing and potential human rights impacts. While the present study has identified various gaps that relate to different sectors mentioned in the NAP (see various sections in the present study), it has not been possible to deal exhaustively with each sector given the limited time and resources assigned to complete the study. Therefore, it is recommended that the Government conducts further sector specific analysis into the sectors identified above.
2.5. Is the state undertaking or supporting any activities to identify specific impacts on particularly vulnerable groups, such as women, children, minorities, and indigenous peoples?	Several institutions in Luxembourg work on identifying specific impacts on particularly vulnerable groups. For institutions and procedures for children, see Section 26.3., for women, see Section 15.1. This report has also identified people living under in-work poverty and older people as well as victims of human trafficking to be among the particularly vulnerable groups (see Section 5.1.).
2.6. Has the state developed guidance for businesses on respecting human rights that is appropriate to different industry sectors (for example, high-risk sectors such as extractives), particular human rights issues (for example, working conditions, discrimination), and different types of business enterprises (for example, MNEs, SMEs)?	The NAP 2018-19 makes a reference to the “<i>Human Rights Guidance Tools</i> developed by the UNEP Finance Initiative [which] offers a sectorial human rights risk analysis, including the financial sector. This tool can be used to structure the dialogue with private sector actors and their sectorial professional organizations”⁶⁷. The NAP 2018-19 also states that; “[c]oncerning the protection of children’s rights in the context of business activities, UNICEF and the <i>Danish Institute for Human Rights</i> (DIHR) have developed a supplement to the <i>Human Rights Guidance Tools</i>, on

	<i>Children's Rights in National Action Plans on Business & Human Rights</i>, in order for governments and other stakeholders to understand how obligations regarding children's rights could be implemented in practice".⁶⁸ Gaps Apart from the above references, this study did not find any specific guidance issued by Luxembourg for businesses. The Government is advised to strongly encourage the businesses to make use of various sector specific guidance that exist at the international level. In addition, in light of the various gaps identified with regard to the laws and regulations relating to anti-discrimination (see Section 15), the Government should issue a clear guidance for businesses on discrimination, amongst others. Considering the limited resources available for SMEs to implement human rights policies, the Government should consider developing a guidance tailored for SMEs.
3. DUE DILIGENCE Guiding Questions 3.1 Has the state established laws requiring business enterprises to do human rights due diligence, including in relation to their subsidiaries and suppliers, regardless of where they operate?	Status and Gaps Human rights due diligence is one of the key components of the UNGPs. The UNGP 17 provides that: <i>In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights' due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.</i> Human rights due diligence is also addressed in the OECD Guidelines for MNEs which further provide that:

	<i>Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations, carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.</i> • Currently, there are no laws in Luxembourg requiring business enterprises to conduct human rights due diligence. • The Law of 23 July 2016 giving effect to EU Directive 2014/95/EU, obliges certain companies to provide a non-financial statement as a part of their annual report (for details, see Section 4.3.). While the companies are required to address respect for human rights alongside other non-financial considerations, conducting human rights due diligence is not one of the requirements. • The Coalition Agreement (2018) includes a commitment to explore the possibility of HRDD legislation in Luxembourg and to support the adoption of binding EU legislation:⁶⁹ <i>“Le Luxembourg soutiendra des initiatives européennes pour renforcer la responsabilité sociale et environnementale des entreprises transnationales dans la gestion de leurs chaînes d’approvisionnement et s’engagera au niveau européen pour une législation contraignante et effective. Dans ce contexte, la possibilité de légiférer sur le devoir de diligence pour les entreprises domiciliées au Luxembourg sera étudiée, dans la mesure où ce dernier permettra de garantir le respect des droits humains et de l’environnement tout au long de leur chaîne de valeur et représenterait une mesure complémentaire au Plan d’action national sur les entreprises et les droits humains qui souligne l’importance de la diligence raisonnable pour prévenir des violations des droits humains et des dommages environnementaux</i>
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	<i>engendrés par les activités des entreprises”.</i> • The NAP 2018-2019 encourages companies to adopt policy instruments in order to fulfill their responsibility to respect human rights, in particular, by introducing a due diligence process.⁷⁰ • The NAP 2018-2019 proposes to “put in place pilot projects on due diligence in enterprises in which the State is the main shareholder”.⁷¹ • “Due diligence” was the subject of a parliamentary question on 22 January 2019 (see Section 10.3.). • In addition, - o The “Initiative pour un devoir de vigilance au Luxembourg” (Luxembourg due diligence initiative) calls for introduction of a binding due diligence legislation for TNCs domiciled in Luxembourg.⁷² The Initiative brings together 16 CSOs. It is represented at the WG/GT meetings and participates in the NAP deliberations. - o During consultations with the representatives of the Initiative,⁷³ they restated their position and called for a law on human rights due diligence for companies registered in Luxembourg which should cover their value chains. - o In a press release on October 3, 2019, the CCDH has advised the Government to adopt a legislation on human rights due diligence for all enterprises, in accordance with its commitment expressed in the coalition agreement. Gaps
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	• As stated above, CCDH and the civil society groups have called for the introduction of a human rights due diligence legislation. • However, some concerns were expressed about the impact of “new forms of regulation” including human rights, but also environment and the GDPR, especially among smaller businesses due to the impact that such a regime may have on the resources of small and medium size enterprises in particular.⁷⁴ It is important to note that, while all businesses regardless of their size, sector, operational context, ownership and structure have an obligation to respect human rights, the means through which a business enterprise meets its responsibility to respect is proportional to its size and scale of the business.⁷⁵ Therefore, tailoring the human rights due diligence requirements to reflect the size and type of businesses may address the foregoing concerns of the smaller enterprises. During the stakeholder consultations, a trade union representative suggested that the State could consider dedicating experts to assist smaller companies to fulfill their human rights obligations.⁷⁶ • It can also be inferred from the contributions of the business representatives at the WG/GT meetings that the preferred way to address human rights issues is a coordinated and collaborative approach that focuses on human rights guidance and awareness raising, rather than a mandatory regime. Concerns exist that legislative requirements will alter the level playing field and put Luxembourgish companies in a competitive disadvantage in comparison to companies based in jurisdictions where no such laws exist. These are legitimate concerns, but as the UN Working Group on the issue of human rights and transnational corporations and other business enterprises has
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	emphasized, they “do not negate the imperative for Governments to take steps to close governance gaps, including through legal means. When considering the most effective approaches, States may learn from both legislative and enforcement efforts in other fields, such as anti-bribery and environmental protection[...], where business enterprises have been able to adjust to the implementation of laws concerning corporate responsibility expectations. Generally, business actors are not opposed to legislation when it helps to level the playing field and provides predictability” .⁷⁷ The Government can partially address these concerns by taking a more proactive role within the EU by advocating binding measures at the EU level including supply chain due diligence; and by advocating for a more constructive engagement of the EU with the multilateral business and human rights treaty negotiations (the latter appears to be the case based on the comments received by public officials, see Section 23.3.). • An expert interviewed for this study stated that Luxembourg is a “follower, not an innovator” when it comes to corporate governance issues.⁷⁸ This comment, however, can be debated. In 2016, the Luxembourg Stock Exchange launched the first global platform dedicated to green, socially responsible and sustainable securities; Luxembourg Green Exchange (LGX).⁷⁹ Nevertheless, even if one assumes that Luxembourg is not an innovator but only follows the trends, there appears to be a clear trend in mandatory human rights due diligence legislation: - o In 2017, France introduced the law on le <i>devoir de vigilance</i> which imposes on French business enterprises above a certain size a duty to be vigilant in order to prevent environmental and human rights harm caused by their subsidiaries and through their business relationships. - o Currently, the Swiss Parliament is considering a mandatory human rights
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	due diligence put forward by the Swiss Responsible Business Initiative (RBI) and the Parliamentary counter-proposal. - o German Federal Ministry for Economic Cooperation and Development has drafted and released a law (10 February 2019) on mandatory human rights due diligence for German companies and their supply chains. - o Concerning forced labour and human trafficking as well as child labour; the United Kingdom has adopted the Modern Slavery Act 2015 which requires business enterprises that conduct business in the country and have an annual turnover of £36 million or more to report on steps taken to ensure that there is no forced labour and trafficking in their supply chains and their own activities. - o The California Transparency in Supply Chains Act of 2010 requires affected business enterprises conducting business in California to report to the public on their efforts to “eradicate slavery and human trafficking from [their] direct supply chain for tangible goods offered for sale”. - o The child labour due diligence law of the Netherlands, approved by the Dutch Senate on 14 May 2019, requires companies to determine whether child labour exists in their supply chains and set out a plan of action on how to combat it. - o The Modern Slavery Act of Australia, in force since January 2019, requires for enterprises of a certain size to report on how they manage modern slavery risks in their operations and supply chains. • In the EU, Regulation (EU) 2017/821 lays down supply chain due diligence obligations for selected EU importers of certain conflict minerals and metals (see Section 10.4.) • The EU regulation on disclosure of non-financial information by certain large business enterprises also includes provisions for creating incentives to exercise human rights due diligence (see Section 10.4.).
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	- Admittedly, limitations exist in these laws and it is too early to assess their impact on the ground. Nonetheless, the UN Working Group has already highlighted two positive effects: (i) that the legislation is helping to raise awareness of the corporate responsibility to respect human rights at the decision-making level within business enterprises, and (ii) that, despite the fact that the legislation applies only to larger companies, obligations shift down through value chains through business-to-business pressure.⁸⁰ - Strictly binary approach to business and human rights challenges appears misconstrued. In a recent statement, John Ruggie, the author of the UNGPs, has reiterated that: <i>“there is no inconsistency in states adopting measures that require businesses to meet their responsibility to respect human rights through legislation. States similarly may adopt legislative measures to encourage, support or incentivize businesses to do so. [...] States are expected to adopt a mix of measures - voluntary and mandatory, national and international- to foster respect for human rights in practice. [...] By doing so, they are doing what we expect governments to do: to govern, and to govern in the public interest”</i>.⁸¹ - In light of the above, the Government is advised to adopt a mixed set of measures to ensure that human rights due diligence is embedded as part of standard business practice in Luxembourg, including; - introducing legislation or amending existing legislation to require Luxembourg based companies, or companies that do business in Luxembourg to exercise human rights due diligence. This can be a stand-
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	alone legislation, or the existing laws can be amended so as to include due diligence requirements. The Law of 23 July 2016 giving effect to the EU Directive 2014/95/EU could be a useful basis upon which mandatory due diligence could be developed providing that the scope is expanded. - o Corporate governance laws also have a potential basis upon which due diligence requirements can be introduced. Considering various economic arguments for businesses to respect human rights –both in terms of mitigating risks and cost and gaining competitive advantage in the market place—⁸² it is reasonable to argue that board of directors’ fiduciary duties to their shareholders require them to consider long term rights and interests of other stakeholders. For instance, principle 2 of the <i>X Principles of Corporate Governance</i> of the Luxembourg Stock Exchange for listed companies states that: “The Board [...] shall act in the corporate interest, and shall serve all the shareholders by ensuring <i>the long-term success of the company</i>. They shall consider <i>corporate social responsibility aspects and shall take into account the interests of all stakeholders in their deliberations</i>”.⁸³ - o State-owned or controlled enterprises, in particular, should be required to conduct human rights due diligence in Luxembourg and abroad. The attention to the State-owned or controlled businesses or those receiving State support is particularly important in light of the State-business nexus. According to the UNGP 4: “<i>States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence</i>”. As such, the Government is advised to implement without delay the action point in the current NAP
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	that provides “putting in place pilot projects on due diligence in enterprises in which the State is the main shareholder” . • At the mean time, Luxembourg is advised to continue exploring ways to incentivise businesses to conduct human rights due diligence and accelerate the awareness raising activities. • The NAP 2018-19 proposes to elaborate, adopt and implement a <i>National Pact on the Respect for Human Rights in the Activities of Business Enterprises</i>. The pact will be a formal declaration of intent to respect human rights from top executives of the signatory company. In its current formulation, the Pact involves a number of commitments by businesses including, trainings and reporting, among others. The Pact can be a useful tool as an initial commitment as it will allow individual companies to tailor their training and reporting needs to their particular sector and risk profile. The Government should ensure that the Pact is adopted as soon as possible and as many businesses as possible are encouraged to make formal commitment to the instrument. The Government is advised to ensure that all companies that are owned or controlled by the State sign the Pact. • The first NAP on business and human rights of Luxembourg is currently under revision for an update. The WG/GT should consider adopting clear targets so far as it concerns the due diligence expectations from businesses in Luxembourg. An inspiration can be drawn from other NAPs and policy instruments.⁸⁴
3.2. Has the state provided guidance around its expectations and best practices in relation to human rights due diligence?	The NAP 2018-2019 sets out the Government’s expectations from companies “to fully respect human rights in general”, and in particular to: • “[p]revent human rights violations as a result of their activities; • [A]dopt the necessary policy instruments for this purpose, in particular by introducing a due diligence process. In this context, due diligence refers to the

	process that enables companies, as an integral part of their decision-making and risk management mechanisms, to identify, prevent and mitigate potential human rights impacts of their activities, as well as to report on how they address this issue. [...] • [R]edress any adverse impacts of their activities on human rights”⁸⁵. (See Section 3.1. for comments on due diligence)
4. CORPORATE STRUCTURES AND GOVERNANCE	
Guiding Questions	Status and Gaps
4.1. Has the state established measures to overcome the challenges associated with limited liability of parent companies? For example, has the state established a “duty of care” for parent companies in terms of the human rights impacts of their subsidiaries, regardless of where the subsidiaries operate?	Experts have noted that, “there is no legal definition of ‘corporate governance’ in Luxembourg.”⁸⁶ In Luxembourg, limited liability company (<i>société à responsabilité limitée</i> - SARL) is the most widely used form of company (around 2/3 of the companies in Luxembourg are SARLs).⁸⁷ Article 2 of the Company Law lists commercial companies with legal personality and states that each form shall constitute a “legal person separate from its members”. According to the principle of limited liability, the shareholders in a corporation may not be held liable for the debts of that corporation beyond the level of their investment. While this corporate form has certain economic advantages, in the context of corporate groups, limited liability and corporate separation have led to challenges for third parties who have suffered harm as a result of the conduct of an overseas subsidiary and sought reparations before the national jurisdiction of the home state of the parent company.⁸⁸ Experts have argued for the restriction of the doctrine where it is used to shield the owners and controllers of a company against liabilities to third parties.⁸⁹

	Whether or not a parent company can be held liable for the conduct of the subsidiaries that it controls or ought to control shall depend on the law applicable to the case.⁹⁰ The Brussels I and Rome II Regulations relate to the “domicile” of a business. This is specifically defined as being the business’s “statutory seat,” “central administration,” or “principle place of business.” But, experts have noted that, the principle of limited liability remains the dominant approach, and under most legal systems, only exceptionally will it be possible to lift the corporate veil.⁹¹ Consistent with this doctrine, the liability of the parent company may not be engaged solely on the basis of the fact of the control it exercises on the subsidiary, where the latter commits human rights violations or contributes to such violations.⁹² As experts have noted, this may make it difficult for victims of the conduct of the subsidiary to seek reparation by filing a claim against the parent company.⁹³
4.2. Has the state put in place corporate and/or securities laws and regulations to support ethical corporate behaviour and business respect for human rights, such as those relating to financial reporting; articles of incorporation; registration; and corporate board, director, and stock exchange listing requirements?	The following is a non-exhaustive list of main legislative and regulatory practices on corporate governance in Luxembourg: • The main source of corporate governance is the Law on Commercial Companies of 10 August 1915, as amended in 2016 (the “Companies Law”);⁹⁴ • The Law of 19 December 2002 on the Trade and Companies Register and the accounting and annual accounts of undertakings, as amended (“RCS Law”);⁹⁵ • The Law of 10 July 2005, relating to prospectuses for securities, as amended, implementing Directive 2003/71/EC;⁹⁶ • The Law of 11 July 2008 (the “Transparency Law”) on transparency requirement for issuers, as amended, implementing EU Directive 71/3013; • The Law of 23 December 2016 on market abuse, implementing Regulation 596/2014 (the “Market Abuse Law”); • The Civil Code; • The Commercial Code;

	• The Law of 12 December 2016 creates societal impact companies (<i>société d'impact sociétal</i> - SIS), a legal form of business reserved for businesses active in the social and solidarity economy.⁹⁷ The law derogates from Article 1832 of the Civil Code, by stating that “an act of partnership may provide that the company is not constituted for the purpose of providing the partners with a direct or indirect profit”.⁹⁸ • In November 2018, EU Commission referred Luxembourg to the Court of Justice of the EU for not completely implementing EU anti-money laundering rules.⁹⁹ Subsequently, Luxembourg adopted the Law of 13 January 2019 creating a register of beneficial owners (‘RBO’) and transposing the 4th EU AML Directive¹⁰⁰ as amended by the 5th EU AML Directive.¹⁰¹ into domestic law. The Law entered in to force on 1 March 2019.¹⁰² Following six-month transitional period (by end of August 2019) all in-scope entities, including commercial companies, special limited partnerships, and investment funds were required to provide the RBO with relevant information on their ultimate beneficial owners of Luxembourg corporate and other legal entities. • The X Principles of Corporate Governance (“the X Principles”) of the Luxembourg Stock Exchange (the LuxSE) for listed companies apply to all Luxembourg companies listed on LuxSE and are aligned with the European Commission’s guidance, set in the 2003 Action Plan.¹⁰³ - o The X Principles include, amongst others, a principle on CSR (Principle 9) and accompanying recommendations.¹⁰⁴ The X Principles recommends companies to provide clear and transparent non-financial information on sustainable development and encourages them to use internationally recognized frameworks to do so (Recommendation 9.2).¹⁰⁵ - o The Principle on CSR also recommends listed companies to “regularly consider the company’s non-financial risks, including in particular the
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	<i>social and environmental risks</i>” (Recommendation 9.3) and to “<i>publish a methodological memorandum [...] relating to the way in which significant factors have been identified and data have been established</i>” (Recommendation 9.4). The latter recommendation identifies the following, as some of the significant performance indicators applicable to business activities: “<i>workforce, staff training, safety, absenteeism, gender balance, subcontracting and relations with suppliers, energy consumption, water consumption, waste treatment, CO2 emissions, adaptation to the consequences of climate change, measures taken to preserve or develop biodiversity</i>”.¹⁰⁶ - o The X Principles are based on a flexible “comply or explain” system which allows companies to deviate from the recommendations providing that they explain why they have done so. - o The LuxSe has also compiled an ESG reporting guide for companies complementing the Ten Principles. • Various recommendations, instructions and circulars on corporate governance published by the financial regulator Commission de Surveillance du Secteur Financier (CSSF).¹⁰⁷ • A non-profit Luxembourg Finance Labeling Agency (LuxFLAG) was established in 2006 with the aim of promoting the raising of capital for microfinance by awarding a specific label to eligible microfinance investment funds based on a number of criteria.¹⁰⁸ Its objective is to reassure investors that the labeled investment vehicles invest in the responsible investment sector. • In September 2009 the Association of the Luxembourg Fund Industry (ALFI) published a Code of Conduct for Luxembourg Funds to provide Luxembourg
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	funds' boards of directors with high-level principles and best practice recommendations.¹⁰⁹ Gaps The identification of beneficial ownership of entities remains a high profile issue in Luxembourg, in particular following the Luxembourg leaks scandal in 2014.¹¹⁰ It is reported that, %53 of the in-scope entities of the RBO law, amounting to more than 68,000 companies, did not register their beneficial ownership details by the initial deadline of 31 August 2019.¹¹¹ The administrators of the register granted additional administrative period of 3 months to entities that have not yet made their declaration to the Register of Beneficial Owners (<i>Registre des bénéficiaires effectifs</i> - RBE).¹¹² The website of the register does not provide reason for the extension.
4.3. Has the state put in place laws and regulations to support disclosure and reporting by corporations on human rights, labour rights, environmental impacts, corporate social responsibility, or other ethical issues? Do these laws and regulations extend to reporting on operations and activities abroad? Has the state provide guidance on how human rights impacts are “material” to the economic performance of the reporting business enterprise?	The following is a non-exhaustive list of laws and regulations to support disclosure and reporting by corporations on environmental and social impacts, CSR and other ethical issues: • Documents that companies are required to disclose are listed in Article 11 bis of the Companies Law. The list does not require the disclosure of information on human rights, labour rights, environmental impacts, CSR or other ethical issues. • The Law of 23 July 2016 implements the Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending the Directive 2013/34/EU (the “Accounting Directive”) as regards disclosure of non-financial and diversity information by certain large undertakings and groups. The primary purpose of the law is to increase the EU companies’ transparency and performance in respect of environmental and social issues. The law applies “comply or explain” principle. - o The laws applies to the companies that fulfill the following conditions:¹¹³

	▪ <i>Average number of full-time staff employed during the financial year:</i> over 500 ▪ <i>Net turnover:</i> over EUR 40 million; and / or Balance sheet total: over EUR 20 million ▪ <i>Public Interest Entities:</i> Listed companies, credit institutions, insurance undertakings ▪ For insurance undertakings (including reinsurance undertakings), the criteria “net turnover” has been renamed “gross written premiums” in line with directive 91/674/EEC. - o Targeted undertakings must disclose a non-financial statement containing information to the extent necessary for an understanding of the undertaking’s development, performance, position and the impact of its activity relating to, at least, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters; - o Targeted undertakings must disclose the information in their management report, or in a separate report published with the management report, or within 6 months of the balance sheet date, made available to the public on their website; - o The report shall include; ▪ a description of the undertaking’s business model, ▪ company policies relating to non-financial matters, and the outcomes of those policies, ▪ principle risks related to non-financial matters and business activities, ▪ any non-financial key performance indicators which are used. - o Subsidiaries may be exempted from such reporting obligations if they are included in the consolidated nonfinancial statement of another group parent company.
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	- o A fine between EUR 500 to EUR 25,000 may be imposed on directors or managers who have breached the publication requirement regarding non-financial and diversity information (either in connection with the annual accounts or the consolidated accounts of the relevant company). • Ten Principles of Corporate Governance of the Luxembourg Stock Exchange (X Principles).¹¹⁴ Gaps The scope of the Law of 23 July 2016 is limited with large groups and undertakings. It does not create obligations for smaller and medium sized businesses. The present research did not find any positive incentives provided by the State for companies to respect human rights.
4.4. Has the state provided any incentives for businesses to respect human rights, such as such as preferential treatment in procurement processes where a company evidences the responsibility to respect human rights?	
5. LABOUR	
Guiding Questions	Status and Gaps
5.1. Has the state put in place labour laws and regulations to ensure business respect for workers' rights? Are these laws in line with the protection provided by the ILO Fundamental Principles and Rights at Work (Core Conventions) and any other ILO conventions ratified by the state?	The following is a non-exhaustive list of labour laws and regulations in Luxembourg; • Of the 8 ILO Fundamental Conventions, Luxembourg has ratified all 8 of them.¹¹⁵ • The Constitution (Article 11(4)) recognize right to work as a fundamental right: <i>"the law guarantees the right to work and the State shall ensure that each citizen may exercise this right. The law guarantees freedom of association and organizes the right to strike"</i>; • Laws and regulations regarding work and employment are consolidated in Labour Code of 1 September 2006.¹¹⁶

	• Collective bargaining agreements (<i>convention collective</i>) Gaps In general, Luxembourg has a well-developed system of employment and collective labour laws and also has mechanisms in place to monitor their enforcement and implementation (see Section 5.3.). The present study, however, found that certain issues deserve further scrutiny and ongoing attention, including; • In-work poverty (<i>pauvreté au travail</i>): Luxembourg is among the countries where in-work poverty rate is considerably higher than the EU average. According to the EU-SILC (statistics on income, social inclusion and living conditions) indicators (also adopted by the STATEC), in-work poverty comprises the share of persons who are employed and have an equivalised disposable income below the risk-of-poverty threshold, which is set at 60 % of the national median equivalised disposable income (after social transfers). An individual is considered as being employed if he/she was employed for more than half of the reference year.¹¹⁷ • The rate of in-work poverty in Luxembourg has increased from 7.1% in 2003 to 13.7% in 2017.¹¹⁸ In comparison to its neighbours, in-work poverty is the highest in Luxembourg (5.0% in Belgium, 9.1% in Germany and in 2016 it was 7.9% in France).¹¹⁹ This rate is the second highest in the whole EU behind Romania.¹²⁰ According to the STATEC, among the people considered within in-work poverty, 18% work in the construction sector, 12% in the area of accommodation and catering, 12% in commerce, 11% in administrative and support activities, 10% in health human resources and social action, 9% in public administration, 5% in domestic services and 5% in manufacturing activities.¹²¹ Regarding general poverty rate, the 2019 OECD Economic Survey of Luxembourg has noted that “though most immigrants find a job, they tend to earn less than the native-born and are more exposed to poverty, which weighs on the poverty
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	rate for the population as a whole”¹²². • Gender pay gap: Wage gap between men and women in Luxembourg is one of the lowest in Europe.¹²³ Nonetheless, according to the conclusions of the European Committee of Social Rights, Luxembourg is not compliant with Article 4 (3) of the European Social Charter, which stipulates “non-discrimination between women and men with respect to remuneration, on the ground that “it has not been established that the principle of equal pay is ensured in practice”¹²⁴. • Trafficking for the purpose of labour exploitation: Council of Europe’s Group of Experts on Action against Trafficking in Human Beings (GRETA) have noted that “Luxembourg continues to be country of destination and transit for people subjected to trafficking in human beings”¹²⁵. During the period of 2013-17, the authorities have identified 24 victims trafficked for the purposes of labour exploitation which took place particularly in the construction and catering sectors.¹²⁶ • In addition; Luxembourg has not signed, or signed but not ratified numerous international as well as regional Conventions (see Section 1.1.) related to the protection of labour rights which creates gaps in the overall regime. The Government is advised to consider signing these instruments and implement them in order to address these gaps.
5.2. Has the state provided law enforcement and relevant authorities with information and training on issues related to labour rights, including forced labour, child labour, non- discrimination, freedom of association, collective bargaining, living wage, etc.?	The National Institute of Public Administration (<i>L’Institut national d’administration publique – INAP</i>) is the Government’s leading civil service training school in Luxembourg. It provides initial and vocational training for public employees at the State and local levels.¹²⁷ Legal basis of these trainings is provided in the Grand-Ducal Regulation of 31 October.¹²⁸ Accordingly, public service officials are required to

	follow series of “common core” trainings (“formations du tronc commun”) which is compulsory for all trainees, and a set of “optional” trainings (“formations au choix”) which are determined individually for each trainee by the head of administration or his delegate. Possible optional courses are listed in the Annex to the Grand-Ducal Regulation of 31 October. The Annex lists various courses in the field of law including, labour law, public procurement, copy right law, constitutional law and social security law. Trainings are also provided under the heading of rights and duties of public officials (“droits et devoirs des agents publics”) which includes topics such as, diversity in the public service, protection of individuals with regard to the processing of personal data, equal opportunities and health at work among others. Detailed catalogue of all trainings (accessible online <https://fonction-publique.public.lu/fr/formation-developpement.html>) also lists human trafficking (“La traite des êtres humains”) as one of the training modules offered by the INAP.¹²⁹ Gaps Currently, there are no “human rights” trainings offered by the INAP. However, a representative of the INAP confirmed that they will be “more than glad” to provide such trainings should the need and demand arises.¹³⁰
5.3. Does the state have systems in place to monitor enforcement and implementation of these labour laws and regulations?	• The Labour Court (<i>Tribunal du Travail</i>) has jurisdiction over individual disputes between employers and employees arising from a labor contract or an apprenticeship contract, complementary pension schemes, and insolvency insurance. • The Ministry of Labor, Employment and the Social and Solidarity Economy (<i>Ministère du Travail, de l'Emploi et de l'Économie sociale et solidaire</i>) determines and supervises the implementation of labour laws and regulations as well as proposing future policies in relation to employment.¹³¹ • The Inspectorate of Labour and Mines (<i>Inspection du travail et des mines - ITM</i>)

	is responsible for, among other things to ensure the proper application of the legal, regulatory, administrative and contractual provisions on working hours, wages, safety, health and wellbeing, as well as the employment of children and adolescents, equal treatment for men and women, protection against sexual harassment in the workplace and for providing information and technical advice to employers and workers on how to comply with legal, regulatory, administrative and contractual provisions;¹³² - o Social elections take place in Luxembourg every five years where the employees vote to elect the members of the staff delegation in their company. The delegation then appoints “health and safety representative” and an “equality officer”. The health and safety representative, is required to be consulted by the employer in the matters concerning: ▪ risk assessment for occupational safety and health, including for groups of employees at particular risk; ▪ protective measures to be taken and materials to be used; ▪ any action by the employer that may have significant effects on safety and health; ▪ measures taken in first aid, fire fighting and evacuation of employees; ▪ the appropriate training that each employee receives in the interest of his health and safety; ▪ measures taken to protect the environment where the health or working conditions of employees are concerned. - o Following the inspections, if the findings of the health and safety representative require immediate intervention by the ITM, he or she may contact the ITM directly, and must inform the company manager and the staff delegation at the same time.
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	o In order to mitigate any risk to employees or eliminate sources of danger, health and safety representative may ask the company manager to take the appropriate measures and submit proposals.¹³³ • The National Conciliation Office (<i>Office National de Conciliation – ONC</i>) is responsible of preventing or settling collective labour disputes;¹³⁴ • The National Employment Agency (<i>Agence pour le développement de l'emploi - ADEM</i>) registers and seeks employment for unemployed persons and allocates unemployment benefits; • The Economic Committee (<i>Comité de Conjoncture</i>) is tasked with monitoring the development of economic and cyclical situation of the labour market. It reports to the Government Council every month advising on measures to prevent layoffs due to circumstantial factors.¹³⁵ The secretariat of the Economic Committee also coordinates the activities of the OECD NCP of Luxembourg under the supervision of the Ministry of Economy.¹³⁶ In addition, there are five professional chambers in Luxembourg (three for the employers and two for the employees): • The Chamber of Salaried Workers (Chambre des Salarié - CSL); • The Chamber of Civil Servants and Public-Sector Workers (Chambre des fonctionnaires et des employés publics); • The Chamber of Agriculture (Chambre d'Agriculture); • The Chamber of Commerce (Chambre de Commerce - CC), and • The Chamber of Trades (Chambre des Métiers - CDM). The Chambers play an important role, in particular in the development of the legislative framework in Luxembourg. The professional chambers have an established advisory role on drafts and proposals for regulatory texts.
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	Membership of the professional chambers is compulsory for both employers and workers, unlike representation by the trade unions and employers' associations, which is voluntary. The following is a list of major trade confederations in Luxembourg: • the General Confederation of the Civil Service (<i>Confédération générale de la fonction publique</i> - CGFP); • the Independent Luxembourg Trade Union Confederation (Onafhängege Gewerkschaftsbond Lëtzebuerg - OGB-L) • the General Confederation of Work in Luxembourg (<i>Confédération générale du travail du Luxembourg</i> - CGT-L) comprising OGB-L and FNCTTFEL, • the Luxembourg Confederation of Christian Trade Unions (Lëtzebuurger Chrëschtliche Gewerkschaftsbond – LCGB), • the Association of bank employees (<i>Association Luxembourgeoise des Employés de Banque et Assurance</i> – ALEBA), • the General Federation of the Municipal Administration (<i>Fédération générale de la fonction communale</i> - FGFC). Gaps • Luxembourg is distinguished by its tripartite institutionalised system of social dialogue comprising the Government, employers and employees. According to a report published by Eurofound:¹³⁷ <i>“the Luxembourg social dialogue model has the advantage of securing peaceful labour relations within the country because it has the capacity to react very quickly and to rapidly mobilise the actors when a problem arises”.</i> The same report, however, also notes that this advantage shows weaknesses namely that, <i>“[t]his highly reactive and informal method [...] lacks transparency and clarity</i>
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	[that] it is difficult to see and understand how decisions are made. The functioning of the Tripartite Coordination Committee illustrates this point: the law defines who sits on the committee, but not how decisions are made there”. The Government should consider adopting measures to mitigate the perception of lack of transparency mentioned above. • The following issue was brought to the attention of the author by the CSOs during the consultations: With regard to the employee representatives elected during the social elections, the relevant legislation has been extended to cover “health” (in addition to security) only during the latest elections in 2019. Therefore, the CSOs have raised concerns that the newly elected staff representatives may not have the necessary prior training on <i>health issues</i>. The Government is advised to provide additional trainings in health issues to the employee representatives.
5.4. Are there publicly reported cases of business-related adverse impacts on labour rights, including child labour, forced labour, discrimination, violations of freedom of association and collective bargaining, and inadequate working conditions, when operating at home or abroad?	Ternium S.A. is a public limited liability company (société anonyme) registered in Luxembourg,¹³⁸ and is one of the biggest steel companies operating in Americas. The company has been accused of breaching workers rights in its operations in Guatemala and refusing to engage in negotiations with Sitraternium, a union representing Ternium workers rights.¹³⁹ IndustriALL Global Union and Ternium have filed a complaint against the company at the OECD NCP Luxembourg in September 2017. Currently, the case is suspended to allow for negotiations between parties.¹⁴⁰
6. ENVIRONMENT AND LAND	
Guiding Questions	
6.1. Has the state put in place environmental laws and regulations to ensure the protection and promotion of the rights of its citizens to health, a healthy	Status and Gaps The following is a non-exhaustive list of relevant existing environmental laws and regulations in Luxembourg: • Protection of the environment and animals is among constitutional principles in

environment, and livelihoods including, for example, clean water, clean air, and cultivatable land?	Luxembourg (Article 11bis); • The Environmental Code provides a comprehensive compendium of national legislation applicable in the field of environment;¹⁴¹ • The Law of May 15, 2018 on Environmental Impact Assessment;¹⁴² • The Grand-Ducal Regulation of 15 May 2018 establishing lists of projects subject to an environmental impact assessment;¹⁴³ • The Law of 21 March 2012 on waste management;¹⁴⁴ • The Law of 21 June 1976 on the fight against noise;¹⁴⁵ • The Law of 25 November 2005 on respecting public access to environmental information;¹⁴⁶ • The Law of 29 March 2016 on reorganizing the Environmental Administration;¹⁴⁷ Luxembourg has been a pioneer in green finance: “The Luxembourg Green Exchange is the first platform exclusively dedicated to sustainable securities, listing almost half of the world’s green bond volume and an estimated third of sustainability and social bonds”.¹⁴⁸ On June 26, 2018 Luxembourg adopted a law establishing a legal framework for a new type of covered bond to finance the generation of renewable energies.¹⁴⁹ In its 2019 National Reform Programme, the Government stated that it “will explore the possibility of introducing tax incentives for investments that meet the goals of sustainable development and climate transition”.¹⁵⁰ Gaps Air pollution in Luxembourg, caused in part by traffic congestion, remains a concern, according to the EU Environmental Implementation Review 2019.¹⁵¹
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	European Council Recommendation of 9 July 2019 on the 2019 National Reform Programme of Luxembourg also highlights air pollution and traffic congestion at peak times as major problems for Luxembourg:¹⁵² <i>“ [...] the CO2 emissions from road transport contribute to climate change. According to the 2017 national projections submitted to the Commission, it is expected that in the absence of additional measures, Luxembourg will miss its 2020 greenhouse gas emission reduction target by 3 percentage points and its 2030 target by 20 percentage points. The number of cross-border workers, who currently represent about 45% of Luxembourg’s labour force, the low taxation of transport fuel and high house prices stimulate increased car use and are an obstacle to improving air quality and traffic conditions”.</i> The 2019 OECD Economic Survey has noted that there is a “scope to further reduce the CO2 emissions, especially from transport”, noting that per capita emissions in Luxembourg to be among the highest in the OECD.¹⁵³ The most effective policies and measures for reducing greenhouse gas emissions by private cars and road transport seem likely to involve a package or combination of measures. These include; voluntary agreements between vehicle manufacturers and government to produce low-fuel consumption vehicles; graduated vehicle taxes; fuel taxes and excise duties; consumer information;¹⁵⁴ and promotion of greater fuel efficiency in the different sectors.¹⁵⁴ It is recommended that Luxembourg considers implementing the foregoing measures and policies together with the necessary legislative and regulatory regimes in order to reduce CO2 emissions by road transport and to meet the set targets. The following is a non-exhaustive list of environmental impact assessment (“EIA”) laws and regulations; • The Law of May 15, 2018 on Environmental Impact Assessment;¹⁵⁵
6.2. Has the state put in place land management laws and regulations to ensure the protection of the rights of its citizens, including the recognition of customary	

land rights and the incorporation of human rights considerations into environmental and social impact assessments and related licensing practices?	• The <i>Grand-Ducal Regulation of 15 May 2018 establishing lists of projects subject to an environmental impact assessment</i>;¹⁵⁶ • The <i>Grand-Ducal Regulation of 15 May 2018 amending the Grand-Ducal Regulation of 13 September 2011 concerning the special procedure to be followed for certain classified establishments</i>;¹⁵⁷ • The <i>Corrigendum to the Grand-Ducal Regulation of 15 May 2018 amending the Grand-Ducal Regulation of 13 September 2011 concerning the special procedure to be followed for certain classified establishments</i>.¹⁵⁸ The <i>Law of 26 November 2003 on classified facilities</i> sets out a requirement to obtain prior authorisation for any industrial, commercial or craft facility, whether public or private, whenever the activity may present danger or nuisance to security, health or convenience and health and safety of workers in the workplace as well as the human and natural environment.¹⁵⁹ The Government's official information portal <i>Guichet.lu</i> has a dedicated website on "Urban Planning and Environment" which contains, amongst other topics, a site on EIA,¹⁶⁰ and a site dedicated to CSR.¹⁶¹ See the general response on training issues in Section 5.2.
6.3. Has the state provided law enforcement and relevant authorities with information and training on issues related to land rights and the linkages between human rights and the environment?	
6.4. Does the state have systems in place to monitor enforcement and implementation of these laws and regulations?	Luxembourg's <i>Environment Agency (Administration de l'environnement)</i> has the following responsibilities;¹⁶² • providing training, information and advice as well as raising awareness about environmental topics, • managing and promoting voluntary environmental certification schemes,

