

Standing and operational space of non-governmental organisations (NGOs) in contributing to respecting and promoting fundamental rights in EU Member States

Luxembourg 2017

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Table of contents

Table of contents	2
1 Regulatory environment for the work of non-governmental organisations	3
2 EU Member State government funding for non-governmental organisations – trends and developments 2011-2016	8
2.1 Overall amount of government funding.....	8
2.2 Distribution of government funding	9
2.3 Restrictions (or other changes) on NGO funding from other sources 9	
3 Access to the decision-making process for non-governmental organisations working on fundamental rights	9
4 Further information.....	14

1 Regulatory environment for the work of non-governmental organisations

Title of legislation and reference	Topic (please make reference to categories A-F see guidelines)	Effect on civil society (positive or negative) Please include reference to source of information
<p>1. Act of 9 May 2012 amending the amended Act of 1996 regarding development cooperation (<i>Loi du 9 mai 2012 modifiant la loi modifiée du 6 janvier 1996 sur la coopération au développement</i>), available at: http://legilux.public.lu/eli/etat/leg/loi/2012/05/09/n1/jo</p>	<p>C</p>	<p>This act had the effect of including explicitly the topics of 'human rights' and 'participative democracy' as transversal issues in the approach of Luxembourg non-governmental organisations (NGOs) working on development cooperation and humanitarian action. It also set up a government fund to develop NGOs and clarified the rules regarding who can obtain such a statute and benefit from government funding.¹</p>
<p>2. Act of 27 May 2016 regarding the reform of the legal publication system for companies and associations (<i>Loi du 27 mai 2016 modifiant, en vue de réformer le régime de publication légale relatif aux sociétés et associations, - la loi modifiée du 19 décembre 2002 concernant le registre de commerce et des sociétés ainsi que la comptabilité et les comptes annuels des entreprises; - la loi modifiée du 10 août</i></p>	<p>C</p>	<p>No significant impact on the day-to-day work of civil society actors, since the amendments are of an administrative nature and affect mainly certain formalities related to the registration and public disclosure (<i>publication</i>) of NGOs.²</p>

¹ Luxembourg, Phone interview with staff from the Circle of NGOs (*Cercle des ONG*), 28 February 2017.

² None of the persons interviewed mentioned this act as significantly impacting their work.

<p><i>1915 concernant les sociétés commerciales; - la loi modifiée du 21 avril 1928 sur les associations sans but lucratif; - l'arrêté grand-ducal du 24 mai 1935 complétant la législation relative au sursis de paiement, au concordat préventif de faillite par l'institution du régime de gestion contrôlée; - l'arrêté grand-ducal modifié du 17 septembre 1945 portant révision de la loi du 27 mars 1900 sur l'organisation des associations agricoles; - la loi modifiée du 24 mars 1989 sur la Banque et Caisse d'Epargne de l'Etat, Luxembourg; - la loi modifiée du 25 mars 1991 sur les groupements d'intérêt économique; - la loi modifiée du 25 mars 1991 portant diverses mesures d'application du règlement CEE n° 2137/85 du Conseil du 25 juillet 1985 relatif à l'institution d'un groupement européen d'intérêt économique (GEIE); - la loi modifiée du 17 juin 1992 relative aux comptes annuels et comptes consolidés des établissements de crédit; - la loi modifiée du 8 décembre 1994 relative aux comptes annuels et comptes consolidés des entreprises d'assurance et de réassurance de droit luxembourgeois</i></p>		
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<p><i>aux obligations en matière d'établissement et de publicité des documents comptables des succursales d'entreprises d'assurance de droit étranger; - la loi modifiée du 31 mai 1999 régissant la domiciliation des sociétés; - la loi modifiée du 22 mars 2004 relative à la titrisation; - la loi modifiée du 15 juin 2004 relative à la Société d'investissement en capital à risque (SICAR); - la loi modifiée du 13 juillet 2005 relative aux institutions de retraite professionnelle sous forme de SEPCAV et ASSEP; - la loi modifiée du 13 février 2007 relative aux fonds d'investissement spécialisés; - la loi modifiée du 10 novembre 2009 relative aux services de paiement; - la loi modifiée du 17 décembre 2010 concernant les organismes de placement collectif; - la loi du 7 décembre 2015 sur le secteur des assurances; - la loi du 18 décembre 2015 relative à la défaillance des établissements de crédit et de certaines entreprises d'investissement.), available at: http://legilux.public.lu/</i></p>		
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eli/etat/leg/loi/2016/05/27/n1/jo .		
<p>3. Bill 7082 amending the amended Act of 6 January 1996 regarding development cooperation (<i>Projet de loi modifiant la loi modifiée du 6 janvier 1996 sur la coopération au développement et l'action humanitaire</i>), available at: http://www.chd.lu/wps/PA_RoleDesAffaires/FTS/ByteServingServletImpl?path=/export/exped/sexpdata/Mag/0000/032/325.pdf.</p>	<p>C</p>	<p>This bill was supposed to enter into force on 1 January 2017 but has been delayed due to a motion introduced by the Council of State (<i>Conseil d'Etat</i>). The bill is part of the so-called Luxembourg 'package for the future' (<i>Zukunftspak</i>) and specifically regards the funding for NGO development, introducing certain limits to the co-financing of projects. The Luxembourg Circle of NGOs participated in government negotiations around the measures and managed to obtain a higher co-financing percentage for projects aimed at strengthening human rights.³</p>

