



UNODC

United Nations Office on Drugs and Crime

Country Review Report of Luxembourg

Review by Switzerland and Austria of the implementation by
Luxembourg of articles 15 – 42 of Chapter III.
“Criminalization and law enforcement” and articles 44 – 50 of
Chapter IV. “International cooperation” of the United Nations
Convention against Corruption for the review cycle 2010 -
2015

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by the Grand Duchy of Luxembourg (hereinafter 'Luxembourg') of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Luxembourg, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Austria, Switzerland and Luxembourg, by means of telephone conferences and e-mail exchanges and involving Ms. Martina Koger, Mr. Martin Krämer and Mr. Stefan Benner from Austria, Ms. Christine Magnin and Mr. Claudio Mascotto from Switzerland and Mr. Laurent Thyges from Luxembourg.
6. A country visit, agreed to by Luxembourg, was conducted from 17 to 19 September 2013. During the on-site visit, meetings were held with representatives from the Ministry of Justice, the prosecution service and the Financial Intelligence Unit (FIU). The review team also met with civil society organizations, including the national chapter of Transparency International, the chief of compliance of Arcelor Mittal and the media.

III. Executive summary

1. Introduction

1.1. Overview of the legal and institutional framework of Luxembourg in the context of implementation of the United Nations Convention against Corruption

Luxembourg signed the United Nations Convention against Corruption (UNCAC) during the High-level Political Conference in Mérida (Mexico) on 10 December 2003. The Convention was ratified by an Act adopted by the national Parliament on 10 July 2007 and signed by the Grand Duke on 1

August 2007. Luxembourg deposited its instrument of ratification with the Secretary-General of the United Nations on 6 November 2007.

Luxembourg is a member of the EU, the OECD, the Council of Europe's Group of States against Corruption (GRECO), MONEYVAL and FATF.

According to a long established jurisprudence of Luxembourg's Supreme Courts (*Cour de cassation*, *Cour constitutionnelle* and *Cour administrative*, generally accepted rules of international law and international conventions, once they have been ratified by an act of Parliament 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. Accordingly, the UNCAC has become an integral part of Luxembourg's domestic law.

The most relevant implementation legislation is found in the Criminal Code (Code Pénal, 'CP'), the Criminal Procedure Code (Code d'Instruction Criminelle, 'CIC') and in special laws.

2. Chapter III: Criminalization and Law Enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18, 21)

The provisions on active and passive bribery are contained in arts. 246, 247, 249 and 250 CP.

The law does not contain a definition of "public official". Nevertheless, the law and an explanatory note refer to a "depository or law enforcement agent, or a person in charge of a public service mission or vested with a public election mandate" (arts. 246, 247, 249 CP). With regard to agents of public companies and foreign officials, the same concepts and definitions apply as for national officials.

Unilateral corruption through the simple offering or giving of a bribe has been introduced into the CP by the Law of 15 January 2001. There is no longer a requirement of a "corruption pact". Concerning the concept of "undue advantage", the law in force does not allow any exemptions for facilitation payments. The legal texts do not distinguish whether the official acts in violation of his duties or not.

Trading in influence is criminalized in arts. 246 to 249 CP. However, it is only criminalized to the extent that one intends to "obtain from an authority or a public administration any distinction, employment, public tender or any other favourable decision". On the other hand, the offence is completed even if it does not achieve the desired result.

Art. 21 UNCAC is implemented through art. 310-1 CP. Luxembourg law goes beyond the requirements of the Convention in that it applies equally outside the context of business activities. However, the national legislator has retained the formula "without the knowledge and authorization".

Money-laundering, concealment (arts. 23, 24)

Luxembourg has criminalized money-laundering through the provisions in arts. 506-1 to 506-8 CP. While Luxembourg has opted for a list of predicate offences, the last indent of art. 506-1(1) CP means that, due to the low minimum penalty of 6 months imprisonment, in practice Luxembourg almost has an all-crimes approach to money laundering. In particular, all corruption offences are specifically covered by a separate indent.

Attempt, preparation and conspiracy to commit money-laundering, as well as complicity are covered by arts. 506-1(4), 506-4, 506-5 and 506-6 CP, as

well as through the general provisions in arts. 66 and 67 CP (authors and accomplices of crimes). Art. 506-4 CP explicitly provides for the criminalization of self-laundering.

Concealment is covered by the provisions in arts. 505 and 506 CP.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20, 22)

The domestic provisions which correspond to art. 17 UNCAC are art. 240 CP (embezzlement) and art. 491 (breach of trust). Art. 171-1 of the Corporations Act criminalizes the embezzlement of property in the private sector in a broad manner, also penalizing the exercise of powers contrary to the interests of the company. On the other hand, only managers, *de jure* or *de facto*, may be perpetrators of the offence.

Luxembourg has implemented art. 19 UNCAC through arts. 240, 243, 244 and 245 CP.

Luxembourg's National Anti-Corruption Committee (COPRECO) discussed the possibility of criminalizing illicit enrichment (Art. 20 UNCAC) but decided not to recommend this legal change to the government because this would in practice put the burden of proof on the suspect, which was considered to be incompatible with the fundamental legal principle of the presumption of innocence.

Obstruction of justice (art. 25)

The national authorities reported the adoption and implementation of art. 25(a) UNCAC through 140, 141, 223, 224, 251 to 253 and 282 CP.

Art. 25(b) UNCAC is implemented through arts. 140, 141, 251 to 253 and 275 et seq. CP.

Liability of legal persons (art. 26)

Luxembourg cited arts. 34 to 40 CP. Art. 26, paragraphs 1 and 2, UNCAC is implemented through art. 34 CP. The persons who can incur the liability of the legal person are the members of its boards or its *de jure* or *de facto* managers (art. 34 CP).

The reviewing experts noted the large scope *rationae materiae* and *personae* of the liability of legal persons which covers all crimes and offences and includes all legal persons, including those governed by public law (except for the State and the communes) and public enterprises. Moreover, corporate criminal liability is supplemented by administrative sanctions (art. 203 Loi modifiée du 10 août 1915 sur les sociétés commerciales).

According to art. 34(2) CP, the liability of legal persons is independent from the liability of the individual who commits the offence. Conversely, the Luxembourg courts have held that criminal liability of legal persons may be examined even when the organ or the representative may not have been effectively prosecuted and convicted of the offence.

Bearing in mind that the legislation on the criminal liability of legal persons was only enacted in 2010, the reviewing experts noted the absence of criminal sanctions for corruption-related offences imposed on legal persons to date.

Participation and attempt (art. 27)

Luxembourg has adopted and implemented art. 27(1) UNCAC through the provisions in arts. 66 to 69 CP. Attempt is governed by arts. 51 and 52 CP. Luxembourg pointed out that as far as corruption offences are concerned, there was little practical application for the general rules on attempt. Simple preparatory acts are not criminalized under Luxembourg's law.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30, 37)

The law distinguishes between different categories of offences (*crime, délit, contravention*) and the gravity of the offence can be taken into account due to the range of sentences for each offence. The level of sanctions for corruption offences is adequate.

The only public officials who enjoy a very limited immunity are the members of Parliament and the Grand Duke. Only the arrest of an MP during a parliamentary session requires prior approval by Parliament (Art. 68, 69 of the Constitution). However, Art. 116 of the Constitution vests Parliament with the discretionary power to pursue itself criminal proceedings against a member of the Government.

Luxembourg has a discretionary prosecution system and is not governed by the principle of mandatory prosecution. However, prosecution is the rule, particularly for offences punishable with prison sentences, like corruption offences.

A defendant who does not show up voluntarily at court proceedings can be arrested (art. 119 CIC). The regulation about parole can be found in arts. 116, 119 and 94 CIC, as well as arts. 619 et seq. CIC and art. 100 CP.

Art. 30(6) UNCAC is implemented through arts. 48 and 49 of the Civil Servants Act.

Luxembourg has established procedures for the disqualification of persons convicted of corruption offences from holding public office in arts. 7, 10, 11, 14 CP and arts. 48 and 49 of the Civil Servants Act.

Luxembourg can apply disciplinary and criminal sanctions simultaneously.

The legislation promotes the reintegration into society of persons convicted of offences. The reintegration into society of offenders is governed by arts. 644 to 658 et seq. CIC and the Law on Penitentiary Administration. Moreover, there is the Law on the execution of penalties.

While in terrorism, organized crime and drug trafficking cases there is a possibility for granting crown witnesses immunity, this possibility does not exist in corruption cases. However, in such cases, the cooperation of the offender can be taken into account to mitigate the punishment.

Protection of witnesses and reporting persons (arts. 32, 33)

The non-disclosure of the identity of a witness is possible in the very special case of covert investigation.

Luxembourg further cooperates with other States in the field of witness protection. Given the small size of the country, there are no formal witness protection programmes in Luxembourg.

The protection of reporting persons has been implemented through the Act of 13 February 2011 on whistleblower protection. The Labour Act lays down a reversal of the burden of proof for cases of retaliatory dismissal in art. L.271-2. Civil servants are not only protected from reprisals but are actually obliged to report instances of corruption. Transparency International (TI)

Luxembourg has established a hotline for whistleblowers which is financed by the State.

Freezing, seizing and confiscation; bank secrecy (arts. 31, 40)

The domestic legal framework on freezing, seizing and confiscation can be found in arts. 7, 14, 19, 21, 31, 32, 32-1 CP. These chapters cover not only proceeds of crime, but also instrumentalities used, or intended to be used, in the commission of a crime.

Luxembourg has not established an asset management agency to specifically dispose of frozen, seized or confiscated property. The administration of frozen or seized property is handled by the State. In cases related to drug trafficking, money laundering or financing of terrorism, the property is transferred by the State to the Asset Forfeiture Fund (*Fonds de lutte contre certaines formes de criminalité*).

Proceeds of crime that have been transformed or converted, in part or in full, into other property, is liable to freezing and confiscation.

Confiscation can also comprise banking documentation if it was considered an instrument of the offence. Otherwise, if it was considered evidence, it would form part of the case file and would be destroyed or given back to its legitimate owner at the closing of the case (arts. 31-35, 65, 66, 66-1 to 66-5, 67, 67-1 CIC). Luxembourg does not have a central register of bank accounts. Following the introduction of arts. 66-4 and 66-5 CIC, the investigating judge may order a credit institution to provide information or documents concerning bank accounts or banking transactions through a simplified procedure. According to this procedure, the order may be served to the credit institution concerned by way of a notification made electronically. The credit institution notified by the order shall communicate the information or documents requested electronically to the investigating judge within the time period indicated in the order. Non-compliance with such an order is punishable by a fine of 1 250 to 125 000 euros (article 66-5 (3) CIC). Moreover, banks cooperate with the FIU and are criminally liable for Know-Your-Customer statements.

In accordance with article 31 (8) of the Convention Luxembourg has considered the possibility of requiring that an offender demonstrates the lawful origin of alleged proceeds of crime or other property liable to confiscation but decided not to do so because such a requirement was considered to be inconsistent with the fundamental legal principle of the presumption of innocence. However, the principle of the free assessment of the evidence equally applies to the lawful or illegal origin of alleged proceeds of crime.

The rights of bona fide third parties are protected under arts. 31(4), 32-1(4) CP.

Statute of limitations; criminal record (arts. 29, 41)

The rules about the statute of limitations are regulated in arts. 91 to 99 CP and arts. 635 to 643 CIC. The prescription period for the prosecution of crimes is 10 years, and 5 years in the case of misdemeanors (art. 637 and 638 CIC). Prescription of corruption cases generally commences the moment in which the acts are committed. Prescription is interrupted each time evidence is taken or proceedings are brought. The issuing of an arrest warrant would restart the clock.

In the determination of the punishment the court has the possibility to take into consideration any previous, including foreign, conviction (art. 7-5 CIC).

Jurisdiction (art. 42)

The rules about jurisdiction in criminal cases are regulated in the CIC. Luxembourg has implemented the territoriality principle and both the active and passive personality principle for establishing jurisdiction. Luxembourg courts have jurisdiction over crimes committed by its nationals outside its territory without a requirement for dual criminality (art. 5(1) CIC). For misdemeanours, dual criminality is required.

The simple fact of keeping money stemming from certain predicate offences in an account in Luxembourg would constitute money laundering and thus establish Luxembourg's jurisdiction over the case.

Luxembourg can establish its jurisdiction over the offences established in accordance with the Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals (art. 5-1 CIC).

Consequences of acts of corruption; compensation for damage (arts. 34, 35)

Under Luxembourg law, corruption does not make a contract void *ipso iure*, only voidable. In private law proceedings, a contract can be rescinded or a concession revoked for reasons of fraud. Moreover, public procurement law contains specific administrative sanctions for corruption offences. A criminal record for natural and legal persons exists.

Compensation for damage is available and can be claimed under arts. 56 to 62 CIC by the civil party in criminal proceedings.

Specialized authorities and inter-agency coordination (arts. 36, 38, 39)

Luxembourg does not have a specialized anti-corruption body. Rather, the fight against corruption is the task of the criminal police and the prosecution service. Within the Luxembourg police as well as within the Prosecutor's office, a certain number of people are specialised in combating corruption (i.e. by special training) and are responsible for corruption cases. Prosecutors and Judges have the same status under Luxembourg law, ensuring their independence. The police are administratively independent. The *police judiciaire* acts under the supervision of the prosecutor general, but under the sole orders of the investigating magistrate if acting in a specific file.

Luxembourg has a judicial type FIU which is not limited in its investigations by the facts contained in a suspicious transaction report. The FIU is staffed by prosecutors who have powers similar to those of an investigating judge.

Luxembourg has established a horizontal committee for the prevention of corruption (the 'COPRECO'). COPRECO can invite representatives from the private sector and civil society.

The 2008 Act on Cooperation contains an obligation for spontaneous information sharing between national authorities. Moreover, civil servants are obliged to report corruption offences (article 23 CIC). The public authorities are regularly organising workshops and conferences on the subject of corruption with the private sector. Luxembourg is granting financial support to TI to run an anti-corruption hotline where persons can report suspicious acts linked to corruption.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

- (Art. 21) Luxembourg law goes beyond the requirements of the Convention in that it applies equally outside the context of business activities;
- (Art. 22) The broad scope of application of the provision criminalizing embezzlement in the private sector;
- (Art. 30) The granting of immunities to members of parliament only, thus strictly limiting the number of officials enjoying this privilege;
- (Art. 33) The specific protection against reprisals in the Labour Act introduced by the Whistleblower Protection Act;
- (Art. 36) The far-reaching powers of its FIU and the independent status of the prosecutors which is akin to that of judges;
- (Art. 42) The absence of the requirement of double criminality for the establishment of criminal jurisdiction over extra-territorial offences other than misdemeanours committed by nationals of Luxembourg.

2.3. Challenges and recommendations

While noting Luxembourg's advanced anti-corruption legal system, the reviewers identified some challenges in implementation and/or grounds for further improvement and made the following remarks to be taken into account for action or consideration by the competent national authorities (depending on the mandatory or optional nature of the relevant UNCAC requirements). Moreover, they noted, as a general observation, that more statistics, examples and case law in many areas could have better demonstrated the implementation of the Convention in practice.

- (Art. 18) Bearing in mind the optional nature of the provision, the reviewing experts recommend that Luxembourg consider monitoring the jurisprudence pertaining to trading in influence in order to establish if the law is comprehensive enough to cover any "undue advantage";
- (Art. 20) Bearing in mind the decision not to criminalise illicit enrichment, the reviewing experts recommend strengthening existing asset declaration systems and introducing such systems for high-ranking officials;
- (Art. 26) The reviewing experts recommend that Luxembourg consider amending the existing legislation so that the level of authority of the person whose conduct triggers the liability of the legal person is flexible and reflects the wide variety of decision-making systems in legal persons. Moreover, Luxembourg is requested to monitor the jurisprudence on the criminal liability of legal persons;
- (Art. 30) The reviewing experts voiced concern about the rule in art. 116 of the Constitution, vesting Parliament with the discretionary power to pursue itself criminal proceedings against a member of Government. They recommend the adoption of a comprehensive system of prosecution of members of Government as foreseen in draft bill n°6030 on the revision of the Constitution;
- (Art. 32) Given the small size of the country the reviewing experts recommend applying the *ad hoc* protection arrangements for witnesses with neighbouring countries to cases of corruption.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45, 47)

The basic provisions on extradition are found in the Extradition Law of 20 June 2001. This law applies in the absence of bilateral or multilateral agreements and without prejudice to the applicability of the Framework Decision of 13 June 2002 on the European Arrest Warrant (EAW) and the surrender procedures between Member States of the European Union (EU). The Law of 17 March 2004 on the EAW and the surrender procedures between member States of the EU, as modified by Law of 3 August 2011, implements the abovementioned Framework Decision.

The threshold for the identification of extraditable offences is at least one year of imprisonment in the event of a request for extradition for prosecution purposes or a remainder of sentence of at least six months where extradition is requested for purposes of enforcement of such sentence. The requirement of dual criminality is applied, but with a focus on the underlying conduct. Therefore, a flexible approach is taken on the interpretation of this requirement. In addition, the law of 17 March 2004 stipulates that the EAW could be executed without dual criminality in cases of corruption and laundering of proceeds of crime, provided that the related offences are punishable in the issuing State by a penalty or a measure of deprivation of liberty of a maximum of at least 3 years.

Luxembourg may extradite even in the absence of an international treaty or convention, applying the domestic law. The Convention has direct force of law by virtue of the primacy of international treaties. Therefore, most of its extradition-related provisions are directly applicable without the need for implementing legislation. Almost all offences under the Convention have been covered by domestic legislation. Additionally, reciprocity could be used as a legal basis.

The formalities and information necessary in order to process a request for extradition are set forth in art. 10 of the EAW Law and art. 23 of the Extradition Law which provide simplified extradition proceedings.

In the framework of the EAW, the person sought may consent to his/her surrender without further formality. He/she may also waive the rule of specialty. Under the national law of extradition, the lifting of the specialty rule is possible on the advice of the Council Chamber of the Court of Appeal and subject to the consent of the person sought.

The Extradition Law provides for the provisional arrest of the person sought to ensure his/her presence in extradition proceedings.

The Extradition Law sets out the principle of *aut dedere, aut judicare*. It establishes nationality as one of the grounds for refusal of an extradition request. Extradition may also be refused if the person sought is a foreigner who resides permanently in the Luxembourg and if extradition is considered inappropriate due to his integration or to the community ties that he has built in Luxembourg, provided however that he may be prosecuted in Luxembourg for the facts for which the extradition is requested. Where a request for extradition is refused on the ground of nationality, the authorities forward the case to prosecution authorities without delay, the prosecution in lieu of extradition is also possible through the direct application of treaties. The Act of 27 October 2010 has completed the Act of 20 June 2001 by inserting art. 14-1, in application of the principle “aut dedere aut judicare”

Safeguards of due process guarantee all human rights of the person sought from the moment of his/her arrest and throughout the extradition process. Art. 6 of the European Convention of Human Rights is applied by the courts in domestic extradition proceedings.

Luxembourg does not refuse extradition for tax offences if the latter are related to other extraditable offences (accessory extradition). Although Art. 1(6) of the Extradition Act simply states that “[e]xtradition shall not be granted for offences on issues of taxes and levies, customs and foreign exchange”, extradition is only denied if the relevant request is based exclusively on tax offenses. The national authorities confirmed that fiscal offences do not pose difficulties in corruption-related investigations.

Under art. 1 of the Law on the Transfer of Sentenced Persons, if the Luxembourg national who has been the subject of a final conviction by a foreign jurisdiction and who evades the enforcement of that condemnation seeks refuge in Luxembourg, Luxembourg can take responsibility for the execution of this condemnation at the request of the State which has pronounced the final sentence. Luxembourg has not entered yet into a bilateral agreement on this matter. The transfer of sentenced persons is possible on the basis of the Convention on the transfer of sentenced person of 1983 and the Protocol of 1997. The Act of 25 April 2003 is applied in the absence of applicable multilateral or bilateral conventions.

Luxembourg has no specific law concerning the transfer of criminal proceedings. In practice, the transfer is possible and is decided upon by the competent judicial authorities of Luxembourg and the other country concerned.

Mutual legal assistance (art. 46)

The legal framework for mutual legal assistance (MLA) is set out in Law of 8 August 2000. In addition, Luxembourg has entered into a number of bilateral and multilateral agreements on MLA. The Convention could be used as legal basis. MLA can also be afforded on the basis of reciprocity.

The General Prosecutor’s Office has been designated as the central authority for MLA. Luxembourg does not require a formal decision of the requesting State, but the request must come from a competent judicial authority. The request must also relate to an investigation, prosecution or judicial proceedings in the requesting State.

MLA can be requested and obtained for all the purposes set forth in art. 46, paragraph 3, UNCAC. It may also be provided in relation to alleged offences involving legal persons, according to Law of 3 March 2010. The Convention can be used as the basis for spontaneous transmission of information outside the EU framework.

Although bank secrecy is not mentioned in the domestic legislation, the national authorities confirmed that bank secrecy does not pose difficulties in corruption-related investigations.

MLA may be refused if it is likely to endanger the national sovereignty or jeopardise security or pose a threat to public order or harm other essential national interests; and if the assistance is requested for political offences.

In addition, art. 3 of the Law of 8 August 2000, as amended by art. 10 of the Law of 27 October 2010 relating to the Fight against Money Laundering and Terrorist Financing, indicates that “[s]ubject to the provisions of conventions, a request for MLA is refused if it exclusively involves offences related to taxes, customs duties or currency exchange under Luxembourg law”.

Dual criminality is not required to grant MLA requests, unless coercive measures are involved, in which case judicial authorization is mandatory. Requests for assistance that do not involve coercion will be executed even in the absence of dual criminality, as long as the grounds for refusal set out in the MLA law do not apply.

The transfer of detainees for the purpose of assisting in investigations can be authorized through UNCAC, on the basis of existing MLA treaties or on a reciprocity basis.

The provisions of arts. 46(10) to (12) are directly applicable.

Requests sent via fax and email are generally accepted. Oral requests are refused but oral consultations are welcomed.

In principle the requests would be executed on the basis of national legislation to the extent that such execution does not contravene the national law.

Video conference hearings are commonly carried out by Luxembourg at the request of foreign judicial authorities. This form of assistance is carried out for the hearing of witnesses and experts but not of defendants.

In application of art. 13 of the MLA Act, information obtained through MLA may not be used in criminal or administrative proceedings other than that for which the assistance was granted (rule of specialty). Luxembourg ensures confidentiality of the facts and substance of the request if the requesting State so required.

Luxembourg does not refuse MLA if the relevant request also includes tax offences which are accessory to corruption offenses. The refusal of an MLA request is always preceded by consultations.

A detailed timeline for the execution of MLA requests is not set out in domestic legislation. However, MLA cases are treated as a priority pursuant to MLA legislation.

Regarding the safe conduct of witnesses, art. 11 of the CoE Convention on Mutual Assistance in Criminal Matters of 1959 is in force in relation to Luxembourg.

The costs of MLA requests are borne by Luxembourg. Judicial fees are borne by Luxembourg even if they are very high.

Documents accessible to the public are provided in the framework of MLA requests requiring no measure of coercion, thus outside of the condition of dual incrimination. All documents not accessible to the public but deemed relevant as a means of evidence in the context of a criminal investigation may be seized by the competent examining judge in accordance with the specific provisions of the CIC and other applicable legal provisions.

Luxembourg is bound by regional instruments on MLA.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49, 50)

Law enforcement authorities engage in broad, consistent and effective cooperation with international counterparts to combat transnational crime, including corruption offences. The Central authority to deal with the cooperation is the Prosecutor's General's Office.

Luxembourg uses several networks such as EUROPOL, INTERPOL, Schengen Information Service, Centre de Coopération Policière et

Douanière, COPRECO and Eurojust, to facilitate the exchange of police information.

For information exchange, Luxembourg uses EGMONT, CARIN, Siena, Europol, and FIU Net.

The measures to provide necessary items of quantities of substances for investigative purposes are successfully implemented, is done through police and judicial channels.

Luxembourg does not have liaison officers on other jurisdictions but on occasion has used liaison officers of neighbouring countries in investigations

Joint investigation teams (JITs) can be established with other EU member States. In case other countries requested to carry out such joint investigations, UNCAC would be used as legal basis.

With regard to special investigative techniques, systematic surveillance, telephone tapping, the monitoring of banking relations and undercover operations can be carried out. In the context of MLA, the special investigative techniques mentioned can all be carried out at the request of the foreign judicial authorities on the basis of UNCAC.

Regarding the use of controlled delivery at the international level, the Convention would be directly applicable.

3.2. Successes and good practices

Overall, the following points are regarded as successes and good practices in the framework of implementing Chapter IV of the UNCAC:

- The establishment of a comprehensive legal framework on international cooperation in criminal matters which encompasses all forms of international cooperation;
- (Arts. 44(1), 46(9) and 43(2)) The flexible interpretation of the double criminality requirement based on the underlying conduct of the offence;
- (Art. 50) The protection of undercover investigators is explicitly provided for by law.

3.3. Challenges and recommendations

The following points are brought to the attention of the Luxembourg authorities for their action or consideration (depending on the mandatory or optional nature of the relevant UNCAC requirements) with a view to enhancing international cooperation to combat offences covered by the UNCAC:

- (Art. 44(2)) Notwithstanding the flexible interpretation of the double criminality requirement in domestic extradition proceedings, the reviewing experts encouraged the national authorities to explore the possibility of relaxing the strict application of the requirement in cases of UNCAC-based offences not established in domestic legislation, in line with art. 44(2) UNCAC;
- (Arts. 45, 48) Luxembourg is encouraged to consider the expansion of its network of bilateral treaties on transfer of sentenced persons because of the high number of foreign prisoners in its penitentiary institutions;
- (Arts. 46(13), (14)) Notify the Secretary General of the United Nations about the central authority for processing MLA requests, as well as the acceptable languages;
- (Art. 47) Consider whether it could be appropriate to establish guidelines for the public prosecutor to identify cases, where a transfer of the

proceeding is appropriate, and expand the network of treaties with non-European countries;

- (Art. 49) Consider setting up joint investigation teams in cross-border investigations.

IV. Implementation of the Convention

A. Ratification of the Convention

7. The Convention was signed on 10 December 2003, ratified by Parliament on 10 July 2007 and signed by the Grand Duke on 1 August 2007. Luxembourg deposited its instrument of ratification with the Secretary-General of the United Nations on 6 November 2007.
8. The implementing legislation includes the acts and regulations listed under paragraph 11 below.

B. Legal system of Luxembourg

9. A long established jurisprudence of Luxembourg's Supreme Courts (*Cour de cassation*, *Cour constitutionnelle* and *Cour administrative*) 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:

«Un traité international, incorporé dans la législation interne par une loi approbative, 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).

Accordingly, the UN Convention against Corruption has become an integral part of Luxembourg's domestic law following ratification of the Convention by the Parliament on 10 July 2007 signature by the Grand Duke on 1 August 2007, and entry into force on in accordance with Article 68 of the Convention.

10. Luxembourg already assessed the effectiveness of anti-corruption measures taken by it. The relevant documents are as follows:

1) OECD Working Group on Bribery Monitoring Reports

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (February 2001)

<http://www.oecd.org/dataoecd/39/40/2019732.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (June 2004)

<http://www.oecd.org/dataoecd/55/4/32017636.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (August 2006)

<http://www.oecd.org/dataoecd/22/27/37308306.pdf>

Phase 2bis: Second report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (March 2008)

<http://www.oecd.org/dataoecd/4/21/40322335.pdf>

Phase 2bis: Follow-up Report on the Implementation of the Phase 2bis Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (October 2009)

<http://www.oecd.org/dataoecd/55/21/44023684.pdf>

Phase 3 on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (June 2011)

<http://www.oecd.org/dataoecd/48/49/48277203.pdf>

2) GRECO monitoring reports:

http://www.coe.int/t/dghl/monitoring/greco/evaluations/index_en.asp

11. The most relevant provisions are found in the Criminal Code (Code Pénal, ‘CP’), the Criminal Procedure Code (Code d’Instruction Criminelle, ‘CIC’) and in special laws. They can be found online like all Luxembourg legislation on:

www.legilux.public.lu

Penal Code:

http://www.legilux.public.lu/leg/textescoordonnes/codes/code_penal/CodePenal_PageAccueil.pdf

Penal Procedure Code:

http://www.legilux.public.lu/leg/textescoordonnes/codes/code_instruction_criminelle/CodeInstrCrim_PageAccueil.pdf

Special Laws:

http://www.legilux.public.lu/leg/textescoordonnes/compilation/recueil_lois_speciales/WELCOME.pdf

12. The relevant texts more specifically on corruption are the following:
13. The Act of 15 January 2001 introduces into Luxembourg law, or modifies, the notions of misappropriation, destruction of deeds and securities, embezzlement, taking unlawful interest, and bribery. Amendments were made to the Criminal Code and the Criminal Procedure Code and to the Act of 4 December 1967 on income tax.
14. Act of 30 March 2001 approving:

1. the Convention, based on Article K.3 of the European Union Treaty on the **Protection of the Financial Interests of the European Communities**, signed in Brussels on 26 July 1995;
2. the Protocol, based on article K.3 of the European Union Treaty, to the Convention on the Protection of the Financial Interests of the European Communities, signed in Dublin on 27 September 1996;
3. the Protocol, based on article K.3 of the European Union Treaty, on the preliminary interpretation by the Court of Justice of the European Communities of the Convention on the Protection of the Financial Interests of the European Communities, signed in Brussels on 29 November 1996 and amending other legal provisions.

In addition to approving these three instruments, the Act amended 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.

15. Act of 23 May 2005 approving:

1. the Convention, based on article K.3 of the European Union Treaty, on **the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union**, signed in Brussels on 26 May 1997;
2. the second Protocol, based on article K.3 of the European Union Treaty, to the Convention on the Protection of the Financial Interests of the European Communities, signed in Brussels on 19 June 1997;
3. the Criminal Law Convention on Corruption, signed in Strasbourg on 27 January 1999;
4. the Additional Protocol to the Criminal Law Convention on Corruption, signed in Strasbourg on 15 May 2003; and amending and completing certain provisions of the Criminal Code.

This Act transposed 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.

16. Act of 1 August 2007:

1. approving the **“Merida” Convention of the United Nations Against Corruption**, 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;
2. amending Section 12.5 of the Income Tax Act of 4 December 1967, as amended.

This Act approved the Convention in question and set up the Corruption Prevention Committee (« COPRECO ») in Luxembourg. COPRECO is an interministerial body 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.

17. Act of 18 December 2007 approving the **“Palermo” Convention of the United Nations against transnational organized crime**, adopted by the General Assembly of the United Nations in New York, on 15 November 2000.

18. Grand-Ducal Regulation of 15 February 2008 determining the **composition and functioning of the Corruption Prevention Committee**.

This Regulation lays down the rules relating to the composition and functioning of the Corruption Prevention Committee, in implementation of the legal provision setting up the Committee, i.e. Section 2 of the Act of 1 August 2007 approving the « Merida » Convention of the United Nations against corruption, adopted by the General Assembly of the United Nations in New York on 31 October 2003.

19. Act of 17 July 2008 **transposing Directive 2005/60/EC of the European 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**, transposing Directive 2006/70/EC of the Commission of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of “politically exposed persons” and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis, and amending:

1. the Act of 12 November 2004 on combating money laundering and terrorist financing, as amended;
2. the Act of 7 March 1980 on organisation of the judiciary, as amended;
3. the Act of 5 April 1993 on the financial sector, as amended;
4. the Act of 6 December 1991 on the insurance sector, as amended;
5. the Act of 9 December 1976 on organisation of the profession of notary, as amended;
6. the Act of 10 August 1991 on the profession of barrister, as amended;
7. the Act of 28 June 1984 on organisation of the profession of company auditor, as amended;
8. the Act of 10 June 1999 on the organisation of the profession of accountant.

This Act transposes into Luxembourg law the 3rd money laundering Directive (dealing with professional obligations) and introduces in particular a legal definition of the concept of “politically exposed persons”. Inasmuch as the offence of bribery is one of the primary offences of money laundering, this Act helps to reinforce the fight against corruption.

20. Act of 17 July 2008 on the **fight against money laundering and terrorist financing**, and amending: Article 506-1 of the Criminal Code,

21. Act of 14 June 2001:

1. approving the Convention of the Council of Europe on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed in Strasbourg on 8 November 1990;
2. amending certain provisions of the Criminal Code;
3. amending the Act of 17 March 1992;

4. approving the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, signed in Vienna on 20 December 1988;
5. amending and completing the Act of 19 February 1973 on the sale of drug substances and the fight against drug addiction;
6. amending and completing certain provisions of the Criminal Investigation Code.

This Act adapts the criminal offence of money laundering in Luxembourg law to the requirements laid down in the 3rd money laundering Directive in particular.

22. Act 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.

This Act aims to bring Luxembourg in compliance with the requirements under the OECD Convention of 21 November 19997 on Bribery of Foreign Public Officials in International Business Transactions in general, and with the Phase 2 and Phase 2bis evaluation reports in particular, by picking up the recommendations adopted by the Working Group on Bribery.

23. Act of 13 February 2011 **reinforcing the means to combat bribery** and amending:

1. the Labour Code;
2. the general statute applicable to State officials;
3. the amended Act of 24 December 1985 on the general statute applicable to local officials;
4. the Code of Criminal Procedure; and
5. the Criminal Code.

This Act enhances the effective protection of whistleblowers in the public and private sector, **in conformity with the requirements under the OECD Anti-Bribery Convention in general, and the Phase 2 and Phase 2bis evaluation reports in particular.**

24. Act of 27 October 2010 reinforcing the legal framework on **the fight against money laundering and terrorist financing**

This act adapts the laws and regulations on the fight against money laundering and terrorist financing to the recommendations of the mutual evaluation report on Luxembourg of the Financial Action Task Force (FATF) .

25. Act of 27 October 2010 **on mutual legal assistance in criminal proceedings.**

This act ratifies the EU Convention on mutual legal assistance in criminal proceedings (29 May 2000) and its Protocole (16th October 2001) and adapts the existing legal provisions.

26. Act of 10 July 2011 incriminating the **obstruction of justice**

This act foresees a penalty for the person, who knows about a crime whose effects could still be prevented or limited or whose perpetrators are likely to commit other crimes that could be prevented, and who doesn't inform the judicial or administrative authorities.

27. Act 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.

28. Draft grand-ducal regulation of 21 October 2011 introducing a **Code of conduct for public officials**

This regulation introduces a very strict code of conduct defining clear rules concerning e.a. gifts, accessory activities, transfer to the private sector.

29. The political system

Luxembourg is a constitutional monarchy acting as a parliamentary democracy. Although the head of state is a hereditary Grand Duke from the Nassau-Weilburg dynasty, the sovereign power belongs to the Luxembourg people, as represented through the elected members of Parliament (Chamber of Deputies) and as guaranteed by the Constitution.

The sovereign power in Luxembourg is formally divided into a legislative, an executive and a judicial branch. The democratic principles, i.e. the separation of powers and the participation of the population, are further enshrined in the institutional framework that guarantees a measure of independence to each branch, but at the same time makes consultation between branches mandatory.

The sovereign power is formally divided into a legislative, an executive and a judicial branch. As in every parliamentary democracy, the separation of powers is flexible, since many links exist between the legislative and executive branches; the judicial power alone remains completely independent.

30. Elections

Elections are held regularly on 3 levels: local, national and European.

Local elections <<http://www.jepeuxvoter.lu/en/>> are held every 6 years (most recently in 2011). Voting is compulsory for all Luxembourg citizens. Non-Luxembourg citizens can also vote or become a candidate, subject to few conditions.

National elections are held every 5 years (most recently in 2013). Again, voting is compulsory for all Luxembourg citizens, but is limited to people having Luxembourg citizenship.

European elections are held every 5 years (most recently in 2009). Non-Luxembourg citizens can also vote, provided that they come from another EU-country.

31. Legislative branch

The legislative branch is represented by Parliament (Chamber of Deputies), the Government and the Council of State, which interact to create Luxembourg's legal framework. The Council of State acts as a controlling instance for both the Chamber of Deputies and the Government.

The Chamber of Deputies and the Government both have the right of initiative to elaborate and propose new legislation. These texts are then passed on to the Council of Ministers for approbation, after which they become formal projects of bills.

The consultation of the Council of State is mandatory. In absence of a second assembly, its function is to examine the proposed texts thoroughly to ensure their compliance with the Constitution, international conventions, supranational regulations as well as with the general principles of law.

It is only after the completion of these steps that the debate in the Chamber of Deputies is opened. After the vote in the Chamber of Deputies, the adopted text is forwarded to the Grand Duke whose signature is necessary for the publication of legislation in the Mémorial <<http://www.legilux.public.lu/>> (Official Journal), marking the definitive coming into effect of the legal text.

32. Executive branch

The executive power is formally executed by the Grand Duke and in practice by the Government, which he appoints on the basis of a proposal made by the leader of the winning party of the legislative elections.

The Government is composed according to the results of legislative elections. The party having won the majority of votes forms the government. Usually, none of the parties win an absolute majority. Coalition governments are hence the norm.

Formally, the Grand Duke appoints and revokes ministers; in practice though, the Grand Duke only appoints the Prime Minister, who is then free to choose the members of his cabinet.

33. Judicial branch

The judicial branch encompasses all civilian and administrative courts and tribunals on the Grand Duchy's territory. Its complete independence from the other branches is guaranteed by the Constitution. The Conseil d'Etat ceased to be a supreme court in administrative matters in 1997 when the administrative jurisdictions (Tribunal administrative, Cour administrative) and the Constitutional Court were created.

34. The Grand Duke

The Constitution stipulates that the Grand Duke <<http://www.monarchie.lu/>> of Luxembourg is the Head of State of the Grand Duchy of Luxembourg, this being a hereditary title in the Nassau-Weilburg family. The Grand Duke is inviolable, meaning that he cannot be charged or prosecuted. He also enjoys complete political immunity; political responsibility lies with the ministers. Any measure taken by the Grand Duke in the exercise of his constitutional powers must be countersigned by a member of the Government who assumes full responsibility. Moreover, any legislative document signed by the Grand Duke must have been submitted to the cabinet for prior consideration.

The title of Grand Duke is hereditary. Since a change in the Family Pact in 2011, the title is passed on to the eldest child of the grand ducal couple, regardless of gender.

