

An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory

Luxembourg

2023

Contractor: University of Luxembourg

Authors: Vasconcelos, J.; Vysotskaya, V.; Nienaber, B.

DISCLAIMER:

This document was commissioned under contract as background material for comparative analysis by the European Union Agency for Fundamental Rights (FRA) for the project 'Update on developments regarding civic space in the EU'. The information and views contained in the document do not necessarily reflect the views or the official position of the FRA. The document is made publicly available for transparency and information purposes only and does not constitute legal advice or legal opinion.

Table of Contents

1.	Civic space developments in 2022	3
1.1.	Extended protection for whistle-blowers in Luxembourg	3
1.2.	New public funding for human rights organisations	4
1.3.	Need for specific instruments to curb hate speech by judiciary and legislative bodies.....	5
2.	Promising practice in 2022	7
2.1.	Dialogue between the government and refugees CSOs	7
3.	Visa for human rights defenders.....	8
3.1.	Entry and stay for human rights defenders (HRDs) at risk.....	8

1. Civic space developments in 2022

1.1. Extended protection for whistle-blowers in Luxembourg

Area	Freedom of expression and information
Topic	Academic freedom, Artistic freedom, Media freedom; Access/right to information
Impact	Major

The Bill N° 7945 transposing Directive (EU) 2019/1937 of the European Parliament and of the Council, of 23 October 2019, on the protection of persons who report breaches of Union law was submitted to Parliament on 10 January 2022.¹ It is currently under review in the Committee on Justice.

The Bill N° 7945 extends the material scope of the protection afforded to whistle-blowers beyond the acts and policy areas covered by Directive (EU) 2019/1937. In light of Article 3(1) of the bill, the scope of such protection shall encompass all breaches of directly applicable national and EU law, insofar as the consequence is a disturbance of the public interest.²

Regarding the personal scope of the protection, the bill recalls, in line with Directive (EU) 2019/1937, that a very broad definition of beneficiaries should be adopted. It specifically

¹ Luxembourg, Bill N° 7945 transposing Directive (EU) 2019/1937 of the European Parliament and of the Council, of 23 October 2019, on the protection of persons who report breaches of Union law (*Projet de Loi N° 7945 portant transposition de la DIRECTIVE (UE) 2019/1937 DU PARLEMENT EUROPEEN ET DU CONSEIL du 23 octobre 2019 sur la protection des personnes qui signalent des violations du droit de l'Union*), 10 January 2022.

² Luxembourg, Bill N° 7945 transposing Directive (EU) 2019/1937 of the European Parliament and of the Council, of 23 October 2019, on the protection of persons who report breaches of Union law (*Projet de Loi N° 7945 portant transposition de la DIRECTIVE (UE) 2019/1937 DU PARLEMENT EUROPEEN ET DU CONSEIL du 23 octobre 2019 sur la protection des personnes qui signalent des violations du droit de l'Union*), Commentaries on Art. 1 and 3, 10 January 2022.

refers to journalists and to private legal entities for which whistle-blowers work as potential beneficiaries of protection.³

With particular relevance for civil society organisations, the bill also mentions among its objectives the protection of whistle-blowers from retaliation by a natural or legal person exercising some power of coercion in relation to their activity.⁴

1.2. New public funding for human rights organisations

Area	Financing framework
Topic	Funding landscape
Impact	Minor

In Luxembourg, the State budget for 2023, approved in December 2022, provides for new funding specifically dedicated to human rights organisations. In accordance with the Act of 23 December 2022 on the State revenue and expenditure budget for the year of 2023, the budget of the Ministry of Justice includes a budgetary appropriation of € 75,000 relating to participation in the costs of organisations working in the field of human rights in Luxembourg.⁵

³ Luxembourg, Bill N° 7945 transposing Directive (EU) 2019/1937 of the European Parliament and of the Council, of 23 October 2019, on the protection of persons who report breaches of Union law (*Projet de Loi N° 7945 portant transposition de la DIRECTIVE (UE) 2019/1937 DU PARLEMENT EUROPEEN ET DU CONSEIL du 23 octobre 2019 sur la protection des personnes qui signalent des violations du droit de l'Union*), Commentaries on Art. 2, 10 January 2022.