In Luxembourg, there is no specific statute or legislation for NGOs.⁴ Nevertheless, the Ministry of Foreign Affairs has put in place an 'approval system' (*système d'agrément*) for NGOs working in development cooperation and humanitarian action.⁵ An NGO wishing to obtain such an approval can send an application to the Ministry of Foreign Affairs. In this context, NGOs are civil society associations characterised by a transnational activity and by a wish to participate in the democratic process.

In Luxembourg, most NGOs are, in terms of legal statute, so-called 'non-profit associations' (*associations sans but lucratif*, asbl).⁶ They must therefore comply with the law on non-profit associations as regards their functioning and the rules regarding the attribution of legal personality.

³ Luxembourg, Phone interview with staff from the Circle of NGOs (*Cercle des ONG*), 28 February 2017.

⁴ Luxembourg, Ministry of Foreign and European Affairs (*Ministère des Affaires Etrangères et Européennes*), Direction for development cooperation and humanitarian action (*Direction de la coopération au développement et de l'action humanitaire*), Volunteer Portal (*Portail du Bénévolat*), available at: <http://www.benevolat.public.lu/fr/informations-juridiques/types-association/organisation-non-gouvernementale/index.html>.

⁵ *Ibid.*

⁶ While most NGOs have the legal statute of an 'asbl', some are foundations. There are few legal differences between asbl and foundations. For instance, the activities of the NGO Caritas Luxembourg are divided into three legal structures, two of which are "asbl" and one of which is a foundation.

The legal framework for NGOs ('asbl')⁷ in Luxembourg was amended in 2016 with the abovementioned Act of 27 May 2016 regarding the reform of the legal publication system for companies and associations⁸ and its two Grand-Ducal Regulations. Previous laws in the matter dated from 1928 with the Act regarding non-profit organisations and public service establishments,⁹ and from 2002 with the Act regarding the register of commerce as well as of companies and the accounting and annual accounts of companies, and amending certain other legal provisions.¹⁰ Nevertheless, the new legislation does not change anything with regard to the actual standing or the operational space of NGOs, but introduces certain administrative changes in terms of the registration and publication of such entities in the electronic register.

All NGOs must be registered with the Luxembourg Trade and Companies Register (*Registre de Commerce et des Sociétés*, RCS).¹¹ They must be created with at least three founding members (who may be natural or legal persons, other associations or companies). The founding members do not have to pay any social capital.

The statutes of an NGO may be drafted freely by the parties, but they must contain clauses specifying in particular: the name and registered office of the association; its object; the full names and professions, domiciles and nationalities of the founding members; the conditions for entry and exit of members; the powers and methods of convening the general meetings; the methods of appointment and powers of staff members and directors; the maximum rate of contributions that may be paid by members, and; the rules relating to the amendment of the statutes.¹²

The registered office of the NGO must be in the territory of the Grand Duchy of Luxembourg. All documents (invoices, publications, etc.) issued by the NGO must contain the following information: the name of the association, the term 'Non-profit association' or 'asbl', the address of the NGO, and its RCS registration number.