35. The Chamber of Deputies

The Chamber of Deputies <<http://www.chd.lu/>> is composed of 60 members, elected for a five-year term by means of mixed one-person-one-vote suffrage and a system of proportional representation.

Its main task is to vote legal texts, i.e. national laws and regulations, or transpose European directives or regulations into national legislation. On a national level, the legal texts can emanate from the government or from the deputies themselves. Any legal texts must be sent to the Council of State for analysis. Only after its consultation can they be voted.

After the vote in the Chamber of Deputies, the adopted text is forwarded to the Grand Duke whose signature is necessary for the publication of legislation. As of the national elections of 2013, 6 political parties siege in the Chamber of Deputies.

After the 2013 national elections, the Government is based on a three party coalition formed by the LSAP (Luxembourg Socialist Workers Party, the DP (Democrats Party) and Déi Gréng (Green Party).

36. The Government

The Constitution confers to the Grand Duke the prerogative to appoint and revoke members of the Government <<http://www.gouvernement.lu/index.html>>.

However, in practice the Grand Duke respects the results of national elections by appointing one person, from the political party having gathered the most votes, to choose and present potential candidates for the formation of a cabinet.

The composition of the cabinet is not laid down by the Constitution. Indeed, the Constitution only stipulates that the Grand Duke - in practice the Prime Minister <<http://www.gouvernement.lu/gouvernement/premier-ministre/en/index.html>> - can organise his Government freely. Thus, the number of members of Government can vary, as can the portfolios. The number of ministerial departments generally exceeds the number of members of the cabinet called upon to serve in office; thus a single cabinet member normally holds more than one portfolio.

37. The Council of State

The Council of State <<http://www.conseil-etat.public.lu/fr/index.html>> exerts the function of a second assembly, as there is only one elected legislative body in Luxembourg. Drafts of legal texts must be submitted to the Council of State for analysis. Its opinion must entail a thorough examination to ensure compliance of the draft texts with the Constitution, international conventions and the rule of law. The role of the Council of State is one of persuasion rather than enforcement and is therefore advisory in nature. However, on rare occasions, and only if duly motivated, the Chamber of Deputies can decide to pass a bill even though the evaluation of the Council of State is negative. Usually though, the evaluation and the recommended amendments are respected.

The Council of State is composed of 21 councillors. The councillors are proposed by the Chamber of Deputies, the Government or the Council of State itself, and formally nominated and are revoked by the Grand Duke.

38. The Professional Chambers

The professional groups are federated in chambers, of which there are 5:

- the Chamber of Commerce
http://www.cc.lu/en/home/?page=2&nav_month=12&nav_page=1&nav_items_per_page=12&nav_year=2074,
- the Chamber of Trades
<http://www.chambre-des-metiers.lu/>,
- the Chamber of Agriculture

- <http://www.lwk.lu/start_hr.htm>,
- the Chamber of Civil Servants and Public Employees
- <<http://www.chfep.lu/>>,
- the Chamber of Employees
- <<http://www.csl.lu/>>.

These chambers represent and defend the interests of the various professional groups in Luxembourg and have to be consulted on legal texts that concern them, before these can be voted in the Chamber of Deputies. Their consultation by the legislator is mandatory, but the legislator does not have to wait for or follow their advice. The chambers administrate themselves and are not subject to control by the legislator. Membership in the chambers is mandatory for professionals belonging to one of these groups.

39. The Economic and Social Council

The Economic and Social Council <<http://www.ces.public.lu/fr/index.html>> is composed of 39 members:

- 18 members representing the employers,
- 18 members representing the employees,
- 3 members having a recognised competence in the economic, social or financial field.

The Economic and Social Council is a permanent consultative institution for the Government to orient its economic and social policies. It studies economic, social or financial issues and advises the Government on solving them. The Economic and Social Council can be seized by the Government on these matters, but it can also involve itself.

40. The Courts and Tribunals

The articles of the Constitution allow for the creation of a number of courts and tribunals <<http://www.justice.public.lu/fr/index.html>> on Luxembourg's territory and assign a precise jurisdiction to each of them.

They are independent in the exercise of their functions. Courts and tribunals can be of the judicial or the administrative order.

The hierarchy of the judicial branch consists of multiple levels. For minor cases, not exceeding 10,000 euros in damage, the Courts of Conciliation are responsible. The 2 District Courts, in Diekirch and in Luxembourg-City, have jurisdiction in all civil and commercial matters that the law does not explicitly assign to another jurisdiction. They are also responsible for matters relating to guardianship or juvenile delinquency.

The Supreme Court of Justice is a body that deals with appeal procedures in two different courts, the Court of Appeal and the Court of Cassation. The Supreme Court of Justice also deals with jurisdictional conflicts, disciplinary actions against judges and charges brought by the Chamber of Deputies against a member of the Government.

The administration has its own courts of justice, the Administrative Tribunal being the first instance and the Administrative Court being the supreme administrative jurisdiction. The

Tribunal and Court deal with complaints brought against administrative decisions, violation of the law by civil servants and abuse or misuse of power.

The Constitutional Court can additionally be seized to verify the conformity of legal texts to the Constitution. However, it cannot be seized by members of the public; courts or tribunals may refer cases to the Constitutional Court for preliminary rulings and for conducting substantial constitutional reviews in the aftermath of cases.

41. The Mediator

The Office of the Mediator, also called the Ombudsman <<http://www.ombudsman.lu/>>, was implemented in 2004. The Mediator is attached to the Chamber of Deputies but acts as an independent institution, which is not accountable to the Government. The Mediator's office receives complaints from individuals about administrative procedures of the Government or the communes. In order to remedy these problems, the Mediator then transmits recommendations to the authorities in question. This is a free service offered to all citizens in order to strengthen trust in the institutions and democracy.

42. The Audit Court

The Audit Court <<http://www.cour-des-comptes.lu/>> is another institution which is attached to the Chamber of Deputies. Its main task is to control the financial management of the public sector. The Audit Court examines the legality and regularity of State spending and revenues and their conformity to the budget. It is also consulted by the Chamber of Deputies for projects of bills having a large impact on the State Treasury.

C. Implementation of selected articles

Chapter III. Criminalization and law enforcement

Article 15 Bribery of national public officials

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(a) Summary of information relevant to reviewing the implementation of the article

62. Luxembourg confirmed that it has fully implemented this provision of the Convention.

63. The active bribery provisions which correspond to subparagraph (a) of article 15 are regulated in articles 247, 249 paragraph 2 and 250 paragraph 2 of the Penal Code of Luxembourg (the ‘CP’):

De la corruption et du trafic d'influence

Art. 247. (L. 13 février 2011) Sera puni de la réclusion de cinq à dix ans et d’une amende de 500 euros à 187.500 euros, le fait de proposer ou de donner, sans droit, directement ou indirectement, à une personne, dépositaire ou agent de l’autorité ou de la force publiques, ou chargée d’une mission de service public, ou investie d’un mandat électif public, pour elle-même ou pour un tiers, des offres, des promesses, des dons, des présents ou des avantages quelconques, ou d’en faire l’offre ou la promesse, pour obtenir d’elle:

1° Soit qu’elle accomplisse ou s’abstienne d’accomplir un acte de sa fonction, de sa mission ou de son mandat ou facilité par sa fonction, sa mission ou son mandat;

2° Soit qu’elle abuse de son influence réelle ou supposée en vue de faire obtenir d’une autorité ou d’une administration publique des distinctions, des emplois, des marchés, ou toute autre décision favorable.

Art. 249. (L. 13 février 2011) Sera punie de la réclusion de cinq à dix ans et d’une amende de 500 euros à 187.500 euros toute personne, dépositaire ou agent de l’autorité ou de la force publiques, toute personne chargée d’une mission de service public ou investie d’un mandat électif public, qui sollicite ou reçoit, sans droit, directement ou indirectement, pour elle-même ou pour autrui, des offres, des promesses, des dons, des présents ou des avantages quelconques, ou en accepte l’offre ou la promesse, en raison de l’accomplissement ou de l’abstention d’accomplir un acte de sa fonction, de sa mission ou de son mandat ou facilité par sa fonction, sa mission ou son mandat, de quiconque ayant bénéficié de cet acte ou de l’abstention d’accomplir cet acte.

Sera puni des mêmes peines, quiconque, dans les conditions de l’alinéa 1er, propose ou donne à une personne, dépositaire ou agent de l’autorité ou de la force publiques, ou chargée d’une mission de service public ou investie d’un mandat électif public, des offres, des promesses, des dons, des présents ou des avantages quelconques pour soi-même ou pour autrui, ou en fait l’offre ou la promesse.

De la corruption de magistrats

Art. 250. (L. 13 février 2011) Sera puni de la réclusion de dix à quinze ans et d'une amende de 2.500 euros à 250.000 euros, tout magistrat ou toute autre personne siégeant dans une formation juridictionnelle, tout arbitre ou expert nommé soit par une juridiction, soit par les parties, qui aura sollicité ou reçu, sans droit, directement ou indirectement, des offres, des promesses, des dons, des présents ou des avantages quelconques, pour lui-même ou pour un tiers, ou en aura accepté l'offre ou la promesse, pour l'accomplissement ou l'abstention d'accomplir un acte de sa fonction.

Quiconque, dans les conditions de l'alinéa 1er, propose ou donne à un magistrat ou une autre personne siégeant dans une formation juridictionnelle, ou à un arbitre ou expert nommé soit par une juridiction, soit par les parties, des offres, des promesses, des dons, des présents ou des avantages quelconques, pour lui-même ou pour un tiers, ou en fait l'offre ou la promesse, est puni des mêmes peines.

64. Luxembourg provided the following statistics:

For the period 01.09.2010 to 31.08.2013:

61 cases under investigation for offences against art. 245, 246, 247, 248, 249, 250, 251 and 252 CP; i.e. 9 cases on art. 245, 6 on art. 246, 22 cases on art. 247.

12 judgments over the same period.

(b) Observations on the implementation of the article

65. On the concept of a “public official”, the reviewing experts noted that the law does not contain a definition of that term. Nevertheless, the law and an explanatory note refer to a “depository or law enforcement agent, or a person in charge of a public service mission or invested with a public election mandate” (art. 246, 247, 249 CP). Magistrates are expressly covered in article 250 CP.

66. During the country visit, Luxembourg confirmed that the definition of a public official was based on the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and that, therefore, it is the “public service mission” which is the decisive criterion for the definition of a public official and not the nature or status of the employee or the company he or she works for.

As an example from case law, Luxembourg referred to the judgment of the Luxembourg Tribunal d'Arrondissement (XIIIe ch. 21.12.2005) where it was held that even an employee working for a non-profit association (ASBL) could be held liable as the author of a corruption offence under article 246 CP. The employee had provided a list of 5000 persons to a journalist for money; the journalist then informed the police. The ASBL was considered as fulfilling a public service mission (advice for over-indebted persons). The Court said that the employee had acted “in his capacity as an employee with the Information and Advice Service on Over-indebtedness, therefore as a person invested with a public service mission” and that he was “holding a position in public service”

Two other judgments received during the country visit also illustrate the notion of public official, notably judgment 57/11 X of 2 February 2011 (p. 9):

“La Commission juridique (Doc. parl. 4400 -7 p.6) a notamment approuvé la proposition rédactionnelle faite par le Conseil d'État tout en affirmant que ‘toujours est-il que les termes employés sont à interpréter au sens large. Ils visent aussi bien les personnes investies d'un mandat public électif (députés, bourgmestres, conseillers communaux, présidents et membres élus des chambres professionnelles, personnes qui sont dépositaires de l'autorité publique), que les fonctionnaires au sens large y compris les magistrats, les officiers publics, les officiers et les agents de police, les curateurs de faillite, les liquidateurs judiciaires de sociétés commerciales, toute personne ayant reçu un pouvoir de

décision ou de commandement dérivant de l'autorité publique de même que les personnes chargées d'accomplir des actes ou d'exercer une fonction dont la finalité est de servir l'intérêt général sans avoir reçu un pouvoir de décision ou de commandement etc.'

[...]

Par ailleurs l'agent public est défini comme tout individu attaché volontairement à une personne pour laquelle il remplit un emploi quelconque de nature permanente et non accidentelle (Pierre Wigny, Droit administratif — Principes généraux, 4e édition, n°219) et en général, toute personne au service d'une administration publique; en ce sens les agents s'opposent aux gouvernants qui ont seuls la qualité de représentant (Gérard Cornu, Vocabulaire juridique, v°Agent)."

67. Luxembourg further confirmed that with regard to agents of public companies and foreign officials, the same concepts and definitions applied as for national officials. In that respect, Luxembourg cited the example of an employee of a foreign Chamber of Commerce who had issued false commercial licenses to foreign citizens living in Luxembourg.
68. Concerning the requirement of a "corruption pact", the reviewing experts noted that unilateral corruption has been introduced into the CP by the Law of 15 January 2001 through the simple offering or giving of a bribe. The proof of the corruption pact, or the meeting of the minds of the giver and the receiver of the bribe, is no longer required to establish the offence. However, a judgment from 2011 seemed to call this into question.
69. During the country visit, Luxembourg clarified that the 2011 judgment only quoted a judgment from the 1980s which stated the law as it was at the time. In that case, the Court of appeal did not see enough evidence for a corruption pact but did nevertheless impose a sentence for a corruption offence (article 249 CP). Moreover, judgments of the Court of appeal from 2013 (Cour d'appel – X. 3.7.2013 - no. 363 (p.10), no. 364 (p.10), TAL-XVIII, 5 judgments of 2. – 4.7.2013) clearly confirmed that the corruption offences do no longer require "the proof of the establishment of a corruption pact".
70. The reviewing experts further enquired about the concept of undue advantage in Luxembourg law. Luxembourg explained that the term "undue" ("indu") had not been included in the law in order to make clear that the law does not allow an exemption for facilitation payments. The legal texts do not distinguish whether the official acts in violation of his duties or not. The expression "sans droit" in the law does not mean that facilitation payments are allowed. "Sans droit" meant exactly the same as "undue" (cf. also opinion of the *Conseil d'État* of 15 February 2000, p. 7). Nevertheless, the reviewing experts felt that the mentioning of the words "sans droit" in article 247 PC was superfluous and possibly worrying since the described conduct could never be legal. Luxembourg explained that the term excludes salaries, remuneration and lawful advantages that were formally contained in an agreement. They would not apply to any advantages not fulfilling this criteria, even if tolerated by a manager. In a trial, the judge would have to verify that no lawful basis for the advantage existed.

71. The reviewing experts concluded that Luxembourg has implemented Art. 15(a) UNCAC.

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

72. Luxembourg confirmed that it has fully implemented this provision of the Convention.
73. The passive bribery provisions which correspond to subparagraph (b) of article 15 are regulated in articles 246, 249, paragraph 1, and 250, paragraph 1, CP.

De la corruption et du trafic d'influence

Art. 246. (L. 13 février 2011) Sera puni de la réclusion de cinq à dix ans et d'une amende de 500 euros à 187.500 euros, le fait, par une personne, dépositaire ou agent de l'autorité ou de la force publiques, ou chargée d'une mission de service public, ou investie d'un mandat électif public, de solliciter ou de recevoir, sans droit, directement ou indirectement, pour elle-même ou pour autrui, des offres, des promesses, des dons, des présents ou des avantages quelconques ou d'en accepter l'offre ou la promesse:

1° Soit pour accomplir ou s'abstenir d'accomplir un acte de sa fonction, de sa mission ou de son mandat ou facilité par sa fonction, sa mission ou son mandat;

2° Soit pour abuser de son influence réelle ou supposée en vue de faire obtenir d'une autorité ou d'une administration publique des distinctions, des emplois, des marchés ou toute autre décision favorable.

Art. 249. (L. 13 février 2011) Sera punie de la réclusion de cinq à dix ans et d'une amende de 500 euros à 187.500 euros toute personne, dépositaire ou agent de l'autorité ou de la force publiques, toute personne chargée d'une mission de service public ou investie d'un mandat électif public, qui sollicite ou reçoit, sans droit, directement ou indirectement, pour elle-même ou pour autrui, des offres, des promesses, des dons, des présents ou des avantages quelconques, ou en accepte l'offre ou la promesse, en raison de l'accomplissement ou de l'abstention d'accomplir un acte de sa fonction, de sa mission ou de son mandat ou facilité par sa fonction, sa mission ou son mandat, de quiconque ayant bénéficié de cet acte ou de l'abstention d'accomplir cet acte.

...

De la corruption de magistrats

Art. 250. (L. 13 février 2011) Sera puni de la réclusion de dix à quinze ans et d'une amende de 2.500 euros à 250.000 euros, tout magistrat ou toute autre personne siégeant dans une formation juridictionnelle, tout arbitre ou expert nommé soit par une juridiction, soit par les parties, qui aura sollicité ou reçu, sans droit, directement ou indirectement, des offres, des promesses, des dons, des présents ou des avantages quelconques, pour lui-même ou pour un tiers, ou en aura accepté l'offre ou la promesse, pour l'accomplissement ou l'abstention d'accomplir un acte de sa fonction.

...

(b) Observations on the implementation of the article

74. Luxembourg having provided the additional explanations outlined above, the reviewing experts concluded that Luxembourg has implemented Art. 15(b) UNCAC.

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

(a) Summary of information relevant to reviewing the implementation of the article

75. Luxembourg confirmed that it has fully implemented this provision of the Convention.

76. The active bribery provisions which correspond to paragraph 1 of article 16 are regulated in articles 246 to 251 CP (see above) in conjunction with article 252 CP, which makes them applicable to foreign officials.

Art. 252. (L. 15 janvier 2001) 1) (23 mai 2005) Les dispositions des articles 246 à 251 du présent code s'appliquent aussi aux infractions impliquant

- des personnes, dépositaires ou agents de l'autorité ou de la force publiques, ou investies d'un mandat électif public ou chargées d'une mission de service public d'un autre État; - des personnes siégeant dans une formation juridictionnelle d'un autre État, même en tant que membre non professionnel d'un organe collégial chargé de se prononcer sur l'issue d'un litige, ou exerçant une fonction d'arbitre soumis à la réglementation sur l'arbitrage d'un autre État ou d'une organisation internationale publique;

- des fonctionnaires communautaires et des membres de la Commission des Communautés européennes, du Parlement européen, de la Cour de justice et de la Cour des comptes des Communautés européennes, dans le plein respect des dispositions pertinentes des traités instituant les Communautés européennes, du protocole sur les privilèges et immunités des Communautés européennes, des statuts de la Cour de justice, ainsi que des textes pris pour leur application, en ce qui concerne la levée des immunités;

- des fonctionnaires et agents d'une autre organisation internationale publique, des personnes membres d'une assemblée parlementaire d'une organisation internationale publique et des personnes qui exercent des fonctions judiciaires ou de greffe au sein d'une autre juridiction internationale dont la compétence est acceptée par le Grand-Duché de Luxembourg, dans le plein respect des dispositions pertinentes des statuts de ces organisations internationales publiques, assemblées parlementaires d'organisations internationales publiques ou juridictions internationales ainsi que des textes pris pour leur application, en ce qui concerne la levée des immunités. (L. 13 février 2011)

2) L'expression «fonctionnaire communautaire» employée au paragraphe précédent désigne:

- toute personne qui a la qualité de fonctionnaire ou d'agent engagé par contrat au sens du Statut des fonctionnaires des Communautés européennes ou du régime applicable aux autres agents des Communautés européennes;

- toute personne mise à la disposition des Communautés européennes par les États membres ou par tout organisme public ou privé, qui exerce des fonctions équivalentes à celles qu'exercent les fonctionnaires ou autres agents des Communautés européennes. Les membres des organismes créés en application des traités instituant les Communautés européennes et le personnel de ces organismes sont assimilés aux fonctionnaires communautaires lorsque le Statut des fonctionnaires des Communautés européennes ou le régime applicable aux autres agents des Communautés européennes ne leur sont pas applicables.

77. Luxembourg provided the examples of implementation quoted above in para. 64. Moreover, Luxembourg provided the following information: There are 3 ongoing investigations related to foreign bribery out of a total of 5 investigations to date. In one investigation assets have been seized. 2 investigations led to proceedings.

(b) Observations on the implementation of the article

78. The reviewing experts observe that it follows from article 252 CP that articles 246 to 251 CP apply to the active and passive corruption of foreign public officials and of officials of public international organizations.

79. The reviewing experts enquired additionally if the agents of public companies are treated in the same way as public officials. During the country visit, Luxembourg pointed out that currently, there were 12 cases pending before the Luxembourg courts, involving the employee of a foreign Chamber of Commerce who had issued false certificates. The courts explicitly held that the Luxembourg provision equally apply to “persons charged with a public mission who are citizens of a foreign country”. In that case, the accused “did not have the quality of a civil servant” but was an employee of the Chamber of Commerce. Nevertheless, “[t]he employer of [the accused] had been entrusted by the State with a mission incumbent upon him, hence with a public service mission”. (TAL - XVI. 22.7.2013-2344, p. 43-44). Therefore, even though the foreign Chamber of Commerce (“*Confédération de l’industrie*”) in question was a private law body, Luxembourg law on the bribery of foreign officials was applicable. In accordance with the relevant OECD standards, it is irrelevant if the persons charged with a public mission work for a public or private law organisation.

80. After the explanations provided on this point, as well as on the notion of “sans droit” and the corruption pact, the reviewing experts concluded that Luxembourg has implemented Art. 16(1) UNCAC.

Paragraph 2

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

81. Luxembourg confirmed that it has fully implemented this provision of the Convention.

82. The passive bribery provisions which correspond to paragraph 2 of article 16 are regulated in articles 246 to 251 CP (see above) in conjunction with article 252 CP, which makes them applicable to foreign officials.

(b) Observations on the implementation of the article

83. The reviewing experts concluded that Luxembourg has implemented Art. 16(2) UNCAC.

Article 17 Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

(a) Summary of information relevant to reviewing the implementation of the article

84. Luxembourg confirmed that it has fully implemented this provision of the Convention.

85. The provision which corresponds to article 17 is regulated in article 240 CP.

Du détournement

Art. 240. (L. 15 janvier 2001) Sera punie de la réclusion de cinq à dix ans toute personne dépositaire ou agent de l'autorité ou de la force publiques, ou chargée d'une mission de service public, qui aura détourné des deniers publics ou privés, des effets en tenant lieu, des pièces, titres, actes, effets mobiliers qui étaient entre ses mains, soit en vertu, soit à raison de sa charge.

Des abus de confiance

Art. 491. Quiconque aura frauduleusement soit détourné, soit dissipé au préjudice d'autrui, des effets, deniers, marchandises, billets, quittances, écrits de toute nature contenant ou opérant obligation ou décharge et qui lui avaient été remis à la condition de les rendre ou d'en faire un usage ou un emploi déterminé, sera puni d'un emprisonnement d'un mois à cinq ans et d'une amende de 251 euros à 5.000 euros.

Art. 461. Quiconque a soustrait frauduleusement une chose qui ne lui appartient pas est coupable de vol.

(b) Observations on the implementation of the article

86. During the country visit, Luxembourg clarified that article 240 CP applies to the situation where the public official embezzles assets. Other cases are prosecuted as theft, where the fact that the perpetrator is an official constitutes an aggravating circumstance.

87. Concerning the more general provision of article 491 CP, it applies to civil servants and private persons alike.

88. The reviewing experts concluded that Luxembourg has implemented Art. 17 UNCAC.

Article 18 Trading in influence

Subparagraph (a)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(a) Summary of information relevant to reviewing the implementation of the article

89. Luxembourg considers that it has fully implemented this provision of the Convention through articles 246 to 249 CP:

De la corruption et du trafic d'influence

Art. 246. (L. 13 février 2011) Sera puni de la réclusion de cinq à dix ans et d'une amende de 500 euros à 187.500 euros, le fait, par une personne, dépositaire ou agent de l'autorité ou de la force publiques, ou chargée d'une mission de service public, ou investie d'un mandat électif public, de solliciter ou de recevoir, sans droit, directement ou indirectement, pour elle-même ou pour autrui, des offres, des promesses, des dons, des présents ou des avantages quelconques ou d'en accepter l'offre ou la promesse:

1° Soit pour accomplir ou s'abstenir d'accomplir un acte de sa fonction, de sa mission ou de son mandat ou facilité par sa fonction, sa mission ou son mandat;

2° Soit pour abuser de son influence réelle ou supposée en vue de faire obtenir d'une autorité ou d'une administration publique des distinctions, des emplois, des marchés ou toute autre décision favorable.

Art. 247. (L. 13 février 2011) Sera puni de la réclusion de cinq à dix ans et d'une amende de 500 euros à 187.500 euros, le fait de proposer ou de donner, sans droit, directement ou indirectement, à une personne, dépositaire ou agent de l'autorité ou de la force publiques, ou chargée d'une mission de service public, ou investie d'un mandat électif public, pour elle-même ou pour un tiers, des offres, des promesses, des dons, des présents ou des avantages quelconques, ou d'en faire l'offre ou la promesse, pour obtenir d'elle:

1° Soit qu'elle accomplisse ou s'abstienne d'accomplir un acte de sa fonction, de sa mission ou de son mandat ou facilité par sa fonction, sa mission ou son mandat;

2° Soit qu'elle abuse de son influence réelle ou supposée en vue de faire obtenir d'une autorité ou d'une administration publique des distinctions, des emplois, des marchés, ou toute autre décision favorable.

Art. 248. (L. 13 février 2011) Sera punie d'un emprisonnement de six mois à cinq ans et d'une amende de 500 euros à 125.000 euros, toute personne qui sollicite ou reçoit, sans droit, directement ou indirectement, des offres, des promesses, des dons, des présents ou des avantages quelconques, ou en accepte l'offre ou la promesse, pour elle-même ou pour un tiers pour abuser de son influence réelle ou supposée en vue de faire obtenir d'une autorité ou d'une administration publique des distinctions, des emplois, des marchés ou toute autre décision favorable.

Sera puni des mêmes peines quiconque propose ou donne à une personne, sans droit, directement ou indirectement, des offres, des promesses, des dons, des présents ou des avantages quelconques, pour elle-même ou pour un tiers, ou en fait l'offre ou la promesse, pour que cette personne abuse de son influence réelle ou supposée en vue de faire obtenir d'une autorité ou d'une administration publique des distinctions, des emplois, des marchés ou toute autre décision favorable.

Art. 249. (L. 13 février 2011) Sera punie de la réclusion de cinq à dix ans et d'une amende de 500 euros à 187.500 euros toute personne, dépositaire ou agent de l'autorité ou de la force publiques, toute personne chargée d'une mission de service public ou investie d'un mandat électif public, qui sollicite ou reçoit, sans droit, directement ou indirectement, pour elle-même ou pour autrui, des offres, des promesses, des dons, des présents ou des avantages quelconques, ou en accepte l'offre ou la promesse, en raison de

l'accomplissement ou de l'abstention d'accomplir un acte de sa fonction, de sa mission ou de son mandat ou facilité par sa fonction, sa mission ou son mandat, de quiconque ayant bénéficié de cet acte ou de l'abstention d'accomplir cet acte.

Sera puni des mêmes peines, quiconque, dans les conditions de l'alinéa 1er, propose ou donne à une personne, dépositaire ou agent de l'autorité ou de la force publiques, ou chargée d'une mission de service public ou investie d'un mandat électif public, des offres, des promesses, des dons, des présents ou des avantages quelconques pour soi-même ou pour autrui, ou en fait l'offre ou la promesse.

(b) Observations on the implementation of the article

90. The reviewing experts observed that trading in influence is criminalized in several articles under Luxembourg law. Article 248 CP punishes private trading in influence and articles 246 paragraph 2 (passive) and 247 paragraph 2 (active), trading in influence involving a depositary of public authority, a person in charge of a public service mission or invested with a public election mandate. In the former case, a private individual approaches another private individual so that the latter, considering his relations, may intervene before the authority. In the latter case, a private individual approaches the public official directly, who shall intervene before an authority.
91. However, they remarked that trading in influence is not criminalized other than to the extent that one intends to “obtain from an authority or a public administration any distinction, employment, public tender or any other favourable decision”. These objectives are not as comprehensive as the concept of “undue advantage” that appears in the Convention and does not seem to comprise omissions to act.
92. During the country visit, Luxembourg emphasized that the notion of “favourable decision” is a very wide one and can encompass abstentions: the decision not to take a decision can be a favourable decision. Nevertheless, it was acknowledged that the term “undue advantage” seems to be wider than that of “decision”.
93. On the other hand, Luxembourg specifically confirmed that the offence is completed even if it does not achieve the desired result. The Court of appeal (Cour d’appel – X. 3.7.2013-363, p.10; 364, p.10) held in this respect that “it is of little importance in this context to know what concrete steps were undertaken afterwards by [...] to obtain the solicited authorization of establishment”.
94. The reviewing experts concluded that Luxembourg has largely implemented Art. 18(a) UNCAC. Bearing in mind the optional nature of the provision, they recommend that Luxembourg consider monitoring the jurisprudence pertaining to trading in influence in order to establish if the law is comprehensive enough to cover any “undue advantage”.

Subparagraph (b)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

(a) Summary of information relevant to reviewing the implementation of the article

95. Luxembourg considered that it has fully implemented this provision of the Convention.

96. Luxembourg cited articles 246 to 249 CP (see above).

(b) Observations on the implementation of the article

97. The reviewing experts concluded that Luxembourg has largely implemented Art. 18(b) UNCAC. Bearing in mind the optional nature of the provision, they recommend that Luxembourg consider monitoring the jurisprudence pertaining to trading in influence in order to establish if the law is comprehensive enough to cover any “undue advantage”.

Article 19 Abuse of Functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

(a) Summary of information relevant to reviewing the implementation of the article

98. Luxembourg considered that it has fully implemented this provision of the Convention through articles 240, 243, 244 and 245 CP.

Article 240. Sera puni de la réclusion de 5 à 10 ans toute personne dépositaire ou agent de l'autorité ou de la force publique, ou chargée d'une mission de service publique, qui aura détourné des deniers publics ou privés, des effets en tenant lieu, des pièces, titres, actes, effets immobiliers qui étaient entre ses mains, soit en vertu, soit à raison de sa charge.

Article 243. Toute personne, dépositaire ou agent de l'autorité ou de la force publique, toute personne chargée d'une mission de services publics, qui se sera rendue coupable de concussion, en ordonnant de percevoir, en exigeant ou en recevant ce qu'elle savait n'être pas dû ou excéder ce qui était dû pour droit, taxes, impôts, contributions, denier, revenus ou intérêts, pour salaires ou traitements, sera punie d'un emprisonnement de 6 mois à 5 ans, et pourra être condamnée en outre à l'interdiction du droit de remplir des fonctions, emploi ou office public.

La peine sera la réclusion de 5 à 10 ans si la concussion a été commise à l'aide de violences ou menaces.

Sera puni des mêmes peines, toute personne dépositaire ou agent de l'autorité ou de la force publique, ou chargée d'une mission de services publics qui aura accordée sous une forme quelconque et pour quelque motif que ce soit une exonération ou franchise des droits, contributions, impôts ou taxes publiques, en violation des textes légaux ou réglementaires.

La tentative des délits prévue aux alinéas 1 et 3 du présent article est punie des mêmes peines.

Article 244. Les infractions prévues par la présent chapitre sont punies, en outre, d'une amende de 500 Euros à 125.000 Euros.

Ces peines seront appliquées aux préposés ou commis des personnes, dépositaires ou agents de l'autorité ou de la force publique, ou chargés d'une mission de service publique d'après les distinctions établies ici dessus.

Article 245. Toute personne, dépositaire ou agent de l'autorité ou de la force publique, toute personne chargée d'une mission de service publique ou investi d'un mandat électif public, qui, soit directement, soit par interposition de personnes ou par actes simulés, aura pris, reçu ou conservé quelques intérêts que ce soit dans les actes, adjudications, entreprises ou régies dont elle avait, au temps de l'acte, en toute ou en partie, l'administration ou la surveillance, ou qui, ayant mission d'ordonner le paiement ou de faire la liquidation d'une affaire, qui aura pris un intérêt quelconque, sera puni d'un emprisonnement de 6 mois à 5 ans, et d'une amende de 500 Euros à 125.000 Euros, et pourra, en outre, être condamné à l'interdiction du droit de remplir des fonctions, des emplois ou offices publics. La disposition qui précède ne sera pas applicable à celui qui ne pouvait, en raison des circonstances, favoriser par sa position ses intérêts privés et qui aura agi ouvertement».

(b) Observations on the implementation of the article

99. The reviewing experts observed that the abuse of functions of article 19 UNCAC implies that the public official abuses his power on his own initiative. The articles initially referred to by Luxembourg in relation to corruption and trading in influence involve a bilateral, respectively triangular, relationship where all the participants are liable to prosecution, which is evidently not the case of a victim of an abuse of power. However, after the country visit, Luxembourg provided the text of articles 240, 243, 244 and 245 CP. Read together, these articles seem to cover all the conduct prohibited by article 19 UNCAC.
100. The reviewing experts concluded that Luxembourg has implemented Art. 19 UNCAC.

Article 20 Illicit Enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

(a) Summary of information relevant to reviewing the implementation of the article

101. Luxembourg considered that it has complied with the obligation to consider implementing this provision of the Convention. Luxembourg indicated that the National Anti-Corruption Committee (COPRECO) discussed the possibility of criminalizing illicit enrichment but decided not to recommend this legal change to the government because this would in practice put the burden of proof on the suspect, which was considered to be incompatible with the fundamental legal principle of the presumption of innocence.

(b) Observations on the implementation of the article

102. Given that the provision of the Convention is non-mandatory and that COPRECO has examined the opportunity of adoption such a provision, the reviewing experts consider that Luxembourg is in compliance with the requirements of Article 20 UNCAC.
103. The reviewing experts note that following the GRECO report of 21 June 2013, a parliamentary commission has been charged with modifying the Rules of Procedure of the *Chambre des Députés*. Similar changes are being considered with regard to high-ranking

officials. The experts recommended pursuing these efforts to strengthen existing asset declaration systems for members of parliament and to introduce such systems for high-ranking officials.

Article 21 Bribery in the private sector

Subparagraph (a)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(a) Summary of information relevant to reviewing the implementation of the article

104. Luxembourg confirmed that it has fully implemented this provision of the Convention.

105. Luxembourg fulfils the measures described in article 21(a) UNCAC through article 310-1 CP.

Art. 310-1. (L. 13 février 2011) Est puni des mêmes peines le fait, par quiconque, de proposer ou de donner, directement ou par interposition de personnes, à une personne qui a la qualité d'administrateur ou de gérant d'une personne morale, de mandataire ou de préposé d'une personne morale ou physique, une offre, une promesse ou un avantage de toute nature, pour elle-même ou pour un tiers, ou d'en faire l'offre ou la promesse, pour faire ou s'abstenir de faire un acte de sa fonction ou facilité par sa fonction, à l'insu et sans l'autorisation, selon le cas, du conseil d'administration ou de l'assemblée générale, du mandant ou de l'employeur.

(b) Observations on the implementation of the article

106. The reviewing experts noted that articles 310 (passive component) and 310-1 CP (active component) criminalize corruption in the private sector. Luxembourg law goes beyond the requirements of the Convention in that it applies equally outside the context of business activities and the concept of "undue" advantage or advantage received "sans droit" are equally absent from articles 310 and 310-1 CP. On the other hand, the Luxembourg legislator has retained the formula "without the knowledge and authorization" to create a justification. The experts were wondering if the authorization given e.g. by the director of a company – at the time the act was committed or later – to his employee could "legalize" the offence.

107. During the country visit it was confirmed that there would not be an offence if the employee receiving the advantage has the authorization e.g. of the board of directors of the company he works for. It was pointed out that in this case, the decision making process was not corrupted. Moreover, it was pointed out that a subsequent, retrospective

authorization after the facts could not justify the offence. Nevertheless, the reviewing experts were not fully convinced that this possibility to legalize the offence was justified and were concerned because it also applied to active corruption.

108. Luxembourg further confirmed that any employee or person who works for another natural or legal person is a “mandataire” or “préposé”.

109. The reviewing experts concluded that Luxembourg has implemented Art. 21(a) UNCAC.

(c) Successes and good practices

110. The reviewing experts noted as a good practice that Luxembourg law goes beyond the requirements of the Convention in that it applies equally outside the context of business activities.

Subparagraph (b)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

(a) Summary of information relevant to reviewing the implementation of the article

111. Luxembourg confirmed that it has fully implemented this provision of the Convention.

112. Luxembourg fulfils the measures described in article 21(b) UNCAC through article 310 CP.

Art. 310. (L. 13 février 2011) Est puni d'un emprisonnement d'un mois à cinq ans et d'une amende de 251 euros à 30.000 euros, le fait par une personne qui a la qualité d'administrateur ou de gérant d'une personne morale, de mandataire ou de préposé d'une personne morale ou physique, de solliciter ou d'accepter de recevoir, directement ou par interposition de personnes, une offre, une promesse ou un avantage de toute nature, pour elle-même ou pour un tiers, ou d'en accepter l'offre ou la promesse, pour faire ou s'abstenir de faire un acte de sa fonction ou facilité par sa fonction, à l'insu et sans l'autorisation, selon le cas, du conseil d'administration ou de l'assemblée générale, du mandant ou de l'employeur.

(b) Observations on the implementation of the article

113. The reviewing experts concluded that Luxembourg has implemented Art. 21(b) UNCAC.

Article 22 Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position

(a) Summary of information relevant to reviewing the implementation of the article

114. Luxembourg confirmed that it has fully implemented this provision of the Convention.
115. The Luxembourg provisions which correspond to article 22 UNCAC was introduced by the Act of 21 July 1992 adapting the rules on bankruptcy and new definition of acts of trade and creating the offense of abuse of social goods. Concerning private persons, article 491 CP also applies (see para. 87 above).

Loi du 21 juillet 1992 portant adaptation de la réglementation concernant les faillites et nouvelle définition des actes de commerce et créant l'infraction d'abus de biens sociaux.

Art. III. Il est introduit à la loi modifiée du 10 août 1915 concernant les sociétés commerciales un article 171-1 ainsi libellé:

«Seront punis d'un emprisonnement d'un an à cinq ans et d'une amende de 10.000 à 250.000 francs ou d'une de ces peines seulement, les dirigeants de sociétés, de droit ou de fait, qui de mauvaise foi,

- auront fait des biens ou du crédit de la société un usage qu'ils savaient contraire à l'intérêt de celle-ci, à des fins personnelles ou pour favoriser une autre société ou entreprise dans laquelle ils étaient intéressés directement ou indirectement;
- auront fait des pouvoirs qu'ils possédaient ou des voix dont ils disposaient, en cette qualité, un usage qu'ils savaient contraire aux intérêts de la société à des fins personnelles ou pour favoriser une autre société ou entreprise dans laquelle ils étaient intéressés directement ou indirectement.»