	• the determination, the inventorying, the description, the evaluation and monitoring of the evolution of the state of the environment and the impact of human activities on the environment, • the conception, promotion and implementation of strategies, concepts, plans and programs, • carrying out research programs, projects and analyses, • participating in the elaboration of legal, regulatory and administrative prescriptions, • the supervision and controlling of the application of legal, regulatory and administrative prescriptions as well as police activities relating to these prescriptions.
6.5. Are there publicly reported cases of business-related adverse human rights impacts in the context of land and the environment?	• SOCFIN (Société Financière des Caoutchoucs) is a Luxembourg based agro-industrial group specialized in oil palm and rubber plantations. Various reports from NGOs and international organisations have shown severe environmental¹⁶³ social and human rights impacts¹⁶⁴ associated with SOCFIN's land investments. The latest report released by FIAN Belgium concerning the company's activities in Sierra Leone shows that affected communities who have lost access to and control over their land have been exposed to serious human rights violations and abuses since 2011.¹⁶⁵ The report also points to allegations of corruption, lack of transparency and non-implementation of CSR promises by SOCFIN.¹⁶⁶ SOCFIN has denied all allegations in a letter responding to FIAN's report.¹⁶⁷ There has been an OECD NCP specific instance against Socfin Group/Socapalm handled by the Belgium NCP and supported by the France and Luxembourg NCPs.¹⁶⁸ The complaint concerned Socapalm's activities in Cameroon that were allegedly causing environmental and social damage. On June 2017, in consultation with the NCPs of France and Luxembourg, the Belgian NCP decided to terminate the mediation process noting that the remediation plan agreed to

	previously in 2013 was only partially implemented by the Socfin Group. The three NCPs noted that “despite the fact that the Socfin Group has progressed in terms of public commitments relating to the implementation of international CSR standards, practical and measurable results on the ground have yet to be achieved, particularly in Cameroon”¹⁶⁹. It is reported in the press that a lawsuit has been filed against SOCFIN in France by a Cambodian ethnic group Bunong. The group accuses SOCFIN of depriving them of their economic resources, destructing their place of worship and causing environmental degradation.¹⁷⁰ • Paraguay Agricultural Corporation (PAYCO) is a company owned by a private equity firm Rioforte (84.2 %) based in Luxembourg and the German Bank for Development (15.8 %). The company manages 135 000 hectares of land in Paraguay. Paraguay has a highly sensitive land context due to concentrations of land ownership, increasing number of undernourished persons and high percentage of poverty of the rural population.¹⁷¹ In addition, what makes land investments highly problematic is that parts of the land controlled by PAYCO are claimed by indigenous and peasant communities.¹⁷² Local people have complained about unselective sprayings of agro-toxics and resulting health problems in several of the company’s holdings.¹⁷³ It has also been reported that some of PAYCO’s operations are carried out in Chaco, an environmentally highly fragile region, which has the world’s highest deforestation rate.¹⁷⁴ • In May 2017, climate protection platform, Votum Klima, published a report titled “The Luxembourg Pension Fund and Human Rights”. In the report, the authors allege that Luxembourg pension fund invests in companies that violate human rights.¹⁷⁵
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	- Belo Monte Dam on the Xingu River in the Brazilian Amazon basin would be the world's third-largest hydroelectric project. The dam would divert the flow of the Xingu River, devastate an extensive area of the Brazilian rainforest, displace over 20,000 people, and threaten the survival of indigenous tribes that depend on the river. The Odebrecht Group which is involved in the construction of the dam, has five companies registered in Luxembourg two of which have direct links to Odebrecht SA in Brazil, according to the Action Solidarité Tiers Monde (ASTM).¹⁷⁷ - NGOs, ASTM (Luxembourg) and FIAN (Germany) have reported that Agrivision, a company whose activities were financed by Luxembourg-based AATIF (Africa Agriculture and Trade Investment Fund) has been implicated in land grabbing in Zambia.¹⁷⁸
7. COMMUNITY CONSULTATION AND ENGAGEMENT	
Guiding Questions	Status and Gaps
7.1. Is there a requirement for the free, prior, and informed consent (FPIC) of potentially impacted indigenous communities? Has the state provided relevant authorities with information and training on issues related to the rights of indigenous peoples, including their right to FPIC?	The following is a list of hard and soft law instruments that contain FPIC requirements that Luxembourg has signed or expressed support of (see sections 1.1. and 1.5. for reference and details): - ILO's <i>Indigenous and Tribal Peoples Convention</i> (1989)(in particular, Articles 5, 15 and 16);¹⁷⁹ - the <i>UN Declaration on the Rights of Indigenous Peoples (UNDRIP)</i> (2007) (in particular, Articles 10,19, 29, 32); - the <i>UNGPs</i> (2011), principle 12; - the <i>IFC Environmental and Social Performance Standards</i> (2012) (performance standard 7, clause 14, 15, 16, 17).
7.2. Are there publicly reported cases of failure by businesses domiciled in the state's territory or	The CSOs have referred to SOCFIN and Odebrecht Group as businesses that have failed to effectively conduct public consultations and/or FPIC processes in their

jurisdiction to effectively conduct public consultations and/or FPIC processes in relation to their operations at home or abroad?	operations abroad (see Section 6.5.).
8. OCCUPATIONAL HEALTH AND SAFETY	
Guiding Questions	Status and Gaps
8.1. Has the state put in place health and safety laws and regulations to ensure business respect for the physical and mental health of workers and communities?	The following is a non-exhaustive list of laws and regulations in Luxembourg related to occupational health and safety; • The law of 17 June 1994 rendered occupational health measures compulsory for all companies and all employees in the Grand Duchy of Luxembourg: ○ The Law on safety at work is included in the Labor Code in the articles L.311-1 to L.314-4, and; ○ The Law on occupational health is included in articles L.321-1 to L.327-2 of the Labor Code. • Grand-Ducal Regulation of 27 September 2004 on the setting of procedures for the training of safety representatives;¹⁸⁰ • Grand-Ducal Regulation of 20 July 2018 amending the Grand-Ducal Regulation of 14 November 2016 concerning the protection of the safety and health of employees against the risks associated with chemical agents in the workplace;¹⁸¹ • Coordinated text of 3 November 1995 of the amended Grand-Ducal Regulation of 13 June 1979 on the directives on security in the public service;¹⁸² • The Directive 2012/18 / EU of the European Parliament and the Council of 4 July 2012 on the control of hazards associated with major accidents involving dangerous substances, amending and subsequently repealing Council Directive 96/82 / EC has been transposed into Luxembourg law by the Law of 28 April 2017 on the control of major-accident hazards involving dangerous substances;¹⁸³ • On 24 March 2016, national stakeholders, including the AAA (Association

	d'Assurance Accident), the UEL and the INDR, have signed the national VISION ZERO Charter for the promotion of health and safety at work which calls for a common and integrated approach to reducing the number and severity of work accidents, commuting accidents and occupational diseases in Luxembourg.¹⁸⁴ • There is no legislation addressing mental health at workplace in Luxembourg.¹⁸⁵ See the general response on training issues in Section 5.2.
8.2. Has the state provided law enforcement and relevant authorities with information and training on labour rights in the context of occupational health and safety? 8.3. Does the state have systems in place to monitor enforcement and implementation of these laws and regulations?	The Ministry of Labour is in charge of the execution of the national policy on employment and labour, and coordinates actions relating to labour law, working conditions and industrial relations. The Occupational Health Division of the Ministry of Health is in charge of organising, coordinating and overseeing the functioning of the occupational health services. It is also an appeal body for employers and workers in cases where the opinion of an occupational doctor is disputed. Latest "Quality of Work Index" (27 November 2018) published by the Chambre des Salariés and the University of Luxembourg has concluded psychosocial issues to be the main problem in the workplace linked with rising stress levels.¹⁸⁶ The ITM has the task of inspecting occupational health and safety in private sector including; preventing psychosocial risks, external violence and burn-out, managing stress of dismissal and mobbing. The Accident Insurance Association (Association d'Assurance Accident - AAA), under

	the auspices of Ministry of Social Security, is a public institution responsible for the prevention and payment of compensation for work accidents and occupational diseases. (For further information, see Section 5.) Gaps There is no institute whose activities are exclusively dedicated to <i>prevention</i> in the field of occupational health and safety. The construction sector has been reported to have the highest number of workplace accidents in Luxembourg.¹⁸⁷ Recently, the ITM carried out inspections on 93 construction sites (between July 26, 2019 and August 18, 2019). 14 construction sites were shut down due to breaches of health and safety. Works in three separate places were stopped due to imminent and serious danger to the safety and health of employees in the workplace.¹⁸⁸
8.4. Are there publicly reported cases of adverse impacts on the health and safety of workers at home or abroad by businesses domiciled in the state's territory or jurisdiction?	
9. TAX	
Guiding Questions	Status and Gaps
9.1. Has the state put in place tax laws and regulations to support ethical corporate behaviour and business respect for human rights?	The following is a non-exhaustive list of relevant existing Luxembourg tax laws and regulations:¹⁸⁹ • The General Tax Law of 22 May 1931 (Abgabenordnung);¹⁹⁰ • The Adaptation Tax Law of 16 October 1934 (Steueranpassungsgesetz);¹⁹¹ • The Wealth Tax Law of 16 October 1934 (Vermögensteuergesetz);¹⁹² • The Communal Tax Law of 1 December 1936 (Gewerbesteuerengesetz); • The Personal and Corporate Income Tax law of 4 December 1967;¹⁹³ • The VAT Law of 12 February 1979.¹⁹⁴ For each of these laws, the executive branch has adopted various Grand-Ducal

	regulations to provide guidance in the correct implementation of the laws.
9.2. Has the state provided law enforcement and relevant authorities with information and training on the human rights impacts of tax evasion and avoidance?	See the general response on training issues above, Section 5.2.
9.3. Does the state have systems in place to monitor enforcement and implementation of these laws and regulations?	In Luxembourg, three departments are responsible for enforcing tax legislation: - the Registration Duties, Estates and VAT Authority (<i>Administration de l'enregistrement, des domaines et de la TVA - AED</i>);¹⁹⁵ - the Luxembourg direct tax authorities (<i>Administration des contributions directes - ACD</i>);¹⁹⁶ - the Customs and Excise Agency (<i>Administration des douanes et accises</i>),¹⁹⁷ where applicable. While the EU does not have a direct role in collecting taxes or setting tax rates, it oversees national tax rules in certain areas so far as they relate to EU businesses and consumer policies.¹⁹⁸ In addition, the European Commission is obliged to investigate certain national tax treatments that might constitute a violation of state aid rules under Article 108(2) TFEU.¹⁹⁹ The European Commission has launched several formal in-depth investigations to evaluate whether the tax rulings granted by Luxembourg to certain multinational companies constitute state aid within the meaning of EU law and has concluded that Luxembourg has granted selective tax advantages to certain international companies in violation of EU state aid rules.²⁰⁰ Luxembourg and the companies brought actions before the General Court of the EU seeking the annulment of the Commission's decisions. The Court recently issued a decision on the action brought by the Fiat Chrysler Finance Europe and Luxembourg, dismissing both actions and confirming the validity of the Commission's decision.²⁰¹ In November 2014, Luxembourg Leaks (LuxLeaks) scandal broke out when the
9.4. Are there publicly reported cases of adverse human	

rights impacts stemming from tax evasion and avoidance by businesses domiciled in the state's territory or jurisdiction operating at home or abroad?	International Consortium of Investigative Journalists (ICIJ) published nearly 28,000 pages of confidential documents leaked by Antoine Deltour, a whistleblower and former employee of PricewaterhouseCoopers (PwC).²⁰² The documents included hundreds of private tax rulings, revealing details about how companies with operations in Luxembourg had cut their tax bills by moving profits around different parts of the corporate group and playing national tax systems off against one another.²⁰³ The companies had worked with big accounting firms, including PwC, Ernst & Young, Deloitte and KPMG, among others,²⁰⁴ and secured rulings from the Luxembourg tax agency that such arrangements did not flout national laws.²⁰⁵ Around 350 international companies were implicated in the scandal according to the leaked documents, including; Accenture, Abbott Laboratories, American International Group, Amazon, Blackstone, Deutsche Bank, FedEx, the Coach handbag empire, H.J. Heinz, JP Morgan Chase, Pepsi, IKEA, Burberry, Procter & Gamble, the Carlyle Group, the Abu Dhabi Investment Authority and the others.²⁰⁶ Gaps Corporate tax avoidance, although may not be illegal under national laws, is increasingly raising concerns as to whether it harms the government's ability to meet its human rights obligations, in particular in regards to economic and social rights. In a report published in 2013, the International Bar Association's Human Rights Institute (IBAHRI) concluded that tax abuses have considerable negative impacts on the enjoyment of human rights: <i>"tax abuses deprive governments of the resources required to provide the programmes that give effect to economic, social and cultural rights, and to create and strengthen the institutions that uphold civil and political rights. Actions of states that encourage or facilitate tax abuses, or that</i>
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	<i>deliberately frustrate the efforts of other states to counter tax abuses, could constitute a violation of their international human rights obligations, particularly with respect to economic, social and cultural rights”</i>.²⁰⁷ Along similar lines, the OHCHR in an information note on the “Right to Development and Taxation” has stated that: “By failing to address the ways that international differences in taxation can lead to reduced domestic resources for the realization of human rights, and indeed in some cases actively enabling tax avoidance practices by transnational corporations, States also fail to live up to their human rights commitments”.²⁰⁸ Luxembourg has committed to better cooperate and regulate its tax practices following the LuxLeaks scandal. It has taken various steps to combat the issue of aggressive tax planning, including amending the Criminal Code to introduce penalties for fraud and making “aggravated tax evasion” a criminal offence²⁰⁹ and ratifying the Multilateral Convention for the Implementation of Measures on Tax Conventions to Prevent Base Erosion and Profit Shifting (‘MLI’) which entered into force in Luxembourg as of 1 August 2019.²¹⁰ Despite these improvements, however, gaps remain: In a press release published in February 2019, the EU Parliament’s Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance found seven European countries, including Luxembourg, to “display traits of a tax haven and facilitate aggressive tax planning”.²¹¹ On the same issue, the Council Recommendation of 9 July 2019 on the 2019 National Reform Programme of Luxembourg states that; <i>“Luxembourg has taken measures against aggressive tax planning, but the</i>
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	<i>high level of dividend, interest and royalty payments as a percentage of GDP suggests that the country's tax rules are used by companies that engage in aggressive tax planning. The majority of foreign direct investment is held by 'special purpose entities'. The absence of withholding taxes on outbound (i.e. from EU residents to third country residents) interest and royalty payments and the exemption from withholding taxes on dividend payments under certain circumstances may lead to those payments escaping tax altogether, if they are also not subject to tax in the recipient jurisdiction".</i> ²¹² Luxembourg issued several reservations to MLI which makes it difficult to assess how effective the domestic implementation of the instrument would be. These reservations include:²¹³ • Article 4 (<i>Dual Resident Entities</i>); • Article 8 (<i>Dividend Transfer Transactions</i>); • Article 9 (<i>Capital Gains from the Alienation of Shares or Interests of Entities Deriving their Values Principally from Immovable Property</i>); • Article 10 (<i>Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions</i>); • Article 11 (<i>Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents</i>); • Article 12 (<i>Artificial Avoidance of Permanent Establishments through Commissionaire Arrangements and Similar Strategies</i>); • Article 14 (<i>Splitting-up of Contracts</i>); and • Article 15 (<i>Definition of a Person Closely Related to an Enterprise</i>).
10. TRADE AND INVESTMENT	
Guiding Questions	Status and Gaps

10.1. Does the state require that a human rights impact assessment be conducted on the potential impacts of trade and investment agreements before signing such agreements?	• Luxembourg is part of the harmonised trade system of the EU. The EU has exclusive power to legislate on trade matters and to conclude international trade agreements on behalf of EU member countries. Its policy covers trade in goods and services as well as matters such as commercial aspects of intellectual property and foreign direct investment. The rules on EU trade policy are set out in Article 207 of the Treaty on the Functioning of the European Union.²¹⁴ • In Luxembourg, the Directorate of International Economic Relations and European Affairs (La Direction des relations économiques internationales et des affaires européennes - Directorate II) of the Ministry of Foreign and European Affairs chairs the Inter-ministerial Committee for the Coordination of European Policy (CICPE), and coordinates the transposition and application of European Union law.²¹⁵ • The EU's trade policy, alongside its foreign policy and development cooperation, supports respect for human rights in non-EU countries.²¹⁶ The EU examines the effects of trade agreements on human rights in both the EU and its trade partners through <i>impact assessments</i> before and during negotiations, and evaluations of trade agreements once they are in operation.²¹⁷ • The EU's Generalised System of Preferences (GSP) and GSP+ systems are among the most notable existing practices to promote human rights through trade.²¹⁸ • The GSP and Everything But Arms schemes (the "EBA") allow exporters from developing countries to pay lower customs duties. GSP and EBA can be withdrawn if there are serious and systematic violations of human rights. GSP+ entails full removal of tariffs on over 66% of EU tariff lines. The beneficiary country must have ratified the 27 GSP+ relevant international conventions on human and labour rights, environmental protection, and good governance.²¹⁹
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	• Modern EU trade agreements oblige the EU and its partners to respect and implement the ILO's fundamental conventions on freedom of association and the right to collective bargaining, abolishing all forms of forced or compulsory labour, abolishing child labour and ending discrimination in the workplace.²²⁰ • The Belgium-Luxembourg Economic Union ("BLEU" - <i>Union économique belgo-luxembourgeoise</i> - UEBL) was established by a Convention on July 25, 1921. The UEBL Convention was amended on 18 December 2002 and approved by the Law of 27 May 2004.²²¹ The amended Convention authorizes Luxembourg and Belgium to extend their collaboration beyond purely economic and monetary spheres, including; strengthening cooperation within international organizations, intensifying relations in the areas of humanitarian aid and development cooperation and strengthening cooperation in the field of defense and peacekeeping.²²² In March 2019, the BLEU has unveiled a new model investment treaty text which will be used to negotiate future agreements with non-EU states that have not already concluded agreements with the EU itself.²²³ The model agreement contains language recognizing the importance of labour standards (Article 16), environmental standards (Article 17), CSR and RBC (Article 18).²²⁴ Notably, the model agreement's provision on CSR goes further than most recent treaties and mandate that investors should: <i>"act in accordance with internationally accepted standards applicable to foreign investors to which the Contracting Parties are a party [and] strive to make the maximum feasible contributions to the sustainable development of the Host State and local community through socially responsible practices."</i>²²⁵ Gaps Whether the GSP labour and human rights conditionality has been effective has been the subject of debate.²²⁶ Given the limited number of cases in which
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	suspension of preferences has been applied, it is difficult to make any meaningful generalisation about its effectiveness.²²⁷ NAP 2018-19 states that: “All trade and cooperation agreements concluded with third countries include a human rights clause specifying that these rights constitute a fundamental aspect of relations with the EU, which has repeatedly imposed sanctions for violations of human rights”²²⁸
10.2. Do trade and investment agreements include specific, enforceable provisions requiring compliance with internationally recognised human rights, including labour rights? 10.3. Are there laws and policies that ensure that exported goods and services, such as dual use technologies, do not contribute to adverse human rights impacts abroad?	• The export, transit and brokering of dual-use items are within the control of the EU. Dual Use Regulation (EC) No 428/2009 governs the EU's export control regime.²²⁹ The Regulation (EC) No 428/2009 is applicable throughout the EU. In September 2016, the EU Commission adopted a proposal to recast the Regulation (EC) No 428/2009 and modernize the EU Export control system to include provisions related to the control of exports of cyber- surveillance technologies to countries with authoritarian or repressive governments.²³⁰ • The export of goods which have no other practical use than that of inflicting the death penalty or torture and other cruel, inhuman or degrading treatment or punishment are prohibited in Luxembourg in accordance with Annex II of the EU General Export Authorization Regulation (EU GEA 1236/2005) except when intended for display in a museum. Trade in items that have legitimate purpose but could also be used for torture or executions is subject to authorization. • The Law of 27 June 2018 regulates the control of the export, transfer, transit and importation of goods of a strictly civilian nature, defense-related products and dual-use goods.²³¹ In addition, Luxembourg is a member of the following non-proliferation and exports control regimes:²³² • Wassenaar Arrangement (WA): dual-use goods, conventional weapons,

	transfer of industrial, cryptologic and advanced technologies likely to be used for various military programmes, • Missile Technology Control Regime (MTCR) against the proliferation of missiles and missile technology, • Nuclear Suppliers Group (NSG) against the proliferation of nuclear goods and technologies, • Australia Group (AG) against the proliferation of chemical, biological and toxic goods and weapons, • Chemical Weapons Convention (CWC) against the proliferation of chemical weapons. On 22 January 2019, a parliamentary question was raised addressing the Minister of MAEE on the murder of the Jamal Khashoggi.²³³ Khashoggi, a dissident Saudi journalist, was assassinated in the Saudi consulate in Istanbul on 2 October 2018. An Israeli company NSO Group Technologies, was subsequently implicated for selling a sophisticated phone-hacking system called Pegasus to Saudi authorities which allegedly facilitated the murder.²³⁴ It was claimed that the transaction was partly conducted through an affiliate of the NSO called Q Cyber Technologies, based in Luxembourg.²³⁵ The parliamentary question, without mentioning the names of the companies, inquired whether the Minister was aware of the case and the extent to which the Government intends to intervene with Israeli authorities to obtain further clarification. The parliamentary question also inquired whether the Minister considers that the actions of the Luxembourg subsidiary violates human rights and if so what consequences does the Government intend to impose. Finally, referring to the purely voluntary nature of the NAP 2018-19, the parliamentary question inquired whether the Government believes that existing legislation prevents and where appropriate, remedies human rights and environmental damage caused by
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	the activities of companies established in Luxembourg and of their value chain. The Ministers of MAEE and Economy issued a joint response on 19 February 2019. They referred to the Law of 27 June 2018 and the European and the international framework. The Ministers stated that, based on the press reports, the export license for the spy-ware was granted by the Israeli authorities and that the Luxembourg authorities have not in any case been requested by the company established in Luxembourg to authorize any export. The Ministers further stated that the NAP 2018-19 underlines the importance of due diligence in preventing human rights violations by enterprises, and that In order to implement the NAP 2018-19, the Government is raising awareness among companies and expects them to fully respect human rights. The Ministers referred to the Coalition Agreement 2018 whereby the Government also undertook to study the possibility of legislating the due diligence for companies domiciled in Luxembourg, insofar as such duty would represent a complementary measure to the NAP.²³⁶
10.4. Has the state put in place laws and regulations to promote business respect for human rights within trade practices? For example, are there laws or regulations that ensure that goods and services being imported are not linked to violations of internationally recognised human rights, including labour rights?	• The Regulation (EC) No 2368/2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds bans all imports into the European Union of rough diamonds that are not accompanied by an appropriate certificate of origin proving they are not related to conflict.²³⁷ • The Regulation (EU) 2017/821 lays down supply chain due diligence obligations for selected EU importers of certain conflict minerals and metals, including smelters and refiners processing minerals inside the EU.²³⁸ The importers need to comply with, and report on, supply chain due diligence obligations if the minerals originate from conflict-affected and high risk areas. As a member of the EU, the Conflict Minerals Regulation will apply in Luxembourg as of 1 January 2021.

10.5. Do state institutions that support overseas investment have and enforce performance standards that support the protection and promotion of human rights?	According to Luxembourg's export credit agency, the Office du Ducroire (ODL), environmental impact and social responsibility are among the indicators of eligibility criteria for financial support. ²³⁹ The ODL notes that it complies with the OECD guidelines on environmental and social due diligence for export credits. ²⁴⁰
10.6. Has the state provided law enforcement and relevant authorities with information and training on issues related to trade and investment?	See the general response on training issues in Section 5.2.
10.7. Does the state have systems in place to monitor enforcement and implementation of these laws, policies, and regulations?	In Luxembourg, the Office of Export Control, Import and Transit (OCEIT –formerly Licensing Office) is responsible for applying the rules concerning the import, export, intra-Community transfer and transit of the goods whose trade is regulated. ²⁴¹ These include; • dual-use goods, • defense-related products, • property of a strictly civil nature (e.g. diamonds), • property likely to be used for the purpose of capital punishment or torture.
10.8 Are there any publicly reported instances of trade and investment agreements undermining the realisation of human rights at home or abroad? For example, the use of a stabilisation clauses or investor-state dispute settlement provisions to undermine the state's duty to protect human rights.	The present study did not find any instances where the use of stabilisation clauses or investor-state dispute settlement provisions had undermined Luxembourg's duty to protect human rights.
11. ANTI-BRIBERY AND CORRUPTION	
Guiding Questions	
11.1. Has the state put in place laws and regulations aimed at promoting anti-bribery and combatting corruption within and across governments?	The following is a non-exhaustive list of existing laws and regulations aimed at promoting anti-bribery and combatting corruption within and across the Government. • Luxembourg has signed the OECD anti-bribery Convention in December

	1997.²⁴² The Law of 15 January 2001 implements the Convention domestically by introducing into Luxembourg law, or modifying, the notions of misappropriation, destruction of deeds and securities, embezzlement, taking unlawful interest and bribery.²⁴³ The Law amends the Criminal Code, the Code of Criminal Procedure and the Law of 4 December 1967 on Income Tax. • Luxembourg has signed the UN Convention against Corruption in December 2003.²⁴⁴ The Convention was ratified by an Act of July 2007. The following is a non-exhaustive list of other relevant laws and regulations in Luxembourg in regards to the corruption and anti-bribery:²⁴⁵ • The Law of 30 March 2001, <i>inter alia</i>, amending the Criminal Code so as to make it an offence to engage in any misappropriation of subsidies, indemnities or allocations or in any fraudulent acts or manoeuvres designed to reduce illegally an international institution's contribution to the budget;²⁴⁶ • The Law of 23 May 2005 transposing into Luxembourg law all the instruments relating to the punishment of corruption under the criminal law adopted by the European Union and the Council of Europe in the years 1997-2003, including the Framework-Decision 2003/568/JAI of the Council of 22 July 2003 on combating corruption in the private sector, by introducing into the Criminal Code Articles 310 and 310-1 which make corruption in the private sector a criminal offence; • The Law of 1 August 2007 approving the "Merida" Convention of the United Nations Against Corruption,²⁴⁷ and setting up the Corruption Prevention Committee (COPRECO) in Luxembourg; • The Law of 18 December 2007 approving the "Palermo" Convention of the United Nations against transnational organized crime;²⁴⁸ • The Law of 17 July 2008 transposing Directive 2005/60/EC of the European
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	Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing; • The Law of 17 July 2008 on the fight against money laundering and terrorist financing, and amending: Article 506-1 of the Criminal Code; • The Law of 14 June 2001 adapting the criminal offence of money laundering in Luxembourg law; • The Law of 3rd March 2010 introducing the responsibility of legal persons in the Criminal Code, and amending the Criminal Code, the Criminal Procedure Code, and certain other legal provisions; • The Law of 13 February 2011 reinforcing the means to combat bribery, enhancing the effective protection of whistleblowers in the public and private sector; • The Law of 27 October 2010 reinforcing the legal framework on the fight against money laundering and terrorist financing; • The Law of 2nd November 2012 ratifying the agreement on the status as international organization of the International Anti-corruption Academy (IACA) signed in Vienna on 2nd September 2010; • The Grand-Ducal order of 14 November 2014 pertaining to the ethical rules applicable to the Members of Government and their obligations and rights during their mandate (as amended)²⁴⁹ 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 and the use of resources provided by the State, and setting up an ad-hoc ethics committee. Gaps The legal framework promoting anti-bribery and combatting corruption is
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	generally advanced in Luxembourg. A recent OECD report notes that Luxembourg is regarded as one of the least corrupt countries in the world according to different indices of perception of corruption.²⁵⁰ According to the latest evaluation report issued by the Council of Europe's Group of States against Corruption (GRECO), "Luxembourg traditionally scores highly in international perception surveys on corruption, and risks of minor corruption or bribery seem virtually non-existent".²⁵¹ The interviews conducted by the GRECO evaluation team concluded that petty corruption or straightforward bribery appear to be rare in Luxembourg.²⁵² That said, the same report notes that 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: <i>"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"</i>.²⁵³ Nepotism and favouritism is highlighted as problems in Luxembourg also in the Eurobarometer survey of companies issued in 2013.²⁵⁴ According to the Survey, while corruption is perceived by 30% of the questioned businesses as a problem in Luxembourg (well below the EU average of 46%), nepotism and favouritism are seen as a problem by 47% (EU average: 41%), and therefore appear to be a "greater cause of concern".²⁵⁵ The above-mentioned OECD Survey notes that the large scale of capital flows involving Luxembourg poses associated risks of economic crime, especially of a cross-border nature.²⁵⁶ The report makes a point of bribery of foreign public officials noting that "Luxembourg's enforcement of the OECD Anti-bribery Convention remains very modest, with only one criminal case concluded over
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	1999-2017, and only one individual sanctioned”²⁵⁷. Lobbying is not regulated in Luxembourg. There is no specific obligation to register lobbyists or report contacts between public officials and lobbyists.
11.2. Has the state provided law enforcement and relevant authorities responsible for enforcing anti-bribery and corruption laws been provided with information and training on human rights?	Concerning the information and training on human rights, see the general response on training issues in Section 5.2. In addition, according to the GRECO Report, upon recruitment, state officials who are not members of the government undergo a compulsory traineeship which lasts three years. The training includes courses on the executive, covering the rules of conduct to be observed by government members; on civil service regulations, including rights and obligations; and on specific criminal offences applicable to civil servants.²⁵⁸ 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.²⁵⁹ Some of the courses offered in this context deal specifically with preventing corruption in public administration.²⁶⁰ Ministers can obtain advice on ethical matters from the Ethics Committee, following a referral from the Prime Minister. 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 for the members of the government is to be implemented in practice.²⁶¹ The Minister for the Civil Service and Administrative Reform issues circulars for civil servants that can draw attention to the requirements and obligations in the field of ethics and integrity and also to the rules of conduct.²⁶² 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.²⁶³ The new police recruits receive a basic training at the Police Academy that includes a course on ethical conduct.²⁶⁴ It is compulsory and is one of the subjects that must be studied in preparation for the final exam for admission to the police.²⁶⁵ 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.²⁶⁶ GRECO evaluation team has confirmed the regular publication of study materials on the Intranet of the Grand Ducal Police as a good practice and has found the basic ethical conduct training arrangements satisfactory.²⁶⁷ Gaps According to the GRECO report, in-service training for the law enforcement officials does not currently include any courses on ethical conduct: “the government as an institution needs to be more proactive in developing the awareness of its members and other persons entrusted with top executive functions of their specific integrity challenges and in providing them with the necessary training and guidance in concrete ethical dilemmas”²⁶⁸ The present Report reiterated GRECO’s foregoing recommendation.
11.3 Does the state have systems in place to monitor enforcement and implementation of these laws and regulations?	The <i>Inter-ministerial Corruption Prevention Committee</i> (<i>Comité interministériel dénommé Comité de Prévention de la Corruption - COPRECO</i>) is responsible in particular for preparing and proposing to the Government measures to combat corruption and for co-ordinating within the public administration the enforcement of any measures adopted. COPRECO also raises awareness among the sectors concerned through publications or seminars. There are various regulatory requirements in Luxembourg for companies of the banking and financial sector to have anti-bribery policies and procedures in

	place.²⁶⁹ The <i>Commission de Surveillance du Secteur Financier</i> (CSSF) is responsible for financial regulation in Luxembourg. Gaps There are no formal requirements for companies in sectors other than the financial sector to have anti-bribery compliance procedures in place. The Government should consider extending such requirements to other sectors.
11.4. Are there publicly reported cases of adverse human rights impacts stemming from corruption by business when operating at home or abroad?	The Panama Papers scandal uncovered in April 2016 by the ICIJ 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.²⁷⁰ The CSSF has conducted a review of corporate accounts and issued administrative sanctions to 9 entities (including 4 banks) in the form of a fine, amounting to total of EUR 2,012,000.²⁷¹
12. HUMAN RIGHTS DEFENDERS AND WHISTLEBLOWERS	
Guiding Questions	Status and Gaps
12.1. Has the state put in place laws and regulations aimed at supporting business respect for the rights of human rights defenders and/or whistle-blowers?	Human rights defenders play a critical role in promoting corporate respect for human rights.²⁷² Through their work, defenders help to identify, prevent, mitigate, and ensure accountability for corporate human rights abuses.²⁷³ International law provides provisions protecting human rights defenders and/or whistleblowers through universal and regional instruments. Luxembourg has endorsed or ratified, and implemented (through domestic legislation where appropriate) relevant international instruments related to human rights defence (see Section 1). In addition, the <i>Law of 13 February 2011</i> introduces specific provisions in the Labour Code protecting employees or public agents who alert their superiors or

	competent authorities to the existence of corruption or the abuse of influence. According to Article L 271-1 of the Labour Code, an employee who in good faith has alerted his or her superiors, colleagues, or any third party, cannot be subject to reprisal and his or her agreement cannot be terminated because of this alert.²⁷⁴ Gaps • A report published by Transparency international in 2013 on legal protections for whistle-blowers in the EU has rated Luxembourg among the countries with advanced legal provisions and procedures for whistleblowers.²⁷⁵ Nonetheless, the same report stated that; <i>“whistleblowing – known as denunciation in Luxembourg – is not positively perceived within government agencies, private companies or the general public. Whistleblowing does not easily translate into any of the country’s three administrative languages, so language barriers perhaps also add to misconceptions about the practice”</i>.²⁷⁶ The same report also stated that; <i>“Even though civil servants are legally required to report crimes to the public prosecutor, this provision has rarely been applied, and in only a few known cases has a civil servant come forward with a disclosure”</i>.²⁷⁷ • Luxembourg’s approach to the protection of whistleblowers appears to be piecemeal. The recent decision of the Court of Cassation on whistleblower protection relied on the case law of the European Court of Human Rights to protect whistle-blowers and their freedom of expression (see Section 12.4.). The same decision noted the lack of horizontal legislation for whistleblowers in Luxembourg.²⁷⁸ Experts have also argued that the current situation of whistleblowers in Luxembourg remains vague despite the sectoral legislations and they have argued for a horizontal legislation applicable across sectors.²⁷⁹
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12.2. Has the state provided law enforcement and relevant authorities with information and training on issues related to the specific needs and challenges faced by human rights defenders and whistle-blowers?	See the general response on training issues in Section 5.2.
12.3. Does the state have systems in place to monitor enforcement and implementation of these laws and regulations? For example, through establishing a government focal point responsible for monitoring adverse impacts on human rights defenders and whistleblowers?	A hotline has been set up by Transparency International Luxembourg for private and legal persons to denounce instances of corruption and support whistle-blowers.²⁸⁰ The hotline receives state subsidy.²⁸¹
12.4. Are there publicly reported cases of adverse human rights impacts on human rights defenders and/or whistleblowers by business when operating at home or abroad?	In a case commonly referred to as the LuxLeaks Trial two former employees of audit company PwC, Antoine Deltour, Raphaël Halet, and a French journalist Edouard Perrin, were convicted of leaking confidential documents revealing the tax deals concluded by large multinational companies with the Luxembourg fiscal authorities (see Section 9.4. for details concerning the tax aspect of the case).²⁸² Deltour and Halet were condemned on charges of domestic theft, fraudulent access to a database, breach of professional secrecy, violation of trade secrets, and laundering and possession of illegally obtained material. Their convictions were subsequently overturned by Luxembourg's Court of Cassation which relied on the jurisprudence of the ECtHR. The Court of Cassation ruled that the Court of Appeal violated Article 10 ECHR by not applying the 'whistleblower' justification to all incriminating facts which together in context led to the revelation of the confidential documents, altogether constituting the act of whistleblowing.²⁸³ With regard to Halet, the Court of Cassation found that the Court of Appeal judgment was sufficiently motivated in its finding that Halet did not fulfil the proportionality requirement of the Article 10 ECHR jurisprudence and could therefore not benefit from the whistleblower justification, and that the interpretation of these facts is within the discretion of the Court of Appeal.