⁷ Hereinafter, the text of the report will refer to 'NGOs' knowing that in legal terms such organisations are registered as "asbl" in Luxembourg.

⁸ Available at: <http://legilux.public.lu/eli/etat/leg/loi/2016/05/27/n1/jo>.

⁹ Luxembourg, Act regarding non-profit organisations and public service establishments, 28 April 1928 (*Loi du 28 avril 1928 sur les associations sans but lucrative et les établissements d'utilité publique*), available at: <http://legilux.public.lu/eli/etat/leg/loi/1928/04/21/n2/jo>.

¹⁰ Luxembourg, Act regarding the register of commerce as well as of companies and the accounting and annual accounts of companies, and amending certain other legal provisions, 19 December 2002 (*Loi du 19 décembre 2002 concernant le registre de commerce et des sociétés ainsi que la comptabilité et les comptes annuels des entreprises et modifiant certaines autres dispositions légales*), available at: <http://legilux.public.lu/eli/etat/leg/loi/2002/12/19/n1/jo>.

¹¹ Luxembourg, Trade and Companies Register (*Registre de Commerce et des Sociétés*), Brochure regarding non-profit organisations (*Brochure relative aux associations sans but lucratif*), available at: https://www.rcsl.lu/mjrscs/jsp/webapp/static/mjrscs/fr/mjrscs/pdf/asbl_brochure_generalites.pdf.

¹² Claire Beydon, Hance Law Avocats, « L'Association Sans But Lucratif Luxembourgeoise (ASBL) : Une Entité Légère et Flexible », 29 November 2015, available at: <http://www.hance-law.com/single-post/2016/1/5/LAssociation-Sans-But-Lucratif-Luxembourgeoise-ASBL-Une-Entit%C3%A9-L%C3%A9g%C3%A8re-et-Flexible>.

An NGO may obtain municipal subsidies by the city in which its head office is situated. Luxembourg NGOs may benefit from a complete fiscal exemption.¹³ They are not allowed to pursue any for-profit activities, such as industrial or commercial activities, and they may not distribute dividends or profits to its members.¹⁴

Persons or companies wishing to donate money to NGOs may benefit from certain tax advantages, including the deductibility of donations for special expenses under sections 109 and 112 of the Income Tax Act.¹⁵

By means of a request addressed to the Ministry of Justice, non-profit associations may request the recognition of 'public utility status' under Article 26-2 of the abovementioned amended Act of 21 April 1928 regarding non-profit organisations and public service establishments. The request is examined by the Ministry of Justice, who verifies whether the association meets the legal requirements. Furthermore, the Ministry of Justice seeks an opinion of the Ministry of Finance and the Council of State. Following these opinions, a Grand-Ducal decree is adopted.¹⁶

2 EU Member State government funding for non-governmental organisations – trends and developments 2011-2016

2.1 Overall amount of government funding

In Luxembourg, there are no statistics regarding government funding for NGOs working on human rights. This is because there is no specific statute for 'human rights NGOs', and non-profit associations in the country work on a broad set of issues. Human rights may or may not be part of the mandate and/or scope of activities of such associations, but there is no distinction in terms of funding or statute related to what activities an association carries out, as long as they fall under the legislative framework for non-profit associations or foundations.

The only distinction that exists in this field is for such non-profit associations that work in the field of development cooperation and humanitarian action, which can be recognised as 'development NGOs' (see above, Section 1). Again, however, there is no distinction between

¹³ *Ibid.*

¹⁴ Luxembourg Government, "Creating a non-profit association" (*Créer une association sans but lucratif*), available at: <http://www.guichet.public.lu/citoyens/fr/loisirs-benevolat/milieu-associatif/engagement-benevole/creation-asbl/>.

¹⁵ Luxembourg, Amended Income Tax Act of 1967, as consolidated on 1 January 2017, (*Texte coordonné de la Loi modifiée du 4 décembre 1967 concernant l'impôt sur le revenu*), available at: <http://www.impotsdirects.public.lu/content/dam/acd/fr/legislation/LIR/lir-texte-au-01012017.pdf>.