(b) Observations on the implementation of the article

116. The reviewing experts observed that article 3 of the Act of 21 July 1992/article 171-1 of the Corporations Act criminalizes the embezzlement of property in the private sector and goes beyond the Convention in the sense that in the use contrary to the interests of the company, the powers or authority of the manager are also penalized. On the other hand, only the managers, *de jure* or *de facto*, may be perpetrators of the offence, while article 22 UNCAC includes any person who works for a private sector entity.
117. During the country visit, Luxembourg confirmed that the provision only applies to managers in law or in fact. The reason was that the offence involves a breach of trust related to goods for which the offender was granted special rights of administration. Other persons could, however, be punished for theft, articles 461 et seq. CP, and breach of trust, articles 491 et seq. CP.
118. Considering the optional nature of the provision, the reviewing experts concluded that Luxembourg is in compliance with its obligations under article 22 UNCAC.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (i) and (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

119. Luxembourg confirmed that it has fully implemented this provision of the Convention.

120. Luxembourg has adopted and implemented the measures in subparagraph 1 (a) (i) of article 23 UNCAC through the provisions of Section V, articles 506-1(1) and (2) CP.

Section V. - De l'infraction de blanchiment (L. 11 août 1998)

Art. 506-1. (L. 12 août 2003) Sont punis d'un emprisonnement d'un à cinq ans et d'une amende de 1.250 euros à 1.250.000 euros, ou de l'une de ces peines seulement:

1) (L. 27 octobre 2010) ceux qui ont sciemment facilité, par tout moyen, la justification mensongère de la nature, de l'origine, de l'emplacement, de la disposition, du mouvement ou de la propriété des biens visés à l'article 32-1, alinéa premier, sous 1), formant l'objet ou le produit, direct ou indirect,

[...]

- d'une infraction de corruption;

[...]

- (L. 17 juillet 2008) de toute autre infraction punie d'une peine privative de liberté d'un minimum supérieur à 6 mois; ou constituant un avantage patrimonial quelconque tiré de l'une ou de plusieurs de ces infractions;

2) (L. 27 octobre 2010) ceux qui ont sciemment apporté leur concours à une opération de placement, de dissimulation, de déguisement, de transfert ou de conversion des biens visés à l'article 32-1, alinéa premier, sous 1), formant l'objet ou le produit, direct ou indirect, des infractions énumérées au point 1) de cet article ou constituant un avantage patrimonial quelconque tiré de l'une ou de plusieurs de ces infractions;

3) (L. 13 mars 2009) ceux qui ont acquis, détenu ou utilisé des biens visés à l'article 32-1, alinéa premier, sous 1), formant l'objet ou le produit, direct ou indirect, des infractions énumérées au point 1) de cet article ou constituant un avantage patrimonial quelconque tiré de l'une ou de plusieurs de ces infractions, sachant, au moment où ils les recevaient, qu'ils provenaient de l'une ou de plusieurs des infractions visées au point 1) ou de la participation à l'une ou plusieurs de ces infractions. (L. 27 octobre 2010)

4) La tentative des infractions prévues aux points 1 à 3 ci-avant est punie des mêmes peines.

Art. 506-2. (L. 11 août 1998) Les auteurs des infractions prévues à l'article 506-1 pourront, de plus, être condamnées à l'interdiction, conformément à l'article 24.

Art. 506-7. (L. 11 août 1998) En cas de récidive dans le délai de cinq ans après une condamnation du chef d'une infraction prévue à l'article 506-1, les peines pourront être portées au double. Les condamnations définitives prononcées à l'étranger sont prises en considération aux fins d'établissement de la récidive pour autant que les infractions ayant donné lieu à ces condamnations sont également punissables suivant l'article 506-1.

121. Statistical data on the overall number of money laundering convictions was provided:

Year	2009	2010	2011	2012	2013 as of 15.09.
Total number of judicial decisions pronounced by a Court	7	32	54	87	74
Convictions	5	51	85	143	122

(b) Observations on the implementation of the article

122. During the country visit, Luxembourg provided further clarifications. The reviewing experts were told that money laundering being a continuing offence, the 5 year prescription period would only start with the completion of the last act of the offence. In that respect, the mere detaining of the money would mean that the offence is still perpetuated, implying that the limitation period does not start.

123. Moreover, while Luxembourg had opted for a list of predicate offences, the last indent of article 506-1 (1) CP meant that, due to the low minimum penalty of 6 months imprisonment, in practice Luxembourg almost had an all-crimes approach to money laundering. In particular, all corruption offences were specifically covered by a separate indent.

124. The reviewing experts concluded that Luxembourg has implemented Art. 23(1)(a)(i) UNCAC.

Subparagraph 1 (b) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

125. Luxembourg confirmed that it has fully implemented this provision of the Convention.
126. Luxembourg has adopted and implemented the measures in the subparagraph 1 (b) (i) of article 23 UNCAC through the provisions regulated in articles 505, 506 and 506-1(3) of the Luxembourg Penal Code.

Section IV. - Du recèlement des objets obtenus à l'aide d'un crime ou d'un délit.

Art. 505. (L. 14 août 2000) Ceux qui auront recelé, en tout ou en partie, les choses ou les biens incorporels enlevés, détournés ou obtenus à l'aide d'un crime ou d'un délit, seront punis d'un emprisonnement de quinze jours à cinq ans et d'une amende de 251 euros à 5.000 euros.

Ils pourront, de plus, être condamnés à l'interdiction, conformément à l'article 24.

Constitue également un recel le fait de sciemment bénéficier du produit d'un crime ou d'un délit.

Art. 506. Dans le cas où la peine applicable aux auteurs du crime sera celle de la réclusion à vie, les receleurs désignés dans l'article précédent seront condamnés à la réclusion de cinq à dix ans, s'ils sont convaincus d'avoir eu, au temps du recel, connaissance des circonstances auxquelles la loi attache la peine de la réclusion à vie.

Section V. - De l'infraction de blanchiment (L. 11 août 1998)

Art. 506-1. (L. 12 août 2003) Sont punis d'un emprisonnement d'un à cinq ans et d'une amende de 1.250 euros à 1.250.000 euros, ou de l'une de ces peines seulement:

[...]

3) (L. 13 mars 2009) ceux qui ont acquis, détenu ou utilisé des biens visés à l'article 32-1, alinéa premier, sous 1), formant l'objet ou le produit, direct ou indirect, des infractions énumérées au point 1) de cet article ou constituant un avantage patrimonial quelconque tiré de l'une ou de plusieurs de ces infractions, sachant, au moment où ils les recevaient, qu'ils provenaient de l'une ou de plusieurs des infractions visées au point 1) ou de la participation à l'une ou plusieurs de ces infractions. (L. 27 octobre 2010)

(b) Observations on the implementation of the article

127. The reviewing experts concluded that Luxembourg has implemented Art. 23(1)(b)(i) UNCAC.

Subparagraph 1 (b) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

128. Luxembourg confirmed that it has fully implemented this provision of the Convention.
129. Luxembourg has adopted and implemented the measures in subparagraph 1 (b) (ii) of article 23 UNCAC through the provisions of articles 506-1(4), 506-4, 506-5 and 506-6 CP, as well as through the general provisions in articles 66 and 67 CP (authors and accomplices of crimes).

Section V. - De l'infraction de blanchiment (L. 11 août 1998)

Art. 506-1. (L. 12 août 2003) Sont punis d'un emprisonnement d'un à cinq ans et d'une amende de 1.250 euros à 1.250.000 euros, ou de l'une de ces peines seulement:

[...]

4) La tentative des infractions prévues aux points 1 à 3 ci-avant est punie des mêmes peines.

Art. 506-4. (L. 11 août 1998) Les infractions visées à l'article 506-1 sont également punissables, lorsque l'auteur est aussi l'auteur ou le complice de l'infraction primaire.

Art. 506-5. (L. 11 août 1998) Les infractions visées à l'article 506-1 sont punies d'un emprisonnement de quinze à vingt ans et d'une amende de 1.250 euros à 1.250.000 euros ou de l'une de ces peines seulement, si elles constituent des actes de participation à l'activité principale ou accessoire d'une association ou organisation.

Art. 506-6. (L. 11 août 1998) L'association ou l'entente en vue de commettre les infractions prévues à l'article 506-1 est punissable de la même peine que l'infraction consommée.

130. Statistical data on the overall number of money laundering cases was provided (Please refer to paragraph 121 above).

(b) Observations on the implementation of the article

131. The reviewing experts concluded that Luxembourg has implemented Art. 23(1)(a)(i) UNCAC.

Subparagraph 2 (a)

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(a) Summary of information relevant to reviewing the implementation of the article

132. Luxembourg confirmed that it has fully implemented this provision of the Convention.

133. While Luxembourg has opted for a list of predicate offences, the last indent of article 506-1 (1) CP means that, due to the low minimum penalty of 6 months imprisonment, in practice Luxembourg almost has an all-crimes approach to money laundering. In particular, all corruption offences are specifically covered by a separate indent.

Art. 506-1. (L. 12 août 2003) Sont punis d'un emprisonnement d'un à cinq ans et d'une amende de 1.250 euros à 1.250.000 euros, ou de l'une de ces peines seulement:

- 1) (L. 27 octobre 2010) ceux qui ont sciemment facilité, par tout moyen, la justification mensongère de la nature, de l'origine, de l'emplacement, de la disposition, du mouvement ou de la propriété des biens visés à l'article 32-1, alinéa premier, sous 1), formant l'objet ou le produit, direct ou indirect,
[...]
- d'une infraction de corruption;
[...]
- (L. 17 juillet 2008) de toute autre infraction punie d'une peine privative de liberté d'un minimum supérieur à 6 mois; ou constituant un avantage patrimonial quelconque tiré de l'une ou de plusieurs de ces infractions;

(b) Observations on the implementation of the article

134. The reviewing experts concluded that Luxembourg has implemented Art. 23(2)(a) UNCAC.

Subparagraph 2 (b)

2. For purposes of implementing or applying paragraph 1 of this article:

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

135. Luxembourg confirmed that it has fully implemented this provision of the Convention.

Art. 506-1. (L. 12 août 2003) Sont punis d'un emprisonnement d'un à cinq ans et d'une amende de 1.250 euros à 1.250.000 euros, ou de l'une de ces peines seulement:

- 1) (L. 27 octobre 2010) ceux qui ont sciemment facilité, par tout moyen, la justification mensongère de la nature, de l'origine, de l'emplacement, de la disposition, du mouvement ou de la propriété des biens visés à l'article 32-1, alinéa premier, sous 1), formant l'objet ou le produit, direct ou indirect,
[...]
- d'une infraction de corruption;

(b) Observations on the implementation of the article

136. The reviewing experts enquired if corruption in the private sector was a predicate offence to money laundering.

137. During the country visit, Luxembourg pointed out that article 506-1 CP contains a reference to corruption in general, which does not exclude the corruption offences in the private sector.
138. The reviewing experts concluded that Luxembourg has implemented Art. 23(2)(b) UNCAC.

Subparagraph 2 (c)

2. For purposes of implementing or applying paragraph 1 of this article:

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(a) Summary of information relevant to reviewing the implementation of the article

139. Luxembourg confirmed that it has fully implemented this provision of the Convention.
140. Luxembourg has adopted and implemented the measures in subparagraph 2 (c) of article 23 UNCAC through the provisions of articles 506-1 to 506-8 CP.

Art. 506-3. (L. 11 août 1998) Les infractions prévues à l'article 506-1 sont également punissables lorsque l'infraction primaire a été commise à l'étranger. Toutefois, à l'exception des infractions pour lesquelles la loi permet la poursuite même si elles ne sont pas punissables dans l'État où elles ont été commises, cette infraction doit être punissable dans l'État où elle a été commise.

Art. 506-8. (L. 27 octobre 2010) Les infractions visées à l'article 506-1 sont punissables indépendamment de toutes poursuites ou condamnations pour une des infractions primaires de l'article 506-1.

(b) Observations on the implementation of the article

141. During the country visit, Luxembourg pointed out that article 506-8 CP means that offenders can be prosecuted for money laundering even if the predicate offence was not prosecuted in another country. Moreover, for corruption offences, no double criminality is required (article 5 Code d'Instruction Criminelle, hereafter the 'CIC').
142. The reviewing experts concluded that Luxembourg has implemented Art. 23(2)(c) UNCAC.

(c) Successes and good practices

143. The absence of the requirement of double criminality was highlighted as a good practice by the reviewing experts.

Subparagraph 2 (d)

2. For purposes of implementing or applying paragraph 1 of this article:

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(a) Summary of information relevant to reviewing the implementation of the article

144. Luxembourg did not furnish copies of its laws to the Secretary-General of the United Nations as prescribed above.

(b) Observations on the implementation of the article

145. The reviewing experts concluded that Luxembourg has not observed Art. 23(2)(d) UNCAC.

Subparagraph 2 (e)

2. For purposes of implementing or applying paragraph 1 of this article:

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

(a) Summary of information relevant to reviewing the implementation of the article

146. Luxembourg indicated that the country's domestic system does not contain fundamental principles as referred to in Article 23 subparagraph 2 (e) UNCAC. To the contrary, article 506-4 CP explicitly provides for the criminalisation of self-laundering.

Art. 506-4. (L. 11 août 1998) Les infractions visées à l'article 506-1 sont également punissables, lorsque l'auteur est aussi l'auteur ou le complice de l'infraction primaire.

(b) Observations on the implementation of the article

147. The reviewing experts concluded that Luxembourg has not made use of the exemption provided for in Art. 23(2)(e) UNCAC.

Article 24 Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

148. Luxembourg confirmed that it has fully implemented this provision of the Convention.
149. Luxembourg has adopted and implemented the measures in the subparagraph 1 (b) (i) of article 23 UNCAC through the provisions in articles 505 and 506 CP.

Section IV. - Du recèlement des objets obtenus à l'aide d'un crime ou d'un délit.

Art. 505. (L. 14 août 2000) Ceux qui auront recelé, en tout ou en partie, les choses ou les biens incorporels enlevés, détournés ou obtenus à l'aide d'un crime ou d'un délit, seront punis d'un emprisonnement de quinze jours à cinq ans et d'une amende de 251 euros à 5.000 euros.

Ils pourront, de plus, être condamnés à l'interdiction, conformément à l'article 24.

Constitue également un recel le fait de sciemment bénéficier du produit d'un crime ou d'un délit.

Art. 506. Dans le cas où la peine applicable aux auteurs du crime sera celle de la réclusion à vie, les receleurs désignés dans l'article précédent seront condamnés à la réclusion de cinq à dix ans, s'ils sont convaincus d'avoir eu, au temps du recel, connaissance des circonstances auxquelles la loi attache la peine de la réclusion à vie.

(b) Observations on the implementation of the article

150. During the country visit, Luxembourg further clarified the acts included in the concept of concealment. It was explained that the simple retention of property is enough. Therefore, simply driving a stolen vehicle would be sufficient to commit the offence. This very wide definition comes from French and Belgian jurisprudence and can also be used instead of money laundering offences in certain cases. Under Luxembourg law, concealment is qualified as a continuing offence which, due to the absence of prescription, facilitates criminal prosecution.
151. The reviewing experts concluded that Luxembourg has implemented Art. 24 UNCAC.

Article 25 Obstruction of Justice

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

152. Luxembourg confirmed that it has fully implemented this provision of the Convention.

153. Luxembourg has adopted and implemented the measures in the subparagraph (a) of article 25 through the provisions in articles 140, 141, 223, 224, 251 to 253 and 282 CP.

Chapitre I-1. - Des délits relatifs à l'entrave à l'exercice de la justice (L. 10 juillet 2011)

Art. 140. (L. 10 juillet 2011) 1. Le fait, pour quiconque ayant connaissance d'un crime dont il est encore possible de prévenir ou de limiter les effets, ou dont les auteurs sont susceptibles de commettre de nouveaux crimes qui pourraient être empêchés, de ne pas en informer les autorités judiciaires ou administratives est puni d'une peine d'emprisonnement de un à trois ans et d'une amende de 251 à 45.000 euros.

2. Sont exceptés des dispositions qui précèdent, sauf en ce qui concerne les crimes commis sur les mineurs:

- les parents en ligne directe et leurs conjoints, ainsi que les frères et sœurs et leurs conjoints, de l'auteur ou du complice du crime;
- le conjoint de l'auteur ou du complice du crime, ou le partenaire au sens de la loi modifiée du 9 juillet 2004 relative aux effets légaux de certains partenariats;
- les personnes astreintes au secret professionnel et visées par l'article 458 du Code pénal.

Art. 141. (L. 10 juillet 2011) Est puni d'un emprisonnement de un mois à deux ans et d'une amende de 251 à 45.000 euros le fait, en vue de faire sciemment obstacle à la manifestation de la vérité:

1. de modifier l'état des lieux d'un crime ou d'un délit soit par l'altération, la falsification ou l'effacement des traces ou indices, soit par l'apport, le déplacement ou la suppression d'objets quelconques;

2. de détruire, soustraire, receler ou altérer un document public ou privé ou un objet de nature à faciliter la découverte d'un crime ou d'un délit, la recherche des preuves ou la condamnation des coupables.

Lorsque les faits prévus au présent article sont commis par une personne qui, par ses fonctions, est appelée à concourir à la manifestation de la vérité, la peine est portée à cinq ans d'emprisonnement et à 75.000 euros d'amende.

Est punie de la même peine, la personne qui, par ses fonctions, est appelée à concourir à la manifestation de la vérité et qui retient sciemment une information susceptible de contribuer à la manifestation de la vérité.

Le présent article s'applique sans préjudice des dispositions de l'article 32 du Code d'instruction criminelle.

Subornation de témoins

Art. 223. Le coupable de subornation de témoins, d'experts ou d'interprètes sera passible des mêmes peines que le faux témoin, selon les distinctions établies par les articles 215 à 222.

Art. 224. Le coupable de faux témoignage ou de fausse déclaration, qui aura reçu de l'argent, une récompense quelconque ou des promesses, sera condamné, de plus, à une amende de 500 euros à 30.000 euros.

Des actes d'intimidation commis contre les personnes exerçant une fonction publique

Art. 251 (L. 15 janvier 2001) Sera punie de la réclusion de cinq à dix ans et d'une amende de 500 euros à 187.500 euros, toute personne qui utilise des menaces ou des violences ou qui commet tout autre acte d'intimidation pour obtenir d'une personne, dépositaire ou

agent de l'autorité ou de la force publiques, ou chargée d'une mission de service public ou investie d'un mandat électif public, soit qu'elle accomplisse ou s'abstienne d'accomplir un acte de sa fonction, de sa mission ou de son mandat, ou facilité par sa fonction, sa mission ou son mandat, soit qu'elle abuse de son autorité vraie ou supposée en vue de faire obtenir d'une autorité ou d'une administration publique des distinctions, des emplois, des marchés ou toute autre décision favorable.

Art. 252. (L. 15 janvier 2001) 1) (23 mai 2005) Les dispositions des articles 246 à 251 du présent code s'appliquent aussi aux infractions impliquant

- des personnes, dépositaires ou agents de l'autorité ou de la force publique, ou investies d'un mandat électif public ou chargées d'une mission de service public d'un autre Etat;
- des personnes siégeant dans une formation juridictionnelle d'un autre Etat, même en tant que membre non professionnel d'un organe collégial chargé de se prononcer sur l'issue d'un litige, ou exerçant une fonction d'arbitre soumis à la réglementation sur l'arbitrage d'un autre Etat ou d'une organisation internationale publique;
- des fonctionnaires communautaires et des membres de la Commission des Communautés européennes, du Parlement européen, de la Cour de justice et de la Cour des comptes des
[...]

Art. 253. (L. 13 février 2011) 1. Si les faits qualifiés crimes au présent chapitre sont reconnus de nature à n'être punis que de peines correctionnelles, la personne condamnée pourra, en outre, être condamnée à l'interdiction en tout ou en partie de l'exercice des droits énumérés à l'article 11, dans les conditions prévues à l'article 24.

3. Pour les faits qualifiés délits au sens du présent chapitre et pour les faits prévus aux articles 310 et 310-1, l'article 24 du Code pénal s'applique.

Art. 282. Les peines portées par les articles 275, 278 et 279 seront applicables dans le cas où l'on aura outragé ou frappé des témoins à raison de leurs dépositions.

154.

(b) Observations on the implementation of the article

155. The reviewing experts questioned if articles 223 and 224 CP (subornation of witnesses) covered all means to induce false testimony, including the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to the witness. They asked if Luxembourg law in articles 223 and 224 CP only punishes voluntary false testimonies and not those obtained by coercion.

156. During the country visit, Luxembourg replied that subornation of witnesses could be achieved by any means, including the use of physical force, threats or intimidation. Moreover, it was pointed out that articles 327 – 330 CP penalise threats. If violence is used against a witness after he has made his statement, article 282 applies.

157. In view of these explanations, the reviewing experts concluded that Luxembourg has implemented Art. 25(a) UNCAC.

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

(a) Summary of information relevant to reviewing the implementation of the article

158. Luxembourg confirmed that it has fully implemented this provision of the Convention.

159. Luxembourg has adopted and implemented the measures in the subparagraph (b) of article 25 through the provisions in articles 140, 141, 251 to 253 and 275 et seq. CP.

Chapitre I-1. - Des délits relatifs à l'entrave à l'exercice de la justice (L. 10 juillet 2011)

Art. 140. (L. 10 juillet 2011) 1. Le fait, pour quiconque ayant connaissance d'un crime dont il est encore possible de prévenir ou de limiter les effets, ou dont les auteurs sont susceptibles de commettre de nouveaux crimes qui pourraient être empêchés, de ne pas en informer les autorités judiciaires ou administratives est puni d'une peine d'emprisonnement de un à trois ans et d'une amende de 251 à 45.000 euros.

2. Sont exceptés des dispositions qui précèdent, sauf en ce qui concerne les crimes commis sur les mineurs:

- les parents en ligne directe et leurs conjoints, ainsi que les frères et sœurs et leurs conjoints, de l'auteur ou du complice du crime;
- le conjoint de l'auteur ou du complice du crime, ou le partenaire au sens de la loi modifiée du 9 juillet 2004 relative aux effets légaux de certains partenariats;
- les personnes astreintes au secret professionnel et visées par l'article 458 du Code pénal.

Art. 141. (L. 10 juillet 2011) Est puni d'un emprisonnement de un mois à deux ans et d'une amende de 251 à 45.000 euros le fait, en vue de faire sciemment obstacle à la manifestation de la vérité:

de modifier l'état des lieux d'un crime ou d'un délit soit par l'altération, la falsification ou l'effacement des traces ou indices, soit par l'apport, le déplacement ou la suppression d'objets quelconques;

de détruire, soustraire, receler ou altérer un document public ou privé ou un objet de nature à faciliter la découverte d'un crime ou d'un délit, la recherche des preuves ou la condamnation des coupables.

Lorsque les faits prévus au présent article sont commis par une personne qui, par ses fonctions, est appelée à concourir à la manifestation de la vérité, la peine est portée à cinq ans d'emprisonnement et à 75.000 euros d'amende.

Est punie de la même peine, la personne qui, par ses fonctions, est appelée à concourir à la manifestation de la vérité et qui retient sciemment une information susceptible de contribuer à la manifestation de la vérité.

Le présent article s'applique sans préjudice des dispositions de l'article 32 du Code d'instruction criminelle.

De la corruption de magistrats

Art. 250. (L. 13 février 2011) Sera puni de la réclusion de dix à quinze ans et d'une amende de 2.500 euros à 250.000 euros, tout magistrat ou toute autre personne siégeant dans une formation juridictionnelle, tout arbitre ou expert nommé soit par une juridiction, soit par les parties, qui aura sollicité ou reçu, sans droit, directement ou indirectement, des offres, des promesses, des dons, des présents ou des avantages quelconques, pour lui-même ou pour un tiers, ou en aura accepté l'offre ou la promesse, pour l'accomplissement ou l'abstention d'accomplir un acte de sa fonction.

Quiconque, dans les conditions de l'alinéa 1er, propose ou donne à un magistrat ou une autre personne siégeant dans une formation juridictionnelle, ou à un arbitre ou expert nommé soit par une juridiction, soit par les parties, des offres, des promesses, des dons, des présents ou des avantages quelconques, pour lui-même ou pour un tiers, ou en fait l'offre ou la promesse, est puni des mêmes peines.

Des actes d'intimidation commis contre les personnes exerçant une fonction publique

Art. 251 (L. 15 janvier 2001) Sera punie de la réclusion de cinq à dix ans et d'une amende de 500 euros à 187.500 euros, toute personne qui utilise des menaces ou des violences ou qui commet tout autre acte d'intimidation pour obtenir d'une personne, dépositaire ou agent de l'autorité ou de la force publiques, ou chargée d'une mission de service public ou investie d'un mandat électif public, soit qu'elle accomplisse ou s'abstienne d'accomplir un acte de sa fonction, de sa mission ou de son mandat, ou facilité par sa fonction, sa mission ou son mandat, soit qu'elle abuse de son autorité vraie ou supposée en vue de faire obtenir d'une autorité ou d'une administration publique des distinctions, des emplois, des marchés ou toute autre décision favorable.

Art. 253. (L. 13 février 2011) 1. Si les faits qualifiés crimes au présent chapitre sont reconnus de nature à n'être punis que de peines correctionnelles, la personne condamnée pourra, en outre, être condamnée à l'interdiction en tout ou en partie de l'exercice des droits énumérés à l'article 11, dans les conditions prévues à l'article 24.

Pour les faits qualifiés délits au sens du présent chapitre et pour les faits prévus aux articles 310 et 310-1, l'article 24 du Code pénal s'applique.

Chapitre II. - Des outrages et des violences envers les ministres, les membres de la Chambre des députés, les dépositaires de l'autorité ou de la force publique.

Art. 275. Sera puni d'un emprisonnement de quinze jours à six mois et d'une amende de 500 euros à 3.000 euros, celui qui aura outragé par faits, paroles, gestes, menaces, écrits ou dessins, un député dans l'exercice ou à l'occasion de l'exercice de son mandat, un membre du Gouvernement ou un magistrat de l'ordre administratif ou judiciaire, dans l'exercice ou à l'occasion de l'exercice de leurs fonctions.

Si l'outrage a eu lieu à la séance de la Chambre ou à l'audience d'une cour ou d'un tribunal, l'emprisonnement sera de deux mois à deux ans, et l'amende de 500 euros à 10.000 euros. Les outrages adressés à un député ne peuvent, sauf le cas de flagrant délit, être poursuivis que sur la plainte de la personne outragée ou sur la dénonciation de la Chambre des députés.

(b) Observations on the implementation of the article

160. During the country visit, Luxembourg pointed out that article 251 contains two alternatives which should cover all acts envisaged by article 25(b) UNCAC.

161. In view of these explanations, the reviewing experts concluded that Luxembourg has implemented Art. 25(b) UNCAC.

Article 26 Liability of legal persons

Paragraphs 1 and 2

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

(a) Summary of information relevant to reviewing the implementation of the article

162. Luxembourg confirmed that it has fully implemented these provisions of the Convention.

163. Luxembourg cited Chapter II-1, articles 34 to 40 CP. Article 26, paragraphs 1 and 2, UNCAC is implemented through article 34 CP.

Des peines applicables aux personnes morales. (L. 3 mars 2010)

Art. 34. (L. 3 mars 2010) Lorsqu'un crime ou un délit est commis au nom et dans l'intérêt d'une personne morale par un de ses organes légaux ou par un ou plusieurs de ses dirigeants de droit ou de fait, la personne morale peut être déclarée pénalement responsable et encourir les peines prévues par les articles 35 à 38.

La responsabilité pénale des personnes morales n'exclut pas celle des personnes physiques auteurs ou complices des mêmes infractions.

Les alinéas précédents ne sont pas applicables à l'Etat et aux communes.

(b) Observations on the implementation of the article

164. Noting that criminal liability is not a mandatory requirement of the Convention, the reviewing experts observed that the persons who can incur the criminal liability of the legal person are the members of its boards or its *de jure* or *de facto* managers (article 34 CP). This might not, however, include all the individuals that may work for the legal person, e.g. not a person in a lower hierarchical position.

165. During the country visit, Luxembourg confirmed that an employee in a lower hierarchic position who takes the initiative of offering a bribe, might not incur the liability of the legal person. If, however, this person is instructed or authorized by a director, the director would be a co-author of the crime and would thus engage the liability of the legal person. In that respect, at least a tacit authorisation would be required. A constant omission to provide for compliance could possibly be sufficient in that respect.

166. This requirement could mean that it is difficult to operate the criminal liability of legal persons in practice. Indeed, it was confirmed that no conviction in a corruption case existed to date.

167. In order to clarify the requirement in the law that the offence is committed "*au nom et dans l'intérêt*" of the legal person, Luxembourg cited a judgment of the Court of appeal (Cour d'appel - VIe ch. 12.12.2011 - no. 587, p. 14, 16, 17). It was held that

Offences can be considered to be « in the interest » of the legal person if they were « knowingly committed by the director(s) of a legal person in order to obtain a gain or a financial profit for the legal person or in order to achieve savings or to avoid losses » (cf. doc. parl. no 5718/00 id p.14).

...

[In the present case] Aware of the risk of a traffic accident in the presence of a layer of mud on the roadway, and neglecting to take adequate security measures to avoid it, [the accused] was able to obtain savings in his favour, and respectively avoid losses.

This lack of foresight in the execution and monitoring of the works on the construction site, related to a poor internal organisation, is imputable to the CEO. It resulted as a direct consequence in the fall of the motorcyclist. It is therefore justifiable that the judges at first instance have imputed criminal responsibility to [the accused] ...

168. The reviewing experts positively noted the large scope *rationae materiae* and *personae* of the liability of legal persons which covers all the crimes and offences and it includes all legal persons and legal persons governed by public law (except for the State and the communes), including public enterprises.

169. Noting that criminal liability is not a mandatory requirement of the Convention, the reviewing experts concluded that Luxembourg has legislatively implemented such a form of liability. They also note that Luxembourg has chosen an approach whereby some individuals working for the legal person, in particular a person in a lower hierarchical position, might not trigger the liability of the legal person.

(c) Challenges in implementation

170. The reviewing experts recommend that Luxembourg consider amending the existing legislation so that the level of authority of the person whose conduct triggers the liability of the legal person is flexible and reflects the wide variety of decision-making systems in legal persons. Moreover, Luxembourg is requested to monitor the jurisprudence on the criminal liability of legal persons. The continued absence of any conviction of a legal person in a corruption case could indicate that Luxembourg should amend its legislation in order to make it more operative.

Paragraph 3

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

(a) Summary of information relevant to reviewing the implementation of the article

171. Luxembourg confirmed that it has fully implemented this provision of the Convention in article 34(2) CP, according to which the liability of the legal person is independent from the liability of the individual who commits the offense.

Des peines applicables aux personnes morales. (L. 3 mars 2010)

Art. 34. (L. 3 mars 2010) Lorsqu'un crime ou un délit est commis au nom et dans l'intérêt d'une personne morale par un de ses organes légaux ou par un ou plusieurs de ses dirigeants de droit ou de fait, la personne morale peut être déclarée pénalement responsable et encourir les peines prévues par les articles 35 à 38.

La responsabilité pénale des personnes morales n'exclut pas celle des personnes physiques auteurs ou complices des mêmes infractions.

Les alinéas précédents ne sont pas applicables à l'Etat et aux communes.

172. Conversely, the Luxembourg Courts have held that the criminal liability of the legal person may be examined even when the organ or the representative may not have been

effectively prosecuted and convicted of the offense (Cour d'appel - Xe ch. 30.11.2011 - no. 567, confirmant Trib. Lux. - IXe ch. 14.3.2011 - no. 900 p. 2, 3, 6).

(b) Observations on the implementation of the article

173. The reviewing experts concluded that Luxembourg has implemented Art. 26(3) UNCAC.

Paragraph 4

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

(a) Summary of information relevant to reviewing the implementation of the article

174. Luxembourg confirmed that it has fully implemented this provision of the Convention through articles 35 to 40 CP.

Des peines applicables aux personnes morales. (L. 3 mars 2010)

Art. 35. (L. 3 mars 2010) Les peines criminelles ou correctionnelles encourues par les personnes morales sont:

- 1) l'amende, dans les conditions et suivant les modalités prévues par l'article 36;
- 2) la confiscation spéciale;
- 3) l'exclusion de la participation à des marchés publics;
- 4) la dissolution, dans les conditions et suivant les modalités prévues par l'article 38.

Art. 36. (L. 3 mars 2010) L'amende en matière criminelle et correctionnelle applicable aux personnes morales est de 500 euros au moins.

En matière criminelle, le taux maximum de l'amende applicable aux personnes morales est de 750.000 euros.

En matière correctionnelle, le taux maximum de l'amende applicable aux personnes morales est égal au double de celui prévu à l'égard des personnes physiques par la loi qui réprime l'infraction.

Lorsqu'aucune amende n'est prévue à l'égard des personnes physiques par la loi qui réprime l'infraction, le taux maximum de l'amende applicable aux personnes morales ne peut excéder le double de la somme obtenue par multiplication du maximum de la peine d'emprisonnement prévue, exprimée en jours, par le montant pris en considération en matière de contrainte par corps.

Art. 37. (L. 3 mars 2010) Le taux maximum de l'amende encourue selon les dispositions de l'article

36 est quintuplé lorsque la responsabilité pénale de la personne morale est engagée pour une des infractions suivantes:

- crimes et délits contre la sûreté de l'Etat
- actes de terrorisme et de financement de terrorisme
- infractions aux lois relatives aux armes prohibées en relation avec une association de malfaiteurs ou une organisation criminelle
- traite des êtres humains et proxénétisme
- trafic de stupéfiants en relation avec une association de malfaiteurs ou une organisation criminelle
- blanchiment et recel
- concussion, prise illégale d'intérêts, corruption active et passive, corruption privée

- aide à l'entrée et au séjour irréguliers en relation avec une association de malfaiteurs ou une organisation criminelle.
- (L. 21 décembre 2012) emploi illégal de ressortissants de pays tiers en séjour irrégulier en relation avec une association de malfaiteurs ou une organisation criminelle.

Art. 38. (L. 3 mars 2010) La dissolution peut être prononcée lorsque, intentionnellement, la personne morale a été créée ou, lorsqu'il s'agit d'un crime ou d'un délit puni en ce qui concerne les personnes physiques d'une peine privative de liberté supérieure ou égale à trois ans, détournée de son objet pour commettre les faits incriminés.
La dissolution n'est pas applicable aux personnes morales de droit public dont la responsabilité est susceptible d'être engagée.
La décision prononçant la dissolution de la personne morale comporte le renvoi de celle-ci devant le tribunal compétent pour procéder à la liquidation.

Art. 39. (L. 3 mars 2010) Lorsque la personne morale encourt une peine correctionnelle autre que l'amende, cette peine correctionnelle peut être prononcée seule à titre de peine principale.

Art. 40. (L. 3 mars 2010) Lorsqu'un délit est puni de l'emprisonnement à l'égard des personnes physiques par la loi qui réprime l'infraction, la confiscation spéciale telle qu'elle est définie par l'article 31 peut être prononcée à titre de peine principale à l'égard de la personne morale, alors même qu'elle ne serait pas prévue par la loi particulière dont il est fait application.
La disposition de l'alinéa précédent ne s'applique pas en matière de délits de presse.

175. Moreover the corporate criminal liability is supplemented in Luxembourg by administrative sanctions (Article 203 Loi modifiée du 10 août 1915 sur les sociétés commerciales).

Art. 203. (inséré par la Loi du 19 mai 1978 (Mém. A32 du 13/06/1978 P.589), remplacé par la Loi du 31 mai 1999 (Mém. A77 du 21/06/1999 P.1681)) (inséré par la Loi du 19 mai 1978 (Mém. A32 du 13/06/1978 P.589), remplacé par la Loi du 31 mai 1999 (Mém. A77 du 21/06/1999 P.1681))

(1) Le tribunal d'arrondissement siégeant en matière commerciale peut à la requête du Procureur d'Etat, prononcer la dissolution et ordonner la liquidation de toute société soumise à la loi luxembourgeoise qui poursuit des activités contraire à la loi pénale ou qui contrevient gravement aux dispositions du code de commerce ou des lois régissant les sociétés commerciales, y compris en matière de droit d'établissement.

(2) La requête et les actes de procédure dans le cadre du présent article sont notifiés par la voie du greffe.

Lorsque la société ne peut être touchée à son domicile légal au Grand-Duché de Luxembourg, la requête est publiée par extrait dans deux journaux imprimés au pays.

(3) En ordonnant la liquidation, la tribunal nomme un juge-commissaire ainsi qu'un ou plusieurs liquidateurs. Il arrête le mode de liquidation. Il peut rendre applicables, dans la mesure qu'il détermine, les règles régissant la liquidation de la faillite. Le mode de liquidation peut être modifié par décision ultérieure, soit d'office, soit sur requête du ou des liquidateurs.

(4) Les décisions judiciaires prononçant la dissolution et ordonnant la liquidation d'une société sont publiées par extrait au Mémorial. Le tribunal peut, en outre, et en dehors des publications à faire dans les journaux imprimés au pays, en ordonner la publication par extrait dans des journaux étrangers qu'il désigne.

Les publications sont faites à la diligence du ou des liquidateurs.

(5) Le tribunal peut décider que le jugement prononçant la dissolution et ordonnant la liquidation est exécutoire par provision.

(6) En cas d'absence ou d'insuffisance d'actif, constatée par le juge-commissaire, les frais et honoraires des liquidateurs qui sont arbitrés par le tribunal sont à charge de l'Etat et liquidés comme frais judiciaires.

(7) Les actions contre les liquidateurs se prescrivent par cinq ans à partir de la publication de la clôture de la liquidation.