13. INFORMATION AND COMMUNICATION	
Guiding Questions	Status and Gaps
13.1. Has the state put in place laws and regulations to ensure the protection of access to information, freedom of expression, privacy, and other rights relevant to information and communication, both on and off line?	The following is a non-exhaustive list of relevant information and communication laws and regulations in Luxembourg:²⁸⁴ • The Constitution of Luxembourg guarantees freedom of expression, including the right to freedom of press (Article 24) and right to privacy (Article 28) • As a member of the EU, the General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR) is directly applicable in Luxembourg since May 25, 2018. Luxembourg has enacted the following two laws to implement the GDPR: - o The Law of 1 August 2018 on the Organisation of the Commission Nationale pour la Protection des Données (“CNPD”) [the Luxembourg data protection supervisory authority] and the general data protection regime.²⁸⁵ ▪ Article 70 of the Law of 1 August 2018 amends the Title VI of volume II of the Labour Code (Article L. 261-1(1) with regards to the processing of personal data for the purposes of surveillance in the employment context. - o The Law of 1 August 2018 on the Protection of Individuals with Regard to the Processing of Personal Data in Criminal and National Security Matters;²⁸⁶ • The Law of 14 September 2018 on a Transparent and Open Public administration;²⁸⁷ • The Law of 30 May 2005 Regarding the Specific Rules for the Protection of Privacy in the Sector of Electronic Communications Implementing the Directive 2002/58/EC; • The Law of 11 August 1982 on the Protection of Private Life.²⁸⁸

	Luxembourg made considerable efforts to diversify the economy over the past years, according to the “Smart Specialization Strategy” formally adopted by the Government in 2017.²⁸⁹ Within this strategy, the ICT sector occupies a special position as “it serves a common strategic layer on which all other sectors to be grounded”.²⁹⁰ Digitalisation is one of the policy reforms for the 2018-2023 legislative period announced in the 2018 Coalition Agreement.²⁹¹ The NAP 2018-29 has identified correctly the “ICT sector –including the field of artificial intelligence” among the sectors with potential adverse human rights risks.²⁹² In May 2019, the Government released its national AI strategy: “Artificial Intelligence: A Strategic Vision for Luxembourg”.²⁹³ The document underlines the “human centric focus” of the national strategy. It adopts a rather positive vision of the AI, largely focusing on the ability of the disruptive technology to create new opportunities in health, education, and transportation, and generate economic activity and novel research. The document, however, also underlines the “far-reaching consequences and some growing pains” that increasing integration of AI into existing workflows will bring about, such as questions in terms of working conditions, employment law and labor relations.²⁹⁴ The document explicitly notes that the Government “remains accountable and transparent in its applications of AI and digital tools”.²⁹⁵ Importantly, the document proposes several key actions “in order to ensure that legal and ethical guidelines are implemented to protect <i>fundamental rights and freedoms</i>” including setting up a governmental technology and advisory committee and “collaborating with key bodies on developing and safeguarding corporate governance to accelerate the adoption of proper AI corporate governance”.²⁹⁶ Gaps
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	The national AI strategy does not refer explicitly to the direct impact that businesses can have on human rights in the face of increasing AI integration and the responsibilities placed upon them to prevent and mitigate such impact. In order to enhance coherence across all policy departments, the Government is advised to insert references to responsible business conduct in its national AI strategy by referring to the NAP on business and human rights and other relevant documents. In regards to the current NAP 2018-19, note that, during the deliberations, the Luxembourg Association for the United Nations (UNLA), had suggested to include more explicit references to the impact of artificial intelligence and human rights. See the general response on training issues in Section 5.2.
13.2. Has the state provided law enforcement and relevant authorities with information and training related to information and communication-based rights? 13.3. Does the state have systems in place to monitor enforcement and implementation of these laws and regulations?	In Luxembourg, Ministry of Digitalization (<i>Ministère de la Digitalisation</i>) is charged with simplification and digitalization of the administrative processes. The supervisory authority regarding GDPR is Luxembourg data protection regulator (<i>Commission nationale pour la protection des données - CNPD</i>). The CNPD has various investigative, corrective and advisory powers including issuing penalties for infringement set out by the GDPR and imposing penalty payments (<i>astreintes</i>) of delay to comply with an order by the CNPD to provide information or with a corrective measure issued by the CNPD.²⁹⁷ The Commission on Access to Documents (<i>Commission d'accès aux documents - CAD</i>) is an independent administrative body created by the law of 14 September 2018 to promote transparent and open administration.²⁹⁸ According to the Article 9 of the law, the CAD ensures the right of access to documents in the conditions foreseen by the law, and gives advice to relevant entities on any question

	regarding the application of the law.
14. CONSUMER PROTECTION	
Guiding Questions	Status and Gaps
14.1. Has the state put in place consumer laws and regulations to ensure business respect for human rights?	The following is a non-exhaustive list of national legislation and regulations in Luxembourg in the field of consumer protection; - A compendium of the national legislation applicable in the field of consumer protection is available within the Consumer Code (<i>Code de la consommation</i>) entered into force on April 18, 2011.²⁹⁹ - The Law of 2 April 2014 transposed the Consumer Rights Directive 2011/83/EU into domestic law and amended the Consumer Code in the direction of greater consumer protection. Latest reforms to the Code were introduced by the Law of 17 February 2016 (introducing out-of-court settlement for consumer disputes and amending certain other provisions of the Consumer Code)³⁰⁰ and the Grand-Ducal Regulation of 5 July 2016 (amending the regulatory part of the Consumer Code).³⁰¹ - According to the Consumer Code (L-320-1 bis), an individual, professional group or accredited consumer association can bring the claim for the cessation of any infringement of the Law, represented by the <i>Union Luxembourgeoise des Consommateurs</i> (ULC). Gaps Currently, the only <i>certified</i> entity allowed to file a group action is the ULC which is financially assisted by the State (note that, depending on the rule set concerned, sectoral supervisory authorities and individuals and businesses can initiate an action for cessation of an infringement). See the general response on training issues in Section 5.2.
14.2. Has the state provided law enforcement and relevant authorities with information and training on	

human rights issues related to consumer protection, such as product safety and labelling practices?	
	In Luxembourg, the Ministry of Consumer Protection (<i>Ministère de la Protection des consommateurs</i>) chairs the <i>Conseil de la consommation</i>. This forum is a formal place of exchange between the ministries, consumer organisations and professional organisations.³⁰² In addition, Ministry of Consumer Protection has competency with regards to consumer legal protection and food safety.³⁰³ The National service of the Mediator of consumption (<i>Service national du Médiateur de la consommation</i>) is an independent body offering a voluntary and confidential procedure designed to resolve consumer disputes deriving from a sale contract or a service contract entered into between a consumer (who is a natural person living in Luxembourg or in another European Union country) and a trader established in Luxembourg.³⁰⁴ The Luxembourg Consumer Protection Association (<i>Union Luxembourgeoise des Consommateurs - ULC</i>) is a non-profit organisation with the objective of protecting, defending, informing and educating Luxembourg consumers. The ULC has signed an agreement with the Luxembourg government, whereby it receives annual financial aid in exchange for performing a number of tasks on behalf of consumers, assigned to it by the Ministry of the Economy (Ministère de l'Economie).³⁰⁵ The European Consumer Centre Luxembourg (<i>Centre Européen des Consommateurs – ECC</i>) is part of an EU-wide network of 30 European Consumer Centres set up by the European Commission who offer consumer help and advice.³⁰⁶ The ECC Luxembourg informs European consumers about their rights in the European Union, Norway and Iceland. The ECC Luxembourg advises and

	assists consumers in cross border disputes with traders based in another EU country, Norway or Iceland.³⁰⁷ The Luxembourg Financial Sector Supervisory Commission (Commission de Surveillance du Secteur Financier - CSSF) acts in its capacity as dispute resolution body, notably pursuant to the European legislation relating to the out-of-court resolution of consumer disputes that were transposed into Luxembourg national law and introduced into the Consumer Code in 2016. The first European Consumer Law Clinic open to public is established at the University of Luxembourg.³⁰⁸ At the Clinic, students of master of European Private Law provide legal advice on the questions of consumer law under the supervision of lawyers and academic staff. The Ministry of consumer protection is also cooperating with the Max Planck Institute on improving enforcement of Consumer law in Luxembourg.³⁰⁹ The present study did not find any publicly reported cases of adverse human rights impacts on consumers by businesses domiciled in the Luxembourg when operating at home or abroad.
14.4. Are there publicly reported cases of adverse human rights impacts on consumers by businesses domiciled in the state's territory or jurisdiction when operating at home or abroad?	
15. ANTI-DISCRIMINATION	
Guiding Questions	Status and Gaps
15.1. Has the state put in place anti-discrimination laws and regulations to support business respect for human rights?	The following is a non-exhaustive list of existing anti-discrimination laws and regulations in place in Luxembourg:³¹⁰ • The Constitution; - o Article 10 bis: "Luxembourgers are equal before the law"³¹¹ - o Article 111: "Any foreigner on the territory of the Grand Duchy shall

	enjoy the protection accorded to persons and property, without prejudice to exceptions established by law”. - o Article 11(2): “Women and men are equal in rights and duties. The State sees to active promotion of elimination of impediments which may exist in matters of equality between women and men”. • Articles 454 to 457 of the Penal Code criminalizes discrimination (prohibiting individual and collective discrimination against religion, race and ethnic origin, disability, sexual orientation and age); • The principle of non-discrimination in the workplace is dealt in the Labour Code, Title V of Book II, Articles L.241-1 to L.251-1 to L.254-1 as introduced by the Law of 28 November 2006 on Equal Treatment (transposing EU Directives 200043CE and 200078CE, defining both direct and indirect discrimination and harassment, within and outside the employment field, on the grounds of religion or belief, age, disability, sexual orientation and race and ethnic origin);³¹² The law is applicable to;³¹³ - o conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion; - o access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience; - o employment and working conditions, including dismissals and pay; - o membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations; - o social protection, including social security and healthcare, social advantages, education and access to and supply of goods and services
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	which are available to the public, including housing. • The principle of non-discrimination between men and women are dealt in the Labour Code, title IV of Book II, articles L.241-1 to L.245-8 as introduced by the Law of May 13, 2008 on Equal Treatment for Men and Women (prohibiting “any discrimination based on sex, either directly or indirectly by reference, inter alia, marital or family status”);³¹⁴ • In addition, the Ministry of Equality between Women and Men (<i>Ministère de l'Égalité entre les Femmes et les Hommes – MEGA</i>) has a dedicated portal for gender equality at work and supports a “positive action program” which covers the following themes:³¹⁵ - o equal treatment of women and men (recruitment, training and qualifications, remuneration, corporate culture, sexual and moral harassment), - o equality of women and men in decision-making (vocational training and promotion, equal participation in decision-making), - o the equality of women and men in the reconciliation of professional and private life (work organization, professional reintegration, reconciliation of a leading position and private life). • The Lëtzebuerg Diversity Charter (<i>Charte de la diversité-Lëtzebuerg</i>) is a short commitment text proposed for the companies of Luxembourg to sign in order to commit themselves to promoting diversity through concrete actions going beyond the obligations of legal and regulatory provisions for non-discrimination.³¹⁶ It is supported, among others, by the European Commission, the Ministries of Family and Integration and Equal Opportunities and the CET.
	Gaps

	With regard to the principle of equality, the formulation in the current Constitution (“Luxembourgers are equal before the law”) <i>stricto sensu</i> applies to Luxembourg nationals only. This narrowly drafted principle assumes particular importance in the context of Luxembourg where almost fifty percent of the resident population is made up of foreigners.³¹⁷ Experts, however, have noted that the Constitutional Court has extended the application of the principle to foreigners holding that “the principle of equality ‘is applicable to each individual concerned by Luxembourg law, if rights or personality are concerned’”³¹⁸. The report drafted by the European network of legal experts in gender equality and non-discrimination notes that in Luxembourg, the Law of 28 November 2006, which is the general non-discrimination law transposing the EU Directives, does not define disability.³¹⁹ The law refers to the Law on Disabled Persons of 12 September 2003 which provides a definition which relates to reduced working capacity, whether the cause is natural or accidental, due to a work-related accident or war-related events. The Report has recommended that the definition should also apply for the purpose of non-discrimination law.³²⁰ In general, it has been noted that the Law of 28 November 2006 does not provide any definition of the grounds of discrimination (religion, age, sexual orientation, race, ethnic origin, disability) covered by the directives and that the courts, thus far, have not defined these concepts.³²¹ The Law of 28 November 2006 does not define handicap to include persons with mental disorder. As stated above, the criminal code prohibits against discrimination, including religion, race and ethnic origin, disability, sexual orientation and age in Articles
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	454 to 457. Individual and collective discrimination are thus prohibited and can lead to a fine or imprisonment for up to two years. However, only direct discrimination is forbidden; indirect discrimination, harassment and instruction to discriminate are behaviours that are not prohibited in criminal law.³²² According to the 2018 Activity report of the CET, European directives, as well as Luxembourg legislation, recognize grounds of discrimination may overlap, but an explicit prohibition of multiple discrimination does not exist.³²³ The Labour Code provides for penalties based on gender-based discrimination pursuant to Articles 241-11.³²⁴ The CET has noted that the other grounds of discrimination, which are found under Article 254-1 of the Labour Code, do not contain similar penalties.³²⁵ The CET has recommended, that the Government groups together all grounds of discrimination in one chapter, and provides for sanctions on other grounds of discrimination as well as gender.³²⁶ One of the company representatives interviewed for this study stated that, according to her, one of the biggest challenge was the lack of clarity in Luxembourg with regards to the discrimination and harassment laws: “clear details and indication is missing as to what actions are there, and what will happen”. The CET Report convincingly suggests the Government to amend the existing laws in order to address the foregoing issues. The Government is also advised to issue a guidance for businesses clarifying the expectations from the companies when they are confronted with business related discrimination cases.
15.2. Does the state have systems in place to monitor enforcement and implementation of these laws and	The following organizations in Luxembourg monitor the enforcement and implementation of anti-discrimination laws and regulations:

regulations, such as an anti-discrimination or equal opportunity body?	• Centre pour l'égalité de traitement (<i>Centre for Equal Treatment - CET</i>) is an independent body created by the Law of 28 November 2006. Its mission includes promoting, analysing and monitoring equal treatment between all persons without discrimination based on race or ethnic origin, sex, sexual orientation, religion or beliefs, disability and age.³²⁷ The CET publishes reports, issues opinions and recommendations and carries out studies on all matters relating to discrimination. The CET also assists alleged victims of discrimination by "providing them with an advisory and orientation service intended to inform victims regarding their individual rights, the legislation, case law and the means for claiming their rights"³²⁸. • L'Office luxembourgeois de l'accueil et de l'intégration (<i>Luxembourg Reception and Integration Agency - OLAI</i>) was created by the Law of 16 December 2008 on the Reception and Integration of Foreigners in the Grand Duchy of Luxembourg.³²⁹ The OLAI provides for creation of a National Action Plan for Integration and Against Discrimination. The OLAI has been leading an annual action and information programme to raise awareness against discrimination since 2002. • The Ombudsman (<i>de Médiateur du Grand-Duché de Luxembourg</i>), established by the law of 22 August 2003, may be asked to act on behalf of a victim of discrimination providing that such discrimination occurs within the administration. • The Inspectorate of the Ministry of Labour (<i>l'Inspection du Travail et des Mines</i>) acts as a watchdog in relation to anti-discrimination legislation under the Directive 2000/78/EC.³³⁰ • The Chambre des Salariés (<i>Chamber of Employees - CSL</i>), created by the Law of 13 May 2008, represents all employees, apprentices and pensioners working or having worked in Luxembourg, apart from civil servants and public
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	employees.³³¹ The CSL has a dedicated website to discrimination at work.³³² Gaps The CET has no legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination. The decisions of the CET are not binding, and experts have noted that the recommendations of the body are not followed by the legislature and other institutions.³³³ In the Activity Report 2018, the CET notes its lack of powers to compel third parties to collaborate with their investigations hinders the Center's mission, despite being granted the right to request information by law from the institutions and private persons. The CET draws attention to the delays in the responses received by certain Ministries and urges the Government to lead by example. The CET also urges its investigative powers to be strengthened.³³⁴ The Law of 28 November 2006 refers to the full independence of the CET. However, in theory, this independence may be curtailed by the fact that the Government alone decides on the budget that will be allocated to the Center.³³⁵ The 2018 Activity Report of the CET confirms that the annual budget of the CET has decreased from 200.000 Euros in 2008, when the body started its operations, to 88.000 Euros in 2018. It is advised that the Government extends the CET's mandate in order to address the foregoing issues. The Government is advised to include specific reference to investigation of business related discrimination cases by the CET.
15.3. Are there publicly reported cases of discrimination at home or abroad by businesses domiciled in the state's territory or jurisdiction?	The discrimination cases are not registered as such by national courts in Luxembourg.³³⁶ The CET registers number of complaints, recommendations and solved cases. It makes the data available to the public. Their latest activity report registered 126 new cases in 2018.³³⁷ The grounds were: disability 39 cases (26%),

	gender 24 cases (16%), race 21 cases (14%), age 11 cases (7%), religion 8 cases (5%), sexual orientation 6 cases (4%), multiple discrimination 14 cases (9%) and others 27 cases (18%).
16. NATIONAL HUMAN RIGHTS INSTITUTION (NHRI)	
Guiding Questions	Status and Gaps
16.1 Has the state established a National Human Rights Institution (NHRI)? If so, is it compliant with the Paris Principles? Does the NHRI's mandate include business and human rights? Does the NHRI have sufficient funding to carry out its mandate?	The introduction of the NAP 2018-19 refers to, inter alia, four national human rights institutions that have been regularly contacted during the preparation of the document. These include; <i>La Commission consultative des Droits de l'Homme</i> (CCDH), the CET (see Section 15.), the ORK (see Section 26.3.) and the Ombudsman (see Sections 27.2. and 15.2.). To avoid repetition and overlap with the other sections the present section will focus on the CCDH.³³⁸ The CCDH is an independent national human rights institution of Luxembourg in full compliance with the Paris Principles.³³⁹ Based on to the information received by the CCDH, the organization has a general and rather broad mandate regarding human rights. Article 1 (2) of the law of 21 November 2008 on the creation of the Consultative Human Rights Commission of the Grand Duchy of Luxembourg, provides that the mission of the CCDH is to promote and protect human rights in Luxembourg.³⁴⁰ Gaps The CCDH has confirmed that the organization “does not have an explicit mandate to deal with business and human rights” issues.³⁴¹ However, the mandate covers the topic of business and human rights so far as; <i>“violations of human rights by businesses often seem to manifest themselves outside of Luxembourg, the sources of these violations may</i>

	be traced back to Luxembourg. Indeed, businesses and the government may actively or passively, directly or indirectly, allow, facilitate or contribute to the human rights violations that occur either in Luxembourg or abroad. The absence of adequate safeguards, procedures and remedies can thus be an integral part, if not even the origin, of such human rights violations. Moreover, the obligations and responsibilities deriving from the UNGP are directed towards the government and businesses under its jurisdiction”³⁴². CCDH has confirmed that; “[it] manages to carry out its missions with the financial and human resources allocated to it. However, it must be said that the CCDH cannot deal with every human rights related topic that occurs in Luxembourg – it has to carefully select the most pressing topics. Business and human rights is one of these topics”. Further, it has stated that its 21 board members are volunteers and that it has a secretariat composed of a permanent staff of 3 and a half persons: <i>“It is also noteworthy that neither the permanent staff nor the members of the CCDH are dedicated exclusively to one specific topic: There is no department that is exclusively dealing with business and human rights. Most members also work in many different fields such as the rights of persons with disabilities, equality, youth protection, asylum and migration, fight against human trafficking, data protection, etc. – depending on the developments in the country and the needs of the CCDH. This fact may inter alia be linked to the availability of financial and human resources”.</i> The Government is advised to consider expanding the mandate of the CCDH to
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	include specific reference to the monitoring implementation of business and human rights frameworks in Luxembourg.
16.2. Does the state finance NHRI activities within the field of business and human rights? Does the state support the NHRI in providing guidance on human rights to business enterprises?	According to the written input received by the CCDH; <i>“So far, the CCDH has not done any particular “activity” within the field of business and human rights, thus it has not received any funding in this regard”.</i> In the written input, the CCDH has listed various activities that the organization has taken part, including the meetings at the inter-ministerial and the multi-stakeholder working groups, and business and human rights conference organized by the government on the 7th of June 2019 (a staff of the CCDH has taken the floor with the other local stakeholders). The CCDH also noted that it has been invited as a “invité d’honneur” to the conference on the 22nd of October, which is organized by the UEL and the INDR in partnership with the Ministry of Economy and in collaboration with the Ministry of Foreign and European Affairs.
16.3. Does the state support the NHRI in monitoring the human rights impacts of business?	According to the written input received by the CCDH; <i>“since the CCDH has not (yet) undertaken any particular monitoring activity on the human rights impact of businesses, it also has not received any specific “support” in this regard. However, [...] the government generally welcomes and encourages any input or contribution by the CCDH”.</i>

17. STATE-BUSINESS NEXUS

Guiding Principle 4: States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.

Guiding Principle 5: States should exercise adequate oversight in order to meet their international human rights obligations when they

contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.	
Guiding Principle 6: States should promote respect for human rights by business enterprises with which they conduct commercial transactions.	
Relevant Sustainable Development Goals and Targets	
• Goal 12: Responsible consumption and production (Target 12.7) • Goal 17: Partnerships for the Goals (Target 17.17) • Sectors that are typically privatised include education (Goal 4), water and sanitation (Goal 6), energy (Goal 7), infrastructure (Goal 9) and security (Goal 16)	
Guiding Questions	Status and Gaps
17.1 What types of human rights due diligence measures by state-owned or controlled business enterprises or businesses receiving substantial support from state agencies are required by the state?	There are numerous state owned or controlled companies and administrators in Luxembourg. A comprehensive list is provided in the website of the State Treasury. ³⁴³ At present, there is no specific due diligence requirement imposed on State- owned or controlled business enterprises or businesses receiving substantial support from State agencies (See Section 3.1.)
17.2 What types of supply chain management measures by state-owned or controlled business enterprises or businesses receiving substantial support from state agencies are required by the state?	The present study has not identified any requirements on supply chain management measures by state- owned or controlled business enterprises or businesses receiving substantial support from state agencies. On supply chain due diligence obligations for selected EU importers of certain conflict minerals, see Section 10.4..
17.3. Are there publicly reported instances of adverse human rights impacts associated with businesses that are owned or controlled by the state?	The present study has not identified instances of adverse human rights impacts associated with businesses that are owned or controlled by the state.
17.4. Has the state put in place measures to ensure that businesses benefitting from support from the state through export credit agencies official investment insurance, guarantee agencies or	The Luxembourg Export Credit Agency (Office du Ducroire – “ODL”), supports Luxembourg companies by providing financial support and insurance for export and investment risks. ³⁴⁴ The website of the ODL

receiving other type of support from the state are respecting human rights?	has a dedicated portal to social responsibility: <i>“ODL has established environmental and social guidelines for the selection of projects eligible for official support as well as a two-step process in the prevention of transactions involving bribery”</i> ³⁴⁵. According to the ODL website; <i>“Potential social impacts may include, but are not limited to, labour and working conditions, community health, safety, and security, land acquisition and involuntary resettlement, indigenous peoples, cultural heritage, and project-related human rights impacts, including forced labour, child labour, and life-threatening occupational health and safety situations”.</i> The environmental and social guidelines of ODL are based on the OECD Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (the “Common Approaches”) ³⁴⁶. The environmental and social guidelines of ODL identify principal environmental and social impacts and define the requirements of ODL support. The impacts identified determine the eligibility of the project for official support, in addition to the economic and financial aspects. ³⁴⁷ ODL applies the following procedure to the projects that apply for insurance and financial support; • After the initial screening (a questionnaire), the ODL classifies the projects based on the guidance provided by the OECD. The projects classified as having significant adverse environmental and/or social impacts are required to carry out an
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	Environmental and Social Impact Assessment (ESIA). • The ODL benchmarks the project environmental and social performance against international standards applicable to the project, and if it deems necessary, calls for an independent expert to assess the potential environmental and social impacts. ◦ If there is a high likelihood of severe project-related human rights impact, the environmental and social review of the project may need to be complemented by a specific human rights due diligence.³⁴⁸ ◦ The ODL also assesses and “considers any statements or reports made publicly available by the National Contact Point (NCP)”³⁴⁹. • The ODL requires the monitoring of the supported projects at least on an annual basis if the “<i>ESIA of the supported project indicates the need to put in place mitigation measures and, when ODL includes conditions in its insurance policy</i>”³⁵⁰. The National Credit and Investment Institution in Luxembourg (<i>Société Nationale de Crédit et d'Investissement in Luxembourg – SNCI</i>) is a public-law banking institution specialized in medium and long term financing of Luxembourg based companies. SNCI’s financing instruments are investments in fixed assets, innovations and exports.³⁵¹ Gaps According to the ODL’s website “all projects have to comply with host country standards”³⁵² This statement is problematic (see also Section
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	19.1) in the sense that host country standards might directly conflict with international human rights standards or do not fully comply with them. According to the UNGPs, corporate responsibility to respect human rights exists above and beyond the need to comply with national laws and regulations protecting human rights. It applies even when relevant domestic law is weak, absent or not enforced.³⁵³ No reference to human rights can be found in SNCI's website. It is advised that the ODL modifies the foregoing reference to "host country standards" in its website and aligns with the standards set out in the UNGPs. It is advised that the SNCI includes references to responsible business conduct, including respect for human rights and the UNGPs.
17.5. Are there publicly reported instances of companies receiving support through export credit agencies, official investment insurance, guarantee agencies or receiving other type of support from the state that have caused, contributed or been linked to adverse human rights impacts of business enterprises with whom they contract?	This study has not identified cases of companies receiving support through export credit agencies, official investment insurance, guarantee agencies or receiving other type of support from the state to have caused, contribute or been linked to adverse human rights impacts of business enterprises with whom they contract.
18. BUSINESSES PROVIDING PUBLIC SERVICES	
Guiding Questions	Status and Gaps
18.1. Has the state adopted legislative or contractual protections for human rights in delivery of privatised services by the central or local government, for example, for the provision of services related to health, education, care-delivery, housing, or the penal system? Do such protections include a state-performed assessment of human rights impacts of the potential consequences of a planned	Note the Law of 8 September 1998 on regulating relations between the State and organizations working in the social, family and therapeutic fields ("<i>Loi du 8 septembre 1998 réglant les relations entre l'Etat et les organismes oeuvrant dans les domaines social, familial et thérapeutique</i>") which allows organizations, including non-governmental organizations, to obtain permits if they comply with

privatisation of provision of public services, prior to the provision of such services? Do public procurement contracts clarify the state's expectation that businesses respect human rights in delivering services and comply with human rights standards?	certain minimum conditions such as quality standards and transparency set out in Article 2.³⁵⁴ For information on public procurement, see Section 19.
18.2 Is the state a party to the Montreux Document on Pertinent International Legal Obligations and Good Practices for states Related to Operations of Private Military and Security Companies During Armed Conflict? If so, how does it incorporate commitments into national laws? Is the state party to the International Code of Conduct for Private Security Providers Association (ICoCA), and if so, how does it incorporate commitments into national laws and procurement processes? Is the state party to the Voluntary Principles on Security and Human Rights? If so, how does it incorporate commitments into national laws, including around the provision of public security?	<i>Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict</i> reaffirms the existing obligations of states under international law, in particular international humanitarian law (IHL) and human rights law, relating to the activities of private military and security companies (PMSCs) in situations of armed conflict.³⁵⁵ The Montreux Document promotes respect for international humanitarian law and human rights law and provides a blueprint for governments to effectively regulate PMSCs. It is not a legally binding document but seeks to provide guidance on the basis of existing international law. The Montreux document is finalized in 2008. Luxembourg is a party to the Montreux Document since 27 November 2013. Gaps Luxembourg is not party to the <i>International Code of Conduct for Private Security Providers Association (ICoCA)</i>, a multi-stakeholder initiative with the over-arching objectives to articulate human rights responsibilities of private security companies (PSCs), and to set out international principles and standards for the responsible provision of private security services, particularly when operating in complex environments.³⁵⁶ Luxembourg is not party to the <i>Voluntary Principles on Security and</i>

	Human Rights, a set of principles designed to guide companies in maintaining the safety and security of their operations within an operating framework that encourages respect for human rights.³⁵⁷ This study has not identified any specific screening processes that are in place to promote business respect for human rights.
18.3. What kind of screening processes does the state have in place to promote business respect for human rights, such as by providing preferential treatment to business enterprises that demonstrate respect for human rights? Does the state exclude from the bidding process those businesses that have demonstrated poor respect for human rights (such as poor and hazardous working conditions, as well as excessive use of force or maltreatment of individuals receiving care)? 18.5. Are there publicly reported adverse human rights impacts associated with the delivery of public services by private enterprises, including, for example, in the area of education, healthcare, housing, security, etc.?	This study has not identified any case of adverse human rights impacts associated with the delivery of public services by private enterprises.
19. BUSINESSES FROM WHICH THE STATE PROCURES GOODS OR SERVICES	OTHER COMMERCIAL ACTIVITIES
Guiding Questions	Status and Gaps
19.1. Do state agencies explicitly require contractors to comply with specific human rights protections? If so, have state agencies produced guidance for contractors to address requirement to comply with human rights protections?	The following is a non-exhaustive list of relevant existing Luxembourg procurement laws and regulations:³⁵⁸ • The Law of 8 April 2018 on Public Procurement implementing the Directives 2014/24/EU (the Public Sector Directive) and 2014/25.EU (the Utilities Sector Directive);³⁵⁹ • The Grand-Ducal Regulation of 8 April 2018 implementing the Law on Public Procurement and providing the details governing different procurement procedures;³⁶⁰ • the Grand-Ducal Regulation of 25 January 2019 amending the

	Grand-Ducal Regulation of 27 August 2013 on the use of electronic means in public procurement procedures amending the amended Grand-Ducal Regulation of 3 August 2009 implementing the law of 25 June 2009 on public procurement and modifying the threshold provided for in article 106 point 10 ° of the municipal law of 13 December 1988; the Grand-Ducal Regulation implementing the Procurement Act of 8 April 2018. • the Ministerial Regulation of 2 December 2013 establishing the conditions of use of the public procurement portal;³⁶¹ • the Grand-Ducal Regulation of 24 March 2014 establishing Standardized Special Charters for Public Procurement and amending Article 103 of the Grand-Ducal Regulation of 3 August 2009 implementing the Markets Act of 25 June 2009 public;³⁶² • the Ministerial Regulation of 31 July 2018 establishing special specifications for standardized charges for construction and building closure, technical installation and completion contracts;³⁶³ • the Ministerial Regulation of 20 April 2018 establishing a standard specifications for general contractual clauses, applicable to all public works contracts relating to the building sector;³⁶⁴ • the Law of 10 November 2010 instituting remedies in public procurement;³⁶⁵ • the Grand-Ducal Regulation of 3 August 2009 implementing the law of 25 June 2009 on public procurement. (Memorial A n ° 180 of August 11, 2009).³⁶⁶ Luxembourg is party to the Agreement on Government Procurement (GPA), a plurilateral agreement within the framework of the WTO.³⁶⁷
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	Transparency, fair treatment and equal opportunities are among the basic principles of public procurement legislation pursuant to the EU Directives. In addition, in Luxembourg, the Law of 8 April 2018 on Public Procurement, Article 12(2) requires the contracting authorities to take into account, aspects and problems relating to the environment and the promotion of sustainable development when awarding public contracts. Institutional system governing the public procurement include: The Public Procurement Directorate (<i>Le Département des travaux publics</i>) within the Department of Public Works of the Ministry of Mobility and Public Works (MMTP) is the primary policy body for public procurement.³⁶⁸ It is responsible for the regulatory framework, drafting legislation, monitoring its implementation and online posting of public procurement procedures. The Tender Commission (<i>La Commission des Soumissions</i>) is a consultative body established pursuant to Articles 159 et seq under the amended Law of 8 April 2018 within the MMTP.³⁶⁹ It is composed of 9 members, including representatives from contracting authorities (a chairman and 4 members) and professional chambers (4 members). An administrative unit within the MMTP manages the Tender Commission. The Tender Commission can act as a supervisory body, ensuring that public procurement rules are applied properly by contracting authorities. It has also competency to receive complaints from tenderers. The notices and opinions issued by the Tender Commission are not binding but are commonly adopted by
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	contracting authorities.³⁷⁰ The public procurement law formally encourages contracting authorities to make use of tender procedures to promote sustainable development and social objectives: • According to Article 12 of the Law of 8 April 2018; <i>“contracting authorities shall take into account, when awarding public contracts, aspects and problems relating to the environment and the promotion of sustainable development”</i> • According to the Article 35(1), the contract should be awarded to the “most economically advantageous” tender. The most economically advantageous tender, from the point of view of the contracting authority, can be determined based on the “best quality / price ratio, which is assessed according to the criteria including qualitative, environmental or social aspects related to the subject of the public contract concerned” (Art 35(2)). • Article 42 further sets out the conditions for compliance with applicable rules in the field of environmental, social and labour law: <i>“Economic operators are required to respect and enforce by any person acting as subcontractor at any stage and by any person making available personnel for the performance of the contract all obligations applicable in the fields environmental, social and labor law established by the European Union, national law, collective agreements or international provisions on environmental, social and labor law [...]”</i>
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Under Article 15(1): contracting authorities may restrict tenders to social enterprises, or to enterprises that favour the inclusion of disabled persons or that participate in labour inclusion programmes. The LuxDev is Luxembourg's Development Cooperation Agency in which the State is the majority shareholder.³⁷¹ According to their website, the Agency intervenes in the framework of bilateral development cooperation project or programme protocols, signed by the Government and the Governments of the partner countries.³⁷² The LuxDev lists respect for human rights as one of the ethics clauses that the contractor and its staff must comply with during the duration of the contract.³⁷³ The NAP 2018-19 indicated to raise awareness of contracting authorities as part of their public procurement procedures. The National Plan for Sustainable Development (2018) explicitly sets the target of promoting green and social criteria in public procurement.³⁷⁴ Implementation of these projects and programmes involves procurement of goods, services and works, financed by the contributions of the Government or other Donors and for which LuxDev acts as Awarding Authority.³⁷⁵ The Luxembourg Union for the Social and Solidarity Economy (<i>Union luxembourgeoise de l'économie sociale et solidaire</i> - ULESS), a non-profit organization that aims to defend and to promote the social and solidarity economy, has published a practical guidance for	
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	implementation of social clauses in public procurement with the support of the Ministry of Labour, Employment and the Social Solidarity Economy ('MTESS').³⁷⁶ The second question in this sub-section relate to the guidance provided for the contractors to address requirement to comply with human rights protections: In Luxembourg, the e-procurement portal serves as an information and communication platform on public procurement. It provides contracting authorities and economic operators with information on general principles and guidelines, applicable legislation, notification of contracts and guidance on procedures including applicable thresholds, submission conditions and timelines as well as standardised tender specifications which have been recently introduced for public works.³⁷⁷ Gaps There is a legal basis in Luxembourg for public authorities to implement human rights considerations in the course of purchasing activities. Nonetheless, gaps remain in the protection of business-related human rights abuses under Luxembourg procurement laws and policies: • There is no explicit reference in the current legislation and policy on how human rights are to be operationalised by contracting authorities in public procurement processes. Neither is there reference to businesses responsibilities to respect human rights as prescribed by the UNGPs. • The Guidance provided by the Public Procurement Directorate does not have any explicit reference to human rights.
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	- The reference to contractor’s respect for human rights in the procurement portal of the LuxDev is welcomed. However, it is a general statement that does not prescribe any concrete action or guidance for the contractors. Moreover, the entirety of the statement reads: <i>“For the duration of the contract, the Contractor and his staff must respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiary country”</i>. The latter part of the statement is problematic in the sense that contractors might find themselves in situations where national laws directly conflicts with international human rights standards or do not fully comply with them. According to the UNGPs, corporate responsibility to respect human rights exists above and beyond the need to comply with national laws and regulations protecting human rights. It applies even when relevant domestic law is weak, absent or not enforced. If the national legislative environment makes it impossible for a company to fully meet its responsibility to respect human rights, the company is expected to seek ways to honour the principles of internationally recognized human rights and to continually demonstrate its efforts to do so.³⁷⁸ - At the time of writing, human rights awareness raising of contacting authorities stated in the NAP 2018-19 has not been implemented. - No reference to human rights can be found in the guidance tool prepared by the ULESS.
19.2. Can state agencies use human rights criteria as a consideration	See Section 19.1.

in procurement processes? At what stage of the procurement process can human rights criteria be included (can human rights protections be incorporated beyond the initial procurement phase and in the life-cycle of the contract, including the monitoring and review phases)?	Note a general lack of human rights related content in the frameworks for public procurement.
19.3 Have state agencies taken steps to clarify how human criteria can be incorporated in public procurement? Does such guidance cover the full procurement life-cycle?	See Section 19.1. Note a general lack of human rights specific content in the frameworks for public procurement.
19.4. Do state agencies conduct a human a rights risk assessment to identify the risk of human rights violations and abuses in procurement contracts or categories of procurement contracts? If such assessments occur, what action is taken by state agencies in relation to the contracts deemed to be in a category of higher risk of potential human rights violations and abuses?	See Section 19.1. Note a general lack of human rights specific content in the frameworks for public procurement.
19.5. Can due diligence requirements be included within a public procurement contract? Do state agencies require contractors to undertake human rights due diligence (including human rights risk assessments)? Do state agencies provide guidance to businesses on how to conduct human rights due diligence including human rights impact assessments?	See Section 19.1. Note a general lack of human rights specific content in the frameworks for public procurement.
19.6. Do state agencies require contractors to disclose information on their supply chain, including specific subcontractors and the addresses of factories or sites of supply? Do state agencies require contractors to certify that they know their subcontractors, including specific locations of production or supply, and that they have management systems to ensure compliance? Do state agencies confirm a contractor's assurances and require development of compliance plans during the award stage?	See Section 19.1., in particular, part on Article 42 of the Law of 8 April 2018, see also Section 10.4. on Conflict Minerals Regulation.