¹⁶ Luxembourg, Ministry of Justice (*Ministère de la Justice*), Asbl et Fondations, available at : http://www.mj.public.lu/services_citoyens/asbl_fondations/.

development NGOs that include human rights among their mandates and/or scope of activities and those that do not.

2.2 Distribution of government funding

Regarding the distribution of government funding, NGOs may apply for co-funding of projects and may also conclude agreements (*conventions*) with ministries for public funding of activities. There is no specific rule regarding the distribution of such funding, except the fact that “auto-promotion” is forbidden, i.e. an association may not use public money to increase its own visibility (for example to attract private donors), but to promote the cause for which it is working.

One of the interviewed NGOs stated that they do not ask for government funding for advocacy activities.¹⁷

One NGO representative mentioned that certain activities that focus on support and access to information for persons in vulnerable situations are currently being questioned by the government and funding is at risk.¹⁸

2.3 Restrictions (or other changes) on NGO funding from other sources

The interviewed NGOs did not mention any specific restrictions regarding funding from other sources.

3 Access to the decision-making process for non-governmental organisations working on fundamental rights

Title of legislation/policy	Reference	Short summary (max 500 characters)
1. Act of 28 July 2011 ratifying the Convention on the rights of persons with disabilities (<i>Loi du 28 juillet 2011 portant approbation de la Convention relative aux droits des personnes handicapées</i>)	http://legilux.public.lu/eli/etat/leg/loi/2011/07/28/n3/jo	Through this act, the government commits to implementing the Convention on the Rights of Persons with Disabilities (CRPD) and designs the national bodies that shall be responsible for its implementation and monitoring. While the act makes no direct reference to NGO participation, the CRPD does.

¹⁷ Luxembourg, Interview with NGO representatives.

¹⁸ *Ibid.*

No specific legislation could be identified regarding the access to the decision-making process for NGOs working on human rights.

In practice, there are a few examples of such participation. The general view of human rights NGOs active in Luxembourg appears to be that there is a rather open climate in terms of communication and information flow with and from the government,¹⁹ and that the possibility exists for at least a limited form of participation in relevant political fora. Nevertheless, although NGOs have the right to assist in certain platforms (as in be present) this cannot be considered a real and active form of participation. Indeed, all too often the viewpoints of NGOs are heard but not taken into account, or NGOs are present but they are not asked or invited to intervene substantively, and some NGOs expressed their concern with the lack of follow up after an exchange or consultation has taken place.²⁰

Inter-ministerial committees with civil society participation

The Luxembourg Ministry of Foreign and European Affairs (*Ministère des Affaires Étrangères et Européennes*) has set up inter-ministerial committees for development cooperation²¹ as well as for human rights.²² These committees foresee a limited participation also of human rights and development NGOs, which are invited to part of the meetings.

In the case of the inter-ministerial committee on development cooperation, it was established in 2012, and was at the beginning limited to government officials only. In 2016, the Circle of NGOs (*Cercle des ONG*) was identified as a civil society representative to be invited to the meetings, and in July 2016 the Circle was granted status as 'active observer' (*observateur actif*) to the inter-ministerial committee.²³ Theoretically, this means that representatives from the Circle are invited to all meetings of the Committee and are granted access to all documents prepared in view of and after such meetings. This promising practice is, however, not yet fully working at the operational level, and parts of the meetings are still held behind closed doors, and relevant documents are often shared too late to allow any meaningful civil society participation. Since 2016, a few other

¹⁹ Luxembourg, Interviews with NGO representatives, February and March 2017.

²⁰ Luxembourg, Interviews with NGO representatives, February 2017.

²¹ Luxembourg, Grand-ducal regulation of 7 August 2012 regarding the composition and functioning of the Inter-ministerial Committee for development cooperation (*Règlement grand-ducal du 7 août 2012 fixant la composition et le fonctionnement du comité interministériel pour la coopération au développement*), available at: <http://legilux.public.lu/eli/etat/leg/rgd/2012/08/07/n14/jo>. For further information on the Inter-ministerial Committee, see: <http://www.gouvernement.lu/4484210/comite-interministeriel>.

²² Luxembourg, Government Summary of work, Press release of 8 May 2015, (*Résumé des travaux du 8 mai 2015*), available at: <http://www.gouvernement.lu/4798390/08-conseil-gouvernement>.