Art. 203-1. (inséré par la Loi du 31 mai 1999 (Mém. A77 du 21/06/1999 P.1681), modifié par la Loi du 1^{er} août 2001 (Mém. A117 du 18/09/2001 P.2440) (inséré par la Loi du 31 mai 1999 (Mém. A77 du 21/06/1999 P.1681), modifié par la Loi du 1^{er} août 2001 (Mém. A117 du 18/09/2001 P.2440)

(1) Le tribunal d'arrondissement siégeant en matière commerciale peut, à la requête du Procureur d'Etat, prononcer la fermeture de tout établissement au Grand-Duché de Luxembourg d'une société étrangère qui poursuit des activités contraires à la loi pénale ou qui contrevient gravement aux dispositions du code de commerce ou des lois régissant les sociétés commerciales, y compris en matière de droit d'établissement.

(2) La requête et les actes de procédure dans le cadre du présent article sont notifiés par la voie du greffe.

Lorsque la société ne peut être touchée à son domicile légal au Grand-Duché de Luxembourg, la requête est publiée par extrait dans deux journaux imprimés au pays. Le tribunal peut, en outre, en ordonner la publication par extrait dans des journaux étrangers qu'il désigne.

(3) Les décisions judiciaires prononçant la fermeture de l'établissement d'une société étrangère sont publiées par extrait au Mémorial. Le tribunal peut, en outre, et en dehors des publications à faire dans les journaux imprimés au pays, en ordonner la publication par extrait dans des journaux étrangers qu'il désigne. Les publications sont faites à la diligence du Procureur d'Etat.

(4) Les jugements prononçant la fermeture de l'établissement au Grand-Duché de Luxembourg d'une société étrangère sont exécutoires par provision.

(5) Est puni d'un emprisonnement de huit jours à cinq ans et d'une amende de 1.250 à 125.000 euros ou d'une de ces peines seulement, celui qui viole une décision de fermeture judiciaire prononcée conformément au présent article.

(b) Observations on the implementation of the article

176. The reviewing experts concluded that Luxembourg has legislatively implemented Art. 26(4) UNCAC.

Article 27 Participation and attempt

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

177. Luxembourg confirmed that it has fully implemented this provision of the Convention.

178. Luxembourg has adopted and implemented the measures in paragraph 1 of article 27 UNCAC through the provisions in chapter VII, articles 66 to 69 CP. Co-perpetrators are punished as the perpetrators (article 66), while the accomplices (article 67) of a crime or an offence are punished with the penalty immediately inferior to that incurred by the perpetrators of the crime (article 69).

Chapitre VII. - De la participation de plusieurs personnes au même crime ou délit.

Art. 66. Seront punis comme auteurs d'un crime ou d'un délit:
Ceux qui l'auront exécuté ou qui auront coopéré directement à son exécution;

Ceux qui, par un fait quelconque, auront prêté pour l'exécution une aide telle que, sans leur assistance, le crime ou le délit n'eût pu être commis;
Ceux qui, par dons, promesses, menaces, abus d'autorité ou de pouvoir, machinations ou artifices coupables, auront directement provoqué à ce crime ou à ce délit;
(L. 8 juin 2004) Ceux qui, soit par des discours tenus dans des réunions ou dans des lieux publics, soit par des placards ou affiches, soit par des écrits, imprimés ou non et vendus ou distribués, auront provoqué directement à le commettre, sans préjudice des deux dernières dispositions de l'article 22 de la loi du 8 juin 2004 sur la liberté d'expression dans les médias.

Art. 67. Seront punis comme complices d'un crime ou d'un délit:
Ceux qui auront donné des instructions pour le commettre;
Ceux qui auront procuré des armes, des instruments ou tout autre moyen qui a servi au crime ou au délit, sachant qu'ils devaient y servir;
Ceux qui hors le cas prévu par le paragraphe 3 de l'article 66, auront, avec connaissance, aidé ou assisté l'auteur ou les auteurs du crime ou du délit dans les faits qui l'ont préparé ou facilité, ou dans ceux qui l'ont consommé.

Art. 68. Ceux qui, connaissant la conduite criminelle des malfaiteurs exerçant des brigandages ou des violences contre la sûreté de l'Etat, la paix publique, les personnes ou les propriétés, leur auront fourni habituellement logement, lieu de retraite ou de réunion, seront punis comme leurs complices.

Art. 69. Les complices d'un crime seront punis de la peine immédiatement inférieure à celle qu'ils encourraient s'ils étaient auteurs de ce crime, d'après la graduation prévue par l'article 52 du présent code.
La peine prononcée contre les complices d'un délit n'excédera pas les deux tiers de celle qui leur serait appliquée s'ils étaient auteurs de ce délit.

(b) Observations on the implementation of the article

179. The reviewing experts concluded that Luxembourg has implemented Art. 27(1) UNCAC.

Paragraph 2

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

180. Luxembourg confirmed that it has fully implemented this provision of the Convention.
181. Luxembourg has adopted and implemented the measures in paragraph 2 of article 27 UNCAC through the provisions in chapter IV, articles 51 and 52 CP. Luxembourg pointed out that as far as corruption offences were concerned, the legal provisions comprised as completed offences acts which could otherwise be considered as mere attempts. Therefore, there was little practical application for the general rules on attempts.

Art. 51. Il y a tentative punissable, lorsque la résolution de commettre un crime ou un délit a été manifestée par des actes extérieurs qui forment un commencement d'exécution de ce crime ou de ce délit, et qui n'ont été suspendus ou n'ont manqué leur effet que par des circonstances indépendantes de la volonté de l'auteur.

Art. 52. (L. 7 juillet 2003) La tentative de crime est punie de la peine immédiatement inférieure à celle du crime même.

Est considérée comme immédiatement inférieure:

- a) A la peine de la réclusion à vie, celle de la réclusion de vingt à trente ans;
- b) A la peine de la réclusion de vingt à trente ans, celle de la réclusion de quinze à vingt ans;

- c) A la peine de la réclusion de quinze à vingt ans, celle de la réclusion de dix à quinze ans;
- d) A la peine de la réclusion de dix à quinze ans, celle de la réclusion de cinq à dix ans;
- e) A la peine de la réclusion de cinq à dix ans, celle d'un emprisonnement de trois mois au moins.

(b) Observations on the implementation of the article

182. The reviewing experts concluded that Luxembourg has implemented Art. 27(2) UNCAC.

Paragraph 3

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

183. Luxembourg confirmed that it has fully implemented this provision of the Convention.
184. Luxembourg has adopted and implemented the measures in paragraph 2 of article 27 UNCAC through the provisions in chapter IV, articles 51 and 52 CP (see above).

(b) Observations on the implementation of the article

185. The reviewing experts observed that the law does not seem to specifically criminalize the preparation for an offence. Articles 51 and 52 CP apply to attempt rather than preparation.
186. During the country visit, Luxembourg confirmed that simple preparatory acts are not criminalized under Luxembourg law.
187. The reviewing experts concluded that Luxembourg has not implemented the optional provision of Art. 27(3) UNCAC.

Article 29 Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

(a) Summary of information relevant to reviewing the implementation of the article

188. Luxembourg confirmed that it has fully implemented this provision of the Convention.

189. Luxembourg cited the following applicable measures: Articles 91 to 99 CP and Chapter V, articles 635 to 643 of the Criminal Procedure Code (the ‘CPC’).

Code pénal

Art. 91. Les peines criminelles se prescriront par vingt années révolues à compter de la date des arrêts ou jugements qui les prononcent.

(L. 27 février 2012) Les peines prononcées du chef des infractions prévues aux articles 136bis à 136quinquies du Code pénal ne se prescrivent pas.

Art. 92. Les peines correctionnelles se prescriront par cinq années révolues, à compter de la date de l'arrêt ou du jugement rendu en dernier ressort, ou à compter du jour où le jugement rendu en première instance ne pourra plus être attaqué par la voie de l'appel.

Si la peine prononcée dépasse trois années, la prescription sera de dix ans.

En matière de condamnation du chef de délits contre la sûreté extérieure de l'Etat, les amendes correctionnelles se prescriront par vingt années révolues.

Art. 93. Les peines de police se prescriront par deux années révolues, à compter des époques fixées à l'article précédent.

Art. 94. (L. 13 juin 1994) Les peines de l'amende et de la confiscation spéciale se prescrivent dans les délais fixés par les articles précédents, selon qu'elles seront prononcées pour crimes, délits ou contraventions.

Art. 95. Si le condamné qui subissait sa peine est parvenu à s'évader, la prescription commence à courir du jour de l'évasion. Toutefois, dans ce cas, on imputera, sur la durée de la prescription, le temps pendant lequel le condamné a subi sa peine au-delà de cinq ans, si c'est une peine criminelle temporaire, ou au-delà de deux ans si c'est une peine correctionnelle.

Art. 96. La prescription de la peine sera interrompue par l'arrestation du condamné.

Art. 97 et 98. Abrogés (L. 13 juin 1994).

Art. 99. Les condamnations civiles, prononcées par les arrêts ou jugements rendus en matière criminelle, correctionnelle ou de police, se prescriront d'après les règles du droit civil, à compter du jour où elles seront devenues irrévocables. Toutefois, ces condamnations se prescriront à compter de la date de l'arrêt, si elles ont été prononcées par contumace.

Code d'instruction criminelle

Chapitre V. - De la prescription.

Art. 635. Les peines portées par les arrêts ou jugements rendus en matière criminelle, se prescriront par vingt années révolues, à compter de la date des arrêts ou jugements.

(L. 27 février 2012) Par dérogation à l'alinéa 1er, les peines prononcées du chef des infractions prévues aux articles 136bis à 136quinquies du Code pénal ne se prescrivent pas.

Art. 636. Les peines portées par les arrêts ou jugements rendus en matière correctionnelle se prescriront par cinq années révolues, à compter de la date de l'arrêt ou jugement rendu en dernier ressort; et à l'égard des peines prononcées par les tribunaux de première instance, à compter du jour où ils ne pourront plus être attaqués par la voie de l'appel.

Art. 637. (L. 6 octobre 2009) (1) L'action publique résultant d'un crime se prescrira après dix années révolues à compter du jour où le crime aura été commis, si dans cet intervalle il n'a été fait aucun acte d'instruction ou de poursuite.

S'il a été fait, dans l'intervalle visé à l'alinéa 1er, des actes d'instruction ou de poursuite non suivis de jugement, l'action publique ne se prescrira qu'après dix années révolues, à compter du dernier acte, à l'égard même des personnes qui ne seraient pas impliquées dans cet acte d'instruction ou de poursuite.

(L. 27 février 2012) Par dérogation à l'alinéa 1er, l'action publique résultant d'une des infractions prévues aux articles 136*bis* à 136*quinquies* du Code pénal ne se prescrit pas.

(2) Le délai de prescription de l'action publique des crimes visés aux articles 372 à 377 et aux articles 382-1 et 382-2 du Code pénal commis contre des mineurs ne commence à courir qu'à partir de la majorité de ces derniers, ou de leur décès s'il est antérieur à leur majorité.

Art. 638. (L. 6 octobre 2009) Dans les cas exprimés en l'article précédent, et suivant les distinctions d'époques qui y sont établies, la durée de la prescription sera réduite à cinq ans révolus, s'il s'agit d'un délit de nature à être puni correctionnellement.

Par dérogation à ce qui précède, le délai de prescription de l'action publique des délits commis contre des mineurs ne commence à courir qu'à partir de la majorité de ces derniers ou de leur décès s'il est antérieur à leur majorité, s'il s'agit de faits prévus et réprimés par les articles 372, 379, 379*bis*, 400, 401*bis*, 402 ou 405 du Code pénal.

Art. 639. Les peines portées par les jugements rendus pour contraventions de police seront prescrites après deux années révolues; savoir, pour les peines prononcées par arrêt ou jugement en dernier ressort, à compter du jour de l'arrêt; et, à l'égard des peines prononcées par les tribunaux de première instance, à compter du jour où ils ne pourront plus être attaqués par la voie de l'appel.

Art. 640. (L. 11 novembre 1966) L'action publique pour une contravention sera prescrite après une année révolue; cette prescription s'accomplit selon les indications spécifiées à l'article 637.

Toutefois lorsqu'une même procédure réunit les actions publiques résultant d'un délit et d'une contravention connexes, la prescription sera celle qui est fixée par l'article 638.

Art. 640-1. (L. 15 janvier 2001) Si un fait qualifié crime est, par application de circonstances atténuantes, reconnu de nature à être puni de peines correctionnelles, la prescription de l'action publique est celle applicable à un crime. Si un fait qualifié délit est, par application de circonstances atténuantes, reconnu de nature à être puni de peines de police, alors la prescription de l'action publique est celle applicable à un délit.

Art. 641. En aucun cas, les condamnés par défaut ou par contumace, dont la peine est prescrite, ne pourront être admis à se présenter pour purger le défaut ou la contumace.

Art. 642. Les condamnations civiles portées par les arrêts ou par les jugements rendus en matière criminelle, correctionnelle ou de police, et devenues irrévocables, se prescriront d'après les règles établies par le Code civil.

Art. 643. Les dispositions du présent chapitre ne dérogent point aux lois particulières relatives à la prescription des actions résultant de certains délits ou de certaines contraventions.⁴

(b) Observations on the implementation of the article

190. The reviewing experts observed that the prescription period for the prosecution of crimes is 10 years, and 5 years in the case of misdemeanors (art. 637 and 638 CIC). Therefore, for most corruption offences, it is 10 years. Prescription of corruption cases generally commences the moment in which the acts are committed. Prescription is interrupted each time evidence is taken or proceedings are brought.
191. During the country visit, it was added that the mere fact that the alleged perpetrator evades justice does not constitute a reason for the suspension of prescription. The issuing of an arrest warrant would, however, restart the clock.
192. The reviewing experts concluded that Luxembourg has implemented Art. 29 UNCAC.

Article 30 Prosecution, adjudication and sanctions

Paragraph 1

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

(a) Summary of information relevant to reviewing the implementation of the article

193. Luxembourg confirmed that it has fully implemented this provision of the Convention.

(b) Observations on the implementation of the article

194. During the country visit, Luxembourg explained that the law distinguishes between different categories of offences (*crime, délit, contravention*) and that the gravity of the offence can be taken into account due to the range of sentences for each offence.
195. The reviewing experts concluded that Luxembourg has implemented Art. 30(1) UNCAC.

Article 30 Prosecution, adjudication and sanctions

Paragraph 2

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

196. Luxembourg confirmed that it has fully implemented this provision of the Convention and indicated that the only public officials who enjoy a very limited immunity are the members of parliament and the Grand Duke. The privilege of judges was abolished in 2012.
197. Luxembourg cited the following applicable laws: Article 158 CP and articles 68, 69 and 116 of the Luxembourg Constitution.

Code pénal

Art. 158. Seront punis d'une amende de 500 euros à 20.000 euros, et pourront être condamnés à l'interdiction du droit de remplir des fonctions, emplois ou offices publics, tous officiers du ministère public ou de la police judiciaire qui, sans les autorisations prescrites par la Constitution, auront provoqué, donné, signé soit un jugement contre un membre du Gouvernement, ou un député, soit une ordonnance ou un mandat tendant à les poursuivre ou à les faire mettre en accusation, ou qui, sans les mêmes autorisations, auront donné ou signé l'ordre ou le mandat de saisir ou arrêter soit un membre du Gouvernement, soit un député, sauf, quant à ce dernier, le cas de flagrant délit.

Constitution

Art. 68.

(Révision du 1er juin 2006)

Aucune action, ni civile, ni pénale, ne peut être dirigée contre un député à l'occasion des opinions et votes émis par lui dans l'exercice de ses fonctions.

Art. 69.

(Révision du 1er juin 2006)

À l'exception des cas visés par l'article 68, les députés peuvent être poursuivis en matière pénale, même durant la session.

Cependant, l'arrestation d'un député pendant la durée de la session est, sauf le cas de flagrant délit, soumise à l'autorisation préalable de la Chambre.

L'autorisation de la Chambre n'est pas requise pour l'exécution des peines, même celles privatives de liberté, prononcées à l'encontre d'un député.

Art. 116.

Jusqu'à ce qu'il y soit pourvu par une loi, la Chambre des Députés aura un pouvoir discrétionnaire pour accuser un membre du Gouvernement, et la Cour supérieure, en assemblée générale, le jugera, en caractérisant le délit et en déterminant la peine. - Néanmoins, la peine ne pourra excéder celle de la réclusion, sans préjudice des cas expressément prévus par les lois pénales.

(b) Observations on the implementation of the article

198. The reviewing experts observed that article 116 of the Constitution, which vests Parliament with the discretionary power to pursue criminal proceedings against a member of the Government could pose problems with regard to the separation of powers, the independence of the judiciary, the lawfulness of the procedure and the equality before the law.
199. Moreover, during the country visit, Luxembourg stated that the law foreseen in article 116 has not been adopted yet and that no draft law exists, although the question is under

debate. According to the current state of the debate, article 116 of the Constitution will be changed or abolished to take care of the concerns that have been levelled against it.

200. Luxembourg informed that so far, no member of Government has ever been indicted for or suspected of a corruption offence.

201. A comprehensive system of prosecution of members of Government is foreseen in the draft bill on the revision of the constitution. The new article 101 replacing article 116 reads as follows:

“**Art. 101.** (1) Les membres du Gouvernement sont politiquement responsables. (cf. article 78 de la Constitution)
(2) Les membres du Gouvernement ne répondent ni civilement, ni pénalement des opinions qu’ils émettent à l’occasion de l’exercice de leurs fonctions.
(3) L’Etat répond civilement des actes posés par les membres du Gouvernement dans l’exercice de leurs fonctions.
(4) Les membres du Gouvernement sont pénalement responsables des actes commis par eux dans l’exercice de leurs fonctions.
(5) Les membres du Gouvernement sont jugés exclusivement par la Cour d’Appel pour les infractions qu’ils auraient commises dans l’exercice de leurs fonctions, même après cessation de leurs fonctions. La Cour d’Appel est également compétente pour les infractions qui auraient été commises par les membres du Gouvernement en dehors de leurs fonctions et pour lesquelles ils sont jugés pendant l’exercice de leurs fonctions, ainsi que pour les actions civiles relatives à ces infractions. Seul le ministère public près la Cour Supérieure de Justice peut intenter et diriger les poursuites en matière répressive à l’encontre d’un membre du Gouvernement. Toute citation directe et, sauf le cas de flagrant délit, toute arrestation nécessite l’autorisation préalable de la Chambre des Députés. L’appel sera porté devant la Cour Supérieure de Justice, qui évoquera l’affaire.
(6) En aucun cas, l’ordre verbal ou écrit du Grand-Duc ne peut soustraire un membre du Gouvernement à la responsabilité. (cf. article 81 de la Constitution)
(7) Le Grand-Duc ne peut faire grâce au membre du Gouvernement condamné que sur la demande de la Chambre des Députés. (cf. article 83 de la Constitution) »

202. The reviewing experts concluded that Luxembourg has implemented Art. 30(2) UNCAC.

(c) Good practices and challenges

203. The reviewing experts commended Luxembourg for granting immunities to members of parliament only, thus strictly limiting the number of officials enjoying this privilege. Only the arrest of an MP during a parliamentary session requires prior approval by Parliament (Art. 68, 69 of the Constitution). On the other hand, the experts voiced concern about the rule in article 116 of the Constitution, vesting Parliament with the discretionary power to pursue criminal proceedings against a member of Government. They recommend the adoption of a comprehensive system of prosecution of members of Government as foreseen in draft bill n°6030 on the revision of the Constitution.

Paragraph 3

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this

Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

204. Luxembourg confirmed that it has fully implemented this provision of the Convention.

(b) Observations on the implementation of the article

205. During the country visit, Luxembourg further explained that it has a discretionary prosecution system and is not governed by the principle of mandatory prosecution. However, it was confirmed that prosecution is the rule, particularly for offences punishable with prison sentences, like the corruption offences. Two “notes de service” of the prosecutor general dated 6 October 2009 and 4 December 2009 on the prosecution of criminal cases in corruption matters and trading in influence underline the importance of prosecuting corruption offences but reaffirm at the same time the principle of opportunity.

206. Finally, the victim can appeal a decision not to prosecute pursuant to article 4(1) CIC.

207. The reviewing experts concluded that Luxembourg has implemented Art. 30(3) UNCAC.

Paragraph 4

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

208. Luxembourg confirmed that it has fully implemented this provision of the Convention and cited articles 116, 119 and 94 CIC.

Code d’instruction criminelle

Art. 116. (L. 6 mars 2006) (1) La mise en liberté peut être demandée en tout état de cause, à savoir:

1. à la chambre du conseil du tribunal d’arrondissement, pendant la période de l’instruction;
2. à la chambre du conseil de la Cour d’appel, si elle est saisie d’un recours contre l’ordonnance de renvoi de la chambre du conseil du tribunal d’arrondissement;
3. à la chambre correctionnelle du tribunal d’arrondissement, si l’affaire y est renvoyée;
4. à la chambre correctionnelle de la Cour d’appel, si appel a été interjeté sur le fond;
5. à la chambre criminelle du tribunal d’arrondissement, si l’affaire y est renvoyée;
6. à la chambre criminelle de la Cour d’appel, si appel a été interjeté sur le fond;
7. à la chambre correctionnelle de la Cour d’appel, si un pourvoi en cassation a été formé soit contre une décision d’une juridiction d’instruction, soit contre une décision d’une juridiction de jugement.

(2) La requête est déposée au greffe de la juridiction appelée à statuer.

(3) (L. 27 juin 2008) Il y est statué d’urgence et au plus tard dans les trois jours du dépôt,

le ministère public et l'inculpé ou son défenseur entendus en leurs explications orales. Lorsque la juridiction appelée à statuer est la chambre du conseil du tribunal d'arrondissement, cette juridiction statue sur base d'un rapport écrit et motivé du juge d'instruction.

(4) L'inculpé ou son défenseur sont avertis, par les soins du greffier, des lieu, jour et heure de la comparution.

(5) La mise en liberté ne peut être refusée que si les conditions prévues aux alinéas 1er, 2 et 3 de l'article 94 se trouvent remplies.

(6) La mise en liberté, lorsqu'elle est accordée, peut être assortie du placement sous contrôle judiciaire.

(7) Si la mise en liberté est accordée par la chambre du conseil, la chambre correctionnelle ou la chambre criminelle du tribunal d'arrondissement, le procureur d'Etat peut, dans un délai d'un jour qui court à compter du jour de l'ordonnance, interjeter appel de la décision. L'inculpé reste détenu jusqu'à l'expiration dudit délai. L'appel a un effet suspensif. Le greffe avertit l'inculpé ou son défenseur des lieu, jour et heure de la comparution au plus tard l'avant-veille de l'audience. La

chambre du conseil, la chambre correctionnelle ou la chambre criminelle de la Cour d'appel statue sur l'appel au plus tard 10 jours après qu'appel aura été formé. Si elle n'a pas statué dans ce délai, l'inculpé est mis en liberté, à charge de se représenter à tous les actes de la procédure et pour l'exécution du jugement aussitôt qu'il en sera requis.

Art. 119. (L. 6 mars 2006) Si, après avoir obtenu sa liberté provisoire, l'inculpé cité ou ajourné ne comparaît pas, le juge d'instruction, le tribunal ou la Cour, selon le cas, peuvent décerner contre lui un mandat d'arrêt ou de dépôt.

Art. 94. (L. 28 juillet 1973) Après l'interrogatoire de l'inculpé résidant dans le Grand-Duché le juge pourra décerner un mandat de dépôt s'il y a des indices graves de culpabilité de l'inculpé et si le fait emporte une peine criminelle ou une peine correctionnelle dont le maximum est égal ou supérieur à deux ans d'emprisonnement.

Outre les conditions prévues à l'alinéa précédent le mandat de dépôt ne peut être décerné que dans un des cas suivants:

- 1) S'il y a danger de fuite de l'inculpé; le danger de fuite est légalement présumé, lorsque le fait est puni par la loi d'une peine criminelle;
- 2) s'il y a danger d'obscurcissement des preuves;
- 3) s'il y a lieu de craindre que l'inculpé n'abuse de sa liberté pour commettre de nouvelles infractions.

Si l'inculpé ne réside pas dans le Grand-Duché, le mandat de dépôt peut être décerné en dehors des conditions fixées aux alinéas 1er et 2 après l'interrogatoire, s'il existe des indices graves de culpabilité et si le fait emporte une peine criminelle ou une peine d'emprisonnement correctionnel.

(L. 7 juillet 1989) Les mandats d'amener et de dépôt doivent être spécialement motivés d'après les éléments de l'espèce par référence aux conditions d'application des mandats.

(b) Observations on the implementation of the article

209. The reviewing experts concluded that Luxembourg has implemented Art. 30(4) UNCAC.

Paragraph 5

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

210. Luxembourg confirmed that it has fully implemented this provision of the Convention and cited articles 116, 119 and 94 CIC (see above), as well as articles 619 et seq. and article 100 CP.

Chapitre IV. - De la suspension, du sursis et de la probation. (L. 26 juillet 1986)

Section Ire. - Définitions.

Art. 619. (L. 26 juillet 1986) La mise à l'épreuve d'un délinquant se réalise:

1. par la suspension du prononcé de la condamnation;
2. par le sursis à l'exécution des peines.

Ces mesures peuvent s'accompagner de conditions particulières; en ce cas, elles s'appellent respectivement <<suspension probatoire>> et <<sursis probatoire>>; en l'absence de conditions particulières, elles s'appellent <<suspension simple>> et <<sursis simple>>.

Section II. - Enquête sociale.

Art. 620. (L. 26 juillet 1986) En vue de l'application éventuelle des articles concernant la mise à l'épreuve, le ministère public, le juge d'instruction, les juridictions d'instruction et les juridictions de jugement peuvent faire procéder par le service central d'assistance sociale, d'office ou à la requête du prévenu ou de son avocat, à une enquête sociale sur son comportement et son milieu. (L. 27 juin 2008)

Section III. - Suspension du prononcé de la condamnation.

Art. 621. (L. 26 juillet 1986) La suspension peut être ordonnée, de l'accord du prévenu ou de son avocat, par les juridictions de jugement, à l'exception de la cour d'assises¹, lorsque le fait ne paraît pas de nature à entraîner comme peine principale un emprisonnement correctionnel supérieur à deux ans et que la prévention est déclarée établie. (L. 27 juin 2008)

(L. 3 mars 2010) La suspension est exclue à l'égard des personnes physiques si, avant le fait motivant sa poursuite, le prévenu a encouru une condamnation irrévocable sans sursis à une peine d'emprisonnement correctionnel ou à une peine plus grave du chef d'infraction de droit commun. La suspension est exclue à l'égard des personnes morales si, avant le fait motivant sa poursuite, elle a encouru une condamnation irrévocable sans sursis à une amende correctionnelle ou à une peine plus grave du chef d'infraction de droit commun.

(L. 26 juillet 1986) La suspension peut être ordonnée d'office, requise par le ministère public ou demandée par le prévenu ou son avocat. (L. 27 juin 2008)

(L. 26 juillet 1986) La décision ordonnant la suspension en détermine la durée qui ne peut être inférieure à un an ni supérieure à cinq ans à compter de la date de la décision. Elle doit être motivée.

Art. 622. (L. 26 juillet 1986) La décision ordonnant la suspension est prononcée en audience publique.

Dans le cas où la suspension est ordonnée, le prévenu est condamné aux frais et, s'il y a lieu, aux restitutions. La confiscation spéciale est prononcée.

Dans le même cas, la juridiction, saisie de l'action civile, est compétente pour y statuer; elle statue également sur les dépens.

La suspension exclut l'application des dispositions prévoyant des interdictions, déchéances ou incapacités qui résulteraient d'une condamnation.

Art. 623. (L. 26 juillet 1986) La décision ordonnant la suspension est inscrite au casier judiciaire.

Elle ne sera pas relevée sur les bulletins N° 2 et 3.

Art. 624. (L. 26 juillet 1986) La décision ordonnant la suspension met fin aux poursuites, si la suspension ne se trouve pas révoquée. La décision est, dans ce cas, rayée d'office du casier judiciaire.

(L. 3 mars 2010) La révocation de la suspension a lieu de plein droit à l'égard des personnes physiques en cas de nouvelle infraction commise pendant le temps d'épreuve et ayant entraîné une condamnation irrévocable à une peine criminelle ou à un emprisonnement correctionnel principal de plus de six mois sans sursis. La révocation de la suspension a lieu de plein droit à l'égard des personnes morales en cas de nouvelle infraction commise pendant le temps d'épreuve et ayant entraîné une condamnation irrévocable à une amende criminelle ou à une amende correctionnelle principale sans sursis d'un montant supérieur à 18.000 euros.

(L. 3 mars 2010) La révocation de la suspension est facultative à l'égard des personnes physiques si la nouvelle infraction commise pendant le temps d'épreuve a entraîné une condamnation irrévocable à un emprisonnement correctionnel principal sans sursis d'un mois au moins et ne dépassant pas six mois. La révocation de la suspension est facultative à l'égard des personnes morales si la nouvelle infraction commise pendant le temps d'épreuve a entraîné une condamnation irrévocable à une amende correctionnelle principale sans sursis de 3.000 euros au moins et ne dépassant pas 18.000 euros.

Art. 624-1. (L. 3 mars 2010) Le président de la juridiction doit, après avoir ordonné la suspension du prononcé de la condamnation, avertir l'intéressé qu'en cas de nouvelle infraction commise dans les conditions de l'article 624 alinéa 2, les peines de la première infraction seront prononcées et exécutées sans confusion possible avec celles prononcées du chef de la nouvelle infraction et que les peines de la récidive seront encourues dans les termes de l'article 56 alinéa 2 et de l'article 57-2 alinéa 2 du Code pénal.

(L. 26 juillet 1986) Dans les mêmes conditions, il doit informer l'intéressé des dispositions de l'article 624 alinéa 3.

Art. 625. (L. 26 juillet 1986) Dans le cas prévu à l'alinéa 2 de l'article 624 et lorsqu'il est fait application de l'alinéa 3 du même article, l'intéressé est cité, en vue du prononcé de la peine, devant la juridiction qui a ordonné la suspension, dans les délai, conditions et formes qui y sont applicables.

(L. 3 mars 2010) Si la suspension est révoquée ou sa révocation constatée à l'égard des personnes physiques, la peine d'emprisonnement principal prononcée pour les faits qui ont donné lieu à la suspension du prononcé ne peut dépasser deux ans. Si la suspension est révoquée ou sa révocation constatée à l'égard des personnes morales, la peine d'amende principale prononcée pour les faits qui ont donné lieu à la suspension du prononcé ne peut dépasser 72.000 euros.

Art. 625-1. (L. 26 juillet 1986) Les peines prononcées à la suite de la révocation sont cumulées sans limite avec celles prononcées du chef de la nouvelle infraction. **Art. 625-2.**

(L. 26 juillet 1986) En cas de nouvelle infraction, l'action tendant à la révocation de la suspension et au prononcé de la condamnation pour les faits qui ont donné lieu à la

suspension est prescrite après une année révolue à compter du jour où la condamnation prononcée pour la nouvelle infraction est devenue irrévocable.

Art. 625-3. (L. 26 juillet 1986) La prescription de l'action publique résultant d'une infraction ayant donné lieu à une décision de suspension du prononcé de la condamnation ne court plus à partir du jour où la décision de suspension n'est plus susceptible d'une voie de recours.

L'action publique s'éteint à l'expiration du délai visé à l'article 621, alinéa final, si la suspension du prononcé de la condamnation ne se trouve pas révoquée par application de l'article 624.

Art. 625-4. (L. 26 juillet 1986) Les condamnations contradictoires subies à l'étranger pour infractions de droit commun, punies également par les lois luxembourgeoises, sont assimilées, quant aux dispositions concernant la suspension du prononcé de la condamnation, aux condamnations prononcées par les juridictions luxembourgeoises

Section IV. - Sursis à l'exécution des peines.

Art. 626. (L. 26 juillet 1986) En cas de condamnation contradictoire à une peine privative de liberté et à l'amende, ou à l'une de ces peines seulement, les cours et tribunaux peuvent ordonner, par la même décision motivée, qu'il sera sursis à l'exécution de tout ou partie de la peine.

(L. 3 mars 2010) Le sursis est exclu à l'égard des personnes physiques si, avant le fait motivant sa poursuite, le délinquant a été l'objet d'une condamnation devenue irrévocable, à une peine d'emprisonnement correctionnel ou à une peine plus grave du chef d'infraction de droit commun. Le sursis est exclu à l'égard des personnes morales si, avant le fait motivant sa poursuite, le délinquant a été l'objet d'une condamnation devenue irrévocable, à une amende correctionnelle ou à une peine plus grave du chef d'infraction de droit commun.

Art. 627. (L. 3 mars 2010) Si pendant le délai de sept ans, s'il s'agit d'une peine criminelle, de cinq ans s'il s'agit d'une peine correctionnelle ou de deux ans s'il s'agit d'une peine de police, à dater du jugement ou de l'arrêt, la personne physique condamnée n'a pas commis une nouvelle infraction ayant entraîné une condamnation à l'emprisonnement ou à une peine plus grave pour crime ou délit de droit commun, la condamnation sera comme non avenue.

Si pendant le délai de sept ans, s'il s'agit d'une peine criminelle ou de cinq ans s'il s'agit d'une peine correctionnelle, à dater du jugement ou de l'arrêt, la personne morale condamnée n'a pas commis une nouvelle infraction ayant entraîné une condamnation à l'amende correctionnelle ou à une peine plus grave pour crime ou délit de droit commun, la condamnation sera comme non avenue.

Dans le cas contraire, la première peine sera d'abord exécutée sans qu'elle puisse se confondre avec la seconde, sous réserve de l'article 629.

Art. 628. (L. 26 juillet 1986) Le sursis à l'exécution de la peine ne comprend pas le paiement des frais du procès, des dommages-intérêts, ni les restitutions.

Il ne comprend pas non plus les peines accessoires et les incapacités résultant de la condamnation.

Toutefois, ces peines accessoires et ces incapacités cesseront d'avoir effet du jour où, par application des dispositions de l'article précédent, la condamnation aura été réputée non avenue.

Par dérogation à l'alinéa 2, les cours et tribunaux peuvent néanmoins, dans le cas où ils prononcent une interdiction de conduire un véhicule sur la voie publique, ordonner par la

même décision motivée qu'il sera sursis à l'exécution de tout ou partie de cette peine accessoire, à condition que le condamné n'ait pas été, avant le fait motivant sa poursuite, l'objet d'une condamnation irrévocable à une peine d'emprisonnement correctionnel du chef d'infraction aux lois et règlements régissant la circulation sur la voie publique ou à une peine privative de liberté pour infraction aux lois et règlements concernant la vente de substances médicamenteuses et la lutte contre la toxicomanie.

Au cas où le condamné n'aurait pas dans le délai de cinq ans, si l'interdiction de conduire a été prononcée accessoirement à une peine correctionnelle, ou de deux ans, si elle l'a été accessoirement à une peine de police, commis une nouvelle infraction ayant entraîné une condamnation à une interdiction de conduire un véhicule sur la voie publique ou à une peine privative de liberté pour crimes ou délits prévus par la législation sur la circulation sur les voies publiques ou sur la vente de substances médicamenteuses et la lutte contre la toxicomanie, l'interdiction sera réputée non avenue.

Dans le cas contraire la première peine sera d'abord exécutée sans qu'elle puisse se confondre, le cas échéant, avec la nouvelle interdiction de conduire.

Art. 628-1. (L. 3 mars 2010) Le président de la juridiction doit, après avoir prononcé le sursis, avertir le condamné qu'en cas de nouvelle condamnation dans les conditions de l'article 627, la première peine sera exécutée sans confusion possible avec la seconde et que les peines de la récidive seront encourues dans les termes de l'article 56 alinéa 2, de l'article 57-3 alinéa 2 et de l'article 564 du Code pénal.

Art. 628-2. (L. 26 juillet 1986) La condamnation est inscrite au casier judiciaire mais avec la mention expresse du sursis accordé.

Art. 628-3. (L. 26 juillet 1986) Les condamnations contradictoires subies à l'étranger pour infractions de droit commun punies également par les lois luxembourgeoises, sont assimilées, quant aux dispositions concernant le sursis aux condamnations prononcées par les juridictions luxembourgeoises.

Section V. - Probation.

Art. 629. (L. 26 juillet 1986) En cas de condamnation à une peine privative de liberté pour infraction de droit commun, si le condamné n'a pas fait l'objet, pour crime ou délit de droit commun, d'une condamnation antérieure à une peine d'emprisonnement ou s'il n'a été condamné qu'à une peine d'emprisonnement assortie du sursis simple inférieure ou égale à un an, les cours et tribunaux peuvent en ordonnant qu'il sera sursis à l'exécution de tout ou partie de la peine principale pendant un temps qui ne pourra être inférieur à trois années ni supérieur à cinq années, placer le condamné sous le régime du sursis probatoire. Toutefois au cas où la condamnation antérieure aurait déjà été prononcée avec le bénéfice du sursis probatoire, les dispositions du premier alinéa sont inapplicables. Si la condamnation antérieure a été prononcée avec le bénéfice du sursis simple, la première peine n'est exécutée, par dérogation aux dispositions de l'article 627, que si la seconde vient à l'être dans les conditions et délais prévus à l'article 631 ou à l'article 631-2. Cette première peine sera comme non avenue si la seconde peine est considérée comme non avenue dans les conditions et délais prévus à l'article 631-3.

Contrairement au sursis simple qui est exclu si le prévenu a fait l'objet d'une condamnation définitive avant le fait motivant la poursuite, le sursis probatoire est exclu si la condamnation antérieure définitive existe au moment où la seconde condamnation est prononcée. Cour 15 mars 2006, P. 34, 3.

Art. 629-1. (L. 26 juillet 1986) Les décisions ordonnant la suspension du prononcé de la condamnation peuvent placer le délinquant sous le régime de la «suspension probatoire».

Art. 630. (L. 26 juillet 1986) Le régime de la suspension probatoire ou celui du sursis probatoire comporte pour le prévenu ou le condamné l'observation des mesures de surveillance et d'assistance prévues par les articles 633-5 et 633-6 en vue du reclassement social des délinquants, ainsi que l'observation de celles des obligations prévues par l'article 633-7 et qui lui auraient été imposées spécialement par l'arrêt ou le jugement.

Art. 631. (L. 26 juillet 1986) Si, au cours du délai fixé en application des articles 621 et 629, le prévenu ou le condamné a commis une nouvelle infraction ayant entraîné une condamnation à l'emprisonnement ou à une peine plus grave, pour crime ou délit de droit commun, la première peine sera d'abord exécutée sans qu'elle puisse se confondre avec la seconde, le tout sans préjudice des dispositions de l'alinéa final de l'article 624.