19.7. Do state agencies engage in selective or targeted public procurement, such as preferential award to vulnerable groups (for example, ethnic minorities or persons with disabilities) or to businesses working to achieve specific human right objectives (for example, gender equality or post-conflict reintegration)?	See Section 19.1., in particular, part on Article 15(1) of the Law of 8 April 2018.
19.8. Have state agencies put any other measures in place to ensure that public procurement complies with human rights protection or to promote respect for human rights among other businesses with which it engages in commercial relationships, such as through business partnerships for economic development and innovation (for example, growth funds, or strategic support for innovation in certain sectors, such as green energy or medical technology, or requiring businesses to implement sector-wide standards which include human rights protections)?	See Section 19.1. Note a general lack of human rights specific content in the frameworks for public procurement.
19.9. What remedial procedures or mechanisms are in place to address human rights abuses by contractors? What remedial procedures or mechanisms are in place for victims of human rights abuses by contractors?	See Section 24. on remedies.
19.20. What percentage of resources is dedicated to contract management? Do state agencies have information systems and dedicated staff to monitor contractor compliance with human rights requirements? Do state agencies require contractors to regularly report on the performance of the contract? Do these reports include human rights issues?	See Section 19.1. Note the general lack of human rights specific content in the frameworks for public procurement in Luxembourg.
19.21. Are there publicly reported cases of adverse human rights impacts associated with businesses from which the state procures or conducts other commercial activities with?	This research has not identified any cases of adverse human rights impacts associated with businesses from which the state procures or conducts other commercial activities with.

STATES' ROLE IN RELATION TO THE BUSINESS CONDUCTED IN CONFLICT-AFFECTED AREAS	
Guiding Principle 7: Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by: (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships; (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence; (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation; Ensuring that their current practices, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.	
Relevant Sustainable Development Goals and Targets • Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels (Target 16.1)	
20. LEGAL AND POLICY CONSIDERATIONS IN CONFLICT-AFFECTED AREAS	
Guiding Questions	Status and Gaps
20.1. Has the state signed relevant international and regional treaties, directives, etc. in relation to the business role in conflict-affected areas, such as the Geneva Conventions, Arms Trade Treaty, regional directives, etc.?	The UNGP 7 concerns the measures taken by the Government in order to ensure that business enterprises operating in conflict-affected areas are not involved with human rights abuses. It has two broad dimensions: First concerns the Government's interaction with the host States and the second concerns the guidance provided by the

	Government to businesses operating in conflict-affected areas. The Commentary to the UNGP 7 asks states to “warn business enterprises of the heightened risk of being involved with gross abuses of human rights in conflict-affected areas”³⁷⁹. The Commentary to the UNGP 7 states that: <i>“To achieve greater policy coherence and assist business enterprises adequately in [conflict-affected] situations, home States should foster closer cooperation among their development assistance agencies, foreign and trade ministries, and export finance institutions in their capitals and within their embassies, as well as between these agencies and host Government actors; develop early-warning indicators to alert Government agencies and business enterprises to problems; and attach appropriate consequences to any failure by enterprises to cooperate in these contexts, including by denying or withdrawing existing public support or services, or where that is not possible, denying their future provision”</i>³⁸⁰ Luxembourg ratified all four Geneva Conventions, including Geneva Convention (I) on Wounded and Sick in Armed Forces in the Field, 1949; Geneva Convention (II) on Wounded, Sick and Shipwrecked of Armed Forces at Sea, 1949; Geneva Convention (III) on Prisoners of War, 1949; Geneva Convention (IV) on Civilians, 1949 on July 1, 1953.³⁸¹ Luxembourg ratified the Arms Trade Treaty on June 3, 2014.³⁸² See above Section 1.5.
20.2. Does the state participate in relevant initiatives (for example, the VPs, ICOC, EITI, the Kimberley Process, etc.)?	
20.3. Are there publically available examples of the effectiveness of	The present study has not identified any such examples. However,

state participation in relevant initiatives or examples of shortcomings in relevant initiatives in relation to upholding their mission of promoting human rights in conflict-affected areas	public officials consulted for this study have stated that “Luxembourg has a relatively light footprint in fragile and conflict-affected areas, perhaps with the exception of the Sahel region. There, together with its EU partners and other international allies, Luxembourg pursues a “3D-strategy”, combining elements of diplomacy, development cooperation, and defence and security to support national authorities”. ³⁸³
20.4. Has the state engaged in multilateral approaches to prevent and address acts of gross human rights abuses, such as through accepting the jurisdiction of the International Criminal Court (ICC)?	Luxembourg ratified the Rome Statute of the International Criminal Court (17 July 1998) on September 8, 2000.³⁸⁴ Luxembourg has nominated a national focal point for the responsibility to protect in the Ministry of Foreign and European Affairs and the Ministry of Justice participates in the EU’s Genocide Prevention Network.³⁸⁵ Luxembourg regularly participates in multilateral diplomatic fora in order to address publicly specific situations where a risk of mass atrocity crimes exists, or to advocate for the fight against impunity for genocide, crimes against humanity, or war crimes.³⁸⁶ In a statement released on March 18, 2019 and published at the Ministerial website, the Minister of Foreign and European Affairs, has reiterated Luxembourg’s full support to the ICC and commitment to promote the universality of the Rome Statute.³⁸⁷ See Section 24.1.
20.5. Has the state introduced civil or criminal liability for enterprises domiciled or operating in their territory or jurisdiction that commit or contribute to gross human rights abuses, including abuses committed abroad? Is it possible for the state to impose sanctions on persons and entities, for example by seizing equipment or freezing assets?	

20.6. Are there laws, policies, and regulations in place to ensure that materials and resources sourced from conflict-affected areas are not connected to or exacerbating conflict?	See Section 10.4.
20.7. Does the state have a procedure for investigating business activities in conflict-affected areas (e.g. through the appointment of a special mission assignment to the local embassies to investigate in the host state and report to relevant authorities in the home state)?	The Ministry of Foreign Affairs of Luxembourg has a designated desk to ensure the full implementations of UN and EU sanctions regimes inside the Directorate of European Affairs and International Economic Relations. ³⁸⁸ The implementation is also monitored by the Ministry of Finance. Diplomatic Missions are not generally tasked with investigative assignments. ³⁸⁹
20.8. Has the state established procedures for communicating with host states regarding business operations in conflict-affected areas?	Public officials consulted for the present study confirmed that communications with other states go through official diplomatic channels. ³⁹⁰
20.9. Has the state put in place efforts with the aim of fostering closer cooperation among its development assistance agencies, foreign and trade ministries, and export finance institutions in its capital and within its embassies, as well as between these agencies and host state actors to address the risk of business involvement in gross human rights abuses?	Public officials consulted for this study confirmed that there are regular consultations on export controls issues between all government agencies concerned, as well as ad hoc inter-ministerial consultations on business and human rights issues between the relevant Ministries (all concerned departments of the Ministry of Foreign Affairs, the Ministry of Finance and the Ministry of the Economy. ³⁹¹ The latter also hosts the OECD National Contact Point (see below, Section 27.1.)
20.10. Are there publicly reported instances of adverse human rights impacts caused by business-entities domiciled in the state but operating abroad in conflict-affected areas? Do these examples include a state failure to investigate, act upon, and provide remedy?	This study has not found any examples of state failure to investigate, act upon, and provide remedy linked to the operations of companies that are operating in conflict-affected regions. The study, however, identified a general lack of guidance on human rights issues for businesses operating abroad in particular in those areas affected by conflict where human rights risks are heightened. A

	company representative interviewed for this study confirmed that the businesses can easily access to such information through informal channels “by simply picking up the phone and asking” at the relevant desk at the MAEE. Nonetheless, the Government is advised to formalize the advise offered to businesses operating abroad, that would contain information about high-risk areas and human rights issues in host-countries. The Government is also advised to issue Guidance on how Luxembourg Embassies can promote responsible business conduct including by working with host governments to promote human rights and raising awareness.
POLICY COHERENCE ACROSS STATE ACTIVITY	
<u>Guiding Principle 8:</u> States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State’s human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.	
<u>Guiding Principle 9:</u> States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.	
<u>Guiding Principle 10:</u> States, when acting as members of multilateral institutions that deal with business-related issues, should: (a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder	

business enterprises from respecting human rights; (b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising; (c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.	
Relevant Sustainable Development Goals and Targets • Goal 17: Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development. (Target 17.14)	
21. HORIZONTAL AND VERTICAL POLICY COHERENCE	
Guiding Questions	Status and Gaps
21.1. Has the state published a written commitment to business and human rights? If so, (1) has this commitment been communicated to governmental departments and (2) does this commitment help to clarify the role of different departments (for example, labour, business, development, foreign affairs, finance, or justice)?	Luxembourg has published its first NAP on business and rights in June 22nd, 2018 (NAP 2018-19). The NAP is prepared by the Government, under the coordination of the Ministry of Foreign and European Affairs, within the framework of the Inter-ministerial Committee on Human Rights in close cooperation between public authorities, representatives of the private sector and civil society. The Inter-Ministerial Committee was created in May 2015 by the Council of Government to improve inter-ministerial cooperation and coordination on human rights issues, to <i>strengthen the coherence between Luxembourg's internal and external human rights policies</i> and to monitor Luxembourg's human rights obligations.³⁹² Implementation and follow-up of the NAP 2018-19 is a regular item on the agenda of the Inter-Ministerial Committee. Dialogue with all public and non-governmental actors is organized and coordinated by the Inter-ministerial Committee.³⁹³

	Both the original French version as well as the English translation of the NAP is published on the Government's website. Gap The NAP 2018-19 contains various action points that fall under the competences of different ministries and governmental departments. However, the NAP does not clearly identify the specific entity responsible for the implementation and follow-up of the action points.
21.2. Has the state developed a clear division of responsibilities to help coordinate human rights and business issues between and across different government agencies and departments?	See above, Section 21.1.
21.3. Has the state developed guidance material and training to help clarify the roles of different departments in promoting and protecting human rights with regard to the role of business? Does this guidance include specific information on protection of human rights and how this relates to international and regional obligations and commitments? Does this guidance include specific information on the protection of human rights in trade, with an emphasis on the role of regional bodies and international organisations, such as international and regional finance institutions? Does the guidance provide information on the roles and responsibilities across ministries or agencies?	This research has not identified any guidance material and training to help clarify the roles of different departments in promoting and protecting human rights with regard to the role of businesses. One of the action points in the NAP 2018-19 includes raising human rights awareness of contracting authorities as part of public procurement procedures. No concrete action has been taken on this point yet.
22. POLICY COHERENCE IN STATE AGREEMENTS WITH BUSINESS ENTERPRISES	
Guiding Questions	Status and Gaps
Are there laws or policies in place to ensure that human rights considerations are included in agreements between the state and	In addition to already mentioned examples this research has not identified specific laws and policies on human rights considerations in

business enterprises? Are there laws or policies in place to ensure that business enterprises domiciled in the state's territory or jurisdiction respect the principles of responsible contracting when those businesses enter into agreements with host states? Does the state support or advocate for the inclusion of human rights considerations and the principles of responsible contracting in agreements between the state and business enterprises or between host states and businesses domiciled in the state's territory or jurisdiction? Are there publically available examples of adverse human rights impacts associated with specific state-business agreements? If so, where human rights considerations included in the contracting process?	agreements between the state and businesses at present.
23. STATE POLICY COHERENCE IN MULTILATERAL INSTITUTIONS	
Guiding Questions	Status and Gaps
23.1. Has the state established procedures and measures to ensure support for business and human rights frameworks, including the UNGPs, in positions taken internationally and regionally (for example, on human rights screening and documenting of negotiating positions, as well as training of trade and development officials on business and human rights frameworks)?	There are no established procedures at the moment, but Luxembourg has taken position in favour of the implementation of the UNGPs in a number of multilateral fora, including the EU's relevant working party and the Human Rights Council.³⁹⁴
23.2. Does the state promote its duty to protect and the corporate responsibility to respect in multilateral institutions, including international trade and financial institutions, the UN system, regional institutions, and with business organisation and workers' associations? Has the state taken measures to promote awareness of	See above, Sections 20.9. and 21.1.

the UNGPs and the broader business and human rights agenda?	
23.3. What have been the impacts of state efforts to promote the UNGPs and other business and human rights frameworks in multilateral institutions to which it is a member?	It is difficult to identify the specific impact of Luxembourg's efforts. Public officials have remarked that Luxembourg has been a vocal advocate inside the EU for taking a constructive approach to engagement with the OEIWG on human rights and transnational corporations as well as other business entities. ³⁹⁵

ACCESS TO STATE-BASED REMEDY	
Guiding Principle 25: As part of their duty to protect against business-related human rights abuse, states must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.	
Relevant Sustainable Development Goals and Targets	
Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels (Target 16.3)	
24. REDRESS FOR BUSINESS RELATED HUMAN RIGHTS	
Guiding Questions	Status and Gaps
24.1. Has the state put in place laws, policies, and regulations that introduce civil liability, criminal liability, and administrative sanctions, such as fines or limited access to state funding, for business-related adverse human rights impacts, including for impacts that take place abroad? Do these mechanisms apply to individuals and/or businesses?	Below is a non-exhaustive list of laws, policies, and regulations that introduce civil liability, criminal liability and administrative sanctions in Luxembourg. - The Civil Code states that; - An alien, even if not residing in Luxembourg, may be summoned before Luxembourg courts for the performance of obligations contracted by him in Luxembourg with a Luxembourger; he may be called before the courts of

	Luxembourg for obligations contracted by him in a country towards Luxembourgers (Article 14); • A Luxembourg may be called before a court of Luxembourg for obligations contracted by him in a foreign country, even with an alien (Article 15).³⁹⁶ • The Law of 3 March 2010 introduces the criminal liability of legal persons in the Criminal Code and Code of Criminal Procedure and amends the Criminal Code, the Code of Criminal Procedure and certain other legislative provisions.³⁹⁷ The 2010 Law applies to most types of legal entities, apart from the State and municipalities which are expressly excluded (Article 34). The Law further provides that the criminal liability of the legal entity does not preclude the criminal liability of the natural persons, authors, or accomplices who committed the relevant offenses. Criminal liability of the legal entity will arise whenever a felony or a lesser offense (<i>délit</i>) is committed by one or more of the entity's legal representatives or one or more of its legal or <i>de facto</i> directors on behalf of and for the benefit of the entity. The courts may apply the following penalties in case the corporate entity is found liable for a crime or an offense:³⁹⁸ • Pecuniary fines: Minimum of EUR 500 and maximum of EUR 750,000 for offenses of minimum of EUR 500 and maximum corresponding to twice the maximum rate provided in the Criminal Code for the commission of an offense committed by a natural person (Art 36, Criminal Code). • For the following crimes and offenses, the minimum and maximum fines will be multiplied by five (Art 37, Criminal Code):
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	• Crimes or offenses against State security; • Acts of terrorism and terrorist financing; • Violation of laws relating to detention of arms; • Trafficking of human beings; • Drug trafficking; • Money laundering; • Misuse of public funds • Corruption and bribery; • Assisting unauthorized entry to the country and residence; • Illegal employment of third country nationals. • Specific confiscation (<i>Confiscation spéciale</i>) • Exclusion from participation in public procurement • Dissolution of the entity • Examples of some of the administrative sanctions include:³⁹⁹ • The CSSF has the power to issue sanctions against persons subject to its supervision pursuant to the Law of 5 April 1993 on the financial sector, as amended, including; injunction and suspension under Article 59 and administrative fine of between 125 and 12 500 euros under Article 63.⁴⁰⁰ • The CAA (Commissariat aux assurances)⁴⁰¹ can authorize fines of a maximum of 2,500 EUR, as well as other measures, including warnings, blame, the prohibition to carry out certain operations and all other limitations in the exercise of the activity and temporary suspension of one or more officers pursuant to the Law of 6 December 1991, Article 101.⁴⁰² If
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	after several warning, the company does not remedy the problem, the Ministry can withdraw its approval which would effectively meant liquidation of the company. The CNDP, pursuant to Articles 12 -14, of the Law of 1 August 2018 establishing the National Commission for Data Protection, has various investigative, corrective and advisory powers including, among others, issuing penalties for infringement set out by the GDPR, imposing penalty payments (<i>astreintes</i>) of delay to comply with an order by the CNPD to provide information or with a corrective measure issued by the CNPD.⁴⁰³
24.2. Has the state put in place mechanisms that introduce compensation, such as fines or restoration of livelihoods, for business-related adverse human rights impacts, including for impacts that take place abroad?	The Rome II Regulation requires that the type of remedies, including the character and amount of damages, are to be determined on the basis of the law where the harm occurred.⁴⁰⁴ In the exceptional circumstances where the application of the law where the harm occurred to determine the amount of damages would lead to denial of justice, the courts may apply Article 26 of the Rome II Regulation, which allows them to refuse application of foreign law if it is manifestly incompatible with the public policy of the forum.⁴⁰⁵ In cases concerning environmental damage, Article 7 of Rome II Regulation enables the person seeking compensation for damage to choose to base his claim on the law of the State in which the event giving rise to the damage occurred.⁴⁰⁶ The Law of 12 March 1984 on compensation to certain victims having suffered injuries resulting from crime, as completed by laws of 14 April 1992 and 6 October 2009,⁴⁰⁷ foresees a right for certain victims

	of crime to get compensation paid by the State budget. In order to qualify for compensation, the following conditions have to be met: • The victim must either legally and habitually reside in Luxembourg or be a national of a Member State of the European Union or the Council of Europe. In addition, at the time of the crime, the victim must be lawfully present in Luxembourg or be a victim of the crime referred to in Article 382-1 of the Criminal Code. • The injury suffered must be the result of intentional acts that constitute a crime. • There must be a physical injury and not just material damage (which excludes, for example, compensation for simple theft). • The injury must seriously affect your quality of life, which may be due to a loss or reduction of earnings, increased costs or exceptional expenditure, inability to work, loss of a year of schooling, physical or mental harm, moral damage or disfigurement, or physical or mental suffering. If you are the victim of a crime referred to in Articles 372 to 376 of the Criminal Code, you do not have to prove physical or mental harm as this is presumed. • Compensation is payable by the State only if you cannot obtain effective and adequate compensation in another way. • The compensation may be withheld or reduced on the basis of the victim's conduct at the time of the offence or of his relationship with the offender. • Anyone who legally and habitually resides in Luxembourg, but was the victim of a violent intentional crime abroad, is entitled to claim compensation payable from the Luxembourg budget if they are
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	not entitled to be compensated by the other State (Art. 15, the Law of 12 March 1982). • In order for the criminal court to have cause to rule on compensation, the victim must sue for damages in the criminal proceedings as a civil party and claim fair compensation from the offender, where the latter is found guilty.
24.3. Has the state put in place mechanisms that introduce processes for the prevention of harm, such as injunctions or guarantees of non-repetition, for business-related adverse human rights impacts, including for impacts that take place abroad?	The NCPC Article 932 gives the judge sitting in summary proceedings (<i>procédure de référé</i>) general powers to order, in urgent matters, any interim measures to which there is no compelling objection or which are justified by the existence of a dispute. This judge may also order any conservatory or remedial measures that are necessary either to prevent imminent damage or to put an end to a manifestly unlawful disturbance (NCPC, Article 933). Luxembourg law recognises several kinds of interim injunctions:⁴⁰⁸ • Before any trial, if there is a legitimate reason to retain or establish the evidence of facts that might be relied upon in the solution of a dispute, the President of the District Court can order any legally permissible measures of inquiry (without the need to show emergency or absence of serious protest) (Article 350 of the New Code of Civil Procedure (NCPC)).⁴⁰⁹ • If a debtor resides in Luxembourg, the creditor can ask for a court order instructing the debtor to pay the debt if the debtor's obligation is not seriously in dispute, which must be proven by the claimant beyond a reasonable doubt (Article 919 and the following, NCPC).

	• In urgent cases, the president of the District Court, or a judge who replaces him, can order any necessary measure which, beyond a reasonable doubt, is not seriously contested or causes any disagreement (Article 932, NCPCP). • In order to prevent any imminent damage or unlawful nuisance whose risk of occurrence has to be proved beyond reasonable doubt, the president of the District Court can order a protective measure (Article 933 and following, NCPC).
24.4. Has the state put in place mechanisms to promote apologies for business-related adverse human rights impacts, including for impacts that take place abroad?	No evidence of mechanisms to promote apologies for business-related adverse human rights impacts, including for impacts that take place abroad has been found.
24.5. Has the state made efforts to promote public awareness and understanding of the existence of laws, policies, and regulations that ensure redress for business-related adverse human rights impacts?	Information on laws, policies, and regulations as well as judicial mechanisms and how they can be accessed is provided in the website of the Ministry of Justice.⁴¹⁰ In addition, Central Social Assistance Service (<i>Le service central d'assistance sociale</i> – SCAS) has two dedicated portals where public can obtain the relevant information: Legal Reception and Information Service (<i>Service d'Accueil et d'Information juridique</i>) and the Victim Support Service (<i>Service d'aide aux victimes</i>).⁴¹¹ The latter service answers queries of private individuals and provide them with general information on the scope of their rights, and on the channels and resources to use to protect them.⁴¹² The service's role is to: • answer the queries of private individuals and direct them towards the appropriate departments, giving them the information and technical resources that they need; • provide private individuals with general information on the scope

	of their rights in relation to the problems raised, and on the channels and resources for exercising those rights; • listen to their grievances regarding the difficulties they have encountered in exercising their rights and suggest ways of overcoming them. The service only provides information orally. It does not provide any written consultations. In addition, the Governmental web portal, Gucihet.lu, contains a dedicated website on appeals and dispute settlement in a language easily accessible to the public.⁴¹³ Gaps No explicit reference to laws, policies, and regulations that ensure redress for business-related adverse human rights impacts can be found in the above mentioned sources.
24.6. Does the state have systems in place to monitor enforcement and implementation of laws, policies, and regulations?	See below Section 25.1.

JUDICIAL MECHANISMS

Guiding Principle 26: States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.

25. JUDICIAL MECHANISM	
Guiding Questions ⁴¹⁴	Status and Gaps
25.1. Do the national courts have the competency to adjudicate claims of business and human rights abuse, including for abuses that take place outside of their territorial jurisdiction?	The right to effective remedy is enshrined in several European and international treaties to which Luxembourg adheres. It is both a General Principle of EU law, and is explicitly recognised in Article 47 of the CFR and Article 13 of the ECHR. The CJEU requires that where there is a right under Union law, Member States should offer a remedy to ensure its enforcement (<i>ubi ius ibi remedium</i>) ‘both in law and in practice.’⁴¹⁵ Luxembourg’s domestic legal order is founded on the primacy of international law. All courts in Luxembourg have accepted the full supremacy and direct effect of international law as well as EU law. In the field of human rights there is a long tradition to directly apply the provisions of the ECHR and since the entry into force of the Lisbon treaty the domestic courts frequently refer to the CFR. In a 2015 case, the administrative court proceeded to an <i>ex officio</i> application of the CFR.⁴¹⁶ The Brussels I Regulation makes it mandatory for the national courts of EU Member States to accept jurisdiction in civil liability cases filed against defendants domiciled in the forum State, whatever the nationality of the defendant or the plaintiff and, in cases of extra-contractual liability, wherever the damage occurred.⁴¹⁷ Article 60 (1) of the Regulation clarifies that “a company or other legal person or association of natural or legal persons is domiciled at the place where it has its: a) statutory seat, or b) central administration, or c) principal place of business”. In Luxembourg, it follows from articles 14 and 15

	of the Civil Code (see above, Section 24.1) that the Luxembourg courts may be competent for any civil action brought against a Luxembourg national, in the absence of any other ground for jurisdiction (see above, Section 24.1.1.). The court system in Luxembourg is twofold consisting of judicial and administrative divisions. Both of them are overseen by the Constitutional Court (“Cour constitutionnelle”) which is composed of 9 members and reviews Luxembourg’s laws <i>a posteriori</i> in the light of the Constitution, with the exception of laws approving treaties, which are explicitly excluded from judicial review.⁴¹⁸ The judicial courts sit in civil, commercial and criminal matters and are organized on the basis of a three-tier structure.⁴¹⁹ • The Supreme Court of Justice (<i>Cour supérieure de justice</i>), consisting of; ◦ The Court of Cassation (<i>Cour de cassation</i>); has jurisdiction over the Court of Appeal rulings as well as judgements rendered in last resort by the district courts and conciliation judges. The Court of Cassation decides questions of law; ◦ The Court of Appeals (<i>Cour d’appel</i>) with a jurisdiction over decisions handed down at first instance by the district courts over civil, commercial, criminal and correctional matters, as well as over cases decided by labour tribunals; and ◦ Two District Courts (Luxembourg City and Diekirch),
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	dealing in both civil, commercial (claims above EUR 10.000) and criminal (crimes and misdemeanors) matters; - o Three magistrates courts (<i>Justices de paix</i>) (Luxembourg, Esch-sur-Alzette and Diekirch), dealing in civil commercial (claims up to EUR 10.000) and criminal (petty offences) matters; - o The Employment Tribunals ("Tribunal du Travail") are also organised at the level of the Lower Courts. The administrative division is composed of;⁴²⁰ • the Administrative Court (<i>Cour administrative</i>), dealing in administrative and tax appeals, and • the Administrative Tribunal (<i>Tribunal administratif</i>), tribunal of first instance for administrative (individual administrative decisions and regulatory acts) and tax (basically direct taxation) matters.
25.2. Do national labour tribunals have the competency to adjudicate claims of business-related human rights abuse?	The Labour Court (Tribunal du Travail) has jurisdiction over individual disputes between employers and employees arising from a labor contract or an apprenticeship contract, complementary pension schemes, and insolvency insurance. A right to appeal lies with the Court of Appeal. If the dispute concerns issues relating to the application of the law the case may be referred to the Court of Cassation which, in reality, is very rarely used.
25.3. Do other judicial mechanisms have the competency to adjudicate claims of business-related human rights abuse?	In addition to the above, in Luxembourg, there are two social security courts consisting of the High Social Security Council (<i>Conseil supérieur de la sécurité sociale</i> - CSSS) and the Social Security Arbitration

	Tribunal (Conseil arbitral de la sécurité sociale - CASS).
25.4. Has the state made efforts to promote public awareness and understanding of judicial mechanisms, including how they can be accessed?	While examples of State's efforts to promote public awareness and understanding of judicial mechanisms exist in general (see above, Section 24.5.), these sources do not contain explicit references to grievance mechanisms for human rights violations committed by companies.
25.5. Are the judiciary, including civil, criminal, and commercial courts, as well as employment and other administrative tribunals and law enforcement, trained on issues related to business and human rights?	The initial as well as ongoing studies and vocational training of judiciary are provided in the Law of 7 June 2012 which also establishes a Commission (Art. 15) responsible for overseeing the trainings and recruitment ("commission du recrutement et de la formation des attachés de justice").⁴²¹ The vocational training of judiciary comprises theoretical modules (Art. 7) that last minimum 6 months, and a practical service (Art. 8). Gaps Luxembourg has no training institute for the judiciary. This research has not identified any evidence of trainings on issues related to business and human rights offered to the members of the judiciary.
25.6. What measures are in place to monitor and ensure that judicial mechanisms are operating in a way that is impartial, with integrity, and in accordance with due process?	The independence of judiciary is guaranteed by the Constitution and by the laws governing and organising the structure of the judiciary. Under Article 91, judges are irremovable. An adjudicating judge can be transferred only by appointing him or her to a new position and only with his or her consent. However, in the event of disability or misconduct, adjudicating judges can be suspended, dismissed or transferred, in accordance with the conditions laid down by law. The office of judge is incompatible with being a member of the government, member of parliament, mayor, alderman or communal

		councillor, holding any public or private salaried position, being a notary or bailiff, holding a military or ecclesiastical office or being a lawyer. Judges are impartial and are bound to professional secrecy.
26. BARRIERS TO ACCESS TO JUDICIAL REMEDY		
Guiding Questions	Status and Gaps	
26.1. Has the state taken measures to ensure that there are no legal barriers to prevent legitimate cases from being brought before the courts? This includes ensuring that: (1) it is possible to hold businesses accountable under domestic criminal and civil laws, meaning that liability for both natural and legal persons exists under the law; (2) all members of society can raise complaints, including indigenous peoples, migrants, women, and children, and are afforded the same legal protection as for the wider population; (3) extraterritorial harms can be addressed within the courts, as permitted by the UNGPs and international human rights law; and (4) legal issues such as conflicts of law, statutes of limitations, parent company limited liability, <i>forum non conveniens</i> and standards of liability do not result in barriers to victims of business-related human rights harms in accessing the courts.	Below is a non-exhaustive overview of measures Luxembourg has taken to ensure that there are no legal barriers to prevent legitimate cases from being brought before the courts: (1) See above, Section 24.1. (2) See above, Section 24.1. (3) See above, Sections 24.1 and 25.1. (4) The Rome II Regulation applies to tort liability claims presented to the national courts of the EU Member States. Rome II Regulation in principle designates the law of the State in which the harm occurred as the applicable law.⁴²² Civil liability claims are decided on the basis of the rules in force in the State where the damage occurred.⁴²³ The Rome II Regulation theoretically allows courts to apply the law of the forum in situations where the law of the State in which the harm occurred is not sufficiently protective of the human rights of the person harmed.⁴²⁴ The European Court of Justice has rejected the application of the <i>forum non conveniens</i> doctrine in the EU.⁴²⁵ The European Parliament noted that the Brussels I Regulation mandates the national courts in the EU to recognize their jurisdiction in cases where human rights violations are committed abroad, especially in developing States where European multinationals operate, as a result of the conduct of	

	these businesses.⁴²⁶ The statute of limitation is governed by the Rome II Regulation, which means that the period depends on the national law that is applicable in the case. In Luxembourg, common limitation period is 30 years (Article 2262 Civil Code). A special time limit of ten years is applied to obligations derived from trade, between professionals and between professionals and consumers, unless they are subject to a shorter time limit (Article 189, Commercial Code). Luxembourg law offers the relatively uncommon possibility for NGOs to seek remedies in civil cases (in the form of punitive damages or awards for themselves- <i>in nome proprio</i>) when cases are in the public interest.⁴²⁷
26.2. Has the state taken measures to ensure that there are no practical or procedural barriers to prevent legitimate cases from being brought before the courts? This includes: (1) ensuring financial support including legal aid and other types of assistance; (2) providing legal representation or guidance; (3) providing opportunities for collective redress, class- actions, and multi-party litigation; (4) allowing for recovery of attorneys' fees; (5) preventing retaliatory actions against claimants; (6) reforming access to evidence; and (7) providing training, resources and support for prosecutors and judges.	The question inquires whether the state has taken measures to ensure that there are no practical or procedural barriers to prevent legitimate cases from being brought before the courts, including; (1) Legal aid: The right to legal aid is enshrined in the <i>ECHR</i>, Art 6 (3)(c) which guarantees the right to legal assistance where the defendant has insufficient means to pay for legal assistance, and to get free legal aid when the interest of justice so requires; and the <i>CFR of the EU</i>, Art. 47 which stipulates that legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice. • In Luxembourg, legal aid exists in both civil and criminal proceedings; is granted in extra-judicial and judicial proceedings, in non-contentious or contentious matters, to plaintiffs or defendants; and applies to any action brought before the ordinary