²³ Luxembourg, Phone interview with staff from the Circle of NGOs (*Cercle des ONG*), 28 February 2017.

large NGOs, such as Caritas and ASTI²⁴, have also been invited to some of the meetings on a more occasional basis.²⁵

Regarding the inter-ministerial committee on human rights, it was set up in 2015 with the objective of improving the cooperation and collaboration between ministries with regard to human rights, as well as to strengthen the coherence between domestic and international human rights policy. The committee has the role of ensuring the respect and implementation of Luxembourg's human rights obligations and commitments, and a dialogue with national institutions and civil society organisations working on human rights is explicitly foreseen.²⁶

The committee has so far met five times, and the meetings have been set up in a dual format, whereby the first part of each meeting is reserved for government officials exclusively, and the second part is open to a number of NGOs working on issues related to human rights.²⁷

NGO representatives stated that the possibility of participating in the committee meetings represents a very positive step in the right direction, because it increases transparency, and enables a direct access and a more direct dialogue with government officials.²⁸ It also increases the information flow from government to civil society. Nevertheless, from a perspective of real and meaningful participation of human rights NGOs in the political decision-making process, there is still a considerable margin for improvement.²⁹

The Ministry of Foreign Affairs, which coordinates the inter-ministerial committee, agreed that there is room for improvement and is currently reflecting upon how to enhance the dialogue by, for instance: increasing the number of meetings, which are currently limited to 3–4 per year; changing the format of the meeting by opening it completely to civil society representatives; moving beyond the more formal conversation and finding ways to enable more substantive discussions on the core matters at stake.³⁰

In general, interviewed representatives from both the Ministry of Foreign Affairs and NGOs were positive toward this new form of exchange, and optimistic that it represents the beginning of a closer cooperation. There was a common understanding that the situation is evolving in the right direction, towards a more open space for NGOs to interact with public authorities.

²⁴ Luxembourg, Support association for immigrant workers (*Association de soutien aux travailleurs immigrés*, ASTI), www.asti.lu.

²⁵ Luxembourg, Inter-ministerial committee for development cooperation (*Comité interministériel pour la coopération au développement*), Meeting reports (*Procès verbaux des réunions*), available at: <https://www.gouvernement.lu/4484210/comite-interministeriel>.

²⁶ Luxembourg, Government Summary of work, Press release of 8 May 2015, (*Résumé des travaux du 8 mai 2015*), available at: <http://www.gouvernement.lu/4798390/08-conseil-gouvernement>.

²⁷ Luxembourg, Phone interview with a staff member of the Ministry of Foreign Affairs (*Ministère des Affaires Etrangères*), 2 March 2017.

²⁸ Luxembourg, Interviews with NGO representatives, February and March 2017.

²⁹ *Ibid.*

³⁰ Luxembourg, Phone interview with a staff member of the Ministry of Foreign Affairs (*Ministère des Affaires Etrangères*), 2 March 2017.

However, there were isolated incidents where the generally positive dialogue had been more complicated. One example was provided by Amnesty International Luxembourg with regard to their research report on Banks, Arms and Human Rights Violations, published in 2016.³¹ The report, which among its key findings showed that Luxembourg had taken little or no measures to expressly prohibit financial operations related to illegal arms or arms destined to illegal use, and suggested that the country had not fulfilled its international obligations with regard to the prevention of serious human rights violations, was met with strong criticism from the government and from some members of parliament, and it was very clear that the report was unwanted and represented a disturbing element.³²

The Convention on the Rights of Persons with Disabilities (CRPD)

Regarding the implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD), the government has formally mandated two institutions (not NGOs) to be in charge of the monitoring. No NGO has been given a similar mission, and NGOs are not formally invited to participate in the policy-making processes regarding the CRPD.

Nevertheless, several NGOs in Luxembourg work for the rights of persons with disabilities, and attempt to strengthen the awareness and implementation of the CRPD. In the framework of their work, government representatives from a number of ministries are regularly invited to participate in meetings and to enter into dialogues with these associations.³³ Such meetings are arranged by Info-Handicap, a Luxembourgish umbrella NGO which serves as a platform for rights of persons with disabilities and which has about 40 member associations. At an informal level, NGOs are also informed of government decisions through consultations with the Ministry of Family (*Ministère de la famille*).