Art. 631-1. (L. 26 juillet 1986) Si, au cours du même délai, il apparaît nécessaire de modifier, d'aménager ou de supprimer les obligations auxquelles est soumis le prévenu ou le condamné, la juridiction qui avait accordé la suspension ou le sursis peut, soit sur réquisition du ministère public, soit à la requête de l'intéressé, ordonner leur modification, leur aménagement ou leur suppression.

Art. 631-2. (L. 26 juillet 1986) Si, au cours du délai prévu par l'article 621, le prévenu ne satisfait pas la juridiction qui a ordonné la suspension dans les délais, conditions et forme qui y sont applicables, afin de faire prononcer la peine.
Dans ce cas, la juridiction peut, au lieu de prononcer la peine, assortir la suspension probatoire de nouvelles conditions.

Art. 631-3. (L. 26 juillet 1986) Si, au cours du délai prévu par l'article 629, le condamné ne satisfait pas aux mesures de surveillance et d'assistance ou aux obligations imposées, le ministère public saisit la juridiction qui a ordonné le sursis, dans les délais, conditions et formes qui y sont applicables, afin de faire ordonner l'exécution de la peine.

En cas d'urgence, le ministère public peut faire écrouer le condamné à charge d'en saisir la juridiction qui a ordonné le sursis.

(L. 6 mars 2006) Cette juridiction statue dans un délai de huit jours à dater de l'arrestation. Si elle décide qu'il n'y a pas lieu de révoquer le sursis probatoire, l'intéressé sera immédiatement mis en liberté nonobstant appel.

Dans le cas où le sursis probatoire n'est pas révoqué, la juridiction peut l'assortir de nouvelles conditions.

Art. 631-4. (L. 26 juillet 1986) Si, à l'expiration du délai fixé en application de l'article 621, la peine n'a pas été prononcée dans les conditions prévues à l'article 631-2 et si le prévenu n'a pas commis de nouvelles infractions ayant entraîné une condamnation à l'emprisonnement ou à une peine plus grave pour crime ou délit de droit commun, l'action publique est éteinte quant à l'infraction ayant donné lieu à la suspension probatoire.

Art. 631-5. (L. 26 juillet 1986) Si, à l'expiration du délai fixé en application de l'article 629, l'exécution de la peine n'a pas été ordonnée dans les conditions prévues à l'article 631-3 et si le condamné n'a pas commis de nouvelle infraction ayant entraîné une condamnation à l'emprisonnement ou à une peine plus grave pour crime ou délit de droit commun, la condamnation est considérée comme non avenue.

Art. 632. (L. 26 juillet 1986) La décision ordonnant la suspension probatoire ou le sursis probatoire statue sur les frais et, s'il y a lieu, sur les dommages-intérêts, restitutions et confiscations.

Le sursis probatoire ne s'étend pas aux peines accessoires et aux incapacités résultant de la condamnation.

Toutefois, ces peines accessoires et ces incapacités cessent d'avoir effet du jour où, par application des dispositions de l'article 631-5, la condamnation est considérée comme non avenue.

Art. 633. (L. 26 juillet 1986) Le président de la juridiction doit, après avoir prononcé la suspension probatoire ou le sursis probatoire, donner l'avis prescrit respectivement par les articles 624-1 et 628-1 en informant le prévenu ou le condamné des sanctions dont il serait passible s'il venait à se soustraire aux mesures ordonnées.

L'article 633 du Code d'instruction criminelle ne prévoit pas que l'avis doit être donné par écrit au condamné, lorsqu'il n'a pu être donné oralement à l'audience. Cass. 15 mars 1990, 28, 3.

Art. 633-1. (L. 26 juillet 1986) Les prévenus placés sous le régime de la suspension probatoire et les condamnés placés sous celui du sursis probatoire sont soumis aux mesures de surveillance et d'assistance prévues par les articles 633-5 et 633-6, en vue d'assurer le contrôle de leur comportement et leur reclassement social.

Ces prévenus et condamnés peuvent se voir appliquer, en outre, certaines des obligations prévues par l'article 633-7 lorsqu'elles ont été imposées spécialement par la décision.

Art. 633-2. (L. 26 juillet 1986) Ces mesures et obligations ne sauraient porter atteinte à la liberté d'opinion de ceux qui y sont soumis ni à leurs convictions religieuses ou politiques.

Art. 633-3. (L. 26 juillet 1986) Le procureur général d'Etat contrôle l'exécution des mesures et des obligations relatives aux régimes de la suspension probatoire et du sursis probatoire.

Art. 633-4. (L. 26 juillet 1986) Le procureur général d'Etat est assisté à cet effet par les agents du service central d'assistance sociale.

Art. 633-5. (L. 26 juillet 1986) Les mesures de surveillance imposées au prévenu et au condamné placés respectivement sous le régime de la suspension probatoire et sous celui du sursis probatoire sont les suivantes:

- 1) répondre aux convocations du procureur général d'Etat ou des agents du service central d'assistance sociale;
- 2) recevoir les visites des agents du service central d'assistance sociale et leur communiquer les renseignements ou documents de nature à permettre le contrôle de leurs moyens d'existence;
- 3) justifier éventuellement des motifs de leurs changements d'emploi ou de résidence;
- 4) prévenir le service central d'assistance sociale des changements de résidence.

Art. 633-6. (L. 26 juillet 1986) Les mesures d'assistance ont pour objet de susciter et de seconder les efforts du prévenu et du condamné en vue de leur reclassement social et notamment de leur réadaptation familiale et professionnelle. Elles s'exercent sous la forme de guidance et, s'il y a lieu, de l'aide matérielle apportées par le service central d'assistance sociale ou, sur son intervention, par tout organisme d'assistance ou d'aide sociale.

Art. 633-7. (L. 26 juillet 1986) La décision plaçant le prévenu sous le régime de la suspension probatoire ou le condamné sous celui du sursis probatoire peut leur imposer l'observation d'une ou de plusieurs obligations et notamment celles:

- 1) d'exercer une activité professionnelle ou suivre un enseignement ou une formation professionnelle;

- 2) d'établir sa résidence en un lieu déterminé;
- 3) de se soumettre à des mesures de contrôle, de traitement ou de soins, même sous le régime de l'hospitalisation, notamment aux fins de désintoxication;
- 4) de contribuer aux charges familiales ou d'acquitter régulièrement les pensions alimentaires;
- 5) de réparer les dommages causés par l'infraction;
- 6) d'exécuter certains travaux dans l'intérêt de la communauté selon les modalités à fixer par le procureur général d'Etat.

Art. 634. (L. 26 juillet 1986) Les dispositions concernant la suspension simple et le sursis simple sont applicables respectivement aux prévenus et condamnés n'habitant pas le Grand-Duché.

Celles concernant la suspension probatoire et le sursis probatoire sont applicables à l'étranger n'habitant pas le Grand-Duché, s'il a sa résidence habituelle sur le territoire d'un pays qui a ratifié la Convention européenne pour la surveillance des personnes condamnées ou libérées sous condition ou qui est lié au Grand-Duché par une convention relative à l'exécution des peines ou à la suspension probatoire.

Art. 634-1. (L. 26 juillet 1986) Les dispositions du présent chapitre ne sont pas applicables aux amendes fiscales, civiles, disciplinaires ou de procédure article 633-7 lorsqu'elles ont été imposées spécialement par la décision

Code Penal

Art. 100. (L. 2 juin 1972) 1) Les condamnés qui ont à subir une ou plusieurs peines privatives de liberté, qu'elles aient été encourues en vertu du présent code, du Code pénal militaire ou d'une loi spéciale, peuvent être mis en liberté conditionnellement, lorsqu'ils ont accompli trois mois de leur peine ou de la durée totale de leurs peines, si cette peine ou cette durée totale de peines est inférieure à six mois, et la moitié dans le cas contraire.

1) S'il y a récidive légale, la durée de l'incarcération déjà subie doit être de six mois si la peine est inférieure à neuf mois et correspondre aux deux tiers de la peine dans le cas contraire.

2) Les condamnés à perpétuité peuvent être mis en liberté conditionnellement lorsque la durée de l'incarcération déjà subie par eux dépasse quinze ans.

3) Les condamnés ayant à subir une ou plusieurs peines privatives de liberté peuvent bénéficier d'une libération conditionnelle s'ils ont donné des preuves suffisantes de bonne conduite et présentent des gages sérieux de réadaptation sociale.

4) La libération est ordonnée par le procureur général d'Etat.

5) (L. 6 octobre 2009) Le bénéfice de la libération conditionnelle peut être assorti de modalités et conditions particulières, qui se rapportent notamment à la réinsertion sociale du condamné, à la protection de la société ou de la victime et, le cas échéant, des intérêts de celle-ci, ainsi que de mesures d'assistance et de contrôle destinées à faciliter et à vérifier le reclassement du libéré.

6) Le temps d'épreuve ne peut être inférieur à la durée de la partie de la peine ou des peines non subie au moment de la libération s'il s'agit de peines correctionnelles; il peut la dépasser pour une période d'un an au plus.

7) Toutefois, lorsque la peine en cours d'exécution est une peine criminelle, la durée des mesures facultatives d'assistance et de contrôle est fixée pour une période qui ne peut être inférieure à cinq années, ni supérieure à dix années.

8) Abrogé implicitement (L. 13 juin 1994).

9) En cas d'inconduite ou d'inobservation des conditions attachées à la décision de mise en liberté conditionnelle, le procureur général d'Etat peut révoquer cette décision.

10) En cas de nécessité, le procureur d'Etat de la résidence du condamné libéré de même que celui du lieu où il peut être trouvé peuvent faire procéder à l'arrestation du condamné libéré, sauf à en référer, dans les deux jours, au procureur général d'Etat. Si la révocation est prononcée, son effet remonte au jour de l'arrestation.

(b) Observations on the implementation of the article

211. The reviewing experts concluded that Luxembourg has implemented Art. 30(5) UNCAC.

Paragraph 6

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

(a) Summary of information relevant to reviewing the implementation of the article

212. Luxembourg confirmed that it has fully implemented this provision of the Convention.

Loi du 16 avril 1979 fixant le statut général des fonctionnaires de l'Etat,

Art. 48.

1. La suspension de l'exercice de ses fonctions peut être ordonnée à l'égard du fonctionnaire poursuivi judiciairement ou administrativement, pendant tout le cours de la procédure jusqu'à la décision définitive.

2. La suspension de l'exercice de ses fonctions a lieu de plein droit à l'égard du fonctionnaire:

a) détenu en exécution d'une condamnation judiciaire passée en force de chose jugée, - pour la durée de la réclusion;

b) condamné par une décision judiciaire non encore passée en force de chose jugée, qui porte ou emporte la perte de l'emploi, - jusqu'à la décision définitive;

c) détenu préventivement, - pour la durée de la réclusion;

(Loi du 30 mai 2008)

d) condamné disciplinairement à la révocation ou à la mise à la retraite d'office pour inaptitude professionnelle ou disqualification morale par une décision du Conseil de discipline non encore exécutée par l'autorité de nomination conformément à l'article 52.

3. La période de la suspension visée aux paragraphes 1 et 2 ne compte pas comme temps de service pour les majorations biennales, l'avancement en traitement et la, pension, sauf en cas de non-lieu ou d'acquiescement.

4. Pendant la durée de la réclusion prévue sous a) du paragraphe 2, le fonctionnaire est privé de plein droit de son traitement et des rémunérations accessoires.

(Loi du 19 mai 2003)

5. Dans les cas visés sous b), c) et d) du paragraphe 2 du présent article, la privation est réduite à la moitié du traitement et des rémunérations accessoires.

Art. 49.

(Loi du 19 mai 2003)

Le fonctionnaire condamné pour un acte commis intentionnellement à une peine privative de liberté de plus d'un an sans sursis ou à l'interdiction de tout ou partie des droits énumérés à l'article 11 du Code pénal encourt de plein droit la perte de l'emploi, du titre et du droit à la pension. La perte du droit à la pension ne porte pas préjudice aux droits découlant de l'assurance rétroactive prévue en matière de coordination des régimes de pension.

(Loi du 3 août 1998)

Toutefois, la perte du droit à la pension n'est encourue que par le fonctionnaire visé par la loi modifiée du 26 mai 1954 réglant les pensions des fonctionnaires de l'État.

(b) Observations on the implementation of the article

213. The reviewing experts concluded that Luxembourg has legislatively implemented Art. 30(6) UNCAC.

Paragraph 7

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(b) Holding office in an enterprise owned in whole or in part by the State.

(a) Summary of information relevant to reviewing the implementation of the article

214. Luxembourg confirmed that it has fully implemented this provision of the Convention.

Code pénal

Art. 7. (L. 13 juin 1994; L. 3 mars 2010) Les peines criminelles encourues par les personnes physiques sont:

- 1) la réclusion à vie ou à temps;
- 2) l'amende;
- 3) la confiscation spéciale;
- 4) la destitution des titres, grades, fonctions, emplois et offices publics;
- 5) l'interdiction de certains droits civils et politiques;
- 6) la fermeture d'entreprise et d'établissement;
- 7) la publication ou l'affichage, aux frais du condamné, de la décision ou d'un extrait de la décision de condamnation;
- 8) (L. 6 octobre 2009) l'interdiction d'exercer certaines activités professionnelles ou sociales.

Art. 10. (L. 13 juin 1994)

La destitution des titres, grades, fonctions, emplois et offices publics est obligatoirement prononcée en cas de condamnation à la réclusion.

Art. 11. (L. 13 juin 1994)

Toute décision de condamnation à la réclusion de plus de dix ans prononce contre le condamné l'interdiction à vie du droit:

- 1) de remplir des fonctions, emplois ou offices publics;

Art. 14. (L. 13 juin 1994 ; L. 3 mars 2010) Sans préjudice d'autres peines prévues par des lois spéciales, les peines correctionnelles encourues par les personnes physiques sont:

- 1) l'emprisonnement;
- 2) l'amende;

- 3) la confiscation spéciale;
- 4) l'interdiction de certains droits civils et politiques;
- 5) la fermeture d'entreprise et d'établissement;
- 6) la publication ou l'affichage, aux frais du condamné, de la décision ou d'un extrait de la décision de condamnation;
- 7) (L. 6 octobre 2009) l'interdiction d'exercer certaines activités professionnelles ou sociales;
- 8) l'interdiction de conduire certains véhicules;
- 9) les peines de substitution prévues aux articles 21 et 22.

Loi du 16 avril 1979 fixant le statut général des fonctionnaires de l'Etat,

Art. 48.

1. La suspension de l'exercice de ses fonctions peut être ordonnée à l'égard du fonctionnaire poursuivi judiciairement ou administrativement, pendant tout le cours de la procédure jusqu'à la décision définitive.
2. La suspension de l'exercice de ses fonctions a lieu de plein droit à l'égard du fonctionnaire:
 - a) détenu en exécution d'une condamnation judiciaire passée en force de chose jugée, - pour la durée de la réclusion;
 - b) condamné par une décision judiciaire non encore passée en force de chose jugée, qui porte ou emporte la perte de l'emploi, - jusqu'à la décision définitive;
 - c) détenu préventivement, - pour la durée de la réclusion;
 (Loi du 30 mai 2008)
 - d) condamné disciplinairement à la révocation ou à la mise à la retraite d'office pour inaptitude professionnelle ou disqualification morale par une décision du Conseil de discipline non encore exécutée par l'autorité de nomination conformément à l'article 52.>>
3. La période de la suspension visée aux paragraphes 1 et 2 ne compte pas comme temps de service pour les majorations biennales, l'avancement en traitement et la pension, sauf en cas de non-lieu ou d'acquiescement.
4. Pendant la durée de la réclusion prévue sous a) du paragraphe 2, le fonctionnaire est privé de plein droit de son traitement et des rémunérations accessoires.
(Loi du 19 mai 2003)
5. Dans les cas visés sous b), c) et d) du paragraphe 2 du présent article, la privation est réduite à la moitié du traitement et des rémunérations accessoires.

Art. 49.

(Loi du 19 mai 2003)

Le fonctionnaire condamné pour un acte commis intentionnellement à une peine privative de liberté de plus d'un an sans sursis ou à l'interdiction de tout ou partie des droits énumérés à l'article 11 du Code pénal encourt de plein droit la perte de l'emploi, du titre et du droit à la pension. La perte du droit à la pension ne porte pas préjudice aux droits découlant de l'assurance rétroactive prévue en matière de coordination des régimes de pension.

(Loi du 3 août 1998)

Toutefois, la perte du droit à la pension n'est encourue que par le fonctionnaire visé par la loi modifiée du 26 mai 1954 réglant les pensions des fonctionnaires de l'Etat.

(b) Observations on the implementation of the article

215. During the country visit, Luxembourg added that the removal from office pursuant to article 7(4) CP is a permanent sanction that is applied without discretion if foreseen by the law, article 10 CP. Articles 7 CP and 49 of the Public Service Act work in parallel. The

official can lose his job and be banned from holding office. The loss of pension rights is conditional on the criminal sanction.

216. Concerning state-controlled enterprises, Luxembourg stated that the Civil Service Act was applicable as long as there are still civil servants (*fonctionnaires*) working in the company.

217. The reviewing experts concluded that Luxembourg has legislatively implemented Art. 30(7) UNCAC.

Paragraph 8

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

(a) Summary of information relevant to reviewing the implementation of the article

218. Luxembourg confirmed that it has fully implemented this provision of the Convention.

219. Luxembourg indicated that the exercise of disciplinary powers is without prejudice to the exercise of judicial powers. While this is not provided for in statutory law, it follows from the settled case law of the Administrative Court. In particular, that court has held that the exercise of disciplinary powers does not infringe the principle of *ne bis in idem*, as enshrined in article 4, paragraph 1, of Protocol no. 7 to the European Convention of Human Rights, and referred to the European Court of Human Rights' judgment in *Banfield v. UK* (18 October 2005, no. 6223/04).

(b) Observations on the implementation of the article

220. The reviewing experts concluded that Luxembourg has implemented Art. 30(8) UNCAC.

Paragraph 10

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

221. Luxembourg confirmed that it has fully implemented this provision of the Convention. The reintegration into society of offenders is governed by articles 644 to 658 et seq. CIC and the Law on Penitentiary Administration (27 juillet 1997. – Loi portant réorganisation de l'administration pénitentiaire). Moreover, there is the Law on the execution of penalties.

(b) Observations on the implementation of the article

222. The reviewing experts concluded that Luxembourg has legislatively implemented Art. 30(10) UNCAC.

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (a)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(a) Summary of information relevant to reviewing the implementation of the article

223. Luxembourg confirmed that it has fully implemented this provision of the Convention.

224. The country under review provided the following laws:

Code pénal

Art. 7. (L. 13 juin 1994; L. 3 mars 2010) Les peines criminelles encourues par les personnes physiques sont:

- 1) la réclusion à vie ou à temps;
- 2) l'amende;
- 3) la confiscation spéciale;
- 4) la destitution des titres, grades, fonctions, emplois et offices publics;
- 5) l'interdiction de certains droits civils et politiques;
- 6) la fermeture d'entreprise et d'établissement;
- 7) la publication ou l'affichage, aux frais du condamné, de la décision ou d'un extrait de la décision de condamnation;
- 8) (L. 6 octobre 2009) l'interdiction d'exercer certaines activités professionnelles ou sociales.

Art. 14. (L. 13 juin 1994 ; L. 3 mars 2010) Sans préjudice d'autres peines prévues par des lois spéciales, les peines correctionnelles encourues par les personnes physiques sont:

- 1) l'emprisonnement;
- 2) l'amende;
- 3) la confiscation spéciale;
- 4) l'interdiction de certains droits civils et politiques;
- 5) la fermeture d'entreprise et d'établissement;
- 6) la publication ou l'affichage, aux frais du condamné, de la décision ou d'un extrait de la décision de condamnation;
- 7) (L. 6 octobre 2009) l'interdiction d'exercer certaines activités professionnelles ou sociales;
- 8) l'interdiction de conduire certains véhicules;
- 9) les peines de substitution prévues aux articles 21 et 22.

Art. 19. (L. 13 juin 1994) Lorsqu'un délit est puni de l'emprisonnement, la confiscation spéciale telle qu'elle est définie par l'article 31 peut être prononcée à titre de peine principale, alors même qu'elle ne serait pas prévue par la loi particulière dont il est fait application. La disposition de l'alinéa précédent ne s'applique pas en matière de délits de presse.

Art. 21. (L. 13 juin 1994) Lorsqu'un délit est puni de l'emprisonnement, le tribunal peut prononcer à titre de peine principale, une ou plusieurs des peines suivantes:

- 1) interdiction de conduire certains véhicules pendant une durée de cinq ans au plus, ou limitation du droit de conduire pendant la même durée au plus;
- 2) confiscation d'un ou de plusieurs véhicules dont le prévenu est propriétaire;
- 3) interdiction de détenir ou de porter, pendant une durée de cinq ans au plus, une arme soumise à autorisation;
- 4) interdiction du droit d'exercer la chasse pendant une durée de cinq ans au plus;
- 5) confiscation d'une ou de plusieurs armes dont le prévenu est propriétaire.

Section V. - De la confiscation spéciale.

Art. 31. (L. 1er août 2007) La confiscation spéciale s'applique:

- 1) aux biens comprenant les biens de toute nature, corporels ou incorporels, meubles ou immeubles, ainsi que les actes juridiques ou documents attestant d'un titre ou d'un droit sur un bien, biens formant l'objet ou le produit, direct ou indirect d'une infraction ou constituant un avantage patrimonial quelconque tiré de l'infraction, y compris les revenus de ces biens;
- 2) aux biens qui ont servi ou qui ont été destinés à commettre l'infraction, quand la propriété en appartient au condamné; des biens substitués;
- 3) aux biens qui ont été substitués à ceux visés sous 1) du présent alinéa, y compris les revenus des biens substitués;
- 4) aux biens dont la propriété appartient au condamné et dont la valeur monétaire correspond à celle des biens visés sous 1) du présent alinéa, si ceux-ci ne peuvent être trouvés aux fins de confiscation.

Lorsque les biens appartiennent à la personne lésée par l'infraction, ils lui sont restitués. Les biens confisqués lui sont de même attribués lorsque le juge en aura prononcé la confiscation pour le motif qu'ils constituent des biens substitués à des choses appartenant à la personne lésée par l'infraction ou lorsqu'ils en constituent la valeur au sens de l'alinéa premier du présent article.

Tout autre tiers prétendant droit sur le ou les biens confisqués peut faire valoir ce droit. En cas de prétentions reconnues légitimes et justifiées, le tribunal statue sur la restitution.

Le tribunal qui a ordonné la confiscation demeure compétent pour statuer sur les requêtes en restitution, adressées au ministère public ou à la juridiction, et émanant soit d'une personne lésée, soit d'un tiers, qui fait valoir un droit sur le bien confisqué.

La requête doit être présentée dans un délai de deux ans courant à partir du jour où la décision de confiscation a été exécutée, sous peine de forclusion.

La demande est également forclosée lorsque les biens confisqués ont été transférés à l'Etat requérant en exécution d'un accord afférent entre les deux Etats ou d'un arrangement intervenu entre le Gouvernement luxembourgeois et le Gouvernement de l'Etat requérant.

Le jugement qui ordonne la confiscation des biens visés sous 2) de l'alinéa 1 du présent article prononce, pour le cas où celle-ci ne pourrait être exécutée, une amende qui ne dépasse pas la valeur de la chose confisquée. Cette amende a le caractère d'une peine.

Art. 32. (L. 13 juin 1994) La confiscation spéciale est toujours prononcée pour crime, elle peut l'être pour délit.

Elle n'est prononcée pour contravention que dans les cas déterminés par la loi.

Art. 32-1. (L. 27 octobre 2010) (L. 26 décembre 2012) En cas d'infraction de blanchiment visée aux articles 506-1 à 506-8 et en cas d'infractions visées aux articles 112-1, 135-1 à 135-6, 135-9 et 135-11 à 135-13 la confiscation spéciale s'applique:

- 1) aux biens comprenant les biens de toute nature, corporels ou incorporels, meubles ou

immeubles, ainsi que les actes juridiques ou documents attestant d'un titre ou d'un droit sur un bien, biens formant l'objet ou le produit, direct ou indirect d'une infraction ou constituant un avantage patrimonial quelconque tiré de l'infraction, y compris les revenus de ces biens ;

2) aux biens qui ont servi ou qui ont été destinés à commettre l'infraction;

3) aux biens qui ont été substitués à ceux visés sous 1) et 2) du présent alinéa, y compris les revenus des biens substitués;

4) aux biens dont la propriété appartient au condamné et dont la valeur monétaire correspond à celle des biens visés sous 1) et 2) du présent alinéa, si ceux-ci ne peuvent être trouvés aux fins de confiscation.

La confiscation des biens visés à l'alinéa premier du présent article est prononcée, même en cas d'acquiescement, d'exemption de peine, d'extinction ou de prescription de l'action publique.

Lorsque les biens appartiennent à la personne lésée par l'infraction, ils lui sont restitués. Les biens confisqués lui sont de même attribués lorsque le juge en aura prononcé la confiscation pour le motif qu'ils constituent des biens substitués à des choses appartenant à la personne lésée par l'infraction ou lorsqu'ils en constituent la valeur au sens de l'alinéa premier du présent article.

Tout tiers prétendant droit sur le ou les biens confisqués peut faire valoir ce droit. En cas de prétentions reconnues légitimes et justifiées, le tribunal statue sur la restitution.

Le tribunal qui a ordonné la confiscation demeure compétent pour statuer sur les requêtes en restitution, adressées au ministère public ou à la juridiction, et émanant soit d'une personne lésée, soit d'un tiers, qui fait valoir un droit sur le bien confisqué.

La requête doit être présentée dans un délai de deux ans courant à partir du jour où la décision de confiscation a été exécutée, sous peine de forclusion.

La demande est également forclosée lorsque les biens confisqués ont été transférés à l'Etat requérant en exécution d'un accord afférent entre les deux Etats ou d'un arrangement intervenu entre le Gouvernement luxembourgeois et le Gouvernement de l'Etat requérant.

(b) Observations on the implementation of the article

225. The reviewing experts enquired if and under which conditions articles 7, 31 and 32-1 CP allow for non-conviction based (NCB) confiscation. Luxembourg explained that NCB confiscation is possible in certain cases. According to article 32-1 CP, which applies in cases of money laundering, terrorism and terrorist financing, the property concerned under paragraphs 1) and 3) of article 32-1 CP shall be confiscated even in the absence of a conviction (i.e. in case of acquittal, exemption from penalty, extinguishment or lapsing of the statute of limitations) and even if the property does not belong to the perpetrator of the offence. This means that an outcome analogous to civil ("non-conviction based") confiscation can be obtained.

226. The statute of limitation for confiscation is the same as for the principal offence.

227. It was confirmed that confiscation is imposed as a rule, even where article 32 CP makes it optional only.

228. Luxembourg confirmed that value confiscation is regulated in article 31(4) CP, substitutes are covered by article 31(3) CP.

229. The reviewing experts concluded that Luxembourg has implemented Art. 31(1)(a) UNCAC.

Subparagraph 1 (b)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

230. Luxembourg confirmed that it has fully implemented this provision of the Convention.

Section V. - De la confiscation spéciale.

Art. 31. (L. 1er août 2007) La confiscation spéciale s'applique:

(1) ...

(2) aux biens qui ont servi ou qui ont été destinés à commettre l'infraction, quand la propriété en appartient au condamné; des biens substitués;

Art. 32-1. (L. 27 octobre 2010) (L. 26 décembre 2012) En cas d'infraction de blanchiment visée aux articles 506-1 à 506-8 et en cas d'infractions visées aux articles 112-1, 135-1 à 135-6, 135-9 et 135-11 à 135-13 la confiscation spéciale s'applique:

(2) aux biens qui ont servi ou qui ont été destinés à commettre l'infraction;

(b) Observations on the implementation of the article

231. The reviewing experts concluded that Luxembourg has implemented Art. 31(1)(b) UNCAC.

Paragraph 2

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

(a) Summary of information relevant to reviewing the implementation of the article

232. Luxembourg confirmed that it has fully implemented this provision of the Convention.

Code d'instruction criminelle

Art. 31. (L. 16 juin 1989) (1) En cas de crime flagrant, l'officier de police judiciaire qui en est avisé informe immédiatement le procureur d'Etat, se transporte sans délai sur le lieu du crime et procède à toutes constatations utiles.

(2) Il veille à la conservation des indices susceptibles de disparaître et de tout ce qui peut servir à la manifestation de la vérité.

(3) (L. 17 mars 1992) Il saisit les objets, documents et effets qui ont servi à commettre le crime ou qui étaient destinés à le commettre et ceux qui ont formé l'objet du crime, de même que tout ce qui paraît avoir été le produit du crime, ainsi qu'en général, tout ce qui paraît utile à la manifestation de la vérité ou dont l'utilisation serait de nature à nuire à la bonne marche de l'instruction et tout ce qui est susceptible de confiscation ou de restitution.

(4) Il représente les objets saisis, pour reconnaissance, aux personnes qui paraissent avoir participé au crime, si elles sont présentes.

(5) (L. 6 mars 2006) Si la saisie porte sur des biens dont la conservation en nature n'est pas nécessaire, le procureur d'Etat peut ordonner d'en faire le dépôt à la caisse de consignation s'il s'agit de biens pour lesquels des comptes de dépôt sont normalement ouverts tels que des sommes en monnaie nationale ou étrangère, des titres ou des métaux précieux.

Art. 33. (L. 16 juin 1989) (1) Si la nature du crime est telle que la preuve en puisse être acquise par la saisie des papiers, documents ou autres objets en la possession des personnes qui paraissent avoir participé au crime ou détenir des pièces ou objets relatifs aux faits incriminés, l'officier de police judiciaire se transporte sans désemparer au domicile de ces dernières pour y procéder à une perquisition dont il dresse procès-verbal et opérer la saisie. Cette perquisition peut avoir lieu à toute heure du jour ou de la nuit.

(2) Il a seul, avec les personnes désignées à l'article 34 et celles auxquelles il a éventuellement recours en application de l'article 36, le droit de prendre connaissance des papiers ou documents avant de procéder à leur saisie.

(3) Toutefois, il a l'obligation de provoquer préalablement toutes mesures utiles pour que soit assuré le respect du secret professionnel et des droits de la défense.

(4) Tous objets et documents saisis sont immédiatement inventoriés après avoir été présentés, pour reconnaissance, aux personnes qui paraissent avoir participé à l'infraction, si elles sont présentes, ainsi qu'aux personnes visées à l'article suivant. Cependant, si leur inventaire sur place présente des difficultés, ils font l'objet de scellés jusqu'au moment de leur inventaire en présence des personnes qui ont assisté à la perquisition.

(5) Le procès-verbal des perquisitions et des saisies est signé par les personnes qui paraissent avoir participé à l'infraction, par les personnes au domicile desquelles elles ont eu lieu et par les personnes qui y ont assisté; en cas de refus de signer, le procès-verbal en fait mention. Il leur est laissé copie du procès-verbal.

(6) Les objets et documents saisis sont déposés au greffe du tribunal d'arrondissement ou confiés à un gardien de saisie.

(7) Avec l'accord du procureur d'Etat, l'officier de police judiciaire ne maintient que la saisie des objets et documents utiles à la manifestation de la vérité.

(8) (L. 22 juillet 2008) Dans l'intérêt de la manifestation de la vérité, le procureur d'Etat peut ordonner la prise d'empreintes digitales et de photographies des personnes qui paraissent avoir participé au crime flagrant. Les empreintes digitales et les photographies recueillies en application du présent article peuvent être traitées ultérieurement par la Police à des fins de prévention, de recherche et de constatation des infractions pénales.

Art. 34. (L. 16 juin 1989) (1) Sous réserve de ce qui est dit à l'article précédent concernant le respect du secret professionnel et des droits de la défense, les opérations prescrites par ledit article sont faites en présence de la personne au domicile de laquelle la perquisition a lieu.

(2) En cas d'impossibilité, l'officier de police judiciaire a l'obligation de l'inviter à désigner un représentant de son choix; à défaut, l'officier de police judiciaire choisit deux témoins requis à cet effet par lui, en dehors des personnes relevant de son autorité administrative.

(3) Le procès-verbal de ces opérations est signé par les personnes visées au présent

article; en cas de refus, il en est fait mention au procès-verbal.

Art. 35. (L. 16 juin 1989) Sous réserve des nécessités des enquêtes et de la disposition de l'article 8, paragraphe (3), toute communication ou toute divulgation sans l'autorisation de l'inculpé ou de ses ayants droits ou du signataire ou du destinataire d'un document provenant d'une perquisition à une personne non qualifiée par la loi pour en prendre connaissance est punie d'un emprisonnement de huit jours à six mois et d'une amende de 500 euros à 5.000 euros ou d'une de ces peines seulement.

Art. 65. (L. 16 juin 1989) (1) Les perquisitions sont effectuées dans tous les lieux ou peuvent se trouver des objets dont la découverte serait utile à la manifestation de la vérité.

(2) Le juge d'instruction en donne préalablement avis au procureur d'Etat.

(3) Sauf le cas d'infraction flagrante ou les cas expressément prévus par la loi, les perquisitions ne peuvent, à peine de nullité, être commencées avant six heures et demie ni après vingt heures.

(4) Les dispositions des articles 33 à 38 sont applicables aux perquisitions effectuées par le juge d'instruction.

Art. 66. (L. 17 mars 1992) (1) Le juge d'instruction opère la saisie de tous les objets, documents effets et autres choses visés à l'article 31(3).

(2) Les objets, documents, effets et autres choses saisis sont inventoriés dans le procès-verbal. Si leur inventaire sur place présente des difficultés, ils font l'objet de scellés jusqu'au moment de leur inventaire, en présence des personnes qui ont assisté à la perquisition.

(3) Le procès-verbal des perquisitions et des saisies est signé par l'inculpé, par la personne au domicile de laquelle elles ont été opérées et par les personnes qui y ont assisté; en cas de refus de signer, le procès-verbal en fait mention. Il leur est laissé copie du procès-verbal.

(4) Les objets, documents, effets et autres choses saisis sont déposés au greffe ou confiés à un gardien de saisie.

Art. 66-1. (L. 13 décembre 2007) (1) En cas de saisie conservatoire d'un bien immeuble, l'ordonnance du juge d'instruction contient les mentions suivantes:

1. les circonstances de fait de la cause qui justifient la saisie;

2. la désignation du bien visé par la saisie et du propriétaire de ce bien. Cette désignation se fait conformément aux dispositions de la loi modifiée du 26 juin 1953 concernant la désignation des personnes et des biens dans les actes à transcrire ou à inscrire au bureau des hypothèques.

(2) L'ordonnance de saisie est communiquée au procureur d'Etat.

Cette ordonnance est notifiée dans les formes prévues pour les notifications en matière répressive.

1. au conservateur des hypothèques du lieu de situation du bien saisi, aux fins de transcription conformément à la loi modifiée du 25 septembre 1905 sur la transcription des droits réels immobiliers;

2. au propriétaire du bien saisi.

Si le propriétaire ne peut pas être trouvé sur le territoire du Grand-Duché de Luxembourg, l'ordonnance fait en outre l'objet d'un affichage sur le bien saisi. Les dispositions du présent paragraphe sont applicables aux décisions judiciaires ordonnant la restitution du bien saisi, la mainlevée de la saisie ou la nullité de la saisie.

(3) La transcription de la saisie prend date le jour de la notification de l'ordonnance au conservateur des hypothèques.

La saisie immobilière conservatoire est valable pendant un laps de temps qui s'étend de la date de sa transcription jusqu'au jour où deux mois se sont écoulés depuis le jour où la

décision judiciaire définitive ordonnant la confiscation du bien immobilier est coulée en force de chose jugée.

La saisie est maintenue pour le passé par la mention succincte en marge de sa transcription, pendant le délai de validité de celle-ci, de la décision judiciaire définitive ordonnant la confiscation du bien immobilier.

(4) Les dispositions des articles 68 et 194-1 et suivants sont applicables à toute personne qui prétend avoir un droit réel sur le bien immobilier saisi.

Art. 66-2. (L. 27 octobre 2010) (1) Si l'instruction préparatoire l'exige et que les moyens ordinaires d'investigation s'avèrent inopérants en raison de la nature des faits et des circonstances spéciales de l'espèce, le juge d'instruction saisi peut, à titre exceptionnel, concernant un ou plusieurs des faits énumérés ci-après, ordonner aux établissements de crédit qu'il désigne de l'informer si l'inculpé détient, contrôle ou a procuration sur un ou plusieurs comptes de quelque nature que ce soit, ou a détenu, contrôlé ou eu procuration sur un tel compte pour un ou plusieurs des faits énumérés ci-après:

1. crimes et délits contre la sûreté de l'Etat au sens des articles 101 à 123 du Code pénal
2. (L. 26 décembre 2012) actes de terrorisme et de financement de terrorisme au sens des articles 135-1 à 135-6, 135-9 et 135-11 à 135-13 du Code pénal
3. infractions à la loi modifiée du 15 mars 1983 sur les armes et munitions dans le cadre d'une association de malfaiteurs ou d'une organisation criminelle
4. traite des êtres humains, proxénétisme, prostitution et exploitation des êtres humains au sens des articles 379 à 386 du Code pénal
5. homicide et coups et blessures volontaires dans le cadre d'une association de malfaiteurs ou d'une organisation criminelle au sens des articles 392 à 417 du Code pénal
6. vols et extorsions dans le cadre d'une association de malfaiteurs ou d'une organisation criminelle au sens des articles 461 à 475 du Code pénal
7. infractions à la loi modifiée du 19 février 1973 concernant la vente de substances médicamenteuses et la lutte contre la toxicomanie dans le cadre d'une association de malfaiteurs ou d'une organisation criminelle
8. blanchiment et recel au sens des articles 505 et 506-1 du Code pénal
9. corruption et trafic d'influence au sens des articles 246 à 252, art. 310 et 310-1 du Code pénal
10. aide à l'entrée et au séjour irréguliers au sens de la loi du 29 août 2008 portant sur la libre circulation des personnes dans le cadre d'une association de malfaiteurs ou d'une organisation criminelle
11. faux-monnayage au sens des articles 162 à 170 du Code pénal
12. enlèvement de mineurs au sens des articles 368 à 371-1 du Code pénal.

(2) Si la réponse est affirmative, l'établissement de crédit communique le numéro du compte ainsi que le solde, et lui transmet les données relatives à l'identification du compte et notamment les documents d'ouverture de celui-ci.