⁴ Luxembourg, Bill N° 7945 transposing Directive (EU) 2019/1937 of the European Parliament and of the Council, of 23 October 2019, on the protection of persons who report breaches of Union law (*Projet de Loi N° 7945 portant transposition de la DIRECTIVE (UE) 2019/1937 DU PARLEMENT EUROPEEN ET DU CONSEIL du 23 octobre 2019 sur la protection des personnes qui signalent des violations du droit de l'Union*), Commentaries on Art. 1, 10 January 2022.

⁵ Luxembourg, Act of 23 December 2022 on the State revenue and expenditure budget for the year 2023 (*Loi du 23 décembre 2022 concernant le budget des recettes et des dépenses de l'État pour l'exercice 2023*), p. 116.

The creation of this funding follows the publication of an open letter, in August 2022, calling for public support for human rights organisations in Luxembourg. The letter was signed by around thirty civil society organisations and individuals. It called on relevant Ministers to engage in a dialogue with the human rights sector to examine the possibilities of improving and perpetuating public support for organisations working in the field of human rights. A suggestion was made to increasingly include respect for human rights in their calls for proposals.⁶

The Act of 23 December 2022 on multi-annual financial programming for the period 2022-2026 foresees the extension of this budgetary appropriation of € 75,000 for the period comprised between 2024 and 2026.⁷

1.3. Need for specific instruments to curb hate speech by judiciary and legislative bodies

Area	Safe space and protection
Topic	Verbal attacks and harassment (online or offline by private parties of public entities)
Impact	Minor

As a part of the No Hate Speech Movement, in 2022, the Association for the Support of Immigrant Workers appealed to the national legislative and judiciary bodies with the

⁶ Luxembourg, Alter&Ego a.s.b.l. et al., 2022, Open letter for public support for human rights organisations in Luxembourg (*Lettre ouverte pour un soutien public des organisations oeuvrant pour les droits humains au Luxembourg*), 2 August 2022.

⁷ Luxembourg, Act of 23 December 2022 on multi-annual financial programming for the period 2022-2026 (*Loi du 23 décembre 2022 relative à la programmation financière pluriannuelle pour la période 2022-2026*), p. 102.

urge to implement specific policy instruments to stop hateful attacks on national CSOs.⁸ That followed the online hateful attack of the president of the Association for the Support of Immigrant Workers in 2021 on the Facebook page of a right party member of the Parliament and commentators to the post⁹.

Later, the court sentenced the accused. However, the Public Prosecutor's Office decided not to prosecute the hate speech perpetrators.

The topic of hate speech also became the subject of the parliamentary debate, and the deputies agreed to:

1. Adapt the code of ethics for parliamentarians.
2. Include provisions on hate speech.
3. Designate a parliamentary day against hate speech.

However, in 2022 the parliament has not implemented any of the intended tools to curb hate speech against CSOs.

⁸ Immigrant Workers Support Association (*Association de Soutien aux Travailleurs Immigrés*) (2022). Hate speech must be punished!) ([*Tout discours de haine doit être sanctionné!*](#)), press release 21 November 2022.

⁹ Immigrant Workers Support Association (*Association de Soutien aux Travailleurs Immigrés*) (2022). Hate speech must be punished!) ([*Tout discours de haine doit être sanctionné!*](#)), press release 21 November 2022.

2. Promising practice in 2022

2.1. Dialogue between the government and refugees CSOs

In late 2022 the Minister of Immigration and Asylum met with the representatives of the Luxembourgish refugee council society - *Lëtzebuenger Flüchtlingsrot (LFR)*.¹⁰ The exchange allowed for a common platform for national authorities and civil society organisations engaged in migration and protection. During the meeting, the participants discussed the most relevant topics in the area of the protection system, ranging from the increased number of asylum applicants, mainly from Syria, the reception and protection of unaccompanied minors, the extension of temporary protections status for Ukrainians up to March 2024, and critical views on Frontex.

As a result of this meeting, both parties agreed to organise an exchange on a more regular basis and meet next in 2023.

¹⁰ Luxembourg, Ministry of foreign and European affairs. Discussion between Jean Asselborn and Luxembourgish refugee council (*Entrevue entre Jean Asselborn et le Collectif réfugiés*), Press release 12 November 2022.