	courts or the administrative courts.⁴²⁸ • Luxembourg nationals, foreign nationals authorised to settle in the country, nationals of a EU Member State, or foreign nationals deemed equivalent to Luxembourg nationals for legal aid purposes by virtue of an international treaty. Foreign nationals whose home or residence is in another EU Member State may also be granted legal aid, with the exception of Denmark, for any civil or commercial proceedings in relation to cross-border cases within the scope of Council Directive 2003/8/EC of 27 January 2003.⁴²⁹ • Entitlement for legal aid will be determined based on the total gross income and wealth and that of the members of the household, in accordance with the amended Law of 29 April 1999 establishing the right to a guaranteed minimum income.⁴³⁰ • The Luxembourg Bar Association (<i>Barreau de Luxembourg</i>) decides whether to assign legal aid.⁴³¹ • Third-party funding is unknown in Luxembourg, however no legal or regulatory provisions prohibits a third party from funding a claim. (2) For Legal representation or guidance; see above, Section 24.5. (3) Opportunities for collective redress, class- actions, and multi-party litigation: Current legal framework in Luxembourg does not allow for class action (<i>'recours collectif'</i>) for claims arising from the same event. A general joinder mechanism exists. Under Art 206 of the NCPC, claims may be joined and it is possible to ask the court to rule on them together. The joining of the cases is procedural, and each claimant individually needs to have both sufficient standing (<i>qualité d'agir</i>) and a legitimate and direct interest (<i>intérêt d'agir</i>).
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	Currently, the ULC ('<i>Union Luxembourgeoise des Consommateurs</i>'), which is financially assisted by the State, is the only <i>certified</i> entity which has been allowed to file a group action (note that, depending on the rule set concerned, sectoral supervisory authorities and individuals and businesses can initiate an action for cessation of an infringement). The 2018 Coalition Agreement envisages a law on class action; “a bill of law on consumer class actions should be adopted shortly”.⁴³² (4) Recovery of attorneys’ fees: In general, each party bears its own legal costs. A successful party’s fees and expenses are not usually recoverable from the unsuccessful party. However, under article 240 NCPC, the successful party may recover a lump sum of money by way of procedural indemnity (<i>indemnité de procédure</i>) from the losing party the amount of which is determined by the judge. Judicial costs, such as bailiff’s costs, are paid by the unsuccessful party, or proportionally by all parties involved, depending on the outcome of the matter and the decision of the court. Article 2.4.5.3 of the Internal Regulation of the Luxembourg Bar Association (<i>Règlement intérieur de l’ordre des Avocats du Barreau de Luxembourg</i>) prohibits contingency fees. However, an agreement providing for a maximum or minimum for a portion of the lawyer’s fees, or a supplementary fee to be determined on the basis of the results obtained or services provided would be permitted. (5) Preventing retaliatory actions against claimants: Article 4 and
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	Article 18 (introducing Article L-253(1) of the Labour Code) of the Law of 28 November 2006 on equal treatment introduce a protection mechanism against retaliation.⁴³³ (6) Access to evidence: Disclosure procedures do not exist under Luxembourg law. In principle, the burden of proof lies on the person who alleges a fact. Exceptionally, a judge can order the disclosure of specific pieces of evidence, either at the request of an interested party or at its own initiative, if she or he deems it necessary and only if a commencement of proof has been established by the party requesting such measure. Witness depositions are permitted under the general legal investigation measures in article 350 NCPC. In addition, a party may gather written witness statements prior to trial. If a dispute requires specific technical expertise, the judge can appoint an expert witness. (7) Training, resources and support for prosecutors and judges: There is compulsory training for court staff pursuant to the <i>Law of 18 February 1885</i> on judicial organization as amended.⁴³⁴ The <i>Grand-Ducal Regulation of 17 May 1990</i> lays down the conditions of appointment and promotion of officials.⁴³⁵ The <i>Grand-Ducal Regulation of 14 April 1999</i> lays down the terms and conditions of the end-of-probation and promotion examinations and lays down the special recruitment and promotion conditions for registry office staff of the administrative courts.⁴³⁶ The Ministry of Justice in cooperation with the Office of the Prosecutor General is responsible for judicial training for judges of the ordinary judicial order, prosecutors and trainees in Luxembourg.
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	Gaps Under Article 257 of the New Code of Civil Procedure, an alien is subject to <i>cautio judicatum solvi</i>, if he or she wants to initiate a claim against a Luxembourgish defendant, when this is requested by the defendant and the request is granted by the judge. The purpose of such security payment is to cover the court fees as well as any damages arising from the proceedings. Luxembourg had ratified the 1954 Hague Convention on Civil Procedure which exempts nationals of the countries which had ratified the Convention from the payment of the <i>cautio judicatum solvi</i> in Luxembourg. EU and CoE member country nationals are also exempt from payment of the <i>cautio judicatum solvi</i>. The <i>cautio judicatum solvi</i> requirement can potentially limit the access to court in Luxembourg for foreigners who want to litigate a case against a Luxembourgish defendant, but do not have the means to pay the security deposit.
26.3. Has the state taken measures to ensure that there are no social barriers to prevent legitimate cases from being brought before the courts? This includes: (1) addressing power imbalances between the parties; (2) targeted awareness-raising among vulnerable groups (for example, women, indigenous people, and children); (3) availability of child-sensitive procedures to children and their representatives; (4) efforts to combat corruption; and (5) protection of human rights defenders.	Below is a non-exhaustive overview of measures Luxembourg has taken to ensure that there are no social barriers to prevent legitimate cases from being brought before the courts: (1) Concerning imbalances between the parties, the present research did not find any such measure apart from what has been described above (mainly, in the Section 15. on anti-discrimination); (2) On targeted awareness raising, see above, Section 24.5.; (3) The following is a non-exhaustive list of child-sensitive legislation and procedures that exist in Luxembourg. • Amended and Revised Law of 8 September 1998 regulating

	relations between the State and organizations working in the social, family and therapeutic fields;⁴³⁷ • Amended Law of 16 December 2008 on child and family care;⁴³⁸ • Each district court in Luxembourg has a section called youth and guardianship tribunal (<i>tribunal de la jeunesse et des tutelles</i>) in charge of applying the youth protection legislation;⁴³⁹ • The National youth office (<i>Office national de l'enfance - ONE</i>) an administrative body under the auspices of the Ministry of Education, Children and Youth that offers help to children and youth;⁴⁴⁰ • The Ombuds-Committee for Children's Rights (<i>l'Ombuds Comité pour les droits des enfants - ORK</i>), among other tasks, carries out the following:⁴⁴¹ - o gives opinion on draft laws and regulations concerning children's rights and suggest amendments. - o informs about the children's situation and ensure the application of the Convention on the Rights of the Child. - o reports annually to the Government and to the Chamber of deputies on the situation of children's rights in Luxembourg. - o receives information and complains regarding offences against children's rights, try to mediate and give advices in order to ensure the best possible protection for children. Note that children rights and juvenile justice are topical issues in Luxembourg. The Luxembourg National Research Fund has funded a series of lectures organized by the University of Luxembourg on the topic during the course of 2019.⁴⁴² (4) For efforts to combat corruption, see above, Section 11.
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	(5) For protection of human rights defenders, see above, Section 12.
26.4. Has the state taken measures to increase understanding of barriers amongst members of the judicial, other judicial mechanisms, and law enforcement, including through training and educational materials?	See above, Section 25.5.
26.5. Are there publicly reported examples and cases where victims of business-related human rights abuse have been unable to access effective judicial remedy due to the presence of legal, procedural, and/or social barriers?	The present study has not found any evidence of examples and cases where victims of business-related human rights abuse have been unable to access effective judicial remedy due to the presence of legal, procedural, and/or social barriers.

NON-JUDICIAL MECHANISMS

Guiding Principle 27: States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive state-based system for the remedy of business-related human rights abuse.

Guiding Principle 28: States should consider ways to facilitate access to effective non-state-based grievance mechanisms dealing with business-related human rights harms.

Guiding Principle 31: Effectiveness Criteria.

Effectiveness Criteria

In order to ensure their effectiveness, non-judicial grievance mechanisms, both state-based and non-state-based, should be:

- (a) **Legitimate:** enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) **Accessible:** being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;

(c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation; (d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms; (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake; (f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognised human rights; (g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.		
27. NON-JUDICIAL MECHANISMS		
Guiding Questions	Status and Gaps	
27.1. Does the state provide mediation-based non-judicial mechanisms such as National Contact Points (NCP) under the OECD Guidelines? Can these mechanisms be used for remedying business-related human rights abuses?	According to the Commentary to the UNGP 27: <i>“Administrative, legislative and other non-judicial mechanisms play an essential role in complementing and supplementing judicial mechanisms. Even where judicial systems are effective and well-resourced, they cannot carry the burden of addressing all alleged abuses; judicial remedy is not always required; nor is it always the favoured approach for all claimants. Gaps in the provision of remedy for business-related human rights abuses could be filled, where appropriate, by expanding the mandates of existing non-judicial mechanisms and/or by adding new mechanisms. These may be mediation-based, adjudicative or follow other culturally appropriate and rights-compatible processes – or involve some combination of these – depending on the issues concerned, any public interest involved, and the potential needs of the parties”.</i>	

	A primary difference between the agreement based non-judicial mechanisms and the adjudicative non-judicial mechanisms is that the latter have a mandate to hear cases, issue adjudication and determine sanctions and other forms of remedy (e.g. arbitration), whereas agreement based mechanisms primarily offer a non-adversarial forum of mediation between the parties (e.g. mediation and conciliation). This section addresses the structure and work of the Luxembourg NCP (<i>Point de contact national luxembourgeois - PCN</i>) (see above, Section 1.4.).⁴⁴³ The other existing non-judicial mechanisms (both agreement and adjudication based) will be listed in the next section (27.2.).⁴⁴⁴ • Governments adhering to the OECD Guidelines are under the obligation to establish a national contact point (NCP). They have the flexibility as to how to structure their NCP.⁴⁴⁵ Luxembourg NCP has an <i>individualised decision-making</i> structure.⁴⁴⁶ Individualised decision-making means decisions are taken either by one individual in a single ministry, or by a group of individuals belonging to the same service in the same ministry.⁴⁴⁷ The Luxembourg NCP is based, managed and coordinated in and by the Ministry of Economy.⁴⁴⁸ • The website of the Luxembourg NCP states that the NCP benefits from a tripartite structure of the Government, trade union and employer representatives for the implementation of the OECD Guidelines. The representatives of the Luxembourg NCP have brought further clarification to this in an email exchange.⁴⁴⁹ The reference to the tripartite character of the NCP is stemming from the “Comité de Conjoncture” to which the Luxembourg NCP is attached to. However, this does not denote that the Luxembourg
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	NCP itself or its working method is tripartite in character. According to the representatives of the NCP, the body is inherently tripartite as it “encourages arrangements” between the business and trade unions, the Government “acting as the honest broker”.⁴⁵⁰ This installation, according to the NCP representatives, can be seen in the new logo of the NCP, which reflects the tripartite character of the body. The representatives of the NCP have stated that currently, they are in the process of assessing and comparing their structure and working methods with other NCPs and trying to identify the best practices. • According to the Decision of the Council on the OECD Guidelines for Multinational Enterprises, governments are expected to ensure that their NCP can operate in accordance with the core criteria of visibility, accessibility, transparency and accountability.⁴⁵¹ The same Council Decision on the Guidelines also prescribes NCPs responsibilities, including; “undertaking promotional activities and handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the Guidelines”.⁴⁵² • According to its website, the NCP implements the following activities in order to promote the Guidelines:⁴⁵³ - o Managing and maintaining the website of the NCP; - o Seizing and processing specific instances; - o Responding to inquiries from the public and local businesses; - o Sharing and exchanging good practices with other NCPs; - o Reporting annually to the Investment Committee.
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	Regarding <i>promotional activities</i>, more specifically: • The NCP has a dedicated website.⁴⁵⁴ The website adds to its <i>visibility</i>. It is in French and contains links to a number of useful resources.⁴⁵⁵ It also contains the NCPs rules of procedure, an <i>ad-hoc</i> form for submitting complaints, list of closed and ongoing specific instances with relevant documents, and the contact details of a dedicated person. • The NCP, together with UEL and the INDR, is organizing a conference on “business and human rights” in October 2019, in order to promote the discussion on business and human rights and responsible business conduct. • Representatives of the NCP have presented the NCP and their activities and have interacted with the representatives of business, trade unions and NGOs during the NAP WG/TG meetings. • In addition to the meetings of the Inter-Ministerial Committee for Human Rights and the WG/TG, the NCP has organized or co-organized various other meetings with the stakeholders during the course of 2018, including; a meeting in February 2018 with NGOs on “fair politics”, a meeting in May 2018 with Trade and Investment Department on “trade missions and human rights”, a meeting in October 2018 with business representatives on “promotion of the Guidelines”⁴⁵⁶. Regarding <i>handling enquiries and contributing to the resolution of issues, i.e. the specific instances</i>: • The NCP has published its rules of procedure (in English) on its
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	website. The Rules of Procedure contains information about the timeframe, scope, rules on transparency and confidentiality, assistance available to the parties, and the different phases of the specific instance. These include the launch of the complaint, the initial assessment, offering good offices, and the conclusion of the procedure with a final statement. • The Rules of Procedure includes guidelines on how to launch a complaint, including an “ad-hoc form for submitting complaints” (in English) and contact details of a dedicated person. Complainants are not required to use the questionnaire and can send their complaint either via email or post. The parties to a complaint may also meet in person with the NCP for the purpose of introducing a specific instance or substantiate their case.⁴⁵⁷ These are positive indications since they contribute to the <i>accessibility</i> of the NCP. • The rules of procedure have clear information about the timeframe of each SI stage. • The scope of the complaints accepted by the NCP is quite broad, in that; <i>“The Luxembourg NCP will by principle accept handling Specific Instances stemming from any party claiming an interest – individuals, local communities, NGO’s, worker organizations, other interested parties – in an alleged breach of the [OECD] Guidelines by a multinational enterprise, including non-for-profit legal entities, operating in or from Luxembourg”</i>.⁴⁵⁸ • One another positive note, the Rules of Procedure states that the NCP does not dismiss specific instances solely because parallel proceedings addressing similar issues exist.⁴⁵⁹
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	• According to the Rules of Procedure, the NCP’s good offices include “mediation, supervision, investigation, fact finding missions by the Luxembourg NCP or by an expert or any ad-hoc entity commissioned for this task by the Luxembourg NCP, or any other procedure deemed appropriate for helping the resolution of the raised issues”. In <i>Friends of the Earth</i> against Arcelor Mittal, a case concerning mismanagement of a socio-economic development fund in Liberia, the NCP conducted two fact finding missions assisted by a mediator assigned by the NCP to draft recommendations, which were accepted jointly by the parties and were subsequently submitted to the Liberian government to improve the management of the fund in question.⁴⁶⁰ In general, the OECD recognizes that fact finding missions could impose considerable burden on NCP resources, and as such does not require NCPs to conduct one.⁴⁶¹ The fact that the Luxembourg NCP allocated its financial resources to establish the facts in the foregoing case can be considered as a positive example among the OECD NCPs working methods and practice. • The decisions taken by the NCP (including initial assessments and the final statements) and certain written communication is published in the website of the NCP, which contributes towards the <i>transparency</i> of the body.
	Gaps • The CSOs have stated that they do not perceive the NCP to be impartial due to its position at the “Comité de Conjoncture” within the Ministry of Economy.⁴⁶² Some stakeholders stated that they “take conscious decision not to approach this body” due to the

	perception of lack of impartiality.⁴⁶³ The stakeholders noted the lack of collaboration between the NCP and the civil society.⁴⁶⁴ It is noted that the position of the NCP within the Ministry of economy contributes to the perception of lack of impartiality. A distinction needs to be drawn between the notions of “impartiality” and “independence”. It is generally accepted that the two concepts are distinct but closely linked.⁴⁶⁵ Independence is associated with certain institutional guarantees or safeguards that allow decision makers to free themselves to some extent from external pressures when making their decisions.⁴⁶⁶ Impartiality, on the other hand, “is usually associated with the objectivity of the decision or the absence of prejudice toward one or other of the parties”⁴⁶⁷. As mentioned above, broadly speaking, the NCPs have two-fold mandate: to promote the OECD Guidelines and to handle specific instances. With regards to the first mission, the NCP’s location within the Ministry of Economy can prove useful as the NCP can use leverage and exert influence to the stakeholders on responsible business conduct. However, concerning handling of specific instances, the NCP’s location in a government entity in charge of promoting economic activity can create a perception of lack of impartiality. In order to conclude that the NCP lacks impartiality, as defined above, one has to analyze the outcomes of the complaints handled by the NCP. These complaints at present are too few (with divergent stages and outcomes)⁴⁶⁸ to suggest that the Luxembourg NCP lacks impartiality. Nonetheless, it is recommended that the NCP establishes and
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	maintains a regular dialogue with a broader set of stakeholders, including CSOs, to improve their confidence. The OECD Guidelines recommend that, “the NCPs establish multi-stakeholder advisory and/or oversight bodies” to promote impartiality.⁴⁶⁹ While these do not normally form part of the NCP and do not have decision-making power on accepting or concluding specific instances, they can provide important advice to the NCP on a range of issues.⁴⁷⁰ Stakeholders can also be formally integrated into the institutional arrangements of the NCP as members of the NCP as has been done by some other NCPs.⁴⁷¹ • As mentioned above, the scope of the NCP’s jurisdiction is quite broad. For example, to our knowledge, the Luxembourg NCP is among the few NCPs which accepts complaints against non-profit organizations, although no such case has been brought before the NCP yet.⁴⁷² Notwithstanding the broad mandate, and despite the presence of many companies in Luxembourg, only five complaints have been filed with the NCP so far.⁴⁷³ This may be partially explained with lack of general awareness on the role of the NCP. The NCP is advised to develop a more active promotional strategy which raises awareness on the role of the NCP as a grievance mechanism. • The Luxembourg NCP, like any other NCP, reports annually to the OECD Investment Committee. In order to enhance its transparency, the NCP is advised to make these reports available on its website. • It appears that currently there is no formal reporting requirement within the government on the activities of the NCP. The representatives of the NCP have confirmed that the activities of
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	the NCP are a part of the activity of the Ministry of Economy, and is reported as such.⁴⁷⁴ In order to enhance accountability, it is advised to create an internal reporting mechanism within the Government for the NCP. The NCP could request a regular budget for this exercise. • The NCP has confirmed that it does not have a dedicated budget, but is funded through the budget of the Ministry of Economy.⁴⁷⁵ Adhering governments to the Guidelines are under an obligation to make available human and financial resources to their NCPs in order for them to effectively fulfill their responsibilities.⁴⁷⁶ It is important that the NCP has sufficient financial resources at its disposal to conduct its mandate. • Concerns were raised by complainant NGOs regarding the delays in producing an initial assessment by the NCP. In a case handled jointly by Luxembourg and Belgium NCPs, the complainant NGOs sent an open letter to both NCPs raising the issue that twelve months after the submission of the complaint, the initial assessment of the case had not yet been completed.⁴⁷⁷ The complainants have stated that “the delay creates the impression that the complaint is not being taken seriously”.⁴⁷⁸ The initial assessment was published at the end of June 2018 where the Luxembourg NCP offered various explanations regarding the delay.⁴⁷⁹ The Commentary on the Implementation Procedures of the OECD Guidelines provides an indicative timeframe of three months for completing the initial assessment.⁴⁸⁰ This is also the time frame set out in the Rules of Procedure of the Luxembourg NCP.⁴⁸¹ In order to comply with its Rules of Procedure and the OECD
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	Procedural Guidance, the NCP is advised to strive to meet with the timeliness criteria set out therein. • The OECD also encourages NCPs to undergo peer reviews.⁴⁸² The Luxembourg NCP has not yet undergone a peer review. The NCP representatives, however, have confirmed that it is planned to happen in 2021 or 2022. • The NCP is advised to consider translating its website to other local languages which would add to its accessibility.
27.2. Does the state provide adjudicative mechanisms such as state-run complaints offices (e.g. ombudsman offices)? Can these mechanisms be used for remedying business-related human rights abuses, including for abuses that take place outside of their territorial jurisdiction? Does the state provide other types of non-judicial mechanisms? Can these mechanisms be used for remedying business-related human rights abuses, including for abuses that take place outside of their territorial jurisdiction?	In Luxembourg, the Law of 24 February 2012 transposes the Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters into domestic law. It introduces mediation in civil and commercial matters in the New Code of Civil Procedure (Articles 1251-1 to 1251-24 of the new Code of Civil Procedure.).⁴⁸³ Note the distinction between conventional mediation (“<i>médiation conventionnelle</i>”) (Article 1251-8) and judicial mediation (“<i>médiation judiciaire</i>”) (Article 1252-12), the latter being ordered by a judge. The following is a non-exhaustive list of conventional mediation mechanisms and institutions that exist in Luxembourg:⁴⁸⁴ • The Centre for Civil and Commercial Mediation (<i>Centre de Médiation civile et commerciale</i> - CMCC) offers voluntary and amicable process to settle civil, commercial or social disputes.⁴⁸⁵ The services of the CMCC can be used for domestic or cross border complaints in which one or both parties are foreign nationals.⁴⁸⁶ The CMCC can handle mediation requests where the conduct in question has taken place outside of Luxembourg. In principle, there is no obstacle for CMCC to handle requests for mediation on business-related human rights abuses. In practice,

	however, no such request has been filed with the institution yet.⁴⁸⁷ • The Ombudsman or mediator receives complaints from businesses and individuals in cases involving them and linked to the functioning of Luxembourg administrations. • The Luxembourg Financial Sector Supervisory Commission (Commission de Surveillance du Secteur Financier - CSSF) is competent to receive complaints from customers of the professionals subject to its supervision and to act as an intermediary in order to seek an amicable settlement of these complaints.⁴⁸⁸ The procedure is subject to the condition that the complaint has been dealt with by the management of the relevant professional beforehand. • The Environmental Administration's Control and Inspection Unit (Unité contrôles et inspections) is responsible for the management and handling of complaints in areas in which the Environmental Administration has the power of control, including: the fight against noise; the fight against air pollution; waste management; classified establishments; the placing on the market and / or the use of chemical substances and mixtures; biocidal products. • The National Conciliation Office (Office National de Conciliation – ONC) resolves collective disputes regarding working conditions, among other tasks. • The Luxembourg Regulatory Institute (Institut Luxembourgeois de Régulation - ILR) mediates disputes in the fields of electronic communications, electricity, natural gas, postal services, transport and radio frequencies. • SOLVIT Luxembourg is part of an informal cooperative network
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	established in the EU and EEA that aims to resolves conflicts between Luxembourg citizens and foreign administrators in the matters of social security, taxation, employment law, residence permits, etc. Gaps Luxembourg offers various non-judicial dispute resolution mechanisms. In principle these mechanisms can be used to address business related human rights abuses including the ones that occurred abroad. In general, these mechanisms are not bound by the nationality of the parties neither by the location of the conduct which gives them a wide scope of applicability. Luxembourg offers other advantages such as geographical accessibility and linguistic diversity, as reiterated by a representative of the CMCC.⁴⁸⁹ Despite the foregoing advantages, however, to our knowledge the existing procedures have not been used to address business related human rights abuses. This might be due to lack of awareness about the potential use of the mechanisms. No legal aid exists for conventional mediation in Luxembourg which can create an obstacle for parties to access mediation based non-judicial mechanisms. Note, however, that the 2018 Coalition Agreement envisages possibly to extend legal aid to conventional mediation.⁴⁹⁰
27.3. What measures does the state take to promote awareness of state-based non-judicial mechanisms with the public and potentially impacted communities?	The Government's official information portal Guichet.lu has dedicated pages for each of the mechanisms mentioned above (Section 27.2.). The pages describe in plain language the scope, prerequisites, deadlines, costs (if applicable), procedure, contact details as well as

	forms and online services relevant to the mechanisms. The 2018 Coalition Agreement proposes to promote mediation as an alternative method of dispute resolution. The Agreement envisages a “one stop” (“<i>guichet unique</i>”) mediation service to facilitate citizens’ access to mediation services.⁴⁹¹ Gaps There are no explicit references or guidance as to whether these mechanisms can be used to seek redress for corporate human rights abuses. See the general response on training issues in Section 5.2.
27.4. Does the state provide staff of state-based non-judicial mechanisms with support, education, and training on issues related to business and human rights? 27.5. Do these mechanisms meet the effectiveness criteria set out in UNGP 31? What measures are in place to monitor the ongoing effectiveness of state-based non-judicial mechanisms?	It has not been possible to assess each of the existing mechanisms against UNGP’s effectiveness criteria set out in GP 31 due to lack of time. It is noted that according to the Law of 24 February 2012 in order to obtain approval as a mediator, the person must provide guarantees of “good repute, competence, training, independence and impartiality” (Art. 1251-3. (1). It is also noted that CSSF Regulation No 16-07 relating to out-of-court complaint resolution states that:⁴⁹² <i>“The CSSF’s intervention shall be subject to the principles of impartiality, independence, transparency, expertise, effectiveness and fairness, referred to in Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013</i>

	on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)".
28. ROLE OF NHRI	
Guiding Questions	Status and Gaps
28.1. Has the state given the NHRI a mandate that allows it to: (1) receive and handle complaints relating to business-related adverse human rights impacts; (2) be in a supportive role to claimants, such as through mediation, conciliation, expert support, or legal aid; (3) promote awareness on remedy to and redress for business-related adverse human rights impacts; (4) provide training of relevant stakeholders on their access to remedy for business-related adverse human rights impacts; and/or (5) provide counselling on which remedy to access?	The CCDH, does not have a mandate to receive and handle complaints regarding alleged human rights abuses and therefore, "must give a collective negative answer" to such inquiries.⁴⁹³ According to the written input received by the CCDH, however; "this does not mean that victims seeking aid or support are never soliciting the CCDH. In fact, the CCDH is from time to time contacted via e-mail, telephone or in person by persons claiming that their rights have been violated. In these cases, the CCDH takes note of their complaint, explains that this does not fall within its mandate and tries to advise and redirect the persons to the competent authorities or NGOs. In addition, the CCDH perhaps contributes, in a more general manner, to raising awareness on non-judicial remedies in its opinions, reports or position papers that are published online on its website and generally presented during press conferences".⁴⁹⁴
28.2. What measures are in place to monitor the effectiveness of the NHRI in accordance with UNGP 31?	The CCDH has a consultative function only and does not have a mandate to handle complaints (see Section 28.1).
28.3. Are there publicly reported examples and cases where the NHRI has failed to perform its role as a non-judicial mechanism for addressing grievances?	The CCDH has a consultative function only and does not have a mandate to handle complaints (see Section 28.1).

29. BARRIERS TO ACCESS TO NON-JUDICIAL REMEDY	
Guiding Questions	Status and Gaps
29.1. Has the state taken measures to ensure that there are no barriers to prevent legitimate cases from being heard by non-judicial mechanisms? Measures to prevent barriers include: (1) addressing imbalances between the parties; (2) targeted awareness-raising among vulnerable groups (such as women, indigenous peoples, or children); (3) expert advice or other types of assistance; (4) efforts to combat corruption; and (5) protection of human rights defenders.	See Sections 27.1. to 27.3.
29.2. Has the state taken measures to increase understanding of barriers amongst staff of state-based non-judicial grievance mechanisms, including through training and educational materials?	See the general response on training issues in Section 5.2.
29.3. Are there publicly reported examples and cases where victims of business-related human rights abuse have been unable to access effective non-judicial remedy due to the presence of barriers?	This study has not identified any publicly reported examples and cases where victims of business-related human rights abuse have been unable to access effective non-judicial remedy due to the presence of barriers.
30. FACILITATING ACCESS TO NON-STATE-BASED MECHANISMS	
Guiding Questions	Status and Gaps
30.1. Has the state supported access to (1) business-based grievance mechanisms (such as whistle-blower mechanisms or project-level grievance mechanisms); (2) multi-stakeholder grievance mechanisms; (3) organisational-based grievance mechanisms (including the union systems); (4) international grievance mechanisms; and/or	• Luxembourg provides subsidy for a hotline set up by Transparency International Luxembourg for private and legal persons to denounce instances of corruption and support whistle-blowers, see Section 12.3.. • For a list of multi-stakeholder initiatives that Luxembourg supports see Section 1.5.. • The UN Human Rights Council Complaint Procedure addresses

(5) regional grievance mechanisms through efforts such as dissemination of information or legal aid?	complaints from individuals, groups, or NGOs that claim to be victims of human rights violations or that have direct, reliable knowledge of such violations.⁴⁹⁵ Luxembourg has applied for membership of the UN Human Rights Council for the period of 2022 to 2024. • European Court of Human Rights (ECtHR) is a regional judicial organ charged with supervising the enforcement of the European Convention on Human Rights (ECHR). Luxembourg ratified the ECHR in 1953.
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II. PILLARS II & III: BUSINESS RESPONSIBILITY TO RESPECT & REMEDY*

HUMAN RIGHTS POLICY COMMITMENT	
Guiding Principle 11: Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.	
Guiding Principle 12: The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.	

* The information in this section provides a limited account of the business responsibility to respect human rights in Luxembourg. It is based on a survey questionnaire completed by twelve of the largest thirty business enterprises in Luxembourg (defined by the size of their employees). For further limitations of the company selection and the methodology, see the Section on “Methodology and Limitations” in the main text.

<u>Guiding Principle 13:</u> The responsibility to respect human rights requires that business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts. <u>Guiding Principle 14:</u> The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise’s adverse human rights impacts. <u>Guiding Principle 15:</u> In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including: (a) A policy commitment to meet their responsibility to respect human rights; (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute. <u>Guiding Principle 16:</u> As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that: (a) Is approved at the most senior level of the business enterprise; (b) Is informed by relevant internal and/or external expertise; (c) Stipulates the enterprise’s human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services; (d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties; (e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.	Relevant Sustainable Development Goals
• All Goals	31. HUMAN RIGHTS POLICY COMMITMENTS

Guiding Questions	Status and Gaps
31.1. To what extent business enterprises consider human rights relevant to their operations? ⁴⁹⁶ Have business enterprises explored what human rights issues might be relevant for them and/or their suppliers? What categories of human rights do business enterprises consider relevant to their operations? Are business enterprises familiar with the UNGPs? Have business enterprises made use of any published guidance on the UN Guiding Principles on Business and Human Rights?	Businesses in Luxembourg that have responded to our survey (twelve companies among thirty largest enterprises) agree with the following statement: • “Human rights are relevant to every business, regardless of their size”: 11 (92%) companies agreed, one company (8%) chose “not sure”; and disagreed with the following statements: • “Respecting human rights is a matter for governments, not for business”: 11 (92%) companies “disagree”, one (8%) “not sure”; • “Human rights are mainly a consideration for those operating overseas or with overseas suppliers”: Ten (84%) “disagree”, one (8%) “agree” and one (8%) “not sure”. • Eleven companies stated that they have explored what issues might be relevant for them or their suppliers. • The companies were further asked to choose from categories of human rights related issues that may be relevant to their business operations.⁴⁹⁷ These categories included; gross human rights abuses, adequate standard of living, private life, rights related to land, civic life and, access to justice, intellectual, spiritual and cultural life, rights related to the environment, education and access to technology, conditions of work and employment, and workplace dialogue. Their responses revealed mixed results:

	- Two companies (16%) chose all the categories of human rights related issues to be applicable to their operations, while another two chose none. All of these companies, however, have human rights policy commitments in place including the ones which chose human rights issues not to be relevant to their operations. - The remaining survey responses reveal that businesses that were consulted for this study generally consider <i>conditions of work and employment</i> (e.g. health and safety at work, discrimination, fair wage and equal pay, child labour, periods of rest and/or holiday leave) and <i>workplace dialogue</i> (e.g. freedom of association, collective bargaining, right to join a trade union) to be human rights issues relevant to their operations (both categories were chosen by eight companies making up 84% of the responding companies). <i>Private life</i> (e.g. right to privacy and right to family life) and <i>education and access to technology</i> (e.g. right to education, right to enjoyment of technological process, access to training and development) are also considered issues relevant to businesses operations by the businesses (Chosen by 66% respondents). <i>Gross human rights abuses</i> such as torture, cruel and inhumane treatment, slavery and genocide, are not considered as human rights issues applicable to their operations by the businesses in general (only four companies in total (34%) stated that it may be relevant to their operations).
	Six companies stated that they have been asked about their

	practices related to human rights issues either by their clients or suppliers. Some of the questions that were raised included, origins of sourced materials, conditions of employment, freedom of associations, health and safety, environmental impacts, responsible labeling, “responsible supply”. • Six companies have asked their clients or suppliers about their business practices related to human rights. They inquired about health and safety, environment management and “human rights impact”. ○ One company stated that their due diligence process includes questions on human rights. ○ Another company stated that they pose questions to their suppliers during the evaluation process on “respect for working conditions in [the supplier’s] company: child labour, the health and safety of the employees, the respect of the standards of the ILO, the respect for the environment, the practice of diversity and respect for the code of conduct of the [company]”. ○ Another company stated that they ask questions on human rights issues, for example, during calls for tenders, but also to their customers during their initial contact, and financing operations. • We also asked businesses whether they are familiar with the UNGPs. Ten (84%) companies replied “yes”. Five of those ten companies have made use of published guidance on the UNGPs while the remaining have not.
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	Bearing in mind the limited parameters of our survey (limited number of largest enterprises) an argument can be made that there is a level of awareness and engagement with human rights issues among the largest business enterprises in Luxembourg. However, this awareness and engagement remains very limited. The UNGPs prescribe that <i>“the responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations”</i>. Business enterprises that are based and/or operating in Luxembourg are advised to fulfill their responsibility to respect human rights in all circumstances.
31.2. Do businesses have specific and publicly-available human rights policy commitments in place, detailing the businesses responsibilities, commitments and expectations with regard to human rights, and applicable throughout their operations? Do companies disseminate their human rights policy commitments externally to relevant stakeholders and to their business relationships through providing adequate training, guidance?	The UNGPs prescribe that business enterprises need to know and show that they respect human rights and they can only do so if they have certain policies and processes in place.⁴⁹⁸ Of the twelve business enterprises that responded to our survey, seven of them (60%) of them confirmed that they have a human rights policy commitment. One other company stated that it is “in the process” of approving it. Of these human rights policy commitments, five of them were publicly available, six of them were communicated to entities with which the company has contractual relationships. Companies were also asked whether the human rights policy was “reflected in organization’s operational policies and procedures that

	govern wider business activities and relationships”, to which all responding companies with a human rights policy answered “yes”. According to the UNGPs, having a policy commitment to respect human rights is the first step defined for business enterprises to meet their responsibility to respect human rights. The above numbers show that, even among the largest enterprises in Luxembourg, which would presumably have more resources at their disposal, there is a room for improvement towards meeting their responsibility to put in place human rights policy commitments.
31.3. Do business enterprises’ policy commitments include, at a minimum, the internationally recognised human rights expressed in the International Bill of Rights, and the principles concerning Fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work? Do business policy commitment refer to the full content of human rights and to specific instruments of particular relevance to their industry? Do policy commitments refer to the UNGPs and/or the OECD Guidelines for Multinational Enterprises?	Among the seven business enterprises with human rights policy commitments in place, only five stated that their policy commitment “refers to internationally recognized human rights standards (for example, international human rights instruments, ILO’s Declaration on Fundamental Principles and Rights at Work, the UNGPs, the OECD Guidelines for Multinational Enterprises), and/or other standards related to CSR”. According to the UNGPs, the responsibility to respect applies, at a minimum, to all internationally recognized human rights expressed in the International Bill of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work. Business enterprises based in Luxembourg should draw guidance from the UNGPs, and other international instruments on human rights protection when developing their human rights policy commitments.
31.4. Do business enterprises participate in initiatives relevant to the corporate responsibility to respect human rights?	Business enterprises were asked whether they do participate in initiatives relevant to corporate responsibility to respect human rights and if so to specify which ones. Nine businesses stated that they do

	participate in initiatives relevant to the corporate responsibility to respect human rights, two of them stated that they do not, and one of them was not sure. CSR, <i>traditionally understood</i>, focuses on companies' voluntary contributions to community development, charity and other social and environmental efforts.⁴⁹⁹ The examples of initiatives of corporate responsibility to respect human rights given by the companies responding to our survey show that companies often conflate the responsibility to respect human rights with the traditional conceptions of CSR: - o One company responding to our survey stated that: <i>"In addition to financial contributions made by [the Company] and its people, many of our people also volunteer their time to worthwhile causes. We encourage and support volunteerism as community- involvement is a manifestation of our shared values"</i>. - o Another company stated that it gives support to <i>"non-profitable associations active in social area"</i> giving further the example of an association providing a psycho-socio-educational support to children, young adults and families in distress who have suffered physical, psychological and / or sexual violence. - o Sponsoring an initiative working towards ending sexual violence in fragile environments was among the examples given by another company. - o Two companies confirmed that they participate in the Working Group on Business and Human Rights convened
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	by the Government. - o One company stated that it is a member of the IMS, has signed the “Diversity Charter Lëtzebuerg” and has a code of conduct. - o Another company stated that it is a member of the <i>Thun Group</i> and the <i>EDH</i> (Entreprises pour les Droits de l'Homme - Businesses for human rights). Such efforts are relevant for business and human rights. However, a fundamental difference between them and the corporate responsibility to respect under the UNGPs is that implementation of the latter is a global expectation of all companies rather than a voluntary effort a company may decide to engage in subject to its other objectives and priorities and/or as part of its social or legal licence to operate in particular situations.⁵⁰⁰ Therefore, it is important for businesses in Luxembourg to be aware of the difference between the traditional CSR and respect for human rights, and understand that having CSR policies in place does not offset a failure to respect human rights.
32. MANAGEMENT COMMITMENT AND EMBEDDING OF HUMAN RIGHTS INTO THE COMPANY	
Guiding Questions	Status and Gaps
32.1 Have business enterprises’ policy commitments been informed by insight and/or advice from internal sources of expertise, such as key functional staff? Have business enterprises’ policy commitments been informed by insight and/or advice from external sources of expertise, such as government, human rights practitioners, civil society circles and academia, etc.?	According to our survey, five companies rely on both internal <i>and</i> external expertise while the other two rely on <i>either</i> internal <i>or</i> external expertise. The challenges for companies regarding human rights policy commitment are: translating policy commitment into relevant

	operational procedures (selected three times), lack of material means to formulate policy commitments (selected twice) and difficulties in communicating the policy to relevant external parties (selected once). Any awareness raising and guidance tool should address these challenges. The business enterprises in Luxembourg should seek internal and external expertise in drafting their policy commitments. Experts can also assist facing the challenges concerning formulation of human rights policy commitments.
32.2. Have business enterprises' policy commitments been approved and endorsed at the most senior level of the business, for example by the CEO, board of directors, or senior management? Do the board of directors and/or senior management receive incentives linked to the implementation of the human rights policy commitments? Do businesses have a process for updating their human rights policies and processes?	Companies that confirmed that they have human rights policy commitments were asked who has the responsibility in the company's governance for the human rights policy, including ensuring compliance with it: ☐ Managing director/CEO – two companies; ☐ Board/senior management – one company; ☐ Both board/senior management and human resource manager – one company (the same company also added “designated worker” and “delegate for security”; ☐ International group – one company. • Regarding incentives linked to the implementation of the human rights policy commitments: ☐ Board of directors and/or senior management do not receive any incentives – four companies ☐ Board of directors and/or senior management do receive incentives – two companies ☐ One company did not reply. • Five companies confirmed that they had a process for updating

	the policy commitment, and two of them were not sure. In order to meet their obligations under the UNGPs, businesses in Luxembourg should ensure that their human rights policy is approved at the most senior level of the business enterprise and that it should be the subject of periodic review.
32.3. Do business enterprises communicate their human rights policy commitments internally to all staff? Have business enterprises organized internal training sessions on human rights?	Six companies stated that they communicate their human rights policy commitments internally to all personnel. Only four of them stated that their human rights policy commitments were supported by a training for personnel in relevant business functions. Companies were asked whether they have “ever organized internal training sessions on human rights” and what would they consider as the “biggest challenge concerning trainings on social issues in general and human rights in particular”. For the latter question, companies were offered choices including; “lack of resources (personnel, material, etc.), lack of time to conduct effective training, lack of examples of good practice, lack of templates or public information to guide training efforts, and other. They were asked to select all that applies. Three companies stated that they have organized internal human rights trainings: One of these companies stated that they have mandatory human rights training modules followed every three years by all employees. In the same company, at a group level, 94% of the total number of employees have followed these modules. The company identified “making effective to people” as the biggest challenge concerning the human rights trainings.