(3) La décision est versée au dossier de la procédure après achèvement de la procédure.

Art. 66-3. (L. 27 octobre 2010) (1) Si l'instruction préparatoire l'exige et que les moyens ordinaires d'investigation s'avèrent inopérants en raison de la nature des faits et des circonstances spéciales de l'espèce, le juge d'instruction saisi peut, à titre exceptionnel, concernant un ou plusieurs des faits énumérés ci-après, ordonner à un établissement de crédit de l'informer pendant une période déterminée de toute opération qui sera exécutée ou prévue d'être exécutée sur le compte de l'inculpé qu'il spécifie:

1. crimes et délits contre la sûreté de l'Etat au sens des articles 101 à 123 du Code pénal
2. (L. 26 décembre 2012) actes de terrorisme et de financement de terrorisme au sens des articles 135-1 à 135-6, 135-9 et 135-11 à 135-13 du Code pénal

3. infractions à la loi modifiée du 15 mars 1983 sur les armes et munitions dans le cadre d'une association de malfaiteurs ou d'une organisation criminelle
 4. traite des êtres humains, proxénétisme, prostitution et exploitation des êtres humains au sens des articles 379 à 386 du Code pénal
 5. homicide et coups et blessures volontaires dans le cadre d'une association de malfaiteurs ou d'une organisation criminelle au sens des articles 392 à 417 du Code pénal
 6. vols et extorsions dans le cadre d'une association de malfaiteurs ou d'une organisation criminelle au sens des articles 461 à 475 du Code pénal
 7. infractions à la loi modifiée du 19 février 1973 concernant la vente de substances médicamenteuses et la lutte contre la toxicomanie dans le cadre d'une association de malfaiteurs ou d'une organisation criminelle
 8. blanchiment et recel au sens des articles 505 et 506-1 du Code pénal
 9. corruption et trafic d'influence au sens des articles 246 à 252, art. 310 et 310-1 du Code pénal
 10. aide à l'entrée et au séjour irréguliers au sens de la loi du 29 août 2008 portant sur la libre circulation des personnes dans le cadre d'une association de malfaiteurs ou d'une organisation criminelle
 11. faux-monnayage au sens des articles 162 à 170 du Code pénal
 12. enlèvement de mineurs au sens des articles 368 à 371-1 du Code pénal.
- (2) La mesure est ordonnée pour une durée qui est indiquée dans l'ordonnance. Elle cessera de plein droit un mois à compter de l'ordonnance. Elle pourra toutefois être prorogée chaque fois pour un mois, sans que la durée totale ne puisse dépasser trois mois.
- (3) La décision est versée au dossier de la procédure après achèvement de la procédure.

Art. 66-4. (L. 27 octobre 2010) Lorsqu'il est utile à la manifestation de la vérité, le juge d'instruction peut ordonner à un établissement de crédit de lui transmettre des informations ou des documents concernant des comptes ou des opérations qui ont été réalisées pendant une période déterminée sur un ou plusieurs comptes qu'il spécifie.

Art. 66-5. (L. 27 octobre 2010) (1) L'ordonnance prévue par les articles 66-2, 66-3 et 66-4 est portée à la connaissance de l'établissement de crédit visé par notification faite soit par un agent de la force publique, soit par lettre recommandée avec avis de réception, soit par télécopie, soit par courrier électronique.

(2) L'établissement de crédit qui s'est vu notifier l'ordonnance communique les informations ou documents sollicités par courrier électronique au juge d'instruction dans le délai indiqué dans l'ordonnance. Le juge d'instruction en accuse réception par courrier électronique.

(3) Le refus de prêter son concours à l'exécution des ordonnances sur le fondement des articles 66-2 et 66-3 sera puni d'une amende de 1.250 à 125.000 euros.

Art. 67. (L. 16 juin 1989) (1) Le juge d'instruction peut ordonner d'office et à tout moment la mainlevée totale ou partielle des saisies effectuées.

(2) (L. 6 mars 2006) Si la saisie porte sur des biens dont la conservation en nature n'est pas nécessaire à la manifestation de la vérité ou à la sauvegarde des droits des parties, le juge d'instruction peut ordonner d'en faire le dépôt à la caisse de consignation s'il s'agit de biens pour lesquels des comptes de dépôt sont normalement ouverts tels que des sommes en monnaie nationale ou étrangère, des titres ou des métaux précieux.

(3) Les intéressés peuvent obtenir, à leurs frais, copie ou photocopie des documents saisis.

Art. 67-1. (L. 21 novembre 2002) (1) (L. 24 juillet 2010) Lorsque le juge d'instruction saisi de faits qui emportent une peine criminelle ou une peine correctionnelle dont le maximum est égal ou supérieur à un an d'emprisonnement, estime qu'il existe des circonstances qui

rendent le repérage de télécommunications ou la localisation de l'origine ou de la destination de télécommunications nécessaire à la manifestation de la vérité, il peut faire procéder, en requérant au besoin le concours technique de l'opérateur de télécommunications et/ou du fournisseur d'un service de 1. au repérage des données d'appel de moyens de télécommunication à partir desquels ou vers lesquels des appels sont adressés ou ont été adressés;

2. à la localisation de l'origine ou de la destination de télécommunications.

Dans les cas visés à l'alinéa 1er, pour chaque moyen de télécommunication dont les données d'appel sont repérées ou dont l'origine ou la destination de la télécommunication est localisée, le jour, l'heure, la durée et, si nécessaire, le lieu de la télécommunication sont indiqués et consignés dans un procès-verbal.

Le juge d'instruction indique les circonstances de fait de la cause qui justifient la mesure dans une ordonnance motivée qu'il communique au procureur d'Etat. Il précise la durée durant laquelle elle pourra s'appliquer, cette durée ne pouvant excéder un mois à dater de l'ordonnance, sans préjudice de renouvellement.

(2) Chaque opérateur de télécommunications et chaque fournisseur d'un service de télécommunications communique les informations qui ont été demandées dans les meilleurs délais.

Toute personne qui, du chef de sa fonction, a connaissance de la mesure ou y prête son concours, est tenue de garder le secret. Toute violation du secret est punie conformément à l'article 458 du Code pénal.

Toute personne qui refuse de prêter son concours technique aux réquisitions visées dans cet article, est punie d'une amende de 100 à 5.000 euros.

(3) (L. 12 août 2003) La personne dont un moyen de télécommunication a fait l'objet de la mesure prévue au paragraphe (1) est informée de la mesure ordonnée au cours même de l'instruction et en tout cas au plus tard dans les 12 mois qui courent à partir de la date de l'ordonnance. Toutefois ce délai de 12 mois ne s'applique pas lorsque la mesure a été ordonnée dans une instruction pour des faits qui se situent dans le cadre ou en relation avec une association ou une organisation criminelle au sens des articles 322 à 324ter du Code pénal, ou qui se situent dans le cadre ou en relation avec le terrorisme au sens des articles 135-1 à 135-6, 135-9 et 135-11 à 135-13 du Code pénal, ou au sens de l'article 10, alinéa 1er de la loi modifiée du 19 février 1973 concernant la vente de substances médicamenteuses et la lutte contre la toxicomanie. (L. 26 décembre 2012)

La requête en nullité doit être produite sous peine de forclusion, dans les conditions prévues à l'article 126 du Code d'instruction criminelle.

Lorsque les mesures de repérage de télécommunications ordonnées par le juge d'instruction n'ont donné aucun résultat, les données obtenues seront retirées du dossier de l'instruction et détruites dans la mesure où elles concernent des personnes non inculpées.

(b) Observations on the implementation of the article

233. The reviewing experts concluded that Luxembourg has implemented Art. 31(2) UNCAC.

Paragraph 3

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

234. Luxembourg confirmed that it has fully implemented this provision of the Convention.

29 avril 1999. - Loi sur les consignations auprès de l'Etat

Mém. 1999, 1296

Art. 1er. Champ d'application

(1) Tout bien à consigner en vertu d'une loi, d'un règlement, d'une décision judiciaire ou administrative doit être consigné auprès de la caisse de consignation, conformément aux dispositions de la présente loi, nonobstant toutes dispositions légales ou réglementaires antérieures.

(2) Tout bien à consigner volontairement par un débiteur pour se libérer à l'égard d'un créancier peut être consigné avec effet libératoire pour le débiteur auprès de la caisse de consignation, conformément aux dispositions de la présente loi, lorsque la consignation a lieu sur base des articles 1257 à 1263 ou 1264 du Code civil ou lorsque le débiteur, sans faute de sa part, ne peut se libérer en toute sécurité pour des raisons relatives au créancier.

(3) La présente loi s'applique aussi aux consignations faites par l'Etat.

2. Caisse de consignation

(1) La Trésorerie de l'Etat est la caisse de consignation au sens de la présente loi.

(2) Les biens consignés à la caisse de consignation ne peuvent être confondus avec les avoirs de l'Etat. La caisse de consignation tient des livres distincts de ceux de l'Etat dont les règles comptables sont fixées par règlement grand-ducal.

(3) Les comptes de la caisse de consignation sont soumis annuellement au contrôle de la Chambre des Comptes.

3. Biens consignables

Pour pouvoir être consigné, un bien doit avoir l'une des formes acceptables conformément aux dispositions du présent article:

a) Sont acceptables tous les biens susceptibles d'être versés ou virés en faveur de la caisse de consignation sur un compte bancaire ou un compte chèque postal au Luxembourg.

b) Sont acceptables tous autres biens meubles ou immeubles, corporels ou incorporels, à condition, dans les cas visés au paragraphe (2) de l'article 1er, de l'accord écrit et préalable de la caisse de consignation. Cet accord devient caduc s'il n'est pas suivi dans les trois mois de sa notification par la réception des biens à la caisse de consignation.

4. Réception des biens à consigner

(1) Toute réception de biens par la caisse de consignation est documentée par un récépissé au déposant. La réception de biens à consigner et la délivrance du récépissé se fera par l'administration de l'Enregistrement et des Domaines dans tous les cas où la compétence pour ce faire lui est expressément reconnue par une loi, un règlement, une décision judiciaire ou administrative.

(2) La caisse de consignation tient un registre de toutes les consignations effectuées, faisant référence aux éléments relevant de chaque consignation.

5. Garde des biens consignés

(1) La caisse de consignation a seule la charge de garder les biens consignés en vue de leur restitution aux ayants droit.

(2) La caisse de consignation place auprès d'établissements financiers au

Luxembourg tous les biens consignés pour lesquels des comptes de dépôt sont normalement ouverts, tels que des sommes en monnaies nationale ou étrangère, des titres ou des métaux précieux. Elle prend égard, quant au choix des échéances, à son obligation de restituer les biens consignés dans un délai raisonnable.

(3) Les biens consignés autres que ceux visés au paragraphe précédent, sont conservés inchangés en vue de leur restitution en nature aux ayants droit. A cet effet, la caisse de consignation peut faire par elle-même ou par des tiers, tous les actes d'administration qui lui paraissent nécessaires.

(4) Les sommes provenant de la perte des biens consignés sont placées conformément au paragraphe (2).

(5) Les frais de la garde des biens consignés, y compris les frais propres de la caisse de consignation ainsi qu'une taxe de consignation établie sur base d'un tarif à fixer par règlement grand-ducal, sont couverts par imputation annuelle sur les fruits et à défaut, les produits des biens consignés. La taxe de consignations ne peut être fixée par an à moins de 0,5% ni à plus de 3% de la valeur estimée des biens consignés.

6. Restitution des biens consignés

(1) La restitution des biens consignés aux ayants droit nécessite une décision motivée de la part de la caisse de consignation.

En cas de consignation sur base de l'article 1er (1), la restitution intervient suite à l'acte qui l'autorise. En cas de consignation sur base de l'article 1er (2), la restitution intervient sur demande dûment justifiée.

(2) La restitution porte soit sur les biens consignés en nature, soit sur les sommes acquises en lieu et place des biens initialement consignés. Sous réserve de l'article 5 (5), elle porte également sur les fruits et produits de ces biens et sommes, tels qu'établis par la caisse de consignation. La caisse de consignation n'est pas tenue de verser ces fruits et produits avant la fin de la consignation.

(3) La caisse de consignation ne peut effectuer la restitution qu'après avoir reçu paiement, de la part des ayants droit au profit du Trésor, des frais restant dus.

7. Effet des significations

Les saisies-arrêts, oppositions, cessions et généralement toutes significations relatives à des biens consignés ont lieu, par dérogation aux dispositions du Code de procédure civile, à la Trésorerie de l'Etat. Sont, pour le surplus, appliquées aux consignations les formalités pour les saisies-arrêts ou oppositions entre les mains des receveurs ou administrateurs de caisses ou deniers publics.

8. Prescription

(1) Les biens meubles consignés sont acquis à l'Etat lorsqu'il s'est écoulé un délai de trente ans sans qu'il ait été demandé à la caisse de consignation de prendre une décision de restitution conformément à l'article 6 (1) ou sans que soit intervenu l'un des actes visés par l'article 2244 du Code civil. Ce délai prend cours à partir de la date du récépissé visé au paragraphe (1) de l'article 4.

(2) Six mois au plus tard avant l'échéance de ce délai, la caisse de consignation avise par lettre recommandée les ayants droit dont le domicile est connu suivant les pièces en sa possession, de la déchéance qu'ils encourent. A défaut de domicile connu ou à défaut d'une réclamation des ayants droit avisés endéans les deux mois de l'envoi de la lettre recommandée précitée, les indications pouvant permettre aux ayants droit de se manifester sont publiées immédiatement au Mémorial.

(b) Observations on the implementation of the article

235. During the country visit, Luxembourg explained that in practice, the seized property is held in escrow by the public administration. So far there is no asset management office. The confiscated property, which is the property of the State, is administered by the State. In cases related to drug trafficking, money laundering and terrorism financing, the property is transferred by the State to the Asset Forfeiture Fund (*Fonds de lutte contre certaines formes de criminalité*) which was established by the law of 17 March 1992. The Asset Forfeiture Fund uses its funds in order to pursue its role which is the promotion of the development, coordination and implementation of methods for combatting certain types of criminal activities (such as e.g. money laundering and terrorist financing). If the assets relate to a foreign bribery case, they will be shared with the foreign authorities by virtue of a sharing agreement.

236. The reviewing experts concluded that Luxembourg has implemented Art. 31(3) UNCAC.

Paragraph 4

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

237. Luxembourg confirmed that it has fully implemented this provision of the Convention.

Penal Code

Art. 31. (L. 1er août 2007) La confiscation spéciale s'applique:

(1) ...;

(2) ...;

(3) aux biens qui ont été substitués à ceux visés sous 1) du présent alinéa, y compris les revenus des biens substitués;

Art. 32-1. (L. 27 octobre 2010) (L. 26 décembre 2012) En cas d'infraction de blanchiment visée aux articles 506-1 à 506-8 et en cas d'infractions visées aux articles 112-1, 135-1 à 135-6, 135-9 et 135-11 à 135-13 la confiscation spéciale s'applique:

...

(3) aux biens qui ont été substitués à ceux visés sous 1) et 2) du présent alinéa, y compris les revenus des biens substitués;

(b) Observations on the implementation of the article

238. The reviewing experts concluded that Luxembourg has implemented Art. 31(4) UNCAC.

Paragraph 5

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

239. Luxembourg confirmed that it fully implemented this provision of the Convention. The part that corresponds to the proceeds will be confiscated.

Section V. - De la confiscation spéciale.

Art. 31. (L. 1er août 2007) La confiscation spéciale s'applique:

- 1) aux biens comprenant les biens de toute nature, corporels ou incorporels, meubles ou immeubles, ainsi que les actes juridiques ou documents attestant d'un titre ou d'un droit sur un bien, biens formant l'objet ou le produit, direct ou indirect d'une infraction ou constituant un avantage patrimonial quelconque tiré de l'infraction, y compris les revenus de ces biens;
- 2) aux biens qui ont servi ou qui ont été destinés à commettre l'infraction, quand la propriété en appartient au condamné; des biens substitués;
- 3) aux biens qui ont été substitués à ceux visés sous 1) du présent alinéa, y compris les revenus des biens substitués;
- 4) aux biens dont la propriété appartient au condamné et dont la valeur monétaire correspond à celle des biens visés sous 1) du présent alinéa, si ceux-ci ne peuvent être trouvés aux fins de confiscation.

...

Art. 32-1. (L. 27 octobre 2010) (L. 26 décembre 2012) En cas d'infraction de blanchiment visée aux articles 506-1 à 506-8 et en cas d'infractions visées aux articles 112-1, 135-1 à 135-6, 135-9 et 135-11 à 135-13 la confiscation spéciale s'applique:

- 1) aux biens comprenant les biens de toute nature, corporels ou incorporels, meubles ou immeubles, ainsi que les actes juridiques ou documents attestant d'un titre ou d'un droit sur un bien, biens formant l'objet ou le produit, direct ou indirect d'une infraction ou constituant un avantage patrimonial quelconque tiré de l'infraction, y compris les revenus de ces biens ;
- 2) aux biens qui ont servi ou qui ont été destinés à commettre l'infraction;
- 3) aux biens qui ont été substitués à ceux visés sous 1) et 2) du présent alinéa, y compris les revenus des biens substitués;
- 4) aux biens dont la propriété appartient au condamné et dont la valeur monétaire correspond à celle des biens visés sous 1) et 2) du présent alinéa, si ceux-ci ne peuvent être trouvés aux fins de confiscation.

La confiscation des biens visés à l'alinéa premier du présent article est prononcée, même en cas d'acquiescement, d'exemption de peine, d'extinction ou de prescription de l'action publique.

...

(b) Observations on the implementation of the article

240. The reviewing experts concluded that Luxembourg has implemented Art. 31(5) UNCAC.

Paragraph 6

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

(a) Summary of information relevant to reviewing the implementation of the article

241. Luxembourg confirmed that it fully implemented this provision of the Convention.

Penal Code - Section V. - De la confiscation spéciale.

Art. 31. (L. 1er août 2007) La confiscation spéciale s'applique:

5) aux biens comprenant les biens de toute nature, corporels ou incorporels, meubles ou immeubles, ainsi que les actes juridiques ou documents attestant d'un titre ou d'un droit sur un bien, biens formant l'objet ou le produit, direct ou indirect d'une infraction ou constituant un avantage patrimonial quelconque tiré de l'infraction, y compris les revenus de ces biens;

6) aux biens qui ont servi ou qui ont été destinés à commettre l'infraction, quand la propriété en appartient au condamné; des biens substitués;

7) aux biens qui ont été substitués à ceux visés sous 1) du présent alinéa, y compris les revenus des biens substitués;

8) aux biens dont la propriété appartient au condamné et dont la valeur monétaire correspond à celle des biens visés sous 1) du présent alinéa, si ceux-ci ne peuvent être trouvés aux fins de confiscation.

...

Art. 32-1. (L. 27 octobre 2010) (L. 26 décembre 2012) En cas d'infraction de blanchiment visée aux articles 506-1 à 506-8 et en cas d'infractions visées aux articles 112-1, 135-1 à 135-6, 135-9 et 135-11 à 135-13 la confiscation spéciale s'applique:

5) aux biens comprenant les biens de toute nature, corporels ou incorporels, meubles ou immeubles, ainsi que les actes juridiques ou documents attestant d'un titre ou d'un droit sur un bien, biens formant l'objet ou le produit, direct ou indirect d'une infraction ou constituant un avantage patrimonial quelconque tiré de l'infraction, y compris les revenus de ces biens ;

6) aux biens qui ont servi ou qui ont été destinés à commettre l'infraction;

7) aux biens qui ont été substitués à ceux visés sous 1) et 2) du présent alinéa, y compris les revenus des biens substitués;

8) aux biens dont la propriété appartient au condamné et dont la valeur monétaire correspond à celle des biens visés sous 1) et 2) du présent alinéa, si ceux-ci ne peuvent être trouvés aux fins de confiscation.

La confiscation des biens visés à l'alinéa premier du présent article est prononcée, même en cas d'acquiescement, d'exemption de peine, d'extinction ou de prescription de l'action publique.

...

242.

(b) Observations on the implementation of the article

243. The reviewing experts concluded that Luxembourg has implemented Art. 31(6) UNCAC.

Paragraph 7

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

244. Luxembourg confirmed that it fully implemented this provision of the Convention and cited the following applicable measures: Articles 7, 14, 21, 31, 32, 32-1 CP (see above) and Articles 31-35, 65, 66, 66-1 to 66-5, 67, 67-1 CIC.

Code d'instruction criminelle

Art. 31. (L. 16 juin 1989) (1) En cas de crime flagrant, l'officier de police judiciaire qui en est avisé informe immédiatement le procureur d'Etat, se transporte sans délai sur le lieu du crime et procède à toutes constatations utiles.

(2) Il veille à la conservation des indices susceptibles de disparaître et de tout ce qui peut servir à la manifestation de la vérité.

(3) (L. 17 mars 1992) Il saisit les objets, documents et effets qui ont servi à commettre le crime ou qui étaient destinés à le commettre et ceux qui ont formé l'objet du crime, de même que tout ce qui paraît avoir été le produit du crime, ainsi qu'en général, tout ce qui paraît utile à la manifestation de la vérité ou dont l'utilisation serait de nature à nuire à la bonne marche de l'instruction et tout ce qui est susceptible de confiscation ou de restitution.

(4) Il représente les objets saisis, pour reconnaissance, aux personnes qui paraissent avoir participé au crime, si elles sont présentes.

(5) (L. 6 mars 2006) Si la saisie porte sur des biens dont la conservation en nature n'est pas nécessaire, le procureur d'Etat peut ordonner d'en faire le dépôt à la caisse de consignation s'il s'agit de biens pour lesquels des comptes de dépôt sont normalement ouverts tels que des sommes en monnaie nationale ou étrangère, des titres ou des métaux précieux.

Art. 33. (L. 16 juin 1989) (1) Si la nature du crime est telle que la preuve en puisse être acquise par la saisie des papiers, documents ou autres objets en la possession des personnes qui paraissent avoir participé au crime ou détenir des pièces ou objets relatifs aux faits incriminés, l'officier de police judiciaire se transporte sans désenparer au domicile de ces dernières pour y procéder à une perquisition dont il dresse procès-verbal et opérer la saisie. Cette perquisition peut avoir lieu à toute heure du jour ou de la nuit.

(2) Il a seul, avec les personnes désignées à l'article 34 et celles auxquelles il a éventuellement recours en application de l'article 36, le droit de prendre connaissance des papiers ou documents avant de procéder à leur saisie.

(3) Toutefois, il a l'obligation de provoquer préalablement toutes mesures utiles pour que soit assuré le respect du secret professionnel et des droits de la défense.

(4) Tous objets et documents saisis sont immédiatement inventoriés après avoir été présentés, pour reconnaissance, aux personnes qui paraissent avoir participé à l'infraction, si elles sont présentes, ainsi qu'aux personnes visées à l'article suivant. Cependant, si leur inventaire sur place présente des difficultés, ils font l'objet de scellés jusqu'au moment de leur inventaire en présence des personnes qui ont assisté à la perquisition.

(5) Le procès-verbal des perquisitions et des saisies est signé par les personnes qui paraissent avoir participé à l'infraction, par les personnes au domicile desquelles elles ont eu lieu et par les personnes qui y ont assisté; en cas de refus de signer, le procès-verbal en fait mention. Il

leur est laissé copie du procès-verbal.

(6) Les objets et documents saisis sont déposés au greffe du tribunal d'arrondissement ou confiés à un gardien de saisie.

(7) Avec l'accord du procureur d'Etat, l'officier de police judiciaire ne maintient que la saisie des objets et documents utiles à la manifestation de la vérité.

(8) (L. 22 juillet 2008) Dans l'intérêt de la manifestation de la vérité, le procureur d'Etat peut ordonner la prise d'empreintes digitales et de photographies des personnes qui paraissent avoir participé au crime flagrant. Les empreintes digitales et les photographies recueillies en application du présent article peuvent être traitées ultérieurement par la Police à des fins de prévention, de recherche et de constatation des infractions pénales.

Art. 34. (L. 16 juin 1989) (1) Sous réserve de ce qui est dit à l'article précédent concernant le respect du secret professionnel et des droits de la défense, les opérations prescrites par ledit article sont faites en présence de la personne au domicile de laquelle la perquisition a lieu.

(2) En cas d'impossibilité, l'officier de police judiciaire a l'obligation de l'inviter à désigner un représentant de son choix; à défaut, l'officier de police judiciaire choisit deux témoins requis à cet effet par lui, en dehors des personnes relevant de son autorité administrative.

(3) Le procès-verbal de ces opérations est signé par les personnes visées au présent article; en cas de refus, il en est fait mention au procès-verbal.

Art. 35. (L. 16 juin 1989) Sous réserve des nécessités des enquêtes et de la disposition de l'article

8, paragraphe (3), toute communication ou toute divulgation sans l'autorisation de l'inculpé ou de ses ayants droits ou du signataire ou du destinataire d'un document provenant d'une perquisition à une personne non qualifiée par la loi pour en prendre connaissance est punie d'un emprisonnement de huit jours à six mois et d'une amende de 500 euros à 5.000 euros ou d'une de ces peines seulement.

Section III. - Des transports, perquisitions et saisies.

Art. 63. (L. 16 juin 1989) (1) Le juge d'instruction peut se transporter sur les lieux pour y effectuer toutes constatations utiles. Il en donne avis au procureur d'Etat qui a la faculté de l'accompagner.

(2) L'inculpé et son conseil ainsi que la partie civile peuvent assister au transport sur les lieux; ils en reçoivent avis la veille. Exceptionnellement, lorsqu'il y a lieu de craindre la disparition imminente d'éléments dont la constatation et l'examen semblent utiles à la manifestation de la vérité, le juge d'instruction procède d'urgence à ces opérations sans que les intéressés doivent y être appelés.

(3) Le juge d'instruction est toujours assisté de son greffier.

(4) Il dresse un procès-verbal de ses opérations. Si, en raison de l'urgence, les intéressés n'ont pas été appelés, le motif en est indiqué dans le procès-verbal.

Art. 64. (L. 16 juin 1989) Si les nécessités de l'information l'exigent, le juge d'instruction peut, après en avoir donné avis au procureur d'Etat de son tribunal, se transporter avec son greffier dans toute l'étendue du territoire national, à l'effet d'y procéder à tous actes d'instruction, à charge par lui d'aviser, au préalable, le procureur d'Etat du tribunal dans le ressort duquel il se transporte. Il mentionne dans son procès-verbal les motifs de son transport.

Art. 65. (L. 16 juin 1989) (1) Les perquisitions sont effectuées dans tous les lieux ou peuvent se trouver des objets dont la découverte serait utile à la manifestation de la vérité.

(2) Le juge d'instruction en donne préalablement avis au procureur d'Etat.

(3) Sauf le cas d'infraction flagrante ou les cas expressément prévus par la loi, les perquisitions ne peuvent, à peine de nullité, être commencées avant six heures et demie ni après vingt heures.

(4) Les dispositions des articles 33 à 38 sont applicables aux perquisitions effectuées par le

juge d'instruction.

Art. 66. (L. 17 mars 1992) (1) Le juge d'instruction opère la saisie de tous les objets, documents effets et autres choses visés à l'article 31(3).

(2) Les objets, documents, effets et autres choses saisis sont inventoriés dans le procès-verbal. Si leur inventaire sur place présente des difficultés, ils font l'objet de scellés jusqu'au moment de leur inventaire, en présence des personnes qui ont assisté à la perquisition.

(3) Le procès-verbal des perquisitions et des saisies est signé par l'inculpé, par la personne au domicile de laquelle elles ont été opérées et par les personnes qui y ont assisté; en cas de refus de signer, le procès-verbal en fait mention. Il leur est laissé copie du procès-verbal.

(4) Les objets, documents, effets et autres choses saisis sont déposés au greffe ou confiés à un gardien de saisie.

Art. 66-1. (L. 13 décembre 2007) (1) En cas de saisie conservatoire d'un bien immeuble, l'ordonnance du juge d'instruction contient les mentions suivantes:

1. les circonstances de fait de la cause qui justifient la saisie;
2. la désignation du bien visé par la saisie et du propriétaire de ce bien. Cette désignation se fait conformément aux dispositions de la loi modifiée du 26 juin 1953 concernant la désignation des personnes et des biens dans les actes à transcrire ou à inscrire au bureau des hypothèques.

(2) L'ordonnance de saisie est communiquée au procureur d'Etat.

Cette ordonnance est notifiée dans les formes prévues pour les notifications en matière répressive.

1. au conservateur des hypothèques du lieu de situation du bien saisi, aux fins de transcription conformément à la loi modifiée du 25 septembre 1905 sur la transcription des droits réels immobiliers;

2. au propriétaire du bien saisi.

Si le propriétaire ne peut pas être trouvé sur le territoire du Grand-Duché de Luxembourg, l'ordonnance fait en outre l'objet d'un affichage sur le bien saisi. Les dispositions du présent paragraphe sont applicables aux décisions judiciaires ordonnant la restitution du bien saisi, la mainlevée de la saisie ou la nullité de la saisie.

(3) La transcription de la saisie prend date le jour de la notification de l'ordonnance au conservateur des hypothèques.

La saisie immobilière conservatoire est valable pendant un laps de temps qui s'étend de la date de sa transcription jusqu'au jour où deux mois se sont écoulés depuis le jour où la décision judiciaire définitive ordonnant la confiscation du bien immeuble est coulée en force de chose jugée.

La saisie est maintenue pour le passé par la mention succincte en marge de sa transcription, pendant le délai de validité de celle-ci, de la décision judiciaire définitive ordonnant la confiscation du bien immobilier.

(4) Les dispositions des articles 68 et 194-1 et suivants sont applicables à toute personne qui prétend avoir un droit réel sur le bien immeuble saisi.

Art. 66-2. (L. 27 octobre 2010) (1) Si l'instruction préparatoire l'exige et que les moyens ordinaires d'investigation s'avèrent inopérants en raison de la nature des faits et des circonstances spéciales de l'espèce, le juge d'instruction saisi peut, à titre exceptionnel, concernant un ou plusieurs des faits énumérés ci-après, ordonner aux établissements de crédit qu'il désigne de l'informer si l'inculpé détient, contrôle ou a procuration sur un ou plusieurs comptes de quelque nature que ce soit, ou a détenu, contrôlé ou eu procuration sur un tel compte pour un ou plusieurs des faits énumérés ci-après:

1. crimes et délits contre la sûreté de l'Etat au sens des articles 101 à 123 du Code pénal
2. (L. 26 décembre 2012) actes de terrorisme et de financement de terrorisme au sens des articles 135-1 à 135-6, 135-9 et 135-11 à

135-13 du Code pénal

3. infractions à la loi modifiée du 15 mars 1983 sur les armes et munitions dans le cadre d'une association de malfaiteurs ou d'une organisation criminelle
 4. traite des êtres humains, proxénétisme, prostitution et exploitation des êtres humains au sens des articles 379 à 386 du Code pénal
 5. homicide et coups et blessures volontaires dans le cadre d'une association de malfaiteurs ou d'une organisation criminelle au sens des articles 392 à 417 du Code pénal
 6. vols et extorsions dans le cadre d'une association de malfaiteurs ou d'une organisation criminelle au sens des articles 461 à 475 du Code pénal
 7. infractions à la loi modifiée du 19 février 1973 concernant la vente de substances médicamenteuses et la lutte contre la toxicomanie dans le cadre d'une association de malfaiteurs ou d'une organisation criminelle
 8. blanchiment et recel au sens des articles 505 et 506-1 du Code pénal
 9. corruption et trafic d'influence au sens des articles 246 à 252, art. 310 et 310-1 du Code pénal
 10. aide à l'entrée et au séjour irréguliers au sens de la loi du 29 août 2008 portant sur la libre circulation des personnes dans le cadre d'une association de malfaiteurs ou d'une organisation criminelle
 11. faux-monnayage au sens des articles 162 à 170 du Code pénal
 12. enlèvement de mineurs au sens des articles 368 à 371-1 du Code pénal.
- (2) Si la réponse est affirmative, l'établissement de crédit communique le numéro du compte ainsi que le solde, et lui transmet les données relatives à l'identification du compte et notamment les documents d'ouverture de celui-ci.
- (3) La décision est versée au dossier de la procédure après achèvement de la procédure.

Art. 66-3. (L. 27 octobre 2010) (1) Si l'instruction préparatoire l'exige et que les moyens ordinaires d'investigation s'avèrent inopérants en raison de la nature des faits et des circonstances spéciales de l'espèce, le juge d'instruction saisi peut, à titre exceptionnel, concernant un ou plusieurs des faits énumérés ci-après, ordonner à un établissement de crédit de l'informer pendant une période déterminée de toute opération qui sera exécutée ou prévue d'être exécutée sur le compte de l'inculpé qu'il spécifie:

1. crimes et délits contre la sûreté de l'Etat au sens des articles 101 à 123 du Code pénal
2. (L. 26 décembre 2012) actes de terrorisme et de financement de terrorisme au sens des articles 135-1 à 135-6, 135-9 et 135-11 à 135-13 du Code pénal
3. infractions à la loi modifiée du 15 mars 1983 sur les armes et munitions dans le cadre d'une association de malfaiteurs ou d'une organisation criminelle traite des êtres humains, proxénétisme, prostitution et exploitation des êtres humains au sens des articles 379 à 386 du Code pénal
4. homicide et coups et blessures volontaires dans le cadre d'une association de malfaiteurs ou d'une organisation criminelle au sens des articles 392 à 417 du Code pénal
5. vols et extorsions dans le cadre d'une association de malfaiteurs ou d'une organisation criminelle au sens des articles 461 à 475 du Code pénal
6. infractions à la loi modifiée du 19 février 1973 concernant la vente de substances médicamenteuses et la lutte contre la toxicomanie dans le cadre d'une association de malfaiteurs ou d'une organisation criminelle
7. blanchiment et recel au sens des articles 505 et 506-1 du Code pénal
8. corruption et trafic d'influence au sens des articles 246 à 252, art. 310 et 310-1 du Code pénal
9. aide à l'entrée et au séjour irréguliers au sens de la loi du 29 août 2008 portant sur la libre circulation des personnes dans le cadre d'une association de malfaiteurs ou d'une organisation criminelle
10. faux-monnayage au sens des articles 162 à 170 du Code pénal

11. enlèvement de mineurs au sens des articles 368 à 371-1 du Code pénal.

(2) La mesure est ordonnée pour une durée qui est indiquée dans l'ordonnance. Elle cessera de plein droit un mois à compter de l'ordonnance. Elle pourra toutefois être prorogée chaque fois pour un mois, sans que la durée totale ne puisse dépasser trois mois.

(3) La décision est versée au dossier de la procédure après achèvement de la procédure.

Art. 66-4. (L. 27 octobre 2010) Lorsqu'il est utile à la manifestation de la vérité, le juge d'instruction peut ordonner à un établissement de crédit de lui transmettre des informations ou des documents concernant des comptes ou des opérations qui ont été réalisées pendant une période déterminée sur un ou plusieurs comptes qu'il spécifie.

Art. 66-5. (L. 27 octobre 2010) (1) L'ordonnance prévue par les articles 66-2, 66-3 et 66-4 est portée à la connaissance de l'établissement de crédit visé par notification faite soit par un agent de la force publique, soit par lettre recommandée avec avis de réception, soit par télécopie, soit par courrier électronique.

(2) L'établissement de crédit qui s'est vu notifier l'ordonnance communique les informations ou documents sollicités par courrier électronique au juge d'instruction dans le délai indiqué dans l'ordonnance. Le juge d'instruction en accuse réception par courrier électronique.

(3) Le refus de prêter son concours à l'exécution des ordonnances sur le fondement des articles 66-2 et 66-3 sera puni d'une amende de 1.250 à 125.000 euros.

Art. 67. (L. 16 juin 1989) (1) Le juge d'instruction peut ordonner d'office et à tout moment la mainlevée totale ou partielle des saisies effectuées.

(2)(L. 6 mars 2006) Si la saisie porte sur des biens dont la conservation en nature n'est pas nécessaire à la manifestation de la vérité ou à la sauvegarde des droits des parties, le juge d'instruction peut ordonner d'en faire le dépôt à la caisse de consignation s'il s'agit de biens pour lesquels des comptes de dépôt sont normalement ouverts tels que des sommes en monnaie nationale ou étrangère, des titres ou des métaux précieux.

(3) Les intéressés peuvent obtenir, à leurs frais, copie ou photocopie de documents saisis.

Art. 67-1. (L. 21 novembre 2002) (1) (L. 24 juillet 2010) Lorsque le juge d'instruction saisi de faits qui emportent une peine criminelle ou une peine correctionnelle dont le maximum est égal ou supérieur à un an d'emprisonnement, estime qu'il existe des circonstances qui rendent le repérage de télécommunications ou la localisation de l'origine ou de la destination de télécommunications nécessaire à la manifestation de la vérité, il peut faire procéder, en requérant au besoin le concours technique de l'opérateur de télécommunications et/ou du fournisseur d'un service de 1. au repérage des données d'appel de moyens de télécommunication à partir desquels ou vers lesquels des appels sont adressés ou ont été adressés;

2. à la localisation de l'origine ou de la destination de télécommunications.

Dans les cas visés à l'alinéa 1er, pour chaque moyen de télécommunication dont les données d'appel sont repérées ou dont l'origine ou la destination de la télécommunication est localisée, le jour, l'heure, la durée et, si nécessaire, le lieu de la télécommunication sont indiqués et consignés dans un procès-verbal.

Le juge d'instruction indique les circonstances de fait de la cause qui justifient la mesure dans une ordonnance motivée qu'il communique au procureur d'Etat.

Il précise la durée durant laquelle elle pourra s'appliquer, cette durée ne pouvant excéder un mois à dater de l'ordonnance, sans préjudice de renouvellement.

(2) Chaque opérateur de télécommunications et chaque fournisseur d'un service de télécommunications communique les informations qui ont été demandées dans les meilleurs délais.

Toute personne qui, du chef de sa fonction, a connaissance de la mesure ou y prête son concours, est tenue de garder le secret. Toute violation du secret est punie conformément à l'article 458 du Code pénal.

Toute personne qui refuse de prêter son concours technique aux réquisitions visées dans cet article, est punie d'une amende de 100 à 5.000 euros.