NGOs working for the rights of persons with disabilities express disappointment with the fact that the government has not enabled a serious, regular and compulsory dialogue with civil society, and that the implementation of the CRPD is still taken too lightly.³⁴

Often, this is also due to the lack of persons with disabilities in Luxembourg that are able to represent the cause at a higher level, something which in turn is linked to a certain level of segregation persisting in the national education system, which means that few people attain the level of higher education.³⁵

³¹ Luxembourg, Amnesty International Luxembourg, "Banks, Arms and Human Rights Violations", 2016, available at:

http://www.amnesty.lu/uploads/media/Banks_arms_and_human_rights_violations_FINAL_03.pdf.

³² Luxembourg, Interview with a representative from Amnesty International Luxembourg.

³³ For instance a cycle of "Empowerment meetings" organised during 2015-2016 to draw the attention to certain specific issues of concern for persons with disabilities in the country. The issues were: Work and employment; Independent living; Communication.

³⁴ Luxembourg, Phone interview with a staff member of Info Handicap.

³⁵ Luxembourg, Email exchanges with staff from "Only with us" (*Nemme mat eis*), a national association for persons with disabilities.

When there is a dialogue, the claims that come from NGOs are received but not replied to, and there is no follow up afterwards. There is no participation of NGOs in the policy shaping and decision-making process. Indeed, associations working for the rights of persons with disabilities consider that consultation and meaningful participation of persons with disabilities and their associations are among the weakest points in terms of implementing the CRPD.³⁶

In 2011, the government launched a process to adopt a five-year action plan for the implementation of the CRPD.³⁷ Civil society was invited to participate in the process, and a lot of hopes and expectations were raised among the associations working for the rights of persons with disabilities. Nevertheless, the disappointment was significant when the same organisations realised that the government had chosen to leave out important parts of the CRPD, and that no real discussions had taken place. Furthermore, by the end of 2016, it was observed that the five-year plan had only been very partially implemented and that the government appeared not to have taken the issue seriously.³⁸

In 2017, Luxembourg will be up for review before the UN CRPD Committee for the first time. NGOs in Luxembourg are participating in this process and have sent an alternative report to the Committee to express their point of view. They are hopeful that the recommendations from the Committee will help bring a change. Some of their main claims are "calls for more coherence and coordination in implementation of the CRPD, improved communication and increased consultation in decision-making with the persons with disabilities and their representative organisations".³⁹

The Open Government Partnership

On 1 December 2016, Luxembourg's Prime Minister, sent a letter of intention for his country to adhere to the Open Government Partnership (OGP).⁴⁰ The government has committed to developing and submitting a National Action Plan (NAP) for an open government by June 2017. To elaborate the NAP, the Ministry of Foreign Affairs (department for human rights and international organisations) have taken the lead, and on 31 March 2017 it organised a first meeting with stakeholders from other ministries and institutions, as well as civil society representatives, to introduce the OGP and to have an initial brainstorming session.⁴¹ A 'steering committee' will be set up to continue to elaborate the NAP.

³⁶ Luxembourg, Alternative report on implementation of the United Nations Convention on the rights of persons with disabilities, 2016, p.13.

³⁷ Luxembourg, National Action Plan for the implementation of the UN CRPD (*Plan d'action du Gouvernement luxembourgeois pour la mise en oeuvre de la Convention des Nations Unies relative aux droits des personnes handicapées*), available at: <http://www.sante.public.lu/fr/publications/p/plan-action-lux-conv-nation-unies-pers-handicapees-fr-de/index.html>.

³⁸ Luxembourg, Alternative report on implementation of the United Nations Convention on the rights of persons with disabilities, 2016, p.13.

³⁹ Ibid., p.11.

⁴⁰ The letter is available at: <https://www.opengovpartnership.org/country/luxembourg>.

⁴¹ Luxembourg, Ministry of Foreign and European Affairs (*Ministère des Affaires Etrangères et Européennes*), "Informal brainstorming meeting on a National Action Plan (*Partenariat*

4 Further information

N/A