	Another company with training modules listed various examples, including e-learning, information campaign on intranet, modules offered by the IMS, and one-to-one training on 'risk groups' to personnel in charge of social and environmental issues. For this company, human rights trainings are among the indicators included in the calculation of variable deferred compensation for their key employees. This company identified lack of time to conduct effective training as the biggest challenge while noting that the employees benefit from numerous sector specific social trainings but not necessarily exclusively on human rights. The third company who replied that it has human rights trainings stated that its "overall compliance training includes several aspects concerning directly or indirectly human rights". For this company the biggest challenge is "the extreme diversity of [its] operations and more particularly the situations of countries in which [it] cannot guarantee the security of any staff who would openly discuss over these issues and even more of those who would participate in the discussion". One of the companies stated that it has not identified the need to conduct human rights training. For the rest of the eight companies who have responded, the challenges include lack of templates or public information to guide training efforts (selected five times), lack of examples of good practice (selected four times), lack of resources (personnel, material, etc.) (selected four times), lack of time to conduct effective training (selected two times). There appears to be a significant difference among the attitudes of
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	the largest enterprises in Luxembourg towards human rights trainings. In order to comply with the UNGPs the businesses should observe that internal communication of human rights and of related policies and procedures should be supported by necessary training for personnel in relevant business functions.
32.4. Do business enterprises ensure that internal teams are supported by human rights expertise, and the roles and responsibilities for assessing, mitigation and management are assigned and adequately resourced?	See Section 32.1.

HUMAN RIGHTS DUE DILIGENCE

Guiding Principle 17: In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence: (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships; (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations; (c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise’s operations and operating context evolve. Guiding Principle 18: In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should: (a) Draw on internal and/or independent external human rights expertise;
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(b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

Guiding Principle 19: In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.

(a) Effective integration requires that:

- (i) Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise;
- (ii) Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts.

(b) Appropriate action will vary according to:

- (i) Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship;
- (ii) The extent of its leverage in addressing the adverse impact.

Guiding Principle 20: In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should:

- (a) Be based on appropriate qualitative and quantitative indicators;
- (b) Draw on feedback from both internal and external sources, including affected stakeholders.

Guiding Principle 21: In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:

- (a) Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;
- (b) Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;
- (c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality

Guiding Principle 23: In all contexts, business enterprises should:

- (a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate;

(b) Seek ways to honor the principles of internationally recognized human rights when faced with conflicting requirements; (c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate. Guiding Principle 24: Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.	
Relevant Sustainable Development Goals and Targets • All Goals • Target 12.6: Encourage companies, especially large and transnational companies, to adopt sustainable practices and to integrate sustainability information into their reporting cycle	
33. ASSESMENT OF ADVERSE HUMAN RIGHTS IMPACTS	
Guiding Questions Do business enterprises carry out human rights impact assessments on services/products/supply chains? Do business enterprises have processes in place to identify and assess any negative impact on individuals and communities which it may be involved? – These may include actual impacts (past and current) and potential impacts (those likely to occur in the future); impacts from the company's own activities whether directly or through contribution; as well as impacts which may be directly linked to company operations, products or services by its business relationships. Do business enterprises assess human rights impacts at key moments of operations and business developments such as entering new markets or relationships or expanding operations?	Status and Gaps According to the survey responses, only five companies carry out human rights impact assessments (four routinely, one occasionally). The businesses that conduct regular impact assessments stated that their impact assessment identified and assessed any negative impact on individuals and communities. The remaining one stated that it was not sure if its impact assessment addressed negative impact on individuals. In one company's words the impact assessment consisted of "<i>due diligence than impact studies. The idea is precisely through these due diligences to allow to anticipate and prevent the risk, and thus avoid potential impact</i>". Another company sees impact assessments as "external audits in security, health, etc." . Of the five businesses with human rights impact assessments, four stated that they conduct human rights impacts at key moments of operations and business developments such as entering new markets

Do business enterprises conduct human rights impact assessment at project level? Do companies pay particular attention to human rights impacts affecting marginalised or at-risk groups, and on gender?	or relationships or expanding operations. Only two company conduct human rights impact assessment at project level and three pay particular attention to human rights impacts affecting marginalised or at-risk groups, and on gender. The commentary to the UNGP 18 makes it clear that <i>“the initial step in conducting human rights due diligence is to identify and assess the nature of the actual and potential adverse human rights impacts with which a business enterprise may be involved”</i>. This includes <i>“assessing the human rights context prior to a proposed business activity, where possible; identifying who may be affected; cataloguing the relevant human rights standards and issues; and projecting how the proposed activity and associated business relationships could have adverse human rights impacts on those identified”</i>. The UNGPs make it clear that the <i>“business enterprises should pay special attention to any particular human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization, and bear in mind the different risks that may be faced by women and men”</i>. The assessment of human rights impacts, according to the UNGPs, informs subsequent steps in the human rights due diligence process. Bearing the foregoing in mind, business enterprises in Luxembourg are advised to carry out human rights impact assessments on services, products, supply chains, at key moments of operations and business developments and at project level. While carrying out their human rights impact assessment, companies should pay special attention to
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	human rights impacts affecting marginalized or at-risk groups, and on gender.
34. INTEGRATING AND ACTING UPON FINDINGS AND PRIORITISING RESPONSES	
Guiding Questions	Status and Gaps
Do business enterprises integrate the findings from impact assessment across relevant internal functions and processes, through commitment from senior management and collaboration among relevant departments? Do business enterprises integrate the findings from impact assessment across relevant internal functions and processes, through assigning resources, including financial and human resources, for integrating and acting upon findings? Do business enterprises integrate the findings from impact assessment across relevant internal functions and processes through considering the severity of human rights impacts and prioritizing actions accordingly?	Among the business enterprises that responded to our survey only three stated that they integrate the findings from impact assessment across relevant internal functions and processes through commitment from senior level, through assigning necessary resources and, through considering the severity of human rights impacts and prioritizing actions accordingly. To meet their human rights obligations, business enterprises in Luxembourg <i>should integrate the findings from their impact assessments across relevant internal functions and processes, and take actions accordingly.</i>
35. TRACKING AND COMMUNICATING	
Guiding Questions	Status and Gaps

Do business enterprises use qualitative and quantitative indicators, including sector-specific and key performance indicators, in order to track their human rights performance? Do business enterprises seek external feedback (in particular from affected rights-holders) and internal feedback (including from reporting processes and lessons learned from grievance mechanisms) when tracking their human rights performance? Do business enterprises publicly communicate on how they address adverse human rights impacts? Do business enterprises seek independent verification of their human rights reporting, for example, through third-party auditing? Do business enterprises take steps to ensure communications on human rights are accessible to its intended audiences, including to marginalised or at-risk groups, individuals or groups who may be impacted, and other relevant stakeholders, including investors?	Our survey results show that only two companies track their human rights performance by qualitative and quantitative indicators, including sector-specific and key performance indicators. When asked whether the enterprise seeks external feedback (in particular from affected rights-holders) and internal feedback (including from reporting processes and lessons learned from grievance mechanisms) when tracking their human rights performance, only three companies confirmed that they do. Only three companies publicly communicate on how they address adverse human rights impacts. Two companies seek independent verification of their human rights reporting and the same two companies also take steps to ensure their human rights communications are accessible to the intended audiences. In order to meet the standards prescribed by the UNGPs, Luxembourg businesses should track human rights impact by using necessary indicators. They should seek external and internal feedback on their human rights impact. The companies should also communicate the findings of the tracking to the intended audiences.
36. REPORTED ADVERSE IMPACTS ON HUMAN RIGHTS	
Guiding Questions	Status and Gaps
Are there publicly reported cases of business enterprises' involvement in adverse impacts in the area of labour rights? E.g. relating to discrimination, forced labour, child labour, freedom of association and collective bargaining, working conditions, health and safety etc.?	See Sections 5., 6. and 7..

Are there publicly reported cases of business enterprises' involvement in adverse impacts affecting local communities? E.g. in relation to land, housing, environment, discrimination etc. How have the relevant businesses responded to reported cases of adverse human rights impacts? Have the relevant businesses self-reported on these cases? How do these reports compare?	
37. HUMAN RIGHTS RESPECT IN COMPLEX ENVIRONMENTS SUCH AS CONFLICT-AFFECTED AREAS Guiding Questions Do business enterprises have specific policies and processes in place to ensure respect for human rights in complex environments, such as conflict-affected areas? Do business enterprises have systems and processes in place to deal with conflicting requirements between national laws and regulations and internationally recognised human rights? Do business enterprises treat risks of causing or contributing to gross human rights abuses as a matter of legal compliance? Do businesses consider both direct and indirect contributions to gross human rights abuses? Do business enterprises provide positive and/or negative incentives, adequate resources, guidance and training, and clear expectations to all relevant employees, departments, and business relationships in relation to respecting human rights in complex environments? Do businesses establish clear lines and systems of accountability and responsibility in these contexts?	Status and Gaps Of the 12 companies that responded to our survey, only two of them stated that they do have specific policies and processes in place to ensure respect for human rights in complex environments, such as conflict-affected areas. One company stated that it was in the process of adopting one. Five of the twelve companies stated that they have systems and processes in place to deal with conflicting requirements between national laws and regulations and internationally recognised human rights standards. During a follow-up phone interview, one company stated that when they are dealing with overseas suppliers they make sure that “right from the start” the suppliers know that “at least what concerns our company, we will apply Luxembourgish standards”. Only four of the businesses that participated in our survey stated that they treat risks of causing or contributing to gross human rights abuses as a matter of legal compliance. The total number that considers direct and indirect contributions to human rights abuses is also four according to our survey results.

Do business enterprises cooperate with and regularly consult with credible and independent experts and relevant when assessing and addressing human rights risks present in operating or sustaining business relationships in complex environments?	In regard to the question of incentives, only two of the participating companies stated to have incentives in place. One business chose “not sure” and also added “we try our best” . Finally only three business enterprises replied affirmatively when asked if they cooperate and regularly consult with credible and independent experts when assessing and addressing human rights risks present in complex environments.
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REMEDIATION	
<u>Guiding Principle 22:</u> Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.	
<u>Guiding Principle 29:</u> To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.	
<u>Guiding Principle 30:</u> Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights- related standards should ensure that effective grievance mechanisms are available.	
<u>Guiding Principle 31:</u> In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State- based, should be:	

(a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes; (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access; (c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation; (d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms; (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake; (f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights; (g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms; Operational-level mechanisms should also be... (h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.	
Relevant Sustainable Development Goals and Targets Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels (Target 16.3)	
38. MECHANISMS FOR EFFECTIVE REMEDIATION OF ADVERSE HUMAN RIGHTS IMPACTS	
Guiding Questions Have business enterprises established procedures for hearing processing and settling internal and external concerns/complaints? If so whether they are clear and easily accessible? Do business enterprises provide for or cooperate in remediation in cases of adverse human rights impacts that they are linked to through their operations or products, or services by their business	Status and Gaps Our survey was structured around three core human rights responsibilities of business enterprises, including human rights policy commitment, human rights impact assessment, and procedures for hearing processing and settling internal and external concerns/complaints. The responses received for grievance mechanisms revealed surprising results in comparison to the human rights policy commitment and impact assessment. Ten out of twelve

relationships, including through the use of leverage? Do remediation mechanisms and processes that businesses have established or with which they cooperate with comply with the effectiveness criteria laid out in UNGP 31 (i.e. they are legitimate, accessible, predictable, equitable, rights-compatible, a source of continuous learning, based on engagement and dialogue)? Do remediation mechanisms and processes that businesses have established or with which they cooperate require that complainants sign legal waivers in order to receive reparations? Do business enterprises take measures against any form of retaliation against individuals and groups raising complaints? Do business enterprises consult with relevant stakeholders, in particular with affected rights-holders, during the process of designing, operating, monitoring, and improving the grievance mechanisms? Do business enterprises monitor the effectiveness of grievance mechanisms and processes, including by seeking internal and external feedback and through the use of both qualitative and quantitative indicators? Do business enterprises provide internal guidance, training, incentives, and sufficient resources to relevant departments and employees, and establish clear lines and systems of responsibility and	businesses that replied to our survey stated that they have established procedures for hearing processing and settling internal and external concerns/complaints and all ten businesses stated that this procedure was clear and easily accessible. One company replied that it was “not sure”, however, further stated that they have “internal whistleblowing for employees and have various tools for dialogue that allows reception of complaints from other stakeholders”. The company level grievance procedures in Luxembourg generally appear to be in the form of “consultation desks” and “whistle blowing systems”. One company stated that they have a “consultation desk” which is “not anonymous and is available to all employees, customers and suppliers and a “whistleblowing system” with an external supplier” which is anonymous. During a follow-up interview, another company stated that it does have an internal procedure which is clear and easy to understand for employees who want to file a complaint internally: “it is a ‘big red button’ when you go into our internal website. You cannot miss it.”. The same company representative also stated that they do have an external “hotline” to ensure quality network, which allows access to the global office in case of issues with the local branch. Only three companies stated that they provide for or cooperate in remediation in cases of adverse human rights impacts that they are linked to through their operations or products, or services by their business relationships, including through the use of leverage.
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accountability for remediation, including at senior management level?	Only two businesses confirmed that they take measures against forms of retaliation against individuals and groups raising complaints. One of these companies noted that “however such measures are not valid / credible in many countries in the world”. During a follow-up interview the company clarified the statement by saying that, they sometimes receive complaints from employees of their suppliers (specific example was that the supplier was not paying the salary of the employee for the past three months). The company confirmed that in many instances they can intervene and use their leverage to remedy the situation. However, certain countries that they operate were “culturally sensitive and different”. According to the company representative, the suppliers in that country would terminate the employees contract and risk loosing business rather than being told what to do. When asked if their grievance mechanisms comply with the effectiveness criteria laid out in UNGP 31, none of the companies chose “yes”. They either chose “not sure” (6); “not applicable” (3) or “no” (1). Only two businesses stated that remediation mechanisms and processes that they have established or with which they cooperate with does not require that complainants sign legal waivers in order to receive reparations. The remaining businesses were either “not sure” (5) or stated that it was not applicable (2). Five businesses stated that they consult with relevant stakeholders, in particular with affected rights-holders, during the process of
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	designing, operating, monitoring, and improving the grievance mechanisms. All businesses that responded to our survey stated that they monitor the effectiveness of grievance mechanisms and processes, including by seeking internal and external feedback and through the use of both qualitative and quantitative indicators. All but one business stated that they provide internal guidance, training, incentives, and sufficient resources to relevant departments and employees, and establish clear lines and systems of responsibility and accountability for remediation, including at senior management level.
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¹ The present template is modified from the original DIHR / ICAR version; <<https://www.humanrights.dk/publications/national-action-plans-business-human-rights-toolkit->
² “Un traité international, incorporé dans la législation interne par une loi approuvative, est une loi d'essence supérieure ayant une origine plus haute que la volonté d'un organe interne. Il s'en suit qu'en cas de conflit entre les dispositions d'un traité international et celles d'une loi nationale postérieure, la loi internationale doit prévaloir sur la loi nationale”. (Conseil d'Etat, 28 juillet 1951, Pas. 15, p. 263; Cour (cass.), 8 juin 1950, Pas. 15, p. 41; Cour (cass.), 14 juillet 1954, Pas. 16, p. 151).
³ <https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102757>
⁴ See, < https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN>
⁵ For an up-to-date list of Conventions and Protocols ratified by Luxembourg, see;
<https://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:102757>
⁶ The Additional Protocol providing a system of collective complaints of 1995 is one of measures designated to improve the effective enforcement of the social rights guaranteed by the Charter. The Protocol entitles social partners and NGOs to lodge collective complaints of violations of the Charter in States which have ratified it. The complaint is examined by the European Committee of Social Rights which declares it admissible if the formal requirements have been met. The Committee then takes a decision on the merits of the complaint, which it forwards to the parties concerned and to the Committee of Ministers in a report, which is made public within four months of its being forwarded. On the basis of the report of the European Committee of Social Rights, the Committee of Ministers adopts a resolution. If appropriate, it may recommend that the State concerned take specific measures to bring the situation into line with the Charter.
<<https://www.coe.int/en/web/conventions/search-on-states/-/conventions/treaty/158>>
⁷ The ratification instrument has been deposited with Parliament and is currently under review by the relevant parliamentary committee [cf. chd.lu]

⁸ This Convention is concerned with the principal aspects of the legal situation of migrant workers, in particular recruitment, medical examinations, occupational tests, travel, residence permits, work permits, the reuniting of families, working conditions, the transfer of savings and social security, social and medical assistance, the expiry of work contracts, dismissal and re-employment <<https://www.coe.int/en/web/conventions/search-on-states/-/conventions/treaty/093>>

⁹ For details; <<http://indicators.ohchr.org/>>

¹⁰ National Action Plan of Luxembourg for the Implementation of the United Nations Guiding Principles on Business and Human Rights - 2018-2019, English version (herein after NAP 2018-19) p 20, (page numbers refer to the English version of the NAP) available; <<https://maee.gouvernement.lu/en/directions-du-ministere/affaires-politiques/droits-de-l-homme/NAP-Human-Rights.html>>

¹¹ Draft “1er Rapport au Conseil de gouvernement”, p 9.

¹² NAP 2018-19, p 30.

¹³ <<https://maee.gouvernement.lu/en/directions-du-ministere/affaires-politiques/droits-de-l-homme/NAP-Human-Rights.html>>

¹⁴ B Bağlayan, I Landau, M McVey and K Wodajo, “*Good Business: The Economic Case for Protecting Human Rights*” (January 2019) <<https://corporatejustice.org/ecj-publications/12124-good-business-the-economic-case-for-protecting-human-rights>>.

¹⁵ <<https://uel.lu/fr/article/conference-entreprises-et-droits-de-l-homme-organisee-par-luel-et-lindr-en-collaboration-avec-le-ministere-de-leconomie/>>

¹⁶ <<https://www.uianet.org/en/events/63rd-congress?backlist>>

¹⁷ Updates received during WG/GT meetings.

¹⁸ Consultations with UEL and INDR representatives, various dates.

¹⁹ <<https://charlesmuller.lu/page/finance-and-human-rights/>>

²⁰ NAP 2018-19, 30

²¹ *Ibid*

²² Copy of the letter dated 28.08.2019, in file with the author.

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

²⁴ EU’s position can be accessed through the following link: <<https://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Session1/Pages/Session1.aspx>>.

²⁵ <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/OEIGWG_RevisedDraft_LBI.pdf>

²⁶ Consultation with the officials at the Ministry of Foreign and European Affairs, written feedback received in October 3, 2019 [hereinafter “Consultations, public officials”]

²⁷ OECD, *Governance as an SDG Accelerator: Country Experiences and Tools* (OECD Publishing 2019), 111

²⁸ NAP 2018-19, 9

²⁹ <<https://cdc.gouvernement.lu/fr/service/attributions/point-contact-national-luxembourgeois.html>>

³⁰ For further information see below, Section 11 on Anti-Bribery and Corruption.

³¹ OECD, *OECD Economic Surveys: Luxembourg 2019* (10 July 2019) [hereafter “OECD Survey”]

³² <<https://www.unglobalcompact.org>>

³³ <<https://www.iso.org/standard/42546.html>>

³⁴ <<https://iso26000.info/iso26000/>>

³⁵ < <https://www.ifc.org/> >
³⁶ <<https://www.ifc.org/wps/wcm/connect/7cc4886b-c0df-4e86-afd6-54d138a0796c/IFC+and+Luxembourg+FY18.pdf?MOD=AJPERES&CVID=mu42PAZ>>
³⁷ <<https://equator-principles.com>>
³⁸ <<https://www.globalreporting.org>>
³⁹ <<https://www.kimberleyprocess.com/>>
⁴⁰ <<https://guichet.public.lu/en/entreprises/urbanisme-environnement/entreprise-responsable/entreprise-sociale/entreprise-socialement-responsable.html>>
⁴¹ "[EITI] supports improved governance and transparency in resource-rich countries through the full publication and verification of company payments and government revenues from oil, gas and mining activities", <<https://www.worldbank.org/en/programs/eitimdtf>>
⁴² Currently a total of 51 countries are implementing EITI Standard, of which 31 are compliant, <<https://eiti.org/> for further information>
⁴³ The Voluntary Principles on Security and Human Rights are a set of principles designed to guide companies in maintaining the safety and security of their operations within an operating framework that encourages respect for human rights. <https://www.voluntaryprinciples.org>
⁴⁴ <<https://www.unglobalcompact.org/what-is-gc/participants/11017>>. Email inquiries to the CSR division of the company were sent on 27 July and 29 September 2019 requesting information on their withdrawal decision. No response was received as of 10 October 2019.
⁴⁵ ISO 26000 is an International Standard offering voluntary guidance on social responsibility to any organisation regardless of type, size or place <<https://www.iso.org/iso-26000-social-responsibility.html>>
⁴⁶ For a list of the members, see; <<https://equator-principles.com/members-reporting/>>
⁴⁷ <<https://globalnetworkinitiative.org>>
⁴⁸ UN Human Rights Council, *UN Human Rights Council: Report of the Working Group on the Universal Periodic Review, Luxembourg Addendum*, 6 June 2018, A/HRC/38/11/Add.1 (hereinafter UPR Outcome Report 2018), para 22
⁴⁹ UPR Outcome Report 2018, Recommendation No. 106.71, Emphasis added.
⁵⁰ WG/GT meeting discussion, held 16 September 2019, intervention by the Chair.
⁵¹ <<https://gallery.mailchimp.com/c26eebc433757d98fdf42bbd0/files/4af23f11-41e9-4958-bf8c-23468f6b9d65/PNDD.pdf>>
⁵² <<https://maee.gouvernement.lu/en/directions-du-ministere/affaires-politiques/femmes-paix-securite.html>>
⁵³ <http://mega.public.lu/fr/publications/publications-ministere/2015/pan-egalite-2015/06244_Broch_Plan_Egalite_Femmes_Hommes_2015-2018_04-2015-Web.pdf>
⁵⁴ <http://mj.public.lu/services_citoyens/stop_traite/Plan_action_national_traite.pdf>
⁵⁵ <<http://www.olai.public.lu/en/publications/programmes-planactions-campagnes/PAN/01a-PAN-integration-2018-FR.pdf>>
⁵⁶ <<http://mega.public.lu/fr/publications/publications-ministere/2016/plan-daction-national-prostitution/PAN-Prostitution.pdf>>
⁵⁷ <https://mfamigr.gouvernement.lu/dam-assets/campagnes/personnes_intersexes/PAN-LGBTI-web-update.pdf>
⁵⁸ <<http://sante.public.lu/fr/publications/p/plan-action-lux-conv-nation-unies-pers-handicapees-fr-de/plan-action-lux-conv-nation-unies-pers-handicapees-fr.pdf>>
⁵⁹ <<http://sante.public.lu/fr/publications/p/plan-action-national-sida-2018-2022/plan-action-national-sida-2018-2022.pdf>>
⁶⁰ <https://www.opengovpartnership.org/wp-content/uploads/2019/08/Luxembourg_Action-Plan_2019-2021_FR.pdf>
 NAP 2018-19, 17

⁶¹ Consultations, public officials, *supra* n 26

⁶² <https://www.ohchr.org/Documents/Issues/Business/UNWG_%20NAPGuidance.pdf> 7 [emphasis added]

⁶³ *Ibid*, [emphasis added]

⁶⁴ NAP 2018-19, p 28 (emphasis added).

⁶⁵ Written feedback received from the CSOs, April 5, 2019 [hereinafter, “CSOs’ written feedback”]. CSOs have suggested that the reference to the “extractive industries” in the current NAP, should be replaced by “industry”)

⁶⁶ Although Luxembourg is a landlocked country it has its own fleet. In addition, 335 shipping companies are registered in Luxembourg. In 2015, there were 230 ships on the Luxembourg Public Maritime Register. The sector accounts for around 400 onshore jobs in addition to the 4,000 merchant seamen. See, <<http://luxembourg.public.lu/en/publications/k/cc-economie-luxembourg/cc-economie-luxembourg-en-pdf.pdf>>

⁶⁷ NAP 2018-19, 28

⁶⁸ *Ibid*

⁶⁹ Accord de coalition 2018-2023 (2018), p 218 <<https://gouvernement.lu/en/publications/accord-coalition/2018-2023.html>> [hereinafter “2018 Coalition Agreement”]

⁷⁰ NAP 2018-2019, 26

⁷¹ *Ibid*, 31

⁷² For further details, see: < <https://www.initiative-devoirdevigilance.org/>>. For the proposal of the initiative is see; <http://astm.lu/wp-content/uploads/2018/03/Proposition-devoir-de-vigilance_partis.pdf>

⁷³ Consultation with CSOs, 20 March 2019

⁷⁴ Public intervention by the representative of SMEs in Luxembourg, Conference on Business and Human Rights (June 7, 2019)

⁷⁵ UNGP 14, Commentary.

⁷⁶ CSO consultations, 20 March 2019, intervention by a trade union representative.

⁷⁷ United Nations, General Assembly, *Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms*, A/73/163 (16 July 2018). For a list of large businesses and associations with public statements and endorsements in support of human rights due diligence regulation, see; <<https://www.business-humanrights.org/en/list-of-large-businesses-associations-with-public-statements-endorsements-in-support-of-human-rights-due-diligence-regulation>>

⁷⁸ Discussions with experts, various dates, University of Luxembourg.

⁷⁹ <<https://www.luxembourgforfinance.com/en/financial-centre/sustainable-finance/>>

⁸⁰ See *supra* n 77

⁸¹ John Ruggie, Letter addressed to Business and Human Rights Resource Center, 19 September 2019, <https://www.businesshumanrights.org/sites/default/files/documents/19092019_Letter_John_Ruggie.pdf>.

⁸² B Baglayan, I Landau, M McVey and K Wodajo “*Good Business: The Economic Case for Protecting Human Rights*” (January 2019), <<https://www.icar.ngo/publications/2018/11/26/good-business-the-economic-case-for-protecting-human-rights>>

- ⁸³ Luxembourg Stock Exchange, *Les X Principes de gouvernance d'entreprise de la Bourse du Luxembourg*, 4th edition-revised version (December 2017) <<https://www.bourse.lu/legislation#14688535946648>>
- ⁸⁴ The German Government's approach is noteworthy, which in its NAP committed to considering mandatory requirements if at least 50 per cent of German business enterprises with more than 500 employees failed to put policies and processes in place to conduct human rights due diligence by 2020.
- ⁸⁵ The NAP 209-2020 (English Version), p 26
- ⁸⁶ J Corbisier and P-H Conac, 'Luxembourg. Corporate Governance of listed companies' in A. Flecker and K. Hopt, *Comparative Corporate Governance: A Functional and International Analysis*, *International Corporate Law and Financial Market Regulation* (CUP 2013) 604-647, 606
- ⁸⁷ <<https://guichet.public.lu/en/entreprises/creation-developpement/forme-juridique/societe-capitaux/sarl.html>>
- ⁸⁸ Peter Muchlinski, 'Limited liability and Multinational Enterprises: A Case for Reform?' [2010] 34 Camb. J. Econ. 915, 915; Gwynne Skinner, 'Rethinking Limited Liability of Parent Corporations for Foreign Subsidiaries' Violations of International Human Rights Law' [2015] 72 Wash. & Lee L. Rev. 1769; Radu Mares, 'A Rejoinder to G. Skinner's Rethinking Limited Liability of Parent Corporations for Foreign Subsidiaries' Violations of International Human Rights Law' [2016] 73 Wash. & Lee L. Rev.; Olivier De Schutter, 'Towards a New Treaty on Business and Human Rights' [2006] 1 BHRJ 41.
- ⁸⁹ See, Muchlinski, *id*.
- ⁹⁰ G Skinner, R McCorquodale, O De Schutter, *The Third Pillar: Access to Judicial Remedies for Human Rights Violations by Transnational Business*, December 2013, 81
- ⁹¹ *Ibid*
- ⁹² *Ibid*
- ⁹³ *Ibid*
- ⁹⁴ For a detailed analysis of the reforms modifying the Companies Law, see; Isabelle Corbisier, "La réforme du droit luxembourgeois des sociétés" [2016] 4 *TRV-RPS* 416
- ⁹⁵ <<http://legilux.public.lu/eli/etat/leg/loi/2002/12/19/n1/jo>>
- ⁹⁶ <<http://legilux.public.lu/eli/etat/leg/loi/2005/07/10/n1/jo>>
- ⁹⁷ <<http://legilux.public.lu/eli/etat/leg/loi/2016/12/12/n1/jo>>
- ⁹⁸ *Ibid*, Article 2.
- ⁹⁹ "Commission refers Luxembourg to the Court of Justice for not completely implementing EU anti-money laundering rules", 8 November 2018, <https://europa.eu/rapid/press-release_IP-18-6251_en.htm>
- ¹⁰⁰ Directive 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.
- ¹⁰¹ Directive 2018/843 of 30 May 2018 amending the 4th EU AML Directive.
- ¹⁰² <<http://legilux.public.lu/eli/etat/leg/loi/2019/01/13/a15/jo>>
- ¹⁰³ Luxembourg Stock Exchange, *Les X Principes de gouvernance d'entreprise de la Bourse du Luxembourg*, 4th edition-revised version (December 2017) <<https://www.bourse.lu/legislation#14688535946648>>
- ¹⁰⁴ Principle 9 of the X Principles reads: "The company shall define its corporate social responsibility policy with respect, including to it those responsibilities related to social and environmental aspects. It shall set out the measures taken for its implementation of that policy and shall provide for these to be adequately published".

¹⁰⁵ The guideline to the recommendation 9.2 of the X Principles reads: “The company is encouraged to use a framework recognised at international level (*Global Reporting Initiative, International Integrated Reporting Framework, SASB sustainability standards, FSBTCFD Climate-related Financial Disclosures and/or similar standards*) in preparing such a report. It is invited to align itself with the 17 UN Sustainable Development Goals”.

¹⁰⁶ X Principles, Recommendation 9.4, p 28.

¹⁰⁷ See, <<https://www.cssf.lu/>>

¹⁰⁸ <<https://www.luxflag.org/>>

¹⁰⁹ <<https://www.alfi.lu/>>

¹¹⁰ On Luxembourg leaks scandal, see also the sections on “tax” and “whistle-blowers” in this annex.

¹¹¹ See, Zuzanna Reda-Jakima, “Deadline delayed as firms leave list to shed light on owners vacant” (29.08.2019) in *Luxembourg Times* <<https://luxtimes.lu/luxembourg/38303-deadline-delayed-as-firms-leave-list-to-shed-light-on-owners-vacant>>, quoted in <<https://www.icij.org/investigations/luxembourg-leaks/luxembourg-falls-further-behind-eu-aml-rules-as-companies-fail-to-disclose-ownership/>>

¹¹² <https://www.lbr.lu/mjrcslbr/jsp/IndexActionNotSecured.action?FROM_LANGUAGE_CHANGE=true&loop=3&time=156871388099>

¹¹³ <<http://legilux.public.lu/eli/etat/leg/loi/2016/07/23/n19/jo>>

¹¹⁴ See above, response 4.2.

¹¹⁵ <https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102757>

¹¹⁶ <<http://legilux.public.lu/eli/etat/leg/code/travail/20190201>>

¹¹⁷ See, STATEC, *Rapport travail et cohésion sociale* (2018), hereinafter RTCS 2018, 82 : “Pour calculer le taux de risque de pauvreté au travail, on additionne d’abord les revenus bruts de tous les membres d’un ménage, y compris les transferts sociaux et les revenus locatifs, les revenus fonciers et ceux provenant d’investissements en capital et on déduit les cotisations sociales, l’impôt sur le revenu retenu à la source et l’impôt foncier, déterminant ainsi le revenu disponible du ménage. Suivant la convention européenne, le “revenu disponible équivalent” du ménage est calculé en accordant un poids de 1 à la première personne vivant dans le ménage, un poids de 0.5 à chaque autre personne âgée de 14 ans ou plus et de 0.3 à chaque enfant âgé de moins de 14 ans. La médiane du revenu disponible équivalent ainsi chiffrée est multipliée par 0.6 pour fixer le seuil de pauvreté. Tous les ménages dont le revenu équivalent est inférieur à ce seuil sont considérés “en risque de pauvreté”. La catégorie des “travailleurs pauvres” regroupe toutes les personnes âgées de 18 ans et plus qui ont travaillé pendant au moins 7 mois d’une année, soit en tant qu’employé soit en tant qu’indépendant, mais dont le ménage demeure en risque de pauvreté. L’indicateur s’exprime en pourcentage des travailleurs”.

¹¹⁸ STATEC, RTCS 2018, 82.

¹¹⁹ STATEC, RTCS 2018, 82

¹²⁰ European Social Policy Network (ESPN), *In-work poverty in Europe: A study of national policies* (2019); R. Urbé, *In-work poverty in Luxembourg*, ESPN, (2019). See, also;

Chambre de Commerce (2019), *Pauvreté: de la juste mesure aux mesures appropriées*, Actualité & Tendances, No21

¹²¹ STATEC, RTCS 2018, 85

¹²² OECD Survey, *supra* n 31, 15

¹²³ OECD (2019), Gender wage gap (indicator), <<https://data.oecd.org/earnwage/gender-wage-gap.htm>> 11-12

¹²⁴ European Committee of Social Rights, *Conclusions XX1-3 (2018) Luxembourg* (March 2019)

¹²⁵ Group of Experts on Action against Trafficking in Human Beings (GRETA), *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Luxembourg*, (2018)¹⁸

¹²⁶ *ibid*, 7

¹²⁷ <<https://inap.gouvernement.lu/fr.html>>

¹²⁸ <<http://legilux.public.lu/eli/etat/leg/rgd/2018/10/31/a1199/jo>>

¹²⁹ <https://fonction-publique.public.lu/fr/formation-developpement/catalogue-formations/secteur-communal/05adm/05admdroit/05-1-sujadm/co_05-1-1-33.html>

¹³⁰ Telephone interview conducted by a representative of INAP on 10 September 2019.