(3) (L. 12 août 2003) La personne dont un moyen de télécommunication a fait l'objet de la mesure prévue au paragraphe (1) est informée de la mesure ordonnée au cours même de l'instruction et en tout cas au plus tard dans les 12 mois qui courent à partir de la date de l'ordonnance. Toutefois ce délai de 12 mois ne s'applique pas lorsque la mesure a été ordonnée dans une instruction pour des faits qui se situent dans le cadre ou en relation avec une association ou une organisation criminelle au sens des articles 322 à 324ter du Code pénal, ou qui se situent dans le cadre ou en relation avec le terrorisme au sens des articles 135-1 à 135-6, 135-9 et 135-11 à 135-13 du Code pénal, ou au sens de l'article 10, alinéa 1er de la loi modifiée du 19 février 1973 concernant la vente de substances médicamenteuses et la lutte contre la toxicomanie. (L. 26 décembre 2012)

La requête en nullité doit être produite sous peine de forclusion, dans les conditions prévues à l'article 126 du Code d'instruction criminelle.

Lorsque les mesures de repérage de télécommunications ordonnées par le juge d'instruction n'ont donné aucun résultat, les données obtenues seront retirées du dossier de l'instruction et détruites dans la mesure où elles concernent des personnes non inculpées.

(b) Observations on the implementation of the article

245. During the country visit, Luxembourg confirmed that confiscation could also comprise banking documentation if it was considered an instrument of the offence. Otherwise, if it was considered evidence, it would form part of the case file and would be destroyed or given back to its legitimate owner at the closing of the case.

246. Luxembourg does not have a central register of bank accounts. However, following the introduction of articles 66-4 and 66-5 CIC, the investigating judge may order a credit institution to provide information or documents concerning bank accounts or banking transactions through a simplified procedure. According to this procedure, the order may be served to the credit institution concerned by way of a notification made electronically. The credit institution notified by the order shall communicate the information or documents requested electronically to the investigating judge within the time period indicated in the order. Non-compliance with such an order is punishable by a fine of 1.250 to 125.000 euros (article 66-5 (3) CIC). While the injunction can be challenged, in practice there are no challenges from banks. Moreover, banks cooperate well with the FIU and are criminally liable for Know-Your-Customer statements.

247. The reviewing experts concluded that Luxembourg has implemented Art. 31(7) UNCAC.

Paragraph 8

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

248. In accordance with article 31 (8) of the Convention Luxembourg has considered the possibility of requiring that an offender demonstrates the lawful origin of alleged proceeds of crime or other property liable to confiscation but decided not to do so because such a requirement was considered to be inconsistent with the fundamental legal principle of the presumption of innocence. However, the principle of the free assessment of the evidence equally applies to the lawful or illegal origin of alleged proceeds of crime.

(b) Observations on the implementation of the article

249. Considering the optional nature of this provision, the reviewing experts consider Luxembourg's law to be in compliance with article 31(8) UNCAC.

Paragraph 9

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

250. Luxembourg confirmed that it has fully implemented this provision of the Convention.

251. The Luxembourg regulation can be found in book 1, chapter 2, section 5 CP.

Section V. - De la confiscation spéciale.

Art. 31. (L. 1er août 2007) La confiscation spéciale s'applique:

...

(4) aux biens dont la propriété appartient au condamné et dont la valeur monétaire correspond à celle des biens visés sous 1) du présent alinéa, si ceux-ci ne peuvent être trouvés aux fins de confiscation.

Lorsque les biens appartiennent à la personne lésée par l'infraction, ils lui sont restitués. Les biens confisqués lui sont de même attribués lorsque le juge en aura prononcé la confiscation pour le motif qu'ils constituent des biens substitués à des choses appartenant à la personne lésée par l'infraction ou lorsqu'ils en constituent la valeur au sens de l'alinéa premier du présent article.

Tout autre tiers prétendant droit sur le ou les biens confisqués peut faire valoir ce droit. En cas de prétentions reconnues légitimes et justifiées, le tribunal statue sur la restitution.

Le tribunal qui a ordonné la confiscation demeure compétent pour statuer sur les requêtes en restitution, adressées au ministère public ou à la juridiction, et émanant soit d'une personne lésée, soit d'un tiers, qui fait valoir un droit sur le bien confisqué.

La requête doit être présentée dans un délai de deux ans courant à partir du jour où la décision de confiscation a été exécutée, sous peine de forclusion.

La demande est également forclosée lorsque les biens confisqués ont été transférés à l'Etat requérant en exécution d'un accord afférent entre les deux Etats ou d'un arrangement intervenu entre le Gouvernement luxembourgeois et le Gouvernement de l'Etat requérant.

Le jugement qui ordonne la confiscation des biens visés sous 2) de l'alinéa 1 du présent article prononce, pour le cas où celle-ci ne pourrait être exécutée, une amende qui ne dépasse pas la valeur de la chose confisquée. Cette amende a le caractère d'une peine.

Art. 32-1. (L. 27 octobre 2010) (L. 26 décembre 2012) En cas d'infraction de blanchiment visée aux articles 506-1 à 506-8 et en cas d'infractions visées aux articles 112-1, 135-1 à 135-6, 135-9 et 135-11 à 135-13 la confiscation spéciale s'applique:

...
(4) aux biens dont la propriété appartient au condamné et dont la valeur monétaire correspond à celle des biens visés sous 1) et 2) du présent alinéa, si ceux-ci ne peuvent être trouvés aux fins de confiscation.

La confiscation des biens visés à l'alinéa premier du présent article est prononcée, même en cas d'acquiescement, d'exemption de peine, d'extinction ou de prescription de l'action publique.

Lorsque les biens appartiennent à la personne lésée par l'infraction, ils lui sont restitués. Les biens confisqués lui sont de même attribués lorsque le juge en aura prononcé la confiscation pour le motif qu'ils constituent des biens substitués à des choses appartenant à la personne lésée par l'infraction ou lorsqu'ils en constituent la valeur au sens de l'alinéa premier du présent article.

Tout tiers prétendant droit sur le ou les biens confisqués peut faire valoir ce droit. En cas de prétentions reconnues légitimes et justifiées, le tribunal statue sur la restitution.

Le tribunal qui a ordonné la confiscation demeure compétent pour statuer sur les requêtes en restitution, adressées au ministère public ou à la juridiction, et émanant soit d'une personne lésée, soit d'un tiers, qui fait valoir un droit sur le bien confisqué.

La requête doit être présentée dans un délai de deux ans courant à partir du jour où la décision de confiscation a été exécutée, sous peine de forclusion.

La demande est également forclosée lorsque les biens confisqués ont été transférés à l'Etat requérant en exécution d'un accord afférent entre les deux Etats ou d'un arrangement intervenu entre le Gouvernement luxembourgeois et le Gouvernement de l'Etat requérant.

(b) Observations on the implementation of the article

252. Interested third parties can intervene in the proceedings. The court can even order this on its own motion. The two year deadline foreseen in the law was not in practice an obstacle for third parties to assert their rights. In case where belongings of a victim were confiscated it is a priority for the authorities to restitute the latter and provide compensation.

253. The reviewing experts concluded that Luxembourg has implemented Art. 31(9) UNCAC.

Article 32 Protection of witnesses, experts and victims

Paragraph 1

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

(a) Summary of information relevant to reviewing the implementation of the article

254. Luxembourg considered that it has partly implemented this provision of the Convention.

255. Given the small size of the country, there are no formal witness protection programmes in Luxembourg. In certain cases involving human trafficking, victims and witnesses were protected on a case by case basis in collaboration with neighbouring countries (police escorts, home surveillance etc.). In this context, Luxembourg also mentioned the whistleblower hotline operated by TI Luxembourg and financed by the State. This hotline was created *inter alia* to help whistleblowers to avail themselves of the possibilities for protection offered by the law.

(b) Observations on the implementation of the article

256. The reviewing experts concluded that Luxembourg has implemented Art. 32(1) UNCAC.

Subparagraph 2 (a)

2. The measures envisaged in paragraph 1 of this article may include, *inter alia*, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(a) Summary of information relevant to reviewing the implementation of the article

257. Luxembourg considered that it has partly implemented this provision of the Convention. The Non-disclosure of the identity of a witness is possible in the very special case of covert investigation.

Code d'instruction criminelle

Art. 48-22. (L. 3 décembre 2009) (1) L'officier de police judiciaire sous la responsabilité duquel se déroule l'opération d'infiltration peut seul être entendu en qualité de témoin sur l'opération.

(2) Toutefois, s'il ressort du rapport mentionné au paragraphe (5) de l'article 48-17 que la personne inculpée ou comparaissant devant la juridiction de jugement est directement mise en cause par des constatations effectuées par un officier de police judiciaire ou un agent étranger ayant personnellement réalisé les opérations d'infiltration, cette personne peut demander à être confrontée avec cet officier de police judiciaire ou cet agent étranger par l'intermédiaire d'un dispositif technique permettant l'audition du témoin à distance ou à faire interroger ce témoin par son avocat par ce même moyen. La voix du témoin est alors

rendue non identifiable par des procédés techniques appropriés.

(3) Les questions posées à l'officier de police judiciaire ou à l'agent étranger infiltré à l'occasion de cette confrontation ne doivent pas avoir pour objet ni pour effet de révéler, directement ou indirectement, sa véritable identité.

(b) Observations on the implementation of the article

258. During the country visit, the reviewing experts were told that ad hoc relocation arrangements e.g. with Germany exist only in the field of human trafficking. These programmes were not transferable to corruption offences. The masking of witness was possible only in the case of undercover agents.

259. The reviewing experts concluded that Luxembourg has partly implemented Art. 32(2)(a) UNCAC.

(c) Challenges in implementation

260. Given the small size of the country the reviewing experts recommend applying the *ad hoc* protection arrangements for witnesses with neighbouring countries to cases of corruption.

Subparagraph 2 (b)

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

(a) Summary of information relevant to reviewing the implementation of the article

261. Luxembourg confirmed that it has fully implemented this provision of the Convention.

CIC

Art. 79-1. (L. 6 octobre 2009) Le juge d'instruction peut procéder ou faire procéder à l'enregistrement sonore ou audiovisuel de l'audition d'un témoin ainsi que de tout mineur. L'enregistrement se fera après avoir recueilli le consentement du témoin ou du mineur, s'il a le discernement nécessaire, sinon du représentant légal du mineur. En cas de risque d'opposition d'intérêts dûment constaté entre le représentant légal du mineur et ce dernier, l'enregistrement ne pourra se faire qu'avec le consentement de l'administrateur ad hoc s'il en a été désigné un au mineur ou, si aucun administrateur ad hoc n'a été désigné, qu'avec l'autorisation expresse dûment motivée du juge d'instruction.

Par dérogation à ce qui précède, lorsqu'un mineur est victime de faits visés aux articles 354 à 360, 364, 365, 372 à 379, 382-1 et 382-2, 385, 393, 394, 397, 398 à 405, 410-1, 410-2 ou 442-1 du Code pénal ou lorsqu'un mineur est témoin de faits visés aux articles 393 à 397, ou 400 à 401bis du Code pénal, l'enregistrement se fait obligatoirement de la manière visée à l'alinéa premier, sauf si, en raison de l'opposition du mineur ou de son représentant légal ou, le cas échéant, de son administrateur ad hoc, à procéder à un tel enregistrement, le juge d'instruction décide qu'il n'y a pas lieu d'y procéder.

L'enregistrement sert de moyen de preuve. L'original est placé sous scellés fermés. Les copies sont inventoriées et versées au dossier. Les enregistrements peuvent être écoutés ou visionnés par les parties, dans les conditions prévues à l'article 85, et par

un expert sur autorisation du juge d'instruction sans déplacement et à l'endroit désigné par le juge d'instruction.

Tout mineur visé à l'alinéa 3 a le droit de se faire accompagner par la personne majeure de son choix lors de son audition au cours de l'instruction, sauf décision contraire motivée prise à l'égard de cette personne par le juge d'instruction dans l'intérêt du mineur ou de la manifestation de la vérité.

(b) Observations on the implementation of the article

262. During the country visit, Luxembourg added that the rights of the defence are safeguarded in the case of recorded witness statements because a questioning of the witness during the main hearing is possible.

263. The reviewing experts concluded that Luxembourg has implemented Art. 32(2)(b) UNCAC.

Paragraph 3

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

264. Luxembourg indicated that it has not implemented this provision of the Convention.

(b) Observations on the implementation of the article

265. The reviewing experts concluded that Luxembourg has not implemented the optional provision in Art. 32(3) UNCAC.

Paragraph 4

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

(a) Summary of information relevant to reviewing the implementation of the article

266. Luxembourg confirmed that in its domestic legal system, the provisions of this article also apply to victims insofar as they are witnesses.

(b) Observations on the implementation of the article

267. The reviewing experts concluded that Luxembourg has implemented Art. 32(4) UNCAC.

Paragraph 5

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

(a) Summary of information relevant to reviewing the implementation of the article

268. Luxembourg confirmed that it has fully implemented this provision of the Convention.

Code d'instruction criminelle

Art. 23. (L. 16 juin 1989)(4) (L. 6 octobre 2009) Le procureur d'Etat avise dans les dix-huit mois de la réception de la plainte, la victime qui a porté plainte des suites qu'il donne à l'affaire y compris, le cas échéant, du classement de l'affaire et du motif sous-jacent.

(5) (L. 6 octobre 2009) Lorsque l'affaire est classée, l'avis précise les conditions dans lesquelles la victime peut engager des poursuites par voie de citation directe ou de plainte avec constitution de partie civile. Lorsque les peines encourues de par la loi, au titre des faits faisant l'objet de la plainte, sont des peines criminelles ou des peines correctionnelles, l'avis comporte l'information que la victime peut s'adresser au procureur général d'Etat qui a le droit d'enjoindre au procureur d'Etat d'engager des poursuites

Section II. - De la constitution de partie civile et de ses effets.

Art. 56. (L. 16 juin 1989) Toute personne qui se prétend lésée par un crime ou un délit peut en portant plainte se constituer partie civile devant le juge d'instruction compétent.

Art. 57. (L. 16 juin 1989) (1) Le juge d'instruction ordonne communication de la plainte au procureur d'Etat pour que ce magistrat prenne ses réquisitions.

(2) Le réquisitoire peut être pris contre personne dénommée ou non dénommée.

(3) Le procureur d'Etat ne peut saisir le juge d'instruction de réquisitions de non informer que si, pour des causes affectant l'action publique elle-même, les faits ne peuvent légalement comporter une poursuite ou si, à supposer ces faits démontrés, ils ne peuvent admettre aucune qualification pénale.

Dans le cas où le juge d'instruction passe outre, il doit statuer par une ordonnance motivée.

(4) En cas de plainte insuffisamment motivée ou insuffisamment justifiée par les pièces produites, le juge d'instruction peut aussi être saisi de réquisitions tendant à ce qu'il soit provisoirement informé contre toutes personnes que l'instruction fera connaître.

Art. 58. (L. 16 juin 1989) (1) La constitution de partie civile peut avoir lieu à tout moment au cours de l'instruction. Elle n'est pas notifiée aux autres parties.

(2) Elle peut être contestée par le ministère public, par l'inculpé ou par une autre partie civile.

(3) En cas de contestation, ou s'il déclare d'office irrecevable la constitution de partie civile, le juge d'instruction statue par ordonnance motivée, après communication du dossier au ministère public.

Art. 59. (L. 16 juin 1989) (1) La partie civile qui met en mouvement l'action publique doit, si elle n'a pas obtenu l'aide judiciaire, consigner, entre les mains du receveur de l'enregistrement la somme présumée nécessaire pour les frais de procédure.

(2) Le juge d'instruction constate, par ordonnance, le dépôt de la plainte. En fonction des ressources de la partie civile, il fixe le montant de la consignation et le délai dans lequel celle-ci devra être faite, sous peine de non-recevabilité de la plainte. Il peut également dispenser de consignation la partie civile dépourvue de ressources suffisantes.

Art. 60. (L. 16 juin 1989) (1) Toute partie civile qui ne demeure pas dans le ressort du tribunal où se fait l'instruction est tenue d'y élire domicile, par acte au greffe de ce tribunal.
(2) A défaut d'élection de domicile, la partie civile ne peut opposer le défaut de signification des actes qui auraient dû lui être signifiés aux termes de la loi.

Art. 61. (L. 16 juin 1989) Dans le cas où le juge d'instruction n'est pas compétent aux termes de l'article 29, il rend, après réquisitions du ministère public, une ordonnance renvoyant la partie civile à se pourvoir devant telle juridiction qu'il appartiendra.

Art. 62. (L. 16 juin 1989) (1) La partie civile qui succombe est personnellement tenue de tous les frais de procédure, lorsque c'est elle qui a mis en mouvement l'action publique; lorsqu'elle s'est jointe à l'action du ministère public, elle n'est tenue que des frais nécessités par son intervention.

(2) Le tribunal peut, toutefois, compte tenu des circonstances et de la situation de fortune de la partie civile, la décharger de tout ou partie de ces frais.

(3) En cas de désistement, elle n'est tenue que des frais occasionnés par son intervention jusqu'au jour du désistement.

(b) Observations on the implementation of the article

269. The reviewing experts concluded that Luxembourg has implemented Art. 32(5) UNCAC.

Article 33 Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

270. Luxembourg confirmed that it has fully implemented this provision of the Convention and provided the Act of 13 February 2011 on whistleblower protection.

A. MODIFICATIONS DU CODE DU TRAVAIL

Art. I. Il est ajouté au Livre II du Code du Travail un Titre VII nouveau, libellé comme suit:

Titre VII - Protection des salariés en matière de lutte contre la corruption, le trafic d'influence et la prise illégale d'intérêts

Art. L.271-1 (1) Le salarié ne peut faire l'objet de représailles en raison de ses protestations ou refus opposés à un fait qu'il considère, de bonne foi, comme étant constitutif de prise illégale d'intérêts, de corruption ou de trafic d'influence aux termes des articles 245 à 252, 310 et 310-1 du Code pénal, que ce fait soit l'œuvre de son employeur ou de tout autre supérieur hiérarchique, de collègues de travail ou de personnes extérieures en relation avec l'employeur.

(2) De même, aucun salarié ne peut faire l'objet de représailles pour avoir signalé un tel fait à un supérieur hiérarchique ou aux autorités compétentes ou pour en avoir témoigné.

(3) Toute stipulation contractuelle ou tout acte contraire aux paragraphes (1) et (2), et notamment toute résiliation du contrat de travail en violation de ces dispositions, est nul de plein droit.

(4) En cas de résiliation du contrat de travail, le salarié peut demander dans les quinze jours qui suivent la notification de la résiliation, par simple requête au président de la juridiction du travail qui statue d'urgence, les parties entendues ou dûment convoquées, de constater la nullité de la résiliation du contrat de travail et d'ordonner son maintien, ou le cas échéant sa réintégration conformément aux dispositions de l'article L.124-12, paragraphe (4).

(5) L'ordonnance du président de la juridiction du travail est exécutoire par provision; elle est susceptible d'appel qui est porté par simple requête, dans les quarante jours à partir de la notification par la voie du greffe, devant le magistrat présidant la Chambre de la Cour d'appel à laquelle sont attribués les appels en matière de droit du travail. Il est statué d'urgence, les parties entendues ou dûment convoquées.

(6) Les convocations par voie de greffe prévues aux paragraphes (4) et (5) contiennent sous peine de nullité les mentions prescrites à l'article 80 du Nouveau Code de procédure civile.

(7) Le salarié qui n'a pas invoqué la nullité de son licenciement et demandé le maintien ou le cas échéant la réintégration conformément au paragraphe (4) du présent article, peut encore exercer l'action judiciaire en réparation de la résiliation abusive du contrat de travail sur la base des articles L.124-11 et L.124-12.

Art. L. 271-2.

Sans préjudice des dispositions de l'article L.124-11 du Code du Travail, dès qu'un salarié établit, devant une juridiction ou une autre instance compétente, des faits qui permettent de présumer qu'il a été victime de représailles prohibées en vertu de l'article L.271-1, il incombe à l'employeur de prouver que ces faits sont justifiés par d'autres éléments objectifs.

B. MODIFICATION DE LA LOI MODIFIÉE DU 16 AVRIL 1979

FIXANT LE STATUT GÉNÉRAL DES FONCTIONNAIRES DE L'ÉTAT

Art. II. Le paragraphe 2 de l'article 44bis est modifié comme suit:

2. De même, aucun fonctionnaire ne peut faire l'objet de représailles soit pour avoir témoigné des agissements définis aux articles 1bis et 1ter de la présente loi ou aux articles 245 à 252, 310 et 310-1 du Code pénal, soit pour les avoir relatés.

C. MODIFICATION DE LA LOI MODIFIÉE DU 24 DÉCEMBRE 1985 FIXANT LE STATUT GÉNÉRAL DES FONCTIONNAIRES COMMUNAUX

Art. III. Le paragraphe 2 de l'article 55bis est modifié comme suit:

2. De même, aucun fonctionnaire ne peut faire l'objet de représailles soit pour avoir témoigné des agissements définis aux articles 1bis et 1ter de la présente loi ou aux articles 245 à 252, 310 et 310-1 du Code pénal, soit pour les avoir relatés.

D. MODIFICATIONS DU CODE D'INSTRUCTION CRIMINELLE

Art. IIIbis. L'article 3-1 du Code d'instruction criminelle est modifié comme suit:

Art. 3-1. Toute association, d'importance nationale, dotée de la personnalité morale et agréée par le ministre de la Justice peut exercer les droits reconnus à la partie civile en ce qui concerne les faits constituant une infraction au sens des articles 245 à 252, 310, 310-1, 375, 382-1, 382-2, 401bis ou 409 du Code pénal ou des articles 444(2), 453, 454, 455, 456, 457, 457-1, 457-2, 457-3 et 457-4 du Code pénal et portant un préjudice direct ou indirect aux intérêts collectifs qu'elles ont pour objet de défendre, même si elles ne

justifient pas d'un intérêt matériel ou moral et même si l'intérêt collectif dans lequel elles agissent se couvre entièrement avec l'intérêt social dont la défense est assurée par le ministère public.

Quand il s'agit d'une infraction au sens des articles 444(2), 453, 454, 455, 456, 457, 457-1, 457-2, 457-3, et 457-4 du Code pénal commise envers des personnes considérées individuellement ou encore d'une infraction au sens des articles 245 à 252, 310, 310-1, 375, 382-1, 382-2, 401bis ou 409 du Code pénal, l'association ne pourra exercer par voie principale les droits reconnus à la partie civile qu'à la condition que ces personnes déclarent expressément et par écrit ne pas s'y opposer.

Art. IV. L'article 5-1 du Code d'instruction criminelle est modifié comme suit:

Art. 5-1. Tout Luxembourgeois, toute personne qui a sa résidence habituelle au Grand-Duché de Luxembourg, de même que l'étranger trouvé au Grand-Duché de Luxembourg, qui aura commis à l'étranger une des infractions prévues aux articles 112-1, 135-1 à 135-6, 135-9, 163, 169, 170, 177, 178, 185, 187-1, 192-1, 192-2, 198, 199, 199bis, 245 à 252, 310, 310-1, et 368 à 384 du Code pénal, pourra être poursuivi et jugé au Grand-Duché, bien que le fait ne soit pas puni par la législation du pays où il a été commis et que l'autorité luxembourgeoise n'ait pas reçu soit une plainte de la partie offensée, soit une dénonciation de l'autorité du pays où l'infraction a été commise.

Art. V. Les paragraphes (2) et (3) de l'article 23 du Code d'instruction criminelle sont modifiés comme suit:

(2) Toute autorité constituée, tout officier public ou fonctionnaire, ainsi que tout salarié ou agent chargés d'une mission de service public, qu'il soit engagé ou mandaté en vertu de dispositions de droit public ou de droit privé, qui, dans l'exercice de ses fonctions, acquiert la connaissance de faits susceptibles de constituer un crime ou un délit, est tenu d'en donner avis sans délai au procureur d'Etat et de transmettre à ce magistrat tous les renseignements, procès-verbaux et actes qui y sont relatifs, et cela nonobstant toute règle de confidentialité ou de secret professionnel lui étant applicable le cas échéant.

(3) Toute autorité constituée, tout officier public ou fonctionnaire, ainsi que tout salarié ou agent chargés d'une mission de service public, qu'il soit engagé ou mandaté en vertu de dispositions de droit public ou de droit privé, est tenu d'informer promptement, de sa propre initiative, le procureur d'Etat auprès du tribunal d'arrondissement de Luxembourg lorsqu'il sait, soupçonne ou a de bonnes raisons de soupçonner qu'un blanchiment ou un financement du terrorisme est en cours, a eu lieu, ou a été tenté, notamment en raison de la personne concernée, de son évolution, de l'origine des avoirs, de la nature, de la finalité ou des modalités de l'opération, et de fournir promptement audit procureur d'Etat tous les renseignements, procès-verbaux et actes qui y sont relatifs, et cela nonobstant toute règle de confidentialité ou de secret professionnel lui étant applicable le cas échéant.

E. MODIFICATIONS DU CODE PÉNAL

Art. VI. Les articles 246 à 250 du Code pénal sont modifiés comme suit:

De la corruption et du trafic d'influence

...

(b) Observations on the implementation of the article

271. During the country visit, Luxembourg added that the Labour Act lays down a reversal of the burden of proof for cases of retaliatory dismissal in Art. L.271-2.

272. Luxembourg also explained that civil servants are not only protected from reprisals but are actually obliged to report instances of corruption (art. 23 CIC).

273. Finally, Luxembourg reported that Transparency International (TI) Luxembourg has established a hotline for whistleblowers. So far, this hotline has met with only limited success. During the meeting with civil society, TI explained that one of the problems encountered in Luxembourg was that due to the small size of the country, society is so closely-knit that nobody wants to blow the whistle on someone else. Another restriction stems from the fact that an employee cannot only blow the whistle on a third person. However, TI was recognized as public interest organisation which can file complaints.

274. There was some discussion concerning the admissibility of anonymous complaints. While TI stated that anonymous complaints or witnesses are not allowed, the prosecution representatives insisted that if an anonymous complaint is substantiated, the prosecution can initiate a preliminary investigation. TI confirmed that they can file a complaint without explaining where they got the information from. Generally, prosecutors were said to be very forthcoming in not asking where TI had obtained information from.

275. TI also complained that the whistleblower legislation is restricted to labour law and civil servant law. There was no protection yet in libel and slander law. Representatives from the media criticised that the draft freedom of information Act does not contain a special clause for press and no specific rights for journalists to access information.

276. The reviewing experts concluded that Luxembourg has implemented Art. 33 UNCAC.

(c) Successes and good practices

277. The reviewing experts noted as a good practice the specific protection against reprisals in the Labour Act introduced by the Whistleblower Protection Act.

Article 34 Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

(a) Summary of information relevant to reviewing the implementation of the article

278. Luxembourg confirmed that it has fully implemented this provision of the Convention.

Code pénal

Section Ire. - Des peines criminelles.

Art. 7. (L. 13 juin 1994; L. 3 mars 2010) Les peines criminelles encourues par les personnes physiques sont:

- 1) la réclusion à vie ou à temps;
- 2) l'amende;
- 3) la confiscation spéciale;

- 4) la destitution des titres, grades, fonctions, emplois et offices publics;
- 5) l'interdiction de certains droits civils et politiques;
- 6) la fermeture d'entreprise et d'établissement;
- 7) la publication ou l'affichage, aux frais du condamné, de la décision ou d'un extrait de la décision de condamnation;
- 8) (L. 6 octobre 2009) l'interdiction d'exercer certaines activités professionnelles ou sociales.

Section II. - Des peines correctionnelles.

Art. 14. (L. 13 juin 1994 ; L. 3 mars 2010) Sans préjudice d'autres peines prévues par des lois spéciales, les peines correctionnelles encourues par les personnes physiques sont:

- 1) l'emprisonnement;
- 2) l'amende;
- 3) la confiscation spéciale;
- 4) l'interdiction de certains droits civils et politiques;
- 5) la fermeture d'entreprise et d'établissement;
- 6) la publication ou l'affichage, aux frais du condamné, de la décision ou d'un extrait de la décision de condamnation;
- 7) (L. 6 octobre 2009) l'interdiction d'exercer certaines activités professionnelles ou sociales;
- 8) l'interdiction de conduire certains véhicules;
- 9) les peines de substitution prévues aux articles 21 et 22.

Code civil

Section Ire. - Du consentement

Art. 1109. Il n'y a point de consentement valable si le consentement n'a été donné que par erreur ou s'il a été extorqué par violence ou surpris par dol.

Art. 1116. Le dol est une cause de nullité de la convention lorsque les manoeuvres pratiquées par l'une des parties sont telles qu'il est évident que, sans ces manoeuvres, l'autre partie n'aurait pas contracté. Il ne se présume pas, et doit être prouvé.

Art. 1118. (L. 15 mai 1987) Sauf les règles particulières à certains contrats ou à l'égard de certaines personnes, la lésion vicie le contrat, lorsqu'elle résulte d'une disproportion évidente au moment de la conclusion du contrat entre la prestation promise par l'une des parties et la contre-partie de l'autre et que cette disproportion a été introduite dans le contrat par exploitation d'une position de force, en abusant sciemment de la gêne, de la légèreté ou de l'inexpérience de l'autre partie. La charge de la preuve incombe à la partie qui se prétend lésée. La partie lésée pourra, néanmoins, demander l'exécution du contrat, après réduction des obligations lésionnaires. L'action en rescision du contrat ou en réduction des obligations doit être exercée dans un délai d'un an à partir de la conclusion du contrat.

Section IV. - De la cause

Art. 1131. L'obligation sans cause, ou sur une fausse cause, ou sur une cause illicite, ne peut avoir aucun effet.

Art. 1133. La cause est illicite, quand elle est prohibée par la loi, quand elle est contraire aux bonnes moeurs ou à l'ordre public.

(b) Observations on the implementation of the article

279. During the country visit, Luxembourg added that corruption would not make a contract void *ipso iure*, only voidable. The reviewing experts enquired if the criminal judge can order the withdrawal of concessions or rescind a contract. Luxembourg stated that this was not the case. In private law proceedings a contract could be rescinded or a concession

revoked for reasons of fraud. Moreover, public procurement law contains specific administrative sanctions for corruption offences. A criminal record for natural and legal persons exists.

280. The reviewing experts concluded that Luxembourg has implemented Art. 34 UNCAC.

Article 35 Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

(a) Summary of information relevant to reviewing the implementation of the article

281. Luxembourg confirmed that it has fully implemented this provision of the Convention and cited articles 56 to 62 CIC on the civil party in criminal proceedings (see the legislation cited under article 30(5) UNCAC above).

(b) Observations on the implementation of the article

282. During the country visit, Luxembourg confirmed that victims of corruption can also claim compensation under civil law.

283. The reviewing experts concluded that Luxembourg has implemented Art. 35 UNCAC.

Article 36 Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

(a) Summary of information relevant to reviewing the implementation of the article

284. Luxembourg confirmed that it has fully implemented this provision of the Convention.

285. Within the Luxembourg police as well as within the Prosecutor's office, a certain number of people are specialised in combating corruption (i.e. by special training) and are responsible for corruption cases. In Luxembourg, the prosecutor's office under which the police conducts the investigations and which in the end brings the corruption cases to court is independent from the executive branch in the sense that the government cannot give instructions to close a file.

286. Luxembourg has established a horizontal committee for the prevention of corruption (the 'COPRECO'). The COPRECO was established by regulation of the Grand Duke and

is managed and chaired by the Minister of Justice or his representative. All ministries have representatives in the COPRECO.

Art. 1er. (1) Le Comité de prévention de la corruption, institué par la loi du 1er août 2007 portant 1. approbation de la Convention des Nations Unies contre la corruption, adoptée par l'assemblée générale des Nations Unies à New York le 31 octobre 2003 et ouverte à la signature à Mérida (Mexique) le 9 décembre 2003, 2. modification de l'article 12, point 5 de la loi modifiée du 4 décembre 1967 concernant l'impôt sur le revenu (L.I.R.), désigné ci-après «le Comité», est un organe consultatif qui a pour mission d'assister le Gouvernement dans la lutte contre la corruption, conformément à l'article 2 de cette loi.

(2) Pour remplir cette mission, le Comité peut:

- a) rechercher et proposer les mesures appropriées et nécessaires à une lutte efficace contre le phénomène de la corruption suivant une approche globale et multidisciplinaire, tant au niveau national qu'international et aussi bien dans le secteur public que dans le secteur privé;
- b) proposer des priorités et des mesures à mettre en oeuvre dans le cadre de l'élaboration d'une politique nationale de lutte contre la corruption;
- c) faire le suivi des données relatives à la répression pénale, disciplinaire ou autre dans le domaine de la lutte contre la corruption;
- d) contribuer à la diffusion d'informations relatives à la lutte contre la corruption, notamment en soutenant la publication de documents y relatifs et en organisant, ou en soutenant, l'organisation de formations, séminaires ou autres événements similaires par des entités publiques et privées;
- e) faire le suivi des groupes de travail qui traitent, au sein des différentes organisations internationales, du sujet de la corruption;
- f) correspondre et coopérer, dans les limites de ses attributions, avec des organismes similaires étrangers ou internationaux et représenter le Luxembourg, ou faire office de point de contact, au sein de réseaux internationaux de lutte contre la corruption;
- g) étudier l'efficacité des mesures et instruments de lutte contre la corruption, tout en assurant la coordination entre tous les organes ou organismes impliqués dans la lutte contre la corruption;
- h) émettre, sur demande ou de sa propre initiative, des avis et des recommandations sur toute question liée à la lutte contre la corruption.

Art. 2. (1) Le Comité se compose de membres effectifs et suppléants représentant tous les ministères et désignés par les ministres respectifs.

(2) Le Comité est présidé par le ministre de la Justice ou une personne déléguée par lui à cette fin. En cas d'empêchement du président ou de son délégué, le Comité est présidé par le membre fonctionnaire le plus ancien en rang.

(3) Le Comité peut s'adjoindre, au cas par cas, des représentants ou experts d'entités publiques et privées en fonction des sujets spécifiquement traités, auxquels il peut confier des missions ponctuelles d'information et de consultation. La décision de s'adjoindre d'autres représentants ou experts est prise par le président, sur proposition d'au moins un membre du Comité.

(4) Le Comité est assisté par un secrétaire désigné par le ministre de la Justice.

Art. 3. (1) Le Comité se réunit aussi souvent que sa mission l'exige et au moins deux fois par an. Il se réunit sur convocation de son président, soit à l'initiative de celui-ci ou de deux de ses membres au moins, soit à la demande du Gouvernement en conseil. La convocation mentionne l'ordre du jour arrêté par le président.

(2) Le Comité peut se réunir en composition restreinte en fonction de l'ordre du jour.

(b) Observations on the implementation of the article

287. Luxembourg does not have a specialized anti-corruption commission. Rather, the fight against corruption is the task of the criminal police and the prosecution service. Within the criminal police, 12 agents (i.e. about 10% of the staff of the *police judiciaire*) are trained and specialised in economic crimes. Likewise, 4 prosecutors are specialised in this field. Specialised knowledge is taught in courses, e.g. trainings in Wiesbaden at the German Federal Criminal Police Office or the International Anti-Corruption Academy (IACA, Laxenburg). In case special economic expertise is required, the investigating judge can nominate economic experts. Likewise, the police could also hire experts
288. Prosecutors and Judges have exactly the same status under Luxembourg law, ensuring the independence of the former. The police are administratively independent. The *police judiciaire* act under the supervision of the prosecutor general, but under the sole orders of the investigating magistrate if acting in a specific file. According to a draft text, the independence will be explicitly enshrined in the text of the Constitution. Luxembourg will create a National Judicial Council which will be responsible for the nomination and promotion of judges and prosecutors. Luxembourg has adopted a Code of Conduct (*Code de déontologie*) for magistrates and is drafting one for civil servants.
289. Luxembourg has a judicial type FIU which is not bound by the rule of speciality, i.e. it is not limited in its investigations by the facts contained in a suspicious transaction report. The FIU is staffed by prosecutors who have powers similar to those of an investigating judge. If a money laundering case leads to a corruption case, the prosecutors at the FIU can prosecute it themselves. The FIU will receive Suspicious Transaction Reports (STRs) whenever a Politically Exposed Person (PEP) is involved, even if there are no transactions involved. The FIU reported that the 2011 Arab Spring brought a great number of Suspicious Transaction Reports (STRs). The FIU issued a list of names at the same time as the Swiss FIU. This list was sent to all representatives of the financial sector. Generally, it was said that the banks cooperate well with the FIU in Luxembourg.
290. The resources of the FIU have been continuously enhanced since 2010. As of October 2013, the FIU is staffed under the direction of a “*Procureur d’Etat Adjoint*” with three full time and two part time deputy prosecutors, four full time and one part time financial analysts, three full time and one part time administrative assistants. In addition, one officer of the judicial police acts as liaison officer for the FIU and one IT specialist from the CTIE is working on a full time basis at the FIU (in order to lead the technical implementation of the decision to set up a secured exchange platform and to conceive a modernized, newly structured database for the FIU).
291. During the country visit, the reviewing experts were informed that the COPRECO, which is chaired by the Minister of Justice or his representative, can invite representatives from the private sector and civil society. The members of the COPRECO include police forces, prosecutors, FIU and representatives from all ministries including e. g. the Prime Minister’s Office, the Ministry of Foreign Affairs, the Ministry of Finances and major administrations such as e. g. the direct and indirect tax administrations, the Supervisory Authority of the Financial Sector (CSSF). There are no permanent members from the civil society as this would prevent the members from discussing specific subjects. The

COPRECO can also invite representatives from the civil society including TI, such decision being taken on a case by case base with respect to the specific subjects that are on the agenda. The preventive measures and actions of the COPRECO have been largely recognized in other evaluations and follow-up reports, e.g. the phase 3 evaluation of the WGB of the OCDE. It was also noted that TI Luxembourg was received several times for bilateral exchanges with the Minister of Justice and that the State finances the TI anti-corruption hotline dedicated to whistleblowers. Nevertheless, TI regrets that it is not possible to become a permanent member of COPRECO and that they had not yet been invited to any meeting of the commission.

292. The reviewing experts concluded that Luxembourg has implemented Art. 36 UNCAC.

(c) Successes and good practices

293. The reviewing experts commended Luxembourg for the far-reaching powers of its FIU and the independent status of the prosecutors, which is akin to that of judges.