3. Visa for human rights defenders

3.1. Entry and stay for human rights defenders (HRDs) at risk

Dedicated visa scheme for HRDs at risk available in your country	No
Other type of visa or alternative legal entitlement or derogation clause applied to HRDs	No

In the framework of the Open Government Partnership¹¹, to which Luxembourg adhered in December 2016, the Luxembourgish Government published a national action plan for the period comprised between 2019-2021.¹² The plan was facilitated by the Ministry of Foreign and European Affairs (*Ministère des Affaires étrangères et européennes*) and involved contributions of representatives from different ministries and administrations, as well as from civil society, academia, and the media.¹³

The national action plan foresees six overarching commitments aimed at furthering the application of the open government principles. Among these, commitment number six consists of establishing a support program for human rights defenders.¹⁴ The objectives

¹¹ The Open Government Partnership (OGP) was created in 2011 and includes 76 countries and 106 local governments. It aims to promote transparent, participatory, inclusive and accountable governance.

¹² Luxembourg, Government of the Grand Duchy of Luxembourg (2019), Open Government Partnership - National Action Plan of Luxembourg for 2019-2021 (*Partenariat pour un Gouvernement Ouvert - Plan d'action national du Luxembourg 2019-2021*), July 2019.

¹³ Luxembourg, Government of the Grand Duchy of Luxembourg (2019), Open Government Partnership - National Action Plan of Luxembourg for 2019-2021 (*Partenariat pour un Gouvernement Ouvert - Plan d'action national du Luxembourg 2019-2021*), July 2019, p. 11.

¹⁴ Luxembourg, Government of the Grand Duchy of Luxembourg (2019), Open Government Partnership - National Action Plan of Luxembourg for 2019-2021 (*Partenariat pour un Gouvernement Ouvert - Plan d'action national du Luxembourg 2019-2021*), July 2019, pp. 13 and 32-34.

under this commitment include the establishment of a procedure for hosting human rights defenders for rest periods of 6 to 12 months, in particular via the ProtectDefenders.eu platform.¹⁵ According to the plan, the deadline for developing reception modalities for human rights defenders was December 2019.¹⁶

In the framework of its Independent Reporting Mechanism¹⁷, the Open Government Partnership published a Transitional Results Report on Luxembourg for the period comprised between 2019-2021, in July 2022.¹⁸ The report highlights that a constitutive meeting of the integrated national platform for human rights defenders was held in December 2019¹⁹, during which the reception of defenders in Luxembourg was discussed.²⁰ However, according to the same report, there was no indication about a possible involvement of Luxembourg in the activities of the ProtectDefenders.eu platform or any other measures in relation with reception modalities for human rights defenders.²¹

¹⁵ Luxembourg, Government of the Grand Duchy of Luxembourg (2019), Open Government Partnership - National Action Plan of Luxembourg for 2019-2021 (*Partenariat pour un Gouvernement Ouvert - Plan d'action national du Luxembourg 2019-2021*), July 2019, p. 32.

¹⁶ Luxembourg, Government of the Grand Duchy of Luxembourg (2019), Open Government Partnership - National Action Plan of Luxembourg for 2019-2021 (*Partenariat pour un Gouvernement Ouvert - Plan d'action national du Luxembourg 2019-2021*), July 2019, p. 33.

¹⁷ The Independent Reporting Mechanism provides independent, evidence-based, and objective reporting to hold Open Government Partnership participating countries accountable and support their open government efforts. This is done through reports, services and timely recommendations during key moments in the action plan cycle. For more information, see <https://www.opengovpartnership.org/glossary/independent-reporting-mechanism-irm/>.

¹⁸ Open Government Partnership (2022), Luxembourg Transitional Results Report 2019-2021, 5 July 2022.

¹⁹ Open Government Partnership (2022), Luxembourg Transitional Results Report 2019-2021, 5 July 2022, p. 9.

²⁰ Luxembourg, Government of the Grand Duchy of Luxembourg (2019), OGP NAP 2019-2021 commitment #6 (Platform to support civil society and human rights defenders) - First working group meeting of 03.12.2019 (*OGP PAN 2019-2021 engagement #6 (Plateforme d'appui à la société civile et aux défenseur-e-s des droits humains) - Première réunion du groupe de travail du 03.12.2019*), 03.12.2019.

²¹ Open Government Partnership (2022), Luxembourg Transitional Results Report 2019-2021, 5 July 2022, p. 10.

Since the publication of the Transitional Results Report, the Government of the Grand Duchy of Luxembourg has taken the decision to withdraw from the Open Government Partnership. The withdrawal came into effect on the 1st of January 2023 ²².

²² Luxembourg, Government of the Grand Duchy of Luxembourg (2022), Letter of Withdrawal from the Open Government Partnership, 8 December 2022.