¹³¹ <<https://mteess.gouvernement.lu/fr.html>>

¹³² <<https://itm.public.lu/fr.html> and https://guichet.public.lu/en/organismes/organismes_citoyens/inspection-travail-mines.html>

¹³³ <<https://guichet.public.lu/fr/citoyens/travail-emploi/active-professionnelle/relations-collectives-travail/roles-delegues-securite-sante-egalite.html>>

¹³⁴ <<https://www.csl.lu/fr/vos-droits/droit-du-travail/les-conventions-collectives-du-travail/office-national-de-conciliation-onc>>

¹³⁵ <<https://cdc.gouvernement.lu/fr/service.html>>

¹³⁶ <<https://cdc.gouvernement.lu/fr/service/attributions.html>>

¹³⁷ Eurofound, European Foundation for Improving Living and Working Conditions (2008), *Working Conditions and Social Dialogue in Luxembourg*, quoted in N. Schneider, OHS Wiki, *OSH system at national level - Luxembourg*

¹³⁸ Ternium 2018 Annual Report, 5

¹³⁹ <<https://www.business-humanrights.org/en/guatemala-workers-world-council-calls-on-ternium-to-end-union-busting-campaign-recognize-local-trade-union%E2%80%99s-rights#tc163398>>

¹⁴⁰ Case update obtained from the NCP Luxembourg, on 20 September 2019. Communication in file with the author.

¹⁴¹ <<http://legilux.public.lu/eli/etat/leg/code/environnement/20190809>>. Comprehensive list of all laws and regulations pertaining to Luxembourg, with brief explanations of their contexts, can be found in the website of UN's Food and Agriculture Organization ("FAO"), available; <<http://www.fao.org/faolex/country-profiles/general-profile/en/?iso3=LUX>>

¹⁴² <<https://environnement.public.lu/dam-assets/documents/15-mai-2018-loi-EIE.pdf>>

¹⁴³ <<http://legilux.public.lu/eli/etat/leg/rgd/2018/05/15/a399/jo>>

¹⁴⁴ <<http://legilux.public.lu/eli/etat/leg/loi/2012/03/21/n1/jo>>

¹⁴⁵ <<http://legilux.public.lu/eli/etat/leg/loi/1976/06/21/n2/jo>>

¹⁴⁶ <<http://legilux.public.lu/eli/etat/leg/loi/2005/11/25/n4/jo>>

¹⁴⁷ <<http://legilux.public.lu/eli/etat/leg/loi/2016/03/29/n6/jo>>

¹⁴⁸ UNEP Finance Initiative, *Luxembourg Sustainable Finance Roadmap* (October 2018) <<https://gouvernement.lu/dam-assets/documents/actualites/2018/10-octobre/04-sustainable-finance/Luxembourg-Sustainable-Finance-Roadmap-WEB.pdf>>, 7

¹⁴⁹ <<http://legilux.public.lu/eli/etat/leg/loi/2018/06/22/a521/jo>>

¹⁵⁰ Government of Grand Duchy of Luxembourg, “National plan for smart, sustainable and inclusive growth Luxembourg 2020 - National Reform Programme of the Grand Duchy of Luxembourg under the European semester 2019” available, <<http://www.innovation.public.lu/en/brochures-rapports/p/pnr-2014/index.html>>

¹⁵¹ <https://ec.europa.eu/environment/eir/pdf/report_lu_en.pdf>

¹⁵² Council Recommendation of 9 July 2019 on the 2019 National Reform Programme of Luxembourg and delivering a Council opinion on the 2019 Stability Programme of Luxembourg Brussels, 5.6.2019 COM(2019) 516 final <[https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019H0905\(16\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019H0905(16))> para 12

¹⁵³ OECD Survey, *supra* n 31, 53

¹⁵⁴ <<https://www.itf-oecd.org/sites/default/files/docs/02greenhouse.pdf>>

¹⁵⁵ <<https://environnement.public.lu/dam-assets/documents/%C3%A9gislation/15-mai-2018-loi-EIE.pdf>>

¹⁵⁶ <<http://legilux.public.lu/eli/etat/leg/rgd/2018/05/15/a399/jo>>

¹⁵⁷ <<http://legilux.public.lu/eli/etat/leg/rgd/2018/05/15/a400/jo>>

¹⁵⁸ <<http://legilux.public.lu/eli/etat/leg/rect/2018/05/15/a409/jo>>

¹⁵⁹ <<http://legilux.public.lu/eli/etat/leg/tc/2003/11/26/n1/jo>>

¹⁶⁰ See, <<https://guichet.public.lu/en/entreprises/urbanisme-environnement/incidences-environnementales/evaluation-environnementale/incidences-environnement-eie.html#bloub-4>>

¹⁶¹ <<https://guichet.public.lu/en/entreprises/urbanisme-environnement/entreprise-responsable/responsabilite-sociale/entreprise-socialement-responsable.html>>

¹⁶² <<https://aev.gouvernement.lu/fr/administration/attributions.html>>

¹⁶³ Greenpeace, ‘Menaces sur les forêts africaines: Enquête sur les investissements du groupe Bolloré et de son partenaire belge Hubert Fabri,’ Paris, February 2016, quoted in, S. Borras, *et al*, “Land grabbing and human rights: the involvement of European corporate and financial entities in land grabbing outside the European Union” (European Parliament 2016), 23. Herein after “Borras 2016”

<http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578007/EXPO_STU%282016%29578007_EN.pdf>

¹⁶⁴ United Nations, ‘Human Rights in Liberia’s Rubber Plantations: Tapping into the future,’ Monrovia, 2006; Oakland Institute, ‘SOCFIN Land investment in Sierra Leone, land deal brief,’ April 2012; and FIDH. ‘Land cleared for rubber, Rights bulldozed - The impact of rubber plantations by SOCFIN-KCD on indigenous communities in Bousra, Mondulkiri,’ October 2011, quoted in Borras 2016.

¹⁶⁵ FIAN Belgium, “Land Grabbing for Palm Oil in Sierra Leone: Analysis of the Socfin Case from a Human Rights Perspective” (February 2019), available <https://www.fian.be/IMG/pdf/fian_b_report_landgrab_in_sl_malen_2019_full_webflow.pdf>, with further references therein. SOCFIN also has been accused of violating land rights through its subsidiaries in Liberia, see; Bread For All, “Struggle for Life and Land Socfin’s Rubber Plantations in Liberia and the Responsibility of Swiss Companies” (February 2019)

¹⁶⁶ *Ibid*

¹⁶⁷ SOCFIN, Socfin’s response to Fian’s “Draft report extracts made available to Socfin before publication – Provisional title: Land Conflict in Malen – Analysis and lessons learned from a human perspective” (2019), available <https://www.business-humanrights.org/sites/default/files/documents/2019-01-09-Socfin-response-to-Fian_Final.pdf>

¹⁶⁸ <<http://mneguidelines.oecd.org/database/instances/be0018.htm>>

¹⁶⁹ *Ibid*

¹⁷⁰ <<https://www.worx.lu/accaparement-des-terres-la-holding-luxembourgeoise-socfinasia-dans-le-viseur/>> According to the source, the hearing took place on October 1, 2019. At the time of the writing, no further information could be found.

¹⁷¹ Borras 2016, 28

¹⁷² *Ibid*

¹⁷³ *Ibid*

¹⁷⁴ *Ibid*

¹⁷⁵ <https://www.klimabuendnis.org/fileadmin/Inhalte/7_Downloads/Pensionsfonds_und_Menschenrechte.pdf>

¹⁷⁶ <<https://www.internationalrivers.org/campaigns/belo-monte-dam>>

¹⁷⁷ <https://astm.lu/wp-content/uploads/2018/12/2018_12_BeloMonte_Odebrecht_Luxembourg-Connection_EN.pdf>

¹⁷⁸ <https://multinationales.org/IMG/pdf/enco_aatif_def.pdf>

¹⁷⁹ ILO, “Indigenous and Tribal Peoples Convention, 1989 (No. 169) *Convention concerning Indigenous and Tribal Peoples in Independent Countries*” (Entry into force: 05 Sep 1991)

¹⁸⁰ <<http://legilux.public.lu/eli/etat/leg/rgd/2004/09/27/n5/jo>>

¹⁸¹ <<http://legilux.public.lu/eli/etat/leg/rgd/2018/07/20/a684/jo>>

¹⁸² <<http://legilux.public.lu/eli/etat/leg/memorial/1995/90>>

¹⁸³ <<http://legilux.public.lu/eli/etat/leg/loi/2017/04/28/a459/jo>>

¹⁸⁴ <<https://visionzero.lu/vision-zero-ursprung/>>

¹⁸⁵ Note that Luxembourg has a specific mental health legislation of 10 December 2009 which regulates the admission, placement and residence for involuntarily admitted persons with mental disorders in a psychiatric hospital or in a specialized psychiatric facility, < <http://legilux.public.lu/eli/etat/leg/loi/2009/12/10/n1/jo>>.

¹⁸⁶ < <https://www.csl.lu/fr/travail-sante-et-bien-etre/quality-of-work-index-luxembourg/enquetes-et-rapports>>

¹⁸⁷ < <https://paperjam.lu/article/questions-encore-trop-d'accidents-graves-dans-la-construction>>; < <http://www.lesentiel.lu/fr/luxembourg/story/39-entreprises-ont-ete-sanctionnees-par-l-itm-28657478>>

¹⁸⁸ < https://itm.gouvernement.lu/fr/actualites/gouvernement%2Bfr%2Bactualites%2Btoutes_actualites%2Bcommunique%2B2019%2B09-septembre%2B19-bilan-itm.html>

¹⁸⁹ For an overview of most tax laws and regulations in effect see, for example, *Livre des impôts luxembourgeois*, 2019, Legitech.

¹⁹⁰ <<http://legilux.public.lu/eli/etat/leg/loi/1931/05/22/n1/jo>>

¹⁹¹ <<http://legilux.public.lu/eli/etat/leg/loi/1934/10/16/n2/jo>>

¹⁹² <<http://legilux.public.lu/eli/etat/leg/loi/1934/10/16/n1/jo>>

¹⁹³ <<http://legilux.public.lu/eli/etat/leg/loi/1967/12/04/n1/jo>>

¹⁹⁴ <<http://legilux.public.lu/eli/etat/leg/loi/1979/02/12/n1/jo>>

¹⁹⁵ <https://aed.gouvernement.lu/en/service.html>

¹⁹⁶ <https://impotsdirects.public.lu/fr.html>

¹⁹⁷ <https://douanes.public.lu/fr.html>

¹⁹⁸ For the legal basis of EU tax policy, see; the tax provisions chapter (Articles 110-113) of the TFEU (relating to the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation); the chapter on the approximation of laws (Articles 114-118 TFEU) (covering taxes that have an indirect effect on the establishment of the internal market, with fiscal provisions not subject to the ordinary legislative procedure); other provisions relevant to tax policy, referring to the free movement of persons, services and capital (Articles 45-66 TFEU), the environment (Articles 191-192 TFEU) and competition (Articles 107-109 TFEU). For further information, see; <<http://www.europarl.europa.eu/factsheets/en/sheet/92/general-tax-policy>>

¹⁹⁹ See, <https://ec.europa.eu/competition/publications/factsheets/state_aid_procedures_en.pdf>

²⁰⁰ See, for instance; European Commission, Press release, *Commission decides selective tax advantages for Fiat in Luxembourg and Starbucks in the Netherlands are illegal under EU state aid rules*, 21 October 2015 <https://europa.eu/rapid/press-release_IP-15-5880_en.htm>; European Commission, Press release, *State aid: Commission finds Luxembourg gave illegal tax benefits to Amazon worth around €250 million*, 4 October 2017 <https://europa.eu/rapid/press-release_IP-17-3701_en.htm>; European Commission, Press release, *Commission finds Luxembourg gave illegal tax benefits to Engie; has to recover around €120 million*, 20 June 2018 <https://europa.eu/rapid/press-release_IP-18-4228_en.htm>; European Commission, Press release, State aid: *Commission opens in-depth investigation into tax treatment of Huhtamäki in Luxembourg*, 7 March 2019 <https://europa.eu/rapid/press-release_IP-19-1591_en.htm>.

²⁰¹ General Court of the European Union, Press Release No 118/19, 24 September 2019, <<https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-09/cp190118en.pdf>>

²⁰² For further information see; <https://www.icij.org/investigations/luxembourg-leaks/>. Along with Antoine Deltour, Raphael Halet, another former PwC employee, and Edouard Perrin, a French journalist, were prosecuted for their roles in exposing documents. For further details, see the section on whistleblowers.

²⁰³ Jim Brudsen, "LuxLeaks: Luxembourg's response to an international tax scandal", Financial Times, June 23 2017.

²⁰⁴ <<https://www.icij.org/investigations/luxembourg-leaks/>>

²⁰⁵ Brudsen, *ibid*

²⁰⁶ ICIJ, "Leaked Documents Expose Global Companies' Secret Tax Deals in Luxembourg" November 5, 2014, <<https://www.icij.org/investigations/luxembourg-leaks/leaked-documents-expose-global-companies-secret-tax-deals-luxembourg/>>

²⁰⁷ IBAHRI Task Force on Illicit Financial Flows, Poverty and Human Rights 2013, "Tax Abuses, Poverty and Human Rights: Report of the International Bar Association's Human Rights Institute Taskforce on Illicit Financial Flows, Poverty and Human Rights", 2, available; <https://www.ibanet.org/Human_Rights_Institute/TaskForce_IlicitFinancialFlows_Poverty_HumanRights.aspx>

²⁰⁸ OHCHR, Information note, available; <https://www.ohchr.org/Documents/Issues/RtD/InfoNote_Taxation.pdf>

²⁰⁹ See, the Law of 23 December 2016 implementing the tax reform 2017 <<http://legilux.public.lu/eli/etat/leg/loi/2016/12/23/n11/jo>>. See also, <<http://www.europarl.europa.eu/cmsdata/124709/Luxembourg%20fiche.pdf>>

²¹⁰ <<http://legilux.public.lu/eli/etat/leg/loi/2019/03/07/a153/jo>>

²¹¹ The other 6 countries include Belgium, Cyprus, Hungary, Ireland, Malta and The Netherlands, see; European Parliament, “Press Release: Tax crimes: special committee calls for a European financial police force” (27 February 2019), < <http://www.europarl.europa.eu/news/en/press-room/20190225/PR28727/tax-crimes-special-committee-calls-for-a-european-financial-police-force>>

²¹² Council Recommendation of 9 July 2019 on the 2019 National Reform Programme of Luxembourg and delivering a Council opinion on the 2019 Stability Programme of Luxembourg Brussels, 5.6.2019 COM(2019) 516 final < [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019H0905\(16\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019H0905(16))> para 14

²¹³ <<https://www.chd.lu/wps/portal/public/Accueil/TravailAlaChambre/Recherche/RoleDesAffaires?action=doDocpaDetails&backto=/wps/portal/public/Accueil/Actualite&id=7033>>

²¹⁴ Consolidated version of the Treaty on the Functioning of the European Union (13 December 2007), 2008/C 115/01

²¹⁵ See, < <https://maee.gouvernement.lu/fr/directions-du-ministere/affaires-europeennes/affaires-europeennes.html>>

²¹⁶ See, <https://ec.europa.eu/trade/policy/policy-making/sustainable-development/#_human-rights>

²¹⁷ *Ibid*

²¹⁸ B Baglayan et al, n 82.

²¹⁹ *Ibid*

²²⁰ <https://ec.europa.eu/trade/policy/policy-making/sustainable-development/#_human-rights>

²²¹ <<http://legilux.public.lu/eli/etat/leg/loi/2004/05/27/n3/jo>>

²²² See, <<https://bruxelles.mae.lu/fr/Relations-belgo-luxembourgeoises/L-Union-economique-belgo-luxembourgeoise>>

²²³ For an analysis of the model investment treaty, see; Damien Charlotin and Luke Eric Peterson, “Belgium and Luxembourg Unveil Model Bilateral Investment Treaty Text, With Party-Appointed ISDS Mechanism Enjoying a Temporary Foothold” *IAREporter*, (April 2019)

²²⁴ For a full text of the agreement, see; Chambre des Représentants de Belgique, “Rapport de progrès 2019 du vice-premier ministre et ministre des Affaires étrangères et européennes, chargé de Beliris et des Institutions culturelles fédérales, relatif aux traités commerciaux” (28 March 2019) <<https://www.lachambre.be/flwb/pdf/54/1806/54K1806007.pdf>>

²²⁵ *Ibid*, Article 18(1)

²²⁶ Ionel Zamfir, “EU Parliament Briefing on ‘Human rights in EU trade policy Unilateral measures applied by the EU’ (May 2018), <[http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621905/EPRS_BRI\(2018\)621905_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621905/EPRS_BRI(2018)621905_EN.pdf)>

²²⁷ *Ibid*

²²⁸ NAP 2018-19, 16

²²⁹ <<https://ec.europa.eu/trade/import-and-export-rules/export-from-eu/dual-use-controls/>>

²³⁰ <https://eur-lex.europa.eu/resource.html?uri=cellar:1b8f930e-8648-11e6-b076-01aa75ed71a1.0013.02/DOC_1&format=PDF>

²³¹ < <http://legilux.public.lu/eli/etat/leg/loi/2018/06/27/a603/jo>>

²³² <<https://guichet.public.lu/en/support/glossaire/regimes-non-proliferation.html>>

- ²³³ Letter of MP Wagner dated 14 January, and the Government's response can be accessed here; <<https://www.wort.lu/de/politik/affaire-khashoggi-eine-spur-fuehrt-nach-luxemburg-5c6ea89eda2cc1784e33e51f>>
- ²³⁴ <<https://www.nytimes.com/2018/12/02/world/middleeast/saudi-khashoggi-spyware-israel.html>>. See, also; UN Human Rights Council (19 June 2019), A/HRC/41/CRP.1
- ²³⁵ <https://www.washingtonpost.com/opinions/global-opinions/how-a-chilling-saudi-cyberwar-ensnared-jamal-khashoggi/2018/12/07/f5f048fe-f975-11e8-8c9a-860ce2a8148f_story.html>. In February 2019, NSO Group announced that the management and the founders acquired the company from the other shareholders which was financed by Novalpina Capital, a private equity firm specializing in buyout investments with headquarters in Luxembourg, <<https://www.fyb.de/en/management-buy-out-bei-der-nso-group-mit-novalpina-capital/>>
- ²³⁶ The Government's response, dated 19 February 2019, available <<https://www.wort.lu/de/politik/affaire-khashoggi-eine-spur-fuehrt-nach-luxemburg-5c6ea89eda2cc1784e33e51f>>
- ²³⁷ <<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1476178274400&uri=CELEX:32002R2368>>
- ²³⁸ <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R0821>>
- ²³⁹ <<https://odl.lu/en/financial-support/>>
- ²⁴⁰ <<https://odl.lu/en/about-us/ethics/>>
- ²⁴¹ <<https://meco.gouvernement.lu/fr/annuaire.html?idMin=5394>>
- ²⁴² See above box 1 on international and regional legal and soft law instruments for further details.
- ²⁴³ <<http://legilux.public.lu/eli/etat/leg/loi/2001/01/15/n1/jo>>
- ²⁴⁴ Please see above box 1 on international and regional legal and soft law instruments for further details.
- ²⁴⁵ Adopted from, UNODC, *Country Review Report of Luxembourg, Review by Switzerland and Austria of the implementation by Luxembourg of articles 15 – 42 of Chapter cycle 2010 – 2015*, available <https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/Luxembourg_Final_Report_25-03-2015.pdf>
- ²⁴⁶ In the criminal Code, the relevant provisions are, Art. 242., Art. 244., Art. 245., Art. 246., Art. 247., Art. 248., Art. 249., Art. 250., Art. 251., Art. 253., Art. 310 and 310-1, Art. 37., Art. 379., Art. 506-1.,
- ²⁴⁷ Adopted by the General Assembly of the United Nations in New York on 31 October 2003 and opened for signature in Merida (Mexico) on 9 December 2003.
- ²⁴⁸ Adopted by the General Assembly of the United Nations in New York, on 15 November 2000, opened for signature on 12-15 December 2000 and entered into force on 29 September 2003.
- ²⁴⁹ *Arrêté grand-ducal du 14 novembre 2014 fixant les règles déontologiques des membres du Gouvernement et leurs devoirs et droits dans l'exercice de la fonction* (herein after "Code of Conduct for the Members of the Government"), <<https://gouvernement.lu/dam-assets/fr/systeme-politique/gouvernement/rb-code-deontologie/Arrete-grand-ducal-du-14-novembre-2014-fixant-les-regles-deontologiques-des-membres-du-Gouvernement-et-leurs-devoirs-et-droits-dans-l'exercice-de-la-fo.pdf>>
- ²⁵⁰ OECD Survey, *supra* n 31, 28
- ²⁵¹ GRECO, 'Evaluation Report: Luxembourg, Fifth Evaluation Round, Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies' (Strasbourg, June 2018) para 2 <<https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/16808b7252>> (hereinafter, GRECO Report)

²⁵² *Ibid*

²⁵³ *Ibid*, paras 2 and 13

²⁵⁴ European Commission, 'Flash Eurobarometer 374 Business Attitudes towards Corruption in the EU' (2013) 26

<https://ec.europa.eu/comfrontoffice/publicopinion/flash/fl_374_en.pdf>

²⁵⁵ GRECO Report, cited above, para 12

²⁵⁶ OECD Survey, *supra* n 31, 28

²⁵⁷ *Ibid*

²⁵⁸ *Ibid*, para 52

²⁵⁹ *Ibid*

²⁶⁰ *Ibid*

²⁶¹ Code of Conduct for members of the government was adopted by the Grand Ducal order of 14 November 2014 (establishing rules of conduct for members of the government and their duties and rights while in office. *Ibid*, para 44

²⁶² *Ibid*

²⁶³ *Ibid*

²⁶⁴ *ibid*, para 163

²⁶⁵ *ibid*

²⁶⁶ *Ibid*, para 165

²⁶⁷ *Ibid*

²⁶⁸ *Ibid*, para 56

²⁶⁹ Clifford Chance, 'An International Guide to Anti-Corruption Legislation' (March 2019), 42

<https://www.cliffordchance.com/content/dam/cliffordchance/hub/Risk/An_international_guide_to_anti_corruption_legislation.pdf>

²⁷⁰ GRECO Report, cited above, n 5, quoting <<http://www.lequotidien.lu/a-la-une/la-place-financiere-du-luxembourg-na-tire-aucune-consequence-des-panama-papers/>>

²⁷¹ CSSF, 'Press Release 17/44: Panama Papers: Results of the CSSF's Analysis and Subsequent Enforcement Procedures' (20.12.2017)

<https://www.cssf.lu/fileadmin/files/Publications/Communiques/Communiques_2017/PR1744_panama_papers_201217.pdf>

²⁷² Human rights defenders are defined as any person or group of persons who works to promote and protect human rights in a peaceful way. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144 (Dec. 9, 1998)

²⁷³ B Leather et. al., "Human Rights Defenders in National Action Plans (NAPs) on Business and Human Rights" (June 2016)

<<https://mk0globalnapshvlfq4.kinstacdn.com/wp-content/uploads/2018/01/human-rights-defenders-in-national-action-plans-on-business-and-human-rights.pdf>>

²⁷⁴ See, "The Anti-bribery and Anti-corruption Review", ed. Mark F Mendelsohn, Law and Business Research, 5th Edition, 2016.

²⁷⁵ M Worth, "Whistleblowing in Europe Legal Protections for Whistleblowers in the EU" (2013) *Transparency International*

<https://www.transparency.org/whatwedo/publication/whistleblowing_in_europe_legal_protections_for_whistleblowers_in_the_eu>

²⁷⁶ *Ibid*, 61

²⁷⁷ *Ibid*

²⁷⁸ D Kafteranis “Le lancement d’alerte en interne : défis, perspectives et solutions en droit bancaire et financier”, forthcoming publication, in file with the author.

²⁷⁹ *Ibid*, 19

²⁸⁰ See, <http://www.stopcorrupt.lu/hotline/whistleblowing/>. Under the laws of Luxembourg, “registered associations representing public interests have the right to participate in criminal proceedings in cases involving the unlawful taking of interest, corruption or the abuse of influence. Any association wishing to exercise this right in a criminal proceeding has to submit a request for approval to the Ministry of Justice. Since Transparency International Luxembourg has obtained this status, it is able to process cases presented to them by potential whistleblowers, and then represent the public interest in criminal proceedings, while keeping the identity of the whistleblower confidential”, see, Annex Luxembourg to the EU Anti-Corruption Report, Brussels, 03. 02. 2014 COM (2014) 38 Final, 4.

²⁸¹ ‘Luxembourg: Follow-Up to the Phase 3 Report & Recommendations’ (August 2013) 14 <<https://www.oecd.org/daf/anti-bribery/LuxembourgPhase3WrittenFollowUpReportEN.pdf>>

²⁸² For detailed information and analysis of the LuxLeaks trials see various publications of Annelies Vandendriessche, an expert researcher at the University of Luxembourg. The background information on the LuxLeaks case in this section is largely derived from her publications which can be accessed through her institutional website (<https://www.wen.uni.lu/fdef/law/people/annelies_vandendriessche>) or media law website of the University of Luxembourg (<https://www.wen.uni.lu/research/fdef/media_law/texts>).

²⁸³ Arrêt de la Cour de cassation concernant le pourvoi de Mr Antoine Deltour/ « LuxLeaks » (La Justice, Grand-Duché de Luxembourg, 11/01/2018) <<http://www.justice.public.lu/fr/actualites/2018/01/arret-3912-cassation--deltour/index.html>>. Arrêt de la Cour de cassation concernant le pourvoi de Mr Raphaël Halet/ « LuxLeaks » (La Justice, Grand-Duché de Luxembourg, 11/01/2018) <<http://www.justice.public.lu/fr/actualites/2018/01/arret-n-3911-cassation-halet/index.html>>

²⁸⁴ A selection of laws on media and communication, along with their English translations can be accessed at the media law website of the University of Luxembourg <https://www.wen.uni.lu/research/fdef/media_law/texts>

²⁸⁵ <<http://legilux.public.lu/eli/etat/leg/loi/2018/08/01/a686/jo>>

²⁸⁶ <<http://legilux.public.lu/eli/etat/leg/loi/2018/08/01/a689/jo>>

²⁸⁷ <<http://legilux.public.lu/eli/etat/leg/loi/2018/09/14/a883/jo>>

²⁸⁸ <<http://www.legilux.public.lu/leg/a/archives/1982/0086/a086.pdf#page=2>>

²⁸⁹ OECD Survey, *supra* n 31, 42

²⁹⁰ *Ibid*

²⁹¹ 2018 Coalition Agreement, *supra* n 69, 12-16

²⁹² NAP 2018-19, 28

²⁹³ *Artificial Intelligence: A Strategic Vision for Luxembourg* (21 May 2019) <<https://digital-luxembourg.public.lu/initiatives/artificial-intelligence-strategic-vision-luxembourg>>, [hereinafter, “AI Strategy”]

²⁹⁴ *Ibid*, 8

²⁹⁵ *Ibid*, 15

²⁹⁶ *Ibid*, 19, emphasis added.

²⁹⁷ For a list, see <<https://cnpd.public.lu/en/commission-nationale/pouvoirs.html>>

²⁹⁸ For further information, see <<https://cad.gouvernement.lu/en/le-ministere.html>>

²⁹⁹ All existing codes are profiled in the legal portal of Luxembourg, available <<http://legilux.public.lu/editorial/codes>>

³⁰⁰ Loi du 17 février 2016 portant introduction du règlement extrajudiciaire des litiges de consommation dans le Code de la consommation et modifiant certaines autres dispositions du Code de la consommation, Memorial A 60 of 2016, <<http://legilux.public.lu/eli/etat/leg/memorial/2016/60>>

³⁰¹ Règlement grand-ducal du 5 juillet 2016 portant modification de la partie réglementaire du Code de la consommation, Memorial A 133 of 2016, <<http://legilux.public.lu/eli/etat/leg/rgd/2016/07/05/n7/jo>>

³⁰² See Art. L.312-1 Consumer Code, and Ministerial decree of 7 december 2017 and the following modifications <<http://legilux.public.lu/search/B/?organisation=Conseil+de+la+consommation>>

³⁰³ The competencies of the Ministry in the field of consumer legal protection include: Consumer Policy in the Internal Market and at National Level, Consumer Affairs Council, Consumer Code, Legislative and Enforcement Section - Travelers' Rights - Relations with the European Consumer Center EIG - Relations with the Luxembourg Union of Consumers. In regards to food safety, the Ministry oversees Safety of the food chain - Establishment of an effective food control and sanction system - Information and public awareness - Coordination of laboratory activities in control - Hygiene barometer - Monitoring food establishments, official control of foodstuffs and the food chain, as well as materials and objects coming into contact with foodstuffs. For further information, see; <<https://mpc.gouvernement.lu/fr/le-ministere.html>>

³⁰⁴ <<https://www.mediateurconsommation.lu/fr>>

³⁰⁵ <https://guichet.public.lu/en/organismes/organismes_citoyens/union-luxembourgeoise-consommateurs.html>

³⁰⁶ <<https://cecluxembourg.lu/mentions-legales/>>

³⁰⁷ *Ibid*

³⁰⁸ <https://www.wen.uni.lu/studies/fdef/master_in_european_private_law_ll_m/clinique_du_droit>

³⁰⁹ <<https://www.mpi.lu/news-and-events/latest-news/detail/detail/mpi-luxembourg-to-undertake-study-on-the-enforcement-of-consumer-law-for-the-luxembourgish-ministry/>>

³¹⁰ *Centre pour L'Égalité de Traitement* <<http://cet.lu/en/defense-des-droits-et-voies-de-recours/pan-lgbti/>>

³¹¹ From 1998 until January 2016 the Constitutional Court delivered around 120 judgments most of which concern the principle of equal treatment enshrined in Article 10bis of the Constitution. See, J. Gerkrath (2018) *Member States' Constitutions and EU Integration Country report on Luxembourg*. On the jurisprudence of the Constitutional Court in general, see; J. Gerkrath (ed.) (2008), *La jurisprudence de la Cour Constitutionnelle du Luxembourg 1997 – 2007*.

³¹² <<http://legilux.public.lu/eli/etat/leg/loi/2006/11/29/n1/jo>>

³¹³ Tania Hoffmann, "Country Report Non-discrimination Luxembourg, 2016", prepared for the European Commission, Directorate-General for Justice and Consumers (hereinafter; Hoffmann, Country Report 2016) <https://ec.europa.eu/info/sites/info/files/2016-lu-country_report_nd_final_en.pdf>

³¹⁴ <<http://legilux.public.lu/eli/etat/leg/memorial/2008/70>>

³¹⁵ <<http://mega.public.lu/fr/travail/programme-actions-positives/index.html>>

³¹⁶ <<http://www.chartediversite.lu/en/diversity-charter-letzebuerg>>

³¹⁷ According to Statec, the total number of foreigners living in Luxembourg, as of January 2018, is 288, 234, which represents 47.9% of the total population.

³¹⁸ Cour constitutionnelle, 13 November 1998, No. 2/98, quoted in J Gerkrath, 'The Constitution of Luxembourg in the Context of EU and International Law as "Higher Law"' in Albi (eds) *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law* (Springer 2018), 221-267.

³¹⁹ M Bell and L Waddington, 'The Employment Equality Directive and supporting people with psychosocial disabilities in the workplace A legal analysis of the situation in the EU Member States' (European Commission 2016), 56 <<https://pdfs.semanticscholar.org/709c/e191dc4236d6dad49894aded969dcf0f50cf.pdf>>

³²⁰ *Ibid*

³²¹ Hoffmann, Country Report 2016, 26

³²² *Ibid*, 6-7

³²³ CET, *Rapport d'activités 2018*, 41

³²⁴ L'article L.241-11 du Code du travail reads: « L'employeur, ses préposés ou mandataires ou toute personne qui diffuse ou publie des offres d'emploi ou des annonces relatives à l'emploi non conformes au principe de l'égalité de traitement entre hommes et femmes et qui, malgré l'injonction écrite de l'Administration de l'emploi de s'y conformer, persistent dans le maintien de ces offres ou annonces, sont punissables d'une amende de 251 à 2000 euros. En cas de récidive, cette peine peut être portée au double du maximum. »

³²⁵ CET, *Rapport d'activités 2018*, 42.

³²⁶ *Ibid*

³²⁷ <<http://cet.lu>>

³²⁸ <http://cet.lu/wp-content/uploads/2019/06/CET_EN.pdf>

³²⁹ <<http://www.olai.public.lu/en/olai/index.html>>

³³⁰ Hoffmann, Country Report 2016

³³¹ <<https://www.csl.lu/fr/homepage>>

³³² <<http://discrimination.csl.lu/>>

³³³ Hoffmann, Country Report 2016, 9. See also CET, *Rapport d'activités 2018*, 39 <<http://cet.lu/wp-content/uploads/2019/05/Rapport-annuel-2018.pdf>>

³³⁴ CET, *Rapport d'activités 2018*, 38

³³⁵ Hoffmann, Country Report 2016

³³⁶ Hoffmann, Country Report 2016, 46.

³³⁷ <<http://cet.lu/wp-content/uploads/2019/05/Rapport-annuel-2018.pdf>>

³³⁸ Information in this section is based on a questionnaire completed by the staff of the CCDH (returned to the author on August 5, 2019), hereinafter "CCDH questionnaire".

³³⁹ See <<https://ccdh.public.lu/fr.html>>

³⁴⁰ See <https://ccdh.public.lu/dam-assets/fr/historique/loi_ccdh_memorial_2008.pdf>

³⁴¹ CCDH questionnaire.

³⁴² CCDH questionnaire.

343 <https://te.public.lu/fr/participations/etablissements_publics.html>
 344 <<https://odl.lu/en/about-us/>>
 345 <<https://odl.lu/en/about-us/ethics/>>
 346 <<http://www.oecd.org/trade/topics/export-credits/environmental-and-social-due-diligence/>>
 347 *Ibid*
 348 *Ibid*
 349 *Ibid*
 350 *Ibid*
 351 <<https://www.snci.lu/about-snci/>>
 352 <<https://odl.lu/en/about-us/ethics/#environmental-and-social-due-diligence?>
 353 GP 23, <https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf>
 354 <<http://legilux.public.lu/eli/etat/leg/loi/1998/09/08/n4/jo>>
 355 For further information, see; <https://www.mdforum.ch/en>
 356 <<https://icoca.ch/en/association>>
 357 <<https://www.voluntaryprinciples.org/>>
 358 For a complete list of legislation, see; <<https://marches.public.lu/fr/legislation/marches-publics.html>>
 359 < <http://legilux.public.lu/eli/etat/leg/loi/2018/04/08/a243/jo>>
 360 < <http://legilux.public.lu/eli/etat/leg/rgd/2018/04/08/a244/jo>>
 361 <<http://legilux.public.lu/eli/etat/leg/memorial/2013/214>>
 362 <<http://legilux.public.lu/eli/etat/leg/memorial/2014/50#page=2#page=2>>
 363 <<http://legilux.public.lu/eli/etat/leg/rmin/2018/07/31/a672/jo>>
 364 <<http://legilux.public.lu/eli/etat/leg/rmin/2018/04/20/a270/jo>>
 365 <<http://legilux.public.lu/eli/etat/leg/loi/2010/11/10/n1/jo>>
 366 <<http://legilux.public.lu/eli/etat/leg/memorial/2009/180>>
 367 <https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm>
 368 <<https://marches.public.lu/fr.html>>
 369 < <https://marches.public.lu/fr/acteurs/commission.html>>
 370 According to the Activity Report 2018 of the *Département des travaux publics* (2019), the Tender Commission met 10 times during the course of 2018 and issued 58
 opinions in total (55 in 2017) <[https://gouvernement.lu/dam-assets/fr/publications/rapport-activite/minist-mobilite-travaux-publics/departement-travaux-publics/2018-](https://gouvernement.lu/dam-assets/fr/publications/rapport-activite/minist-mobilite-travaux-publics/departement-travaux-publics/2018-rapport-activites-dtp.pdf)
 rapport-activites-dtp.pdf>, 89
 371 <https://luxdev.lu/files/documents/RAPANN_2018_UK_vF1.pdf>
 372 <<https://luxdev.lu/en/tenders/procurement#procurement>>

373 *Ibid*

374 <<https://environnement.public.lu/dam-assets/documents/developpement-durable/3eme-plan-du-developpement-durable.pdf>>, 28, 89

375 *Ibid*

376 <https://www.uless.lu/images/uless/news/74/docs/ULESS_Brochure_Clauses_sociales_dans_les_marches_publics_2016.pdf>

377 <<https://marches.public.lu/fr.html>>

378 GP 23, <https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf>

379 UNGP 7, Commentary

380 *Ibid*

381 <<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp>>

382 <<https://thearmstradetreaty.org/>>

383 Consultations, public officials, *supra* n 26

384 <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&lang=en#13>

385 Consultations, public officials, *supra* n 26

386 *Ibid*

387 <<https://maee.gouvernement.lu/en/actualites/articles/2019/Asselborn-support-ICC.html>>

388 Consultations, public officials, *supra* n 26

389 *Ibid*

390 *Ibid*

391 *Ibid*

392 NAP 2018-19, 17 (*emphasis added*)

393 NAP 2018-19, 29

394 Consultations, public officials, *supra* n 26

395 *Ibid*

396 Art. 14. L'étranger, même non résidant dans le Luxembourg, pourra être cité devant les tribunaux luxembourgeois, pour l'exécution des obligations par lui contractées dans le Luxembourg avec un Luxembourgeois; il pourra être traduit devant les tribunaux luxembourgeois, pour les obligations par lui contractées en pays étranger envers des Luxembourgeois. Art. 15. Un Luxembourgeois pourra être traduit devant un tribunal luxembourgeois, pour des obligations par lui contractées en pays étranger, même avec un étranger, <<http://legilux.public.lu/eli/etat/leg/code/civil/20190428>>, emphasis added.