Article 37 Cooperation with law enforcement authorities

Paragraphs 1 and 2

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

294. Luxembourg confirmed that it has fully implemented this provision of the Convention

Code pénal

Chapitre IX. - Des circonstances atténuantes. (L. 13 juin 1994)

Art. 73. (L. 13 juin 1994) S'il existe des circonstances atténuantes, les peines criminelles sont réduites ou modifiées conformément aux dispositions qui suivent.

Art. 74. (L. 13 juin 1994) La réclusion à vie est remplacée par la réclusion à temps qui ne peut être inférieure à quinze ans.
La réclusion de vingt à trente ans, par la réclusion non inférieure à dix ans.
La réclusion de quinze à vingt ans, par la réclusion non inférieure à cinq ans.
La réclusion de dix à quinze ans, par la réclusion de cinq à dix ans ou même par un emprisonnement non inférieur à trois ans.
La réclusion de cinq à dix ans, par l'emprisonnement de trois mois au moins.

Art. 75. (L. 13 juin 1994) Dans le cas où la loi élève le minimum d'une peine criminelle le minimum ordinaire de cette peine est appliqué, ou même la peine immédiatement inférieure, conformément à l'article précédent.

Art. 75-1. (L. 3 mars 2010) L'appréciation des circonstances atténuantes dans le chef d'une personne morale s'effectue au regard des peines criminelles encourues par la personne physique pour les faits susceptibles d'engager la responsabilité pénale de la personne morale.

Art. 76. (L. 1er août 2001) L'amende en matière criminelle peut être réduite, sans qu'elle puisse être en aucun cas inférieure à 251 euros.

Art. 77. (L. 1er août 2001) Les coupables dont la peine criminelle a été commuée en un emprisonnement peuvent être condamnés à une amende de 251 euros à 10.000 euros. (L. 13 juin 1994) Ils peuvent être condamnés à l'interdiction de tout ou partie des droits mentionnés à l'article 11, pendant cinq ans au moins et dix ans au plus.

Art. 78. (L. 1er août 2001) S'il existe des circonstances atténuantes, la peine d'emprisonnement peut ne pas être prononcée et l'amende peut être réduite au-dessous de 251 euros, sans qu'elle puisse être inférieure à 25 euros. (L. 13 juin 1994) Si l'interdiction des droits mentionnés à l'article 11 est ordonnée et autorisée, les juges peuvent prononcer ces peines pour un terme d'un an à cinq ans ou les remettre entièrement.

(b) Observations on the implementation of the article

295. During the country visit, Luxembourg indicated that in terrorism, organized crime and drug trafficking cases, there is a possibility for granting crown witnesses immunity. This possibility did not exist in corruption cases. However, in such cases, the cooperation of the offender can be taken into account to mitigate the punishment. Despite the absence of a specific legal provision, in practice judges in Luxembourg take into account the degree of cooperation of the accused in determining the sentence. The police could also offer rewards.

296. The reviewing experts concluded that Luxembourg has implemented Art. 37(1) UNCAC.

Paragraph 3

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

297. Luxembourg indicated that it has not implemented this provision of the Convention.

(b) Observations on the implementation of the article

298. The reviewing experts concluded that Luxembourg has not implemented the optional provision in Art. 37(3) UNCAC.

Paragraph 4

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

299. Luxembourg considered that it has partially implemented this provision of the Convention and refers to the answers under article 32 UNCAC above.

(b) Observations on the implementation of the article

300. Considering the answers to article 32 UNCAC, the reviewing experts concluded that Luxembourg has partially implemented Art. 37(4) UNCAC.

Paragraph 5

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

301. Luxembourg considered that it has partially implemented this provision of the Convention. It confirmed that it could enter into agreements on the basis of UNCAC. While there are no agreements yet in the area of corruption, agreements had already been concluded in the field of human trafficking.

(b) Observations on the implementation of the article

302. The reviewing experts concluded that Luxembourg has partially implemented the optional provision in Art. 37(5) UNCAC.

Article 38 Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

(a) Summary of information relevant to reviewing the implementation of the article

303. Luxembourg confirmed that it has fully implemented this provision of the Convention

Code d'instruction criminelle

Art. 23. (L. 16 juin 1989) (1) Le procureur d'Etat reçoit les plaintes et les dénonciations et apprécie la suite à leur donner.

(2) (L. 13 février 2011) Toute autorité constituée, tout officier public ou fonctionnaire, ainsi que tout salarié ou agent chargés d'une mission de service public, qu'il soit engagé

ou mandaté en vertu de dispositions de droit public ou de droit privé, qui, dans l'exercice de ses fonctions, acquiert la connaissance de faits susceptibles de constituer un crime ou un délit, est tenu d'en donner avis sans délai au procureur d'Etat et de transmettre à ce magistrat tous les renseignements, procès-verbaux et actes qui y sont relatifs, et cela nonobstant toute règle de confidentialité ou de secret professionnel lui étant applicable le cas échéant.

(3) (L. 13 février 2011) Toute autorité constituée, tout officier public ou fonctionnaire, ainsi que tout salarié ou agent chargés d'une mission de service public, qu'il soit engagé ou mandaté en vertu de dispositions de droit public ou de droit privé, est tenu d'informer promptement, de sa propre initiative, le procureur d'Etat auprès du tribunal d'arrondissement de Luxembourg lorsqu'il sait, soupçonne ou a de bonnes raisons de soupçonner qu'un blanchiment ou un financement du terrorisme est en cours, a eu lieu, ou a été tenté, notamment en raison de la personne concernée, de son évolution, de l'origine des avoirs, de la nature, de la finalité ou des modalités de l'opération, et de fournir promptement audit procureur d'Etat tous les renseignements, procès-verbaux et actes qui y sont relatifs, et cela nonobstant toute règle de confidentialité ou de secret professionnel lui étant applicable le cas échéant.

(b) Observations on the implementation of the article

304. During the country visit, Luxembourg informed the reviewing experts that there was also a 2008 Act on Cooperation which included an obligation for spontaneous information sharing. Moreover, civil servants were obliged to report corruption offences, like all other offences.

305. During the country visit, it was explained that the investigating judge can choose the police personnel to investigate a certain case. Moreover, the cooperation between the police and the prosecution service was said to be good. The reviewing experts noted that, due to their absence during the country visit, the point of view of the police was not available. However, Luxembourg confirmed that they had been in constant contact with the police authorities, in particular for the completion of the self-assessment checklist.

306. The reviewing experts concluded that Luxembourg has implemented Art. 38 UNCAC.

Article 39 Cooperation between national authorities and the private sector

Paragraph 1

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

307. Luxembourg confirmed that it has fully implemented this provision of the Convention.

308. Awareness-raising is key to the Luxembourg authorities. The private sector can be invited to participate in meetings of the National anti-corruption committee (COPRECO) in which all ministries as well as the prosecutor's office and the police are represented. The COPRECO also organises regular awareness raising on national and international

provisions on AML/CFT (anti-money laundering / counter terrorist financing), taking e.g. into account the latest evolutions of the FATF.

309. The public authorities are regularly organising workshops and conferences on the subject of corruption. They are also collaborating in this matter very actively with the Luxembourg chapter of Transparency International (corruption hotline, internet site, flyers etc.).

(b) Observations on the implementation of the article

310. During the country visit, Luxembourg added that the financial sector is required to report to the judicial-type FIU, which has more powers than administrative or police-type FIUs. In particular, it does not need an STR to become active. The contact person in each of the 147 banks in Luxembourg is the chief compliance officer. From October 2013 onwards, warrants or orders will be delivered electronically from the investigating judge to the banks.
311. The experts were further told that in the margins of the 2013 G8 meetings, two conferences with the Chambers of Commerce of Luxembourg and Germany were organised.
312. The reviewing experts concluded that Luxembourg has implemented Art. 39(1) UNCAC.

Paragraph 2

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

313. Luxembourg confirmed that it has fully implemented this provision of the Convention.
314. Luxembourg is granting a financial support to Transparency International Luxembourg to run an anti-corruption hotline where people can report suspicious acts that they deem to be corruption. This initiative was taken to encourage whistle blowing (after the new law entered into force) taking into account the fact that some people might hesitate to turn directly to the prosecutor's office or the police and to help to guide them. A first report on the findings after one year of functioning will be presented by TI Luxembourg in 2013.
315. In 2012 a conference on corruption was organised by the Luxembourg Chamber of Commerce with the Minister of Justice as keynote speaker and was attended by all major Luxembourg companies.
316. After Luxembourg's accession to the IACA, Luxembourg organised in 2013 in the margins of the JHA Council of the Ministers of Justice of the European Union a Conference on corruption together with IACA taking advantage of the presence in Luxembourg of politicians, diplomats and civil servants familiar with the topic.

(b) Observations on the implementation of the article

317. The reviewing experts concluded that Luxembourg has implemented Art. 39(2) UNCAC.

Article 40 Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

(a) Summary of information relevant to reviewing the implementation of the article

318. Luxembourg confirmed that it has fully implemented this provision of the Convention as no banking secrecy, or any other professional secrecy, is applicable in the case of domestic criminal investigations and in international cooperation cases. Luxembourg authorities cited in particular articles 63 to 66-5 CIC (see answer to article 31(7) above).

(b) Observations on the implementation of the article

319. The reviewing experts concluded that Luxembourg has implemented Art. 40 UNCAC.

Article 41 Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

320. Luxembourg confirmed that it has fully implemented this provision of the Convention.

CIC

Art. 7-5. Les condamnations définitives prononcées à l'étranger sont assimilées quant à leurs effets aux condamnations prononcées par les juridictions luxembourgeoises, sauf en matière de réhabilitation, pour autant que les infractions ayant donné lieu à ces condamnations sont également punissables suivant les lois luxembourgeoises.

(b) Observations on the implementation of the article

321. The reviewing experts concluded that Luxembourg has implemented Art. 41 UNCAC.

Article 42 Jurisdiction

Subparagraph 1 (a)

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

322. Luxembourg confirmed that it fully implemented this provision of the Convention.

CIC

Art. 7-2.2 (L. 15 juillet 1993) Est réputée commise sur le territoire du Grand-Duché de Luxembourg toute infraction dont un acte caractérisant un de ses éléments constitutifs a été accompli au GrandDuché de Luxembourg.

(b) Observations on the implementation of the article

323. The reviewing experts concluded that Luxembourg has implemented Art. 42(1)(a) UNCAC.

Subparagraph 1 (b)

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

(a) Summary of information relevant to reviewing the implementation of the article

324. Luxembourg confirmed that it fully implemented this provision of the Convention.

Loi du 31 janvier 1948 relative à la navigation aérienne

Art. 37. Les infractions commises à bord d'un aéronef luxembourgeois en vol sont réputées commises au Grand-Duché et peuvent y être poursuivies même si l'inculpé n'est pas trouvé sur le territoire du Grand-Duché. Sont compétents pour la poursuite de ces infractions et de celles prévues par la présente loi et par les arrêtés pris pour son exécution, le Procureur d'Etat ou l'officier du ministère public près le tribunal de police du lieu de l'infraction, celui de la résidence de l'inculpé, celui du lieu où il pourra être trouvé et, à leur défaut, celui de Luxembourg. Les articles 5, 6 et 7 du Code d'Instruction criminelle tels qu'ils ont été modifiés par la loi du 18 janvier 1879 et l'arrêté grand-ducal du 25 mai 1944 s'appliquent aux infractions commises à bord d'un aéronef étranger en vol, comme si le fait s'était accompli hors du territoire du Grand-Duché. En outre, le coupable d'un crime ou d'un délit commis à bord d'un aéronef étranger en vol pourra être poursuivi au Grand-Duché, si lui-même ou la victime est de nationalité luxembourgeoise ou si l'appareil atterrit au Grand-Duché après l'infraction. Sont compétents pour la poursuite des infractions visées à l'alinéa précédent, le Procureur d'Etat du lieu de la résidence de l'inculpé, celui du lieu

où l'inculpé aura été trouvé, celui du lieu de l'atterrissage, et, à leur défaut, le Procureur d'Etat de Luxembourg.

Loi du 9 novembre 1990 ayant pour objet la création d'un registre public maritime luxembourgeois.

Art. 121. Les infractions commises à bord d'un navire luxembourgeois sont réputées commises sur le territoire du Grand-Duché et relèvent de la compétence du tribunal d'arrondissement de Luxembourg.

Pourra être poursuivie au Luxembourg toute personne se trouvant à bord d'un navire battant pavillon luxembourgeois qui se sera rendue coupable d'infractions prévues par les lois luxembourgeoises.

Aucune poursuite ne peut être exercée lorsque la personne inculpée a été jugée définitivement à l'étranger pour le même fait, sous réserve, en cas de condamnation, qu'elle ait subi ou prescrit sa peine ou obtenu sa grâce.

(b) Observations on the implementation of the article

325. The reviewing experts concluded that Luxembourg has implemented Art. 42(1)(b) UNCAC.

Subparagraph 2 (a)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

326. Luxembourg confirmed that it has fully implemented this provision of the Convention.

CIC

Art. 7-3. (L. 24 avril 2000) Tout étranger qui, hors du territoire du Grand-Duché se sera rendu coupable d'une des infractions prévues par les articles 260-1 à 260-4 du Code pénal envers un Luxembourgeois ou une personne résidant au Grand-Duché, pourra être poursuivi et jugé au Grand-Duché.

Toutefois, aucune poursuite n'aura lieu lorsque l'inculpé, jugé en pays étranger du chef de la même infraction, aura été acquitté.

Il en sera de même lorsque, après avoir été condamné, il aura subi ou prescrit sa peine ou qu'il aura été gracié.

Toute détention subie à l'étranger par suite de l'infraction qui donne lieu à la condamnation dans le Grand-Duché, sera imputée sur la durée des peines emportant privation de la liberté.

(b) Observations on the implementation of the article

327. The reviewing experts concluded that Luxembourg has implemented Art. 42(2)(a) UNCAC.

Subparagraph 2 (b)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

328. Luxembourg confirmed that it fully implemented this provision of the Convention.

Code d'instruction criminelle

Art. 5. (Arr. gr.-d. 25 mai 1944) Tout Luxembourgeois qui hors du territoire du Grand-Duché s'est rendu coupable d'un crime puni par la loi luxembourgeoise peut être poursuivi et jugé dans le Grand-Duché.

(L. 31 mai 1999) Tout Luxembourgeois qui, hors du territoire du Grand-Duché s'est rendu coupable d'un fait qualifié délit par la loi luxembourgeoise peut être poursuivi et jugé dans le Grand-Duché de Luxembourg si le fait est puni par la législation du pays où il a été commis.

Toutefois, sauf en ce qui concerne les crimes et délits commis en temps de guerre, qu'il s'agisse d'un crime ou d'un délit, aucune poursuite n'aura lieu lorsque l'inculpé jugé en pays étranger du chef de la même infraction, aura été acquitté.

Il en sera de même lorsque, après y avoir été condamné, il aura subi ou prescrit sa peine ou qu'il aura été gracié.

Toute détention subie à l'étranger par suite de l'infraction qui donne lieu à la condamnation dans le Grand-Duché, sera imputée sur la durée des peines emportant privation de la liberté. En cas de délit commis contre un particulier luxembourgeois ou étranger, la poursuite ne peut être intentée qu'à la requête du ministère public; elle doit être précédée d'une plainte soit de la partie offensée ou de sa famille, soit d'une dénonciation officielle à l'autorité luxembourgeoise par l'autorité du pays où le délit a été commis, soit, si l'infraction commise à l'étranger l'a été en temps de guerre contre un ressortissant d'un pays allié du Luxembourg, au sens de l'article 117, alinéa 2 du Code pénal (arrêté grand-ducal du 14 juillet 1943), par l'autorité du pays dont l'étranger lésé est ou était ressortissant.

Alinéa abrogé (L. 31 mai 1999).

(Arr. gr.-d. 25 mai 1944) L'étranger coauteur ou complice d'un crime commis hors du territoire du Grand-Duché par un Luxembourgeois pourra être poursuivi au Grand-Duché, conjointement avec le Luxembourgeois inculpé ou après la condamnation de celui-ci.

(Arr. gr.-d. 25 mai 1944) Sauf dans les cas prévus à l'article 7 ci-après et dans ceux d'un crime ou délit commis en temps de guerre, à l'étranger, par un Luxembourgeois contre un ressortissant luxembourgeois ou d'un pays allié, la poursuite des infractions prévues par le présent article n'aura lieu que si l'inculpé est trouvé, soit dans le Grand-Duché, soit en pays ennemi, ou si le Gouvernement obtient son extradition.

Art. 5-1. (L. 16 juillet 2011) Tout Luxembourgeois, toute personne qui a sa résidence habituelle au Grand-Duché de Luxembourg, de même que l'étranger trouvé au Grand-Duché de Luxembourg, qui aura commis à l'étranger une des infractions prévues aux articles 112-1, 135-1 à 135-6, 135-9 et 135- 11 à 135-13, 163, 169, 170, 177, 178, 185, 187-1, 192-1, 192-2, 198, 199, 199bis, 245 à 252, 310, 310-1, et 368 à 384 du Code pénal, pourra être poursuivi et jugé au Grand-Duché, bien que le fait ne soit pas puni par la législation du pays où il a été commis et que l'autorité luxembourgeoise n'ait pas reçu soit une plainte de la partie offensée, soit une dénonciation de l'autorité du pays où l'infraction a été commise. (L. 26 décembre 2012)

Art. 6. (Arr. gr.-d. 25 mai 1944) L'inculpé sera poursuivi et jugé d'après les dispositions des lois luxembourgeoises.

(b) Observations on the implementation of the article

329. The reviewing experts concluded that Luxembourg has implemented Art. 42(2)(b) UNCAC.

Subparagraph 2 (c)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

330. Luxembourg confirmed that it fully implemented this provision of the Convention and referred to the answer to article 23 UNCAC.

Art. 506-3. (L. 11 août 1998) Les infractions prévues à l'article 506-1 sont également punissables lorsque l'infraction primaire a été commise à l'étranger. Toutefois, à l'exception des infractions pour lesquelles la loi permet la poursuite même si elles ne sont pas punissables dans l'État où elles ont été commises, cette infraction doit être punissable dans l'État où elle a été commise.

Art. 506-8. (L. 27 octobre 2010) Les infractions visées à l'article 506-1 sont punissables indépendamment de toutes poursuites ou condamnations pour une des infractions primaires de l'article 506-1.

331. Luxembourg added that the simple fact of keeping money stemming from certain predicate offence in an account in Luxembourg would constitute money laundering and thus found Luxembourg's jurisdiction in the matter. As far as corruption offences are concerned, the mere possession of the money in an account would possibly not be sufficient, but a bank transaction would be sufficient to establish jurisdiction.

332.

(b) Observations on the implementation of the article

333. The reviewing experts concluded that Luxembourg has implemented Art. 42(2)(c) UNCAC.

Subparagraph 2 (d)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(d) The offence is committed against the State Party.

(a) Summary of information relevant to reviewing the implementation of the article

334. Luxembourg indicated it has not implemented this provision of the Convention.

(b) Observations on the implementation of the article

335. The reviewing experts concluded that Luxembourg has not implemented the optional provision in Art. 42(2)(d) UNCAC.

Paragraph 3

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

(a) Summary of information relevant to reviewing the implementation of the article

336. Luxembourg confirmed that it fully implemented this provision of the Convention.

Code d'instruction criminelle

Art. 5. (Arr. gr.-d. 25 mai 1944) Tout Luxembourgeois qui hors du territoire du Grand-Duché s'est rendu coupable d'un crime puni par la loi luxembourgeoise peut être poursuivi et jugé dans le Grand-Duché.

(L. 31 mai 1999) Tout Luxembourgeois qui, hors du territoire du Grand-Duché s'est rendu coupable d'un fait qualifié délit par la loi luxembourgeoise peut être poursuivi et jugé dans le Grand-Duché de Luxembourg si le fait est puni par la législation du pays où il a été commis.

Toutefois, sauf en ce qui concerne les crimes et délits commis en temps de guerre, qu'il s'agisse d'un crime ou d'un délit, aucune poursuite n'aura lieu lorsque l'inculpé jugé en pays étranger du chef de la même infraction, aura été acquitté.

Il en sera de même lorsque, après y avoir été condamné, il aura subi ou prescrit sa peine ou qu'il aura été gracié.

Toute détention subie à l'étranger par suite de l'infraction qui donne lieu à la condamnation dans le Grand-Duché, sera imputée sur la durée des peines emportant privation de la liberté. En cas de délit commis contre un particulier luxembourgeois ou étranger, la poursuite ne peut être intentée qu'à la requête du ministère public; elle doit être précédée d'une plainte soit de la partie offensée ou de sa famille, soit d'une dénonciation officielle à l'autorité luxembourgeoise par l'autorité du pays où le délit a été commis, soit, si l'infraction commise à l'étranger l'a été en temps de guerre contre un ressortissant d'un pays allié du Luxembourg, au sens de l'article 117, alinéa 2 du Code pénal (arrêté grand-ducal du 14 juillet 1943), par l'autorité du pays dont l'étranger lésé est ou était ressortissant.

Alinéa abrogé (L. 31 mai 1999).

(Arr. gr.-d. 25 mai 1944) L'étranger coauteur ou complice d'un crime commis hors du territoire du Grand-Duché par un Luxembourgeois pourra être poursuivi au Grand-Duché, conjointement avec le Luxembourgeois inculpé ou après la condamnation de celui-ci.

(Arr. gr.-d. 25 mai 1944) Sauf dans les cas prévus à l'article 7 ci-après et dans ceux d'un crime ou délit commis en temps de guerre, à l'étranger, par un Luxembourgeois contre un ressortissant luxembourgeois ou d'un pays allié, la poursuite des infractions prévues par le présent article n'aura lieu que si l'inculpé est trouvé, soit dans le Grand-Duché, soit en pays ennemi, ou si le Gouvernement obtient son extradition.

Art. 5-1. (L. 16 juillet 2011) Tout Luxembourgeois, toute personne qui a sa résidence habituelle au Grand-Duché de Luxembourg, de même que l'étranger trouvé au Grand-Duché de Luxembourg, qui aura commis à l'étranger une des infractions prévues aux articles 112-1, 135-1 à 135-6, 135-9 et 135- 11 à 135-13, 163, 169, 170, 177, 178, 185, 187-1, 192-1, 192-2, 198, 199, 199bis, 245 à 252, 310, 310-1, et 368 à 384 du Code pénal, pourra être poursuivi et jugé au Grand-Duché, bien que le fait ne soit pas puni par la

législation du pays où il a été commis et que l'autorité luxembourgeoise n'ait pas reçu soit une plainte de la partie offensée, soit une dénonciation de l'autorité du pays où l'infraction a été commise. (L. 26 décembre 2012)

Art. 6. (Arr. gr.-d. 25 mai 1944) L'inculpé sera poursuivi et jugé d'après les dispositions des lois luxembourgeoises.

Art. 7-4. (L. 26 décembre 2012) Lorsqu'une personne qui se sera rendue coupable à l'étranger d'une des infractions prévues par les articles 112-1, 135-1 à 135-6, 135-9, 135-11 à 135-13, 136bis à 136quinquies, 260-1 à 260-4, 379, 382-1, 382-2, 384 et 385-2 du Code pénal, n'est pas extradée, l'affaire sera soumise aux autorités compétentes aux fins de poursuites en application des règles prévues

(b) Observations on the implementation of the article

337. The reviewing experts concluded that Luxembourg has implemented Art. 42(3) UNCAC.

Paragraph 4

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

(a) Summary of information relevant to reviewing the implementation of the article

338. Luxembourg confirmed that it fully implemented this provision of the Convention and cited the articles mentioned above.

(b) Observations on the implementation of the article

339. The reviewing experts concluded that Luxembourg has implemented Art. 42(4) UNCAC.

Paragraph 5

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

(a) Summary of information relevant to reviewing the implementation of the article

340. Luxembourg confirmed that it fully implemented this provision of the Convention.

(b) Observations on the implementation of the article

341. The reviewing experts concluded that Luxembourg has implemented Art. 42(5) UNCAC.

UNODC

Chapter IV. International cooperation

Article 44 Extradition

Paragraph 1

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

342. Luxembourg confirmed that it has fully implemented this provision of the Convention.

343. This law applies for those countries with whom there is no bilateral or multilateral agreement and which are not participating in the European Arrest Warrant (EAW) system.

344. Luxembourg provided the following laws on dual criminality:

June 20, 2001. -Law on Extradition

Art. 1. 1) in the absence of an international treaty and without prejudice to the legal provisions to certain specific categories of offences, the conditions, procedure and effects of extradition shall be determined by this Law.

(2) This Law applies to criminal cases which, under the law of the requesting State, are of the competence of the judicial authorities.

2. The Minister of Justice may, under the rule of reciprocity, grant the extradition of a person subject to prosecution or conviction for an offence under this Law to a Government of another State.

3. 1) Facts punishable under Luxembourg law and the law of the requesting State by a prison term sentence of a maximum of at least one year or by a more severe penalty are grounds for extradition.

Where the request for extradition concerns a person convicted of such an offence and sought for execution of a custodial sentence, extradition may be granted only if a sentence of at least one year has been pronounced and the length of the sentence which remains to be served is at least six months.

Law of 17 March 2004 on the European arrest warrant and the surrender procedures between Member States of the European Union.

Chapter I. - General Principles

Art. 1. 1. The arrest and surrender of persons wanted for criminal prosecution or for execution of a sentence or a security measure involving a custodial sentence between Luxembourg and the other Member States of the European Union are governed by this Law.

2. The arrest and surrender shall be on the basis of a European arrest warrant.

3. The European arrest warrant is a judicial decision issued by the competent judicial authority of a Member State of the European Union, called issuing authority, for the arrest

and surrender by the competent authority of another Member State, called enforcement authority, of a requested person for the exercise of prosecution or for execution of a sentence or a custodial security measure.

4. The European arrest warrant must include, in the manner prescribed by the form set out in the Annex to this Law, the following information:

- a) The identity and nationality of the person sought;
- b) The name, address, telephone and fax numbers, e-mail address of the issuing judicial authority;
- c) The declaration of the existence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same force and concerning a fact referred to in article 3;
- d) The nature and the legal qualification of the offence, especially in view of article 3;
- e) A description of the circumstances in which the offence was committed, including the time and place of its commission and the degree of participation in the offence by the person sought;
- f) the penalty imposed, if there is a final sentence, or the range of penalties provided for by the law of the issuing State;
- (g) to the extent possible, any other consequences of the offence.

5. The European arrest warrant addressed to the Luxembourg authorities must be written in French or in German or in English or be accompanied by a translation in one of these three languages.

Art. 2. A European arrest warrant may be issued:

- 1. for acts punishable by the law of the issuing State by a sentence or a security measure involving deprivation of liberty of a maximum of at least 12 months, or
- 2. when a sentence to time in prison has been pronounced, or a security measure has been imposed, for sanctions of at least four months.

Chapter II. - European arrest warrant sent to Luxembourg by another EU Member State

1.-Conditions of implementation

Art. 3. 1. The execution of a European arrest warrant shall be refused if the fact which is the basis for the European arrest warrant does not constitute an offence under Luxembourg law.

2. In the case of tax, customs and currency exchange, the execution of the European arrest warrant shall not be refused on the ground that the law of Luxembourg does not the same kind of tax or taxes or does not contain the same type of regulatory fees or taxes, customs and currency exchange as the law of the issuing State.

3. By way of derogation to paragraph 1, a European arrest warrant is executed without a dual criminality control and under the terms of this Law, if the act constitutes one of the following offences, provided that it is punishable in the issuing State by a penalty or a measure of deprivation of liberty of a maximum of at least 3 years:

- 1. participation in a criminal organization;
- 2. terrorism;

3. trafficking in human beings;
4. sexual exploitation of children and child pornography;
5. illicit traffic in narcotic drugs and psychotropic substances;
6. illicit traffic of weapons, ammunition and explosives;
7. corruption;
8. fraud, including fraud affecting the financial interests of the European communities within the meaning of the Convention of 26 July 1995 on the protection of the financial interests of the European communities;
9. laundering of the proceeds of crime;
10. counterfeiting and counterfeiting of the euro;
11. cybercrime;
12. crimes against the environment, including illicit trafficking in endangered animal species, and the smuggling of endangered plant extracts and species;
13. aiding irregular entry and stay;
14. homicide, assault and serious injuries;
15. illicit trafficking of human organs and tissue;
16. kidnapping, illegal restraint and hostage taking;
17. racism and xenophobia;
18. organized or armed robbery;
19. illicit trafficking in cultural goods, including antiques and works of art;
20. scam;
21. racketeering and extortion;
22. counterfeiting and piracy of products;
23. forgery of administrative documents and trafficking in false documents;
24. forgery of means of payment;
25. illicit trafficking in hormonal substances and other growth enhancers;
26. illicit trafficking in nuclear and radioactive materials;
27. trafficking of stolen vehicles;
28. rape;
29. arson;
30. crimes falling within the jurisdiction of the International Criminal Court;
31. hijacking of aircraft or vessel;
32. sabotage.

Art. 4. The execution of the European arrest warrant shall also be refused in the following cases:

1. If the offence which is the basis of the European arrest warrant is covered by an amnesty law in Luxembourg, even though the facts could have been prosecuted in Luxembourg under Luxembourg law;

2. If it appears from the information available to the competent Luxembourg authorities that the person sought has been finally tried for the same acts in Luxembourg or another Member State, under the condition that, in the event of a conviction, the sentence has been served or is currently being served or can no longer be enforced under the laws of the sentencing State;

3. If the person who is the subject of the European arrest warrant is a minor of less than sixteen years at the time of the facts.

Art. 5. Enforcement may be refused in the following cases:

1) when the person who is the subject of the European arrest warrant is being prosecuted in Luxembourg for the same offence that is the basis of the European arrest warrant;

2) when the Luxembourg judicial authority has decided either not to prosecute for the fact that the subject of the European arrest warrant or to end said prosecution, or when the person sought has been the subject in Luxembourg of a further final sentence for the same acts, which prevents further proceedings;

3) when there is a statute of limitations of the public action or punishment according to Luxembourg law and the acts fall within the jurisdiction of the Luxembourg courts;

(4) if it appears from the information available to the judge that the person sought has been definitely judged for the same facts by a non-European Union Member State, provided that, in the event of conviction, the sentence has been served or is currently being served or can no longer be enforced under the laws of the sentencing State;

(5) if the European arrest warrant has been issued for the purposes of application of a sentence or a security measure, when the person sought is a Luxembourg citizen and the competent Luxembourg authorities agree to carry out the sentence or remand measure in accordance with Luxembourg law;

6) if the European arrest warrant has been issued for the purposes of execution of a sentence or a security measure, when the person sought is an foreigner residing in Luxembourg and whose stay in Luxembourg may seem appropriate because his integration or community links he established in Luxembourg and the Luxembourg authorities agree to carry out the sentence or measure of safety in accordance with Luxembourg law.

In the cases mentioned in this subparagraph as well as in subparagraph 5 above, the serving, by the persons concerned, of the sentence or the security measure pronounced against them, will take place under the conditions of the law of 25 April 2003 on the transfer of sentenced persons.

7) when the European arrest warrant relates to offences which:

-have been committed wholly or partly on Luxembourg territory or in a place treated as its territory.

-have been committed outside the territory of the issuing State and that Luxembourg law does not permit the prosecution of the same offences committed outside the territory;

8) when the person who is the subject of the European arrest warrant is a minor over the age of sixteen years at the time of the facts.

Section 2 – reporting and arrest

Art. 6. A report made in accordance with the provisions of article 95 of the 19 June 1990 Convention of Application of the 14 June 1985 Schengen agreement on the gradual abolition of checks at their common borders has the value of a European arrest warrant.

The person sought may be detained on the basis of the report referred to in the preceding paragraph or on presentation of the European arrest warrant at the request of the territorially competent State Prosecutor.

If the State Prosecutor believes that the information provided by the issuing State in the European arrest warrant is insufficient, he may request the emergency presentation of the necessary additional information and may set a deadline for their delivery.

Section 3 – Execution Procedure

Art. 7. The person sought will be notified of the European warrant issued against him or, when appropriate, of the alert in the Schengen Information System about him.

The person is also informed:

- a) of the right to counsel of his choice or appointed by the Court ex officio, and
- b) of the possibility of consenting to the surrender, respectively to waive the benefit of the rule of specialty.

A report of the arrests, notification and information outlined above will be drawn up, including the statements of the person sought.

If the arrested person understands neither French nor German, he will be assisted by an interpreter who will sign the report.

This report is handed to the State Prosecutor no later than 24 hours after the arrest.

Art. 8. The arrested person is brought to the investigation judge within 24 hours of his arrest. The investigation judge proceeds to an interrogation to determine his identity. If the arrested person does not have a lawyer, he will be advised of his right to counsel. His response is recorded in the minutes. The investigating judge collects any statements of the person sought on the facts at the basis of the European arrest warrant.

The investigation judge will then hear the person sought on continued detention and records his observations on this matter. The investigation judge decides whether or not to detain the person sought, on the basis of the European arrest warrant and taking into account the circumstances mentioned in it as well as those argued by the person sought.

Art. 9. The person arrested on the basis of a European arrest warrant may at any time submit a request for bail. The request is sent to the Council Chamber of the District Court. The forms and procedure for this application are governed by the provisions of the code of criminal procedure relating to bail.

Release may nevertheless only be granted:

- a) if the arrest procedure is vitiated by an irregularity gravely violating the rights of the person sought, or
- b) if there are real guarantees that lead to the belief that the person sought will not abscond surrender to the issuing State.

If release is granted, the issuing State shall be notified without delay.

Release does not preclude a new later arrest.

Art. 10. 1. At any time from the arrest, the suspect may consent to his surrender without further formality. He may also waive the rule of specialty.

This consent and, respectively, the renunciation are irrevocable.

2. A formal consent or waiver pronounced before a magistrate of the competent public prosecutor is necessary. A record of the consent is drawn up, and must be signed by the magistrate and the person sought and, eventually, by his counsel. This record includes the information given to the person sought on the effects of his consent.

During the declaration mentioned in the preceding subparagraph, the person arrested shall be assisted by his counsel, who shall sign the report.

If the arrested person does not have a lawyer, he shall be advised on his right to counsel.

3. If the person arrested understands neither French nor German, both the formal consent and the eventual waiver are collected only with the assistance of an interpreter who will sign the report.

The consent is equivalent to a decision of execution of the European warrant without further formality.

4. The provisions of this article shall not apply to the relations with the Kingdom of the Netherlands and the Kingdom of Belgium, which remain governed by article 19 of the Benelux Treaty of extradition and mutual legal assistance in criminal matters of 27 June 1962.

Art. 11. If the European arrest warrant has been issued for the exercise of prosecution, and in the absence of consent to surrender, the case shall be taken by the investigation judge, pending a decision on the surrender, at the hearing of the person concerned, in the conditions laid down by mutual agreement with the issuing authority and eventually in the presence of a representative of the issuing authority.

Art. 12. Except in the case where the person sought consents to surrender without any formality, the Council Chamber of the District Court of the place of arrest will decide, at the request of the State Prosecutor, on the surrender of the requested person within twenty days of the arrest.

The Council Chamber of the District Court hearing shall be public unless the person sought asks for closed chambers.

The public prosecutor, the person sought and his lawyer, summoned by the Registrar of the Council Chamber of the District Court at least 48 hours before the hearing, shall be heard.

The decision of the Council Chamber shall be notified to the person sought in the forms provided for in cases of enforcement notifications.

Art. 13.1. The State Prosecutor and the person sought may in all cases appeal the decision of the Council Chamber.

The appeal is logged in a register kept for this purpose at the registrar of the Court having jurisdiction over the Council Chamber. It must be lodged within a period of three days, counting, for the State Prosecutor, from the day of decision, and for the person sought from the day of notification.

The arrested person sought may also declare his appeal to one of the members of the administration or custody personnel of the penitentiary. The appeal is recorded in a special register. It is signed and dated by the official who receives it and signed by the person sought. If he doesn't want to or cannot sign, this fact is mentioned in the report. A copy of the report is immediately transmitted to the registrar of the Court that handed down the decision.

The right of appeal also belongs to the general State Prosecutor who has for this purpose a period of ten days from the date of the order. This appeal can be made by declaration or notification at the registrar of the Court having jurisdiction over the Council Chamber.

2. The appeal is brought before the Council Chamber of the Court of appeal.

3. The hearing of the Council Chamber of the Court of appeal shall be public, unless the person sought asks for closed chambers.

The person sought and his lawyers, who are notified by the Registrar no later than 48 hours before the hearing, and the State Prosecutor will be heard.

4. The decision of the Council Chamber of the Court of appeal is handed down no later than 20 days after the appeal was lodged.

5. The decision of the Board of the Council of the Court of appeal cannot be subject to an appeal in cassation.

Art. 14. 1. In case of a consent to the surrender, or when a decision on the surrender of the person has become final, the State Prosecutor shall inform the competent authority of the issuing State, in order to agree on a surrender date.

2. The arrested person is surrendered as soon as possible, and in any case no later than ten days after the decision on the surrender.

3. In case of a major force obstacle or for serious humanitarian reasons preventing the surrender of the person arrested within the period prescribed in paragraph 2, the State Prosecutor shall immediately contact the competent authority of the issuing State to agree on a new surrender date.

4. The surrender takes place within ten days of the new agreed date.

5. At the expiration of the periods referred to in this article, if the person is still in detention, he must be released.

Art. 15. 1. Notwithstanding what is provided for in article 14, the state prosecutor may defer the surrender of the person arrested so that he can be prosecuted in Luxembourg or, if he is has already been sentenced, so that it can serve a sentence passed for an act other than that referred to in the European arrest warrant.

2. Instead of deferring the surrender, the state prosecutor may temporarily surrender the person arrested to the issuing State, under conditions to be determined by mutual agreement with the competent authority of the issuing State.

Art. 16. All information relating to the duration of the detention of the person arrested due to the execution of the European arrest warrant is sent by the State prosecutor to the issuing judicial authority at the time of the surrender.

Section 4 - Surrender of objects

Art. 17. 1. At the request of the issuing authority or the State Prosecutor, the investigation judge may seize, in accordance with Luxembourg law, objects that can serve as evidence and objects that have been acquired by the person sought by the fact of the infringement.

2. The surrender of the objects referred to in paragraph 1 takes place in accordance with the provisions of paragraphs (3) to (5) of article 9 of the Act of 8 August 2000 on international judicial mutual assistance in criminal matters. The surrender of these objects is made even when the European arrest warrant cannot be served owing to the death or escape of the person sought.

3. When the objects referred to in paragraph