397 <<http://legilux.public.lu/eli/etat/leg/loi/2010/03/03/n1/jo>>

398 <<http://legilux.public.lu/eli/etat/leg/code/penal/20170401>> Articles 34 to 43

399 On this topic, see, G. Ravarani, "Les Sanctions Administratives au Luxembourg" in *Les sanctions administratives en Belgique, au Luxembourg et aux Pays-Bas Analyse compare* (October 2011, Brussels), 37-38

⁴⁰⁰ < <http://legilux.public.lu/eli/etat/leg/tc/2003/11/18/n1/jo>>. Examples of recent administrative penalties imposed by the CSSF is available here, <<https://www.cssf.lu/en/supervision/banks/sanctions-and-administrative-measures/>>

⁴⁰¹ <<https://www.caa.lu/>>

⁴⁰² <<http://legilux.public.lu/eli/etat/leg/loi/1991/12/06/n2/jo>>

⁴⁰³ < <http://legilux.public.lu/eli/etat/leg/loi/2018/08/01/a686/jo>>

⁴⁰⁴ Commission Regulation 864/2007, art. 4, 2007 O.J. (L 199) 40. [hereinafter Rome II Regulation].

⁴⁰⁵ *Ibid*, Article 26

⁴⁰⁶ *Ibid*, Article 7

⁴⁰⁷ <<http://legilux.public.lu/eli/etat/leg/loi/1984/03/12/n1/jo>>

⁴⁰⁸ *Ibid*

⁴⁰⁹ <http://legilux.public.lu/eli/etat/leg/code/procedure_civile/20190101>

⁴¹⁰ <<http://mj.public.lu/>>

⁴¹¹ <<https://justice.public.lu/fr/aides-informations/assistance-sociale.html>>

⁴¹² <<http://legilux.public.lu/eli/etat/leg/tc/1997/09/12/n1/jo>>

⁴¹³ <<https://guichet.public.lu/en/citoyens/citoyennete/voies-recours-reglement-litiges.html>>

⁴¹⁴ However, the GDPR also has extra-territorial effect. An organization that it is not established within the EU will still be subject to the GDPR if it processes personal data of data subjects who are in the Union where the processing activities are related "to the offering of goods or services" (Article 3(2)(a)) (no payment is required) to such data subjects in the EU or "the monitoring of their behaviour" (Article 3(2)(b)) as far as their behaviour takes place within the EU.

⁴¹⁵ H.C.H. Hofmann, "The Right to an 'Effective Judicial Remedy' and the Changing Conditions of Implementing EU Law", Law Working Paper Series Paper number 2013-02 (University of Luxembourg, July 2013), citations omitted.

⁴¹⁶ Judgment of 17.12.2015, 36893C quoted in J. Gerkrath (2018) *Member States' Constitutions and EU Integration Country report on Luxembourg*.

⁴¹⁷ Council Regulation 44/2001, 2001 O.J. (L012), [hereinafter the Brussels I Regulation]

⁴¹⁸ While not expressly provided for in the Luxembourg Constitution, treaties have supremacy over all existing legislation, whether enacted prior or subsequent to a treaty ratified by Luxembourg. Constitution 2016, Art. 95ter, <<http://data.legilux.public.lu/file/eli-etat-leg-recueil-constitution-20161020-fr-pdf.pdf>>; and *Loi du 27 juillet 1997 portant organisation de la Cour constitutionnelle*, *Mémorial A-N° 58*, 13.08.1997, at p. 1724.

⁴¹⁹ Constitution of Luxembourg, *ibid*; and *Loi du 7 mars 1980 sur l'organisation judiciaire*, *Mémorial A- N° 12*, 14.03.1980, at p. 143, as amended.

⁴²⁰ Constitution of Luxembourg, *ibid*; Art. 95bis; and Luxembourg/*Loi du 7 novembre 1996 portant organisation des juridictions de l'ordre administrative*, *Mémorial A- No 79*, 19.11.1996, at p. 2262, as amended.

⁴²¹ <<http://legilux.public.lu/eli/etat/leg/loi/2012/06/07/n1/jo>>

⁴²² G Skinner, R McCorquodale, O De Schutter, *The Third Pillar: Access to Judicial Remedies for Human Rights Violations by Transnational Business*, December 2013

⁴²³ *Ibid*

⁴²⁴ *Ibid*

⁴²⁵ Case C-281/02, *Andrew Owusu v N.B. Jackson, trading as 'Villa Holidays Bal-Inn Villas' and Others* (14 December 2004) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62002CJ0281>> para 46.

⁴²⁶ Skinner, *ibid*

⁴²⁷ See, EU, *Training Manual for Judges and Prosecutors on Ensuring Women's Access to Justice* (2017)

⁴²⁸ <http://mj.public.lu/services_citoyens/assistance_judiciaire/prestations/index.html>

⁴²⁹ <http://mj.public.lu/services_citoyens/assistance_judiciaire/beneficiaires/index.html>

⁴³⁰ <<http://legilux.public.lu/eli/etat/leg/loi/1999/04/29/n11/jo>>, Articles 19(1) and 20>

⁴³¹ <http://mj.public.lu/services_citoyens/assistance_judiciaire/obtention/index.html>

⁴³² "[...] *un projet de loi pour introduire le recours collectif en droit luxembourgeois sera adopté rapidement*", 2018 Coalition Agreement, *supra* n 69, 142. See also the interview conducted with Paulette Lenert, Minister of Consumer Protection on 8 January 2019, available <<https://5minutes.rtl.lu/actu/a/a/1289393.html>>

⁴³³ <<http://legilux.public.lu/eli/etat/leg/loi/2006/11/28/n1/jo>>

⁴³⁴ <<http://legilux.public.lu/eli/etat/leg/loi/1885/02/18/n2/jo>>

⁴³⁵ <<http://legilux.public.lu/eli/etat/leg/rgd/1990/05/17/n2/jo>>

⁴³⁶ <<http://legilux.public.lu/eli/etat/leg/rgd/1999/04/14/n5/jo>>

⁴³⁷ <<http://legilux.public.lu/eli/etat/leg/loi/1998/09/08/n4/jo>>

⁴³⁸ <<http://legilux.public.lu/eli/etat/leg/memorial/2008/1922/highlight>>=>. For a list of various Grand-Ducal Regulations, see;

⁴³⁹ <<http://www.men.public.lu/fr/legislation/enfance-jeunesse/aide-enfance/reglements-grand-ducaux/index.html>>

⁴⁴⁰ <<https://justice.public.lu/fr/organisation-justice/juridictions-judiciaires/tribunaux-arondissement/tribunal-jeunesse.html>>

⁴⁴¹ <<http://www.men.public.lu/fr/aide-assistance/aide-enfance/index.html>>

⁴⁴² <<http://ork.lu/index.php/>>

⁴⁴³ <<https://www.fnr.lu/projects/jeuvenile-justice-and-children-rights-achievements-and-challenges-ahead/>>

⁴⁴⁴ <<https://cdc.gouvernement.lu/fr/service/attributions/point-contact-national-luxembourgeois.html>>

For a comprehensive overview of the mediation in Luxembourg, including historical overview, existing laws, regulations and the role of different institutional actors, see; J Kayser, *La médiation au Grand-Duché de Luxembourg Droit, Technique, Processus, Posture & Paysage Institutionnel* (Larcier 2019)

⁴⁴⁵ Decision of the Council on the OECD Guidelines for Multinational Enterprises [OECD/LEGAL/0307] (Council Decision on the Guidelines).

⁴⁴⁶ <<https://legalinstruments.oecd.org/public/doc/233/233.en.pdf>> I(4)

⁴⁴⁷ OECD, *Annual Report in the OECD Guidelines for Multinational Enterprises* (2018) (OECD Annual Report 2018), 35

⁴⁴⁸ *Ibid*

Luxembourg NCP, *Rules of Procedure for Handling Specific Instances* (Last update: 18.04.2018) (Rules of Procedure)

⁴⁴⁹ <<https://cdc.gouvernement.lu/fr/service/attributions/point-contact-national-luxembourgeois/Regles-de-procedure-pour-le-traitement-des-instances-specifiques.html>>

⁴⁵⁰ Consultation with the NCP, email dated 3 October 2019.

⁴⁵¹ *Ibid*

⁴⁵¹ Decision on the Guidelines, Procedural Guidance, I.

⁴⁵² Council Decision, Part I, para 1.

⁴⁵³ <<https://cdc.gouvernement.lu/fr/service/attributions/point-contact-national-luxembourggeois.html>>

⁴⁵⁴ *Ibid*

⁴⁵⁵ These include, the text of the OECD Guidelines, annual reports issued by the OECD for the implementation of the Guidelines, OECD's general NCP website, OECD Declaration on International Investment and Multinational Enterprises, and OECD Due Diligence Guidance for Responsible Business Conduct.

⁴⁵⁶ Consultations, NCP, *supra* n 449.

⁴⁵⁷ For example, see the initial assessment in *Open Secretsvv CALS / KBC – KBL* (28 June 2019), 2, which describes that the representatives of the complainants and the responding party met in person with the NCP to further comment and elaborate on their case. The NCP decided not to proceed with the further examination of this case (28 June 2019).

⁴⁵⁸ NCP Luxembourg, Rules of Procedure (emphasis added)

⁴⁵⁹ Note that, while normally, the existence of parallel domestic or international proceedings addressing similar issues is not a reason for an NCP to reject the complaint, in all of the following cases various NCPs rejected the cases on the grounds, *inter alia*, that parallel legal proceedings existed; *Transparency International Germany v 57 German companies*, NCP Germany (5 June 2017); *11.11.11 et al v Belgolaise*, NCP Belgium (24 November 2004); *CAVE v FoE Netherlands and Royal Dutch Shell*, NCP Netherlands (15 May 2006); *FIDH et al v CRCC-Tongguan Investment (Canada) Co., Ltd.*, NCP Canada (25 July 2013), Initial Assessment (26 November 2014).

⁴⁶⁰ *Friends of the Earth v Arcelor Mittal*, NCP Luxembourg (24 January 2011).

⁴⁶¹ OECD Annual Report (2011), 40. Norway NCP (*Framtiden i våre hender v Intex Resources* 26 January 2009) and UK NCP (*FoE v BP* (29 April 2003) are among the rare NCPs that have conducted country visits and fact finding missions.

⁴⁶² Consultation with CSOs, 20 March 2019

⁴⁶³ *Ibid*

⁴⁶⁴ *Ibid*

⁴⁶⁵ ECtHR, *Findlay v The United Kingdom*, Application No. 22107/93 (25 February 1997), 73

⁴⁶⁶ For a discussion of these concepts in adjudication, see; Diego M. Papayannis, *Independence, impartiality and neutrality in legal adjudication*, 28 Journal for Constitutional Theory and Philosophy of Law 2016, 33-52. Papayannis lists the institutional safeguards guaranteeing independence to include, among others, “the neutrality of the appointment procedure (i.e., an absence of political intervention), the stability of the position, autonomy from other branches of government, a reasonable sphere of immunity, and the inviolability of their salary”.

⁴⁶⁷ *Ibid*

⁴⁶⁸ So far, the NCP has handled 4 cases, with the fifth one pending initial assessment. Of these four cases, one was concluded with a mutual agreement of the parties (FoE and SDI v ArcelorMittal), another one, handled jointly by the French, Belgium and Luxembourg NCPs has been concluded with a final statement by the Belgium NCP, and is currently under monitoring status (CED Cameroun v Socapalm). The NCP dismissed one case after issuing an initial assessment (Open Secrets v CALS/KBC-KBL) and one case is suspended at the request of the complainants (according to the information obtained by the NCP) to allow for negotiations (IndustriAll Union v Ternium SA).

⁴⁶⁹ OECD Annual Report 2018, 39

⁴⁷⁰ *Ibid*

⁴⁷¹ Finland and Czech Republic are among the examples.

⁴⁷² To our knowledge the other NCPs who have accepted complaints against NGOs include; the UK NCP, *IDI & others v Bonsucro* (Initial Assessment 25 September 2019) and two instances at the Swiss NCP, *Survival International Charitable Trust v World Wide Fund for Nature International (WWF)* (20 December 2016); and *Building and Wood Workers' International (BWI) v Fédération Internationale de Football Association (FIFA)*, (28 May 2015). On the contrary, in *129 Roma in Kosovo v Norwegian Church Aid*, the Norwegian NCP found the complaint inadmissible on the grounds that it was not brought 'against an enterprise in the sense of the Guidelines', *129 Roma in Kosovo v Norwegian Church Aid*, NCP Norway (22 June 2011).

⁴⁷³ Consultations, NCP, *supra* n 449.

⁴⁷⁴ *Ibid*

⁴⁷⁵ Consultations, NCP, *supra* n 449.

⁴⁷⁶ OECD Annual Report 2018, 35.

⁴⁷⁷ Open Secrets and CALS, *Letter dated 11 April 2019* <https://www.opensecrets.org.za/site/wp-content/uploads/Letter-NCPs-CALS-OS_20190411.pdf>

⁴⁷⁸ Open letter to the NCP, 3

⁴⁷⁹ Luxembourg NCP, *Statement from Luxembourg's National Contact Point – 28 June 2019 - Initial assessment of the specific instance Open Secrets v CALS / KBC – KBL* <https://cdc.gouvernement.lu/content/dam/gouv_cdc/publications/Initial-assessment-of-the-specific-instance-Open-Secrets-%E2%80%93KBC-KBL.pdf> 3

[hereinafter "Open letter to the NCP"]

⁴⁸⁰ Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, para 40

⁴⁸¹ The NCP has inserted an exception to the three months rule: "if assessing the Specific Instance requires that the parties involved provide additional material, or ask for reasonable time to seek legal advice or scrutiny, this additional time shall be added to said 3 months for the Luxembourg NCP to proceed with the assessment", Luxembourg NCP, Rules of Procedure for Handling Specific Instances.

⁴⁸² OECD, *Action Plan to Strengthen National Contact Points for Responsible Business Conduct* (2019-2021)

⁴⁸³ <<http://legilux.public.lu/eli/etat/leg/loi/2012/02/24/n1/jo>>

⁴⁸⁴ For other sector specific mediation, see: Mediation in the context of electronic communications, utilities, postal services (Institut Luxembourgeois de Régulation (ILR); Mediation in the Insurance Sector <<https://www.aca.lu/fr/mediateur-assurance>>; Mediation in the Health sector

<<https://mediateursante.public.lu/fr.html>>. See, specific complaints handling mechanism by the Insurance supervisory authority (Commissariat aux assurances)

<<https://www.caa.lu/fr/consommateurs/resolution-extrajudiciaire-des-litiges>>; complaints handling in the travel sector (Commission Luxembourgeoise des Litiges de Voyages – CLLV).

For a list of alternative dispute resolution bodies in consumer affairs, see; <<https://gouvernement.lu/dam-assets/documents/actualites/2019/01-janvier/Liste-des-5-entites-qualifiees-au-25062018.pdf>>.

For a list of approved mediators, see; <http://mj.public.lu/professions/mediation_en_matiere_civile_commerciale/Liste_des_mediateurs_agrees.pdf>.

For a list of approved mediators in civil and commercial matters, see;

<<http://www.cmcc.lu/sites/default/files/Liste%20M%C3%A9diateurs%20actuelle%20au%2003.07.2019.pdf>>.

The European Consumer enter (CELuxembourg.lu) is the contact point of online dispute resolutions and assists citizens in preparing their file and contacting the competent dispute resolution body, see; <<https://cecluxembourg.lu/subjects/resolution-extrajudiciaire-des-litiges/odr/>>.

⁴⁸⁵ < <http://www.cmcc.lu/>>

⁴⁸⁶ Consultation with the CMCC, telephone interview on October 7, 2019.

⁴⁸⁷ *Ibid*

⁴⁸⁸ <https://www.cssf.lu/en/consumer/complaints/?fbclid=IwAR19PbjO9-jida1fcgl_XNMO9Qj04lb-aKaqNIIAgbHDOFk5s1xQ4ZZsGZQ>

⁴⁸⁹ Consultations, CMCC, *supra* n 486

⁴⁹⁰ “*L’assistance judiciaire pourra également être étendue au domaine de la médiation conventionnelle*”, 2018 Coalition Agreement, *supra* n 69, 20. See also, Kayser, *supra* n 444, for a detailed treatment of the references in the 2018 Coalition Agreement.

⁴⁹¹ 2018 Coalition Agreement, *ibid*, 19

⁴⁹² CSSF Regulation N° 16-07 relating to out-of-court complaint resolution, Art, 3, <https://www.cssf.lu/fileadmin/files/Lois_reglements/Legislation/RG_CSSF/RCSSF_No16-07eng.pdf>

⁴⁹³ CCDH Questionnaire, see notes in Section 16.

⁴⁹⁴ *Ibid*

⁴⁹⁵ <<https://www.ohchr.org/en/hrbodies/hrc/complaintprocedure/pages/hrccomplaintprocedureindex.aspx>>

⁴⁹⁶ The questions in this box are not part of the DIHR/ICAR template. They are general questions which were part of the survey questionnaire sent out to companies in Luxembourg that were consulted for this study in order to measure their approach to human rights and their awareness of the UNGPs.

⁴⁹⁷ See Annex II, question 13.

⁴⁹⁸ UNGP 15, *Commentary*

⁴⁹⁹ Note that a new understating of CSR has emerged in recent years which focuses on the corporate responsibility to understand and address business impact on society, to avoid adverse impact and maximize the benefits. This is also the CSR approach supported by the EU and potentially can encompass the corporate responsibility to respect as set out in the UNGPs. It is also the approach adopted in the NAP 201819 (at 27).

⁵⁰⁰ <https://www.ohchr.org/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf>

Business Survey on Corporate Responsibility to Respect Human Rights

March 2019

In June 2011, the United Nations Human Rights Council unanimously adopted the **United Nations Guiding Principles on Business and Human Rights** (UNGPs).¹ The UNGPs are a set of principles for States and companies to prevent, address and remedy human rights abuses committed in business operations. Three years after their adoption, the UN Human Rights Council called on all Member States to develop National Action Plans (NAPs) to support implementation of the UNGPs.² Similar calls followed at the European level.³ The G7, the G20, national human rights institutions and business associations have also encouraged states to develop NAPs on business and human rights.

The Government of Luxembourg has developed its **National Action Plan for the Implementation of the United Nation's Guiding Principles on Business and Human Rights (2018-2019)** and adopted it on June 22nd 2018.⁴ In its current NAP, the Government made several commitments under the heading of **"A Joint Work Program"** which among others include commissioning a study that analyzes **"the existing situation and mapping of the potential negative impacts of business activities on human rights on one hand, and of existing efforts to prevent these risks or to mitigate their consequences on the other..."** The need for such a study emerged and has been repeated regularly during the elaboration of the NAP by the multi-stakeholder working group established under the auspices of the Ministry of Foreign and European Affairs. In response, the Government has commissioned an expert to conduct a research and draft a report assessing the current level of implementation of the UNGPs in Luxembourg.

The primary objectives of the study are:

- (a) To identify and analyse gaps in legislation and policy that are material to business and human rights;
- (b) To identify business related human rights risks and impacts in Luxembourg, including practices that exists to address these impacts by businesses;
- (c) To provide key findings and recommendations that will inform the formulation and prioritization of actions for the upcoming revisions of the NAP.

It is against this background you are invited to participate in the present study. Your responses and feedback will be critical and invaluable not only to understand the current level of business and human rights uptake by companies in Luxembourg, but also feed into the future revisions of Luxembourgish NAP and assist the Government in formulating further relevant action points.

Survey questionnaire contains 25 questions which would take approximately 10 minutes to complete. Based on your answers, you will be asked to complete some additional questions in the annex (taking approximately additional 20 minutes to complete). You are free to omit any question.

¹ A/HRC/RES/17/4, 16 June 2011. The UN Guiding Principles on Business and Human Rights are available at https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

² Human Rights Council Res. 26/22, U.N. Doc. A/HRC/RES/26/22, at 2 (15 July 2014).

³ See, e.g., A renewed EU strategy 2011–2014 for Corporate Social Responsibility, COM (2011) 681 final (Oct. 25, 2011); Resolution on the Review of the EU's Human Rights Strategy, EUR. PARL. DOC. 2062 (INI) (2012); Council of Europe, Declaration of the Committee of Ministers on the UN Guiding Principles on Business and Human Rights (Apr. 16, 2014).

⁴ The Government of the Grand Duchy of Luxembourg, *Plan d'action national du Luxembourg sur la mise en œuvre des Principes directeurs des Nations Unies relatifs aux entreprises et aux droits de l'homme* (in original), available at: <https://maee.gouvernement.lu/dam-assets/directions/d1/PAN-LU-entreprises-et-DH-2018-2019-EN.pdf>.

Your participation is entirely voluntary. Information that you provide in the present questionnaire will remain confidential. All responses will be compiled and analysed as a group. Your input will only be used in combination with the responses of others participating in the questionnaire.

Please let us know whether you intend to participate in the study together with the contact details of a person in charge at the latest **22 March 2019**. Thereafter, you will have until **1 April 2019** to complete the questionnaire and return it to us. Kindly indicate **“Company Survey on Human Rights”** in the subject line in all your correspondences.

The study is being conducted by an independent expert on business and human rights from the University of Luxembourg, Dr. Basak Baglayan. Should you have any questions or concerns you can reach her through the contact details given below.

Basak Baglayan

biz.hrs.lu@gmail.com or basakbc@gmail.com

Mobile: + 352 621 286 052

Work: + 352 4666445606

Contact information and disclosure

- Please kindly include any relevant contact details in case we have follow-up questions.
- Please confirm whether we may include your organization’s name in the list of respondents.

Yes	
No	

Business Survey Questionnaire on Corporate Responsibility to Respect Human Rights

1. What is the main activity of your organization?

Infrastructure construction	
Retail and consumer goods	
Financial services	
Healthcare and pharmaceutical	
IT and technology	
Food and beverage	
Manufacturing	
Professional services	
Transportation, travel and tourism	
Extractives	
Other	

2. How many staff are employed in your organisation?

Number of staff	
1-9	
10-19	
20-49	
50-99	
100-249	
Over 250	

3. How far, geographically, do you operate?

Local (in Luxembourg only)	
EU	
International	

4. Is your organization registered/headquartered in Luxembourg?

Yes	
No	

5. Does your organization source materials from overseas?

Yes	No	Not sure

6. Does your organization supply materials/products/services overseas?

Yes	No	Not sure

7. Is your organization a subsidiary of another organization?

Yes	No	Not sure

8. What position do you hold within your organization?

Managing Director/CEO	
Board/Senior Management	
Human Resources	
Finance	
Marketing Communication	
Partner	
Other (specify)	

9. Is your organization familiar with the UN Guiding Principles on Business and Human Rights?

Yes	No	Not sure

10. Have you made use of any published guidance on the UN Guiding Principles on Business and Human Rights?

Yes	No	Not sure

11. Have you explored what human rights issues might be relevant for you and/or your suppliers?

Yes	No	Not sure

12. Please select whether you agree or disagree with each of the following statements

	Agree	Disagree	Not sure
Respecting human rights is a matter for governments, not for business			
Human rights are relevant to every business, regardless of their size			
Human rights are mainly a consideration for those operating overseas or with overseas suppliers			

13. From the following categories of human rights related issues, please indicate whether you think they maybe relevant to your business operations.

	Yes	No	Not sure
GROSS HUMAN RIGHTS ABUSES (e.g., freedom from torture, cruel and inhumane treatment, including slavery and genocide)			
ADEQUATE STANDARD OF LIVING (e.g., right to physical and mental health, right to food, right to housing)			
PRIVATE LIFE (e.g., right to privacy, right to family life)			
RIGHTS RELATED TO LAND (e.g., right to livelihood, right to own property, right to participate in cultural life)			
CIVIC LIFE AND PARTICIPATION (e.g., freedom of expression, right to political expression, right to peaceful assembly, right to information)			
ACCESS TO JUSTICE (e.g., right to effective remedy, right to fair trial before the law, right to due process)			
INTELLECTUAL, SPIRITUAL AND CULTURAL LIFE (e.g., freedom of thought and opinion, freedom of religion, right to participate in cultural life)			
RIGHTS RELATED TO THE ENVIRONMENT (e.g., right to clean water and sanitation, right to environmental health, right to clean air)			
EDUCATION AND ACCESS TO TECHNOLOGY (e.g., right to education, right to enjoyment of technological process, access to training and development)			
CONDITIONS OF WORK AND EMPLOYMENT (e.g., health and safety at work, discrimination, fair wage and equal pay, child labour, periods of rest and/or holiday leave)			
WORKPLACE DIALOGUE (e.g., freedom of association, collective bargaining, right to join a trade union)			

14. Has a client or supplier ever asked about your business practices related to any of the above issues?

Yes (can you tell us in which areas these questions were raised?)	No	Not Sure

15. Have you ever asked a client or a supplier about their business practices related to any of the above issues?

Yes (can you tell us in which areas these questions were raised?)	No	Not Sure

16. Have you ever received any internal complaint in relation to any of the above issues?

Yes (can you tell us in which areas these complaints were raised?)	No	Not Sure

17. Have you ever organized internal training sessions on human rights?

Yes (please specify)	No	Not sure

18. Concerning trainings on social issues in general and human rights in particular, what would you consider as the biggest challenge? Select all that apply.

Lack of resources (personnel, material, etc.)	
Lack of time to conduct effective training	
Lack of examples of good practice	
Lack of templates or public information to guide training efforts	
Other (please specify)	

19. Do you participate in initiatives relevant to corporate responsibility to respect human rights?

Yes (please specify)	No	Not sure

20. A human rights policy commitment refers to a statement in which the company sets out its commitment to meet its responsibility to respect human rights.

Does your organization currently have a human rights policy?

Yes	No	Not sure

(If your answer is 'yes', please also respond annexed Questions 26 - 31)

21. Does your organization carry out human rights impact assessments on services/products/supply chains?

Yes, routinely	Yes, occasionally	No, never

(If your answer is 'yes', please also respond annexed questions 31 - 37)

22. Does your organization have a procedure for hearing, processing and settling internal and external concerns/complaints?

Yes	No	Not sure

(If your answer is 'yes', please also respond annexed questions 38 - 46)

23. The following set of questions/statements concern human rights respect in complex environments, such as conflict-affected areas. Please reply them if you think they are applicable to your organization, otherwise move to the next question.

	Yes	No	Not Sure	N/A
Does your organization have policies and processes in place to ensure respect for human rights in complex environments, such as conflict-affected areas?				
Does your organization have systems and processes in place to deal with conflicting requirements between national laws and regulations and internationally recognized human rights?				
Does your organization treat risks of causing or contributing to gross human rights abuses as a matter of legal compliance issue?				
Does your organization consider both direct and indirect contributions to gross human rights abuses?				

Does your organization provide positive and/or negative incentives, adequate resources, guidance and training, and clear expectations to relevant employees, departments, and business relationship in relation to respecting human rights in complex environments? Are there clear lines and systems of accountability and responsibility in these contexts?				
Does your organization cooperate with and regularly consult with independent experts and relevant stakeholders when assessing and addressing human rights risks present in operating or sustaining business relationships in complex environments?				

24. What support or guidance would you think would be useful for your organization in order to help it respect human rights in its operations?

Information material	
Trainings	
Conferences, workshops	
Other (specify)	

25. From whom would you like to receive advice regarding business and human rights? Chose as many as applicable.

Government	
Sectoral professional Organizations	
Legal advisors	
Consultants	
Trade associations	
Other (specify)	

ANNEXED QUESTIONS

Questions 26 - 31 concern organization's human rights policy commitment.⁵ Please reply if your answer to question 20 is "yes".

26. Concerning your organization's human rights policy commitment:

	Yes	No	Not Sure
It is a 'stand alone' policy			
It is part of a policy in another area (for example, CSR or sustainability)			
It is publicly available (for example, published on your organization's website)			
It is communicated internally to all personnel			
It is supported by training for personnel in relevant business functions			
It is communicated to entities with which the company has contractual relationships			

⁵ For further guidance please refer to the UN Guiding Principles on Business and Human Rights (2011); Principles 11 to 16 and the accompanying commentaries.

It refers to internationally recognized human rights standards (for example, international human rights instruments, ILO's Declaration on Fundamental Principles and Rights at Work, the UNGPs, the OECD Guidelines for Multinational Enterprises), and/or other standards related to CSR			
It includes references to commitments that the company has made to relevant voluntary initiatives			
It is informed by insight and/or advice from internal sources of expertise, such as key functional staff			
It is informed by insight and/or advice from external sources of expertise, such as government, human rights practitioners, civil society circles and academia, etc.			
It includes system of accountability, including the consequences for breaches.			
It is reflected in organization's operational policies and procedures that govern wider business activities and relationships			
There is a process for updating the human rights policy commitment			

27. What areas are included in your human rights policy? Select all that apply.

Right to life, liberty, and security of person	
Forced, bonded or compulsory labour as well as child labour	
Right to privacy, right to family life	
Freedom of association, collective bargaining, right to join a trade union	
Non-discrimination	
Workplace health and safety	
Right to adequate standard of living	
Right to health	
Fair wage and equal pay	
Other (please specify)	

28. Who (i.e. what position) in your organization's governance has responsibility for the human rights policy, including ensuring compliance with it?

Managing Director/CEO	
Board/Senior Management	
Human Resource Manager	
Other (please specify)	

29. Do the board of directors and/or senior management receive incentives linked to the implementation of the human rights policy commitments?

Yes	No	Not sure

30. Please indicate the biggest challenges that you encounter as regards to human rights policy commitments, if any? Select all that apply.

Lack of material mean to formulate policy commitment	
Difficulties in communicating the policy to relevant external parties	
Difficulties in translating policy commitment into relevant operational procedures	

Other (please specify)	
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Questions 31 - 37 concern human rights impact assessments.⁶ Please reply them if your answer to question 21 is “yes”.

31. Does your organization...

	Yes	No	Not sure
...have processes in place to identify and assess any negative impact on individuals and communities which it may be involved? – These may include actual impacts (past and current) and potential impacts (those likely to occur in the future); impacts from the company's own activities whether directly or through contribution; as well as impacts which may be directly linked to company operations, products or services by its business relationships.			
...assess human rights impacts at key moments of operations and business developments such as entering new markets/relationships/expanding operations?			
...conduct human rights impact assessment at project level?			
...pay particular attention to human rights impacts affecting marginalized or at-risk groups, and on gender?			

32. Does your organization integrate the findings from impact assessment across relevant internal functions and processes, through:

	Yes	No	Not sure
... commitment from senior management and collaboration among relevant departments?			
... assigning resources, including financial and human resources, for integrating and acting upon findings?			
... (when necessary) considering the severity of human rights impacts and prioritizing actions accordingly?			

33. Your organization tracks the effectiveness of its responses to adverse human rights impacts...

	Yes	No	Not sure
... based on qualitative and quantitative indicators, including sector-specific and key performance indicators			
... by drawing on external feedback (in particular from affected rights-holders) and internal feedback (including from reporting processes and lessons learned from grievance mechanisms)			

⁶ For further guidance please refer to the UN Guiding Principles on Business and Human Rights (2011); Principles 17 to 21, 23 and 24 and the accompanying commentaries.

34. Does your organization publicly communicate how it addresses adverse human rights impacts?

Yes (please specify)	No	Not sure

35. Does your organization seek independent verification of its human rights reporting, for example, through third-party auditing?

Yes	No	Not sure

36. Does your organization take steps to ensure communications on human rights are accessible to its intended audiences, including to marginalized or at-risk groups, individuals or groups who may be impacted, and other relevant stakeholders, including investors?

Yes	No	Not sure

37. What do you think are the biggest challenges you face in understanding and addressing impacts, tracking responses and communicating them? Select all that apply.

We are unsure how far into the supply chain we need to go in understanding impacts	
It is a challenge to access credible information	
There is a lack of proven methodologies and frameworks to help assess impacts	
There is a lack of understanding as to how to engage with stakeholders where governments restrict dialogue	
It is difficult to manage situations where our leverage over business partners is limited	
We find it difficult to build leverage	
It is difficult to operate in situations where human rights are not part of local law or not applied in practice	
There is a lack of understanding of our responsibilities in situations where government institutions are lacking	
Others (please specify)	

Questions 38 - 46 concern procedures for hearing, processing and settling internal and external concerns/complaints.⁷ Please reply them if your answer to question 22 is “yes”.

38. The procedure you have in place for hearing, processing and settling internal and external concerns/complaints - is clear and easily accessible.

Yes	No	Not sure

⁷ For further guidance please refer to the UN Guiding Principles on Business and Human Rights (2011); Principles 22, 29, 39 and 31 and the accompanying commentaries.

39. Your organization provides for or cooperates in remediation in cases of adverse human rights impacts that you are linked to through your operations or products, or services by your business relationships, including through the use of leverage?

Yes	No	Not Sure	Not Applicable

40. Remediation mechanisms and processes that your organization has established or with which it cooperates with, comply with the effectiveness criteria laid out in UNGP 31 (i.e. they are legitimate, accessible, predictable, equitable, rights-compatible, a source of continuous learning, based on engagement and dialogue)?

Yes	No	Not Sure	Not Applicable

41. Remediation mechanisms and processes that your organization has established, or with which it cooperates, require that complainants sign legal waivers in order to receive reparations?

Yes	No	Not Sure	Not Applicable

42. Your organization consults with relevant stakeholders, in particular with affected rights-holders, during the process of designing, operating, monitoring, and improving the grievance mechanisms?

Yes	No	Not Sure	Not Applicable

43. Your organization takes measures against any form of retaliation against individuals and groups raising complaints?

Yes	No	Not Sure	Not Applicable

44. Your organization monitors the effectiveness of grievance mechanisms and processes, including by seeking internal and external feedback and through the use of both qualitative and quantitative indicators?

Yes	No	Not Sure	Not Applicable

45. Your organization provides internal guidance, training, incentives, and resources to relevant departments and employees, and establishes clear lines and systems of responsibility and accountability for remediation, including at senior management level?

Yes	No	Not Sure	Not Applicable

46. Has there been publicly reported cases against your organization for failing to provide adequate remediation for adverse human rights impacts that you have caused or contributed to, or for failing to cooperate in remediation through legitimate processes including judicial and state-based non-judicial mechanisms?

Yes	No	Not Sure

ISBN 978-2-9199537-1-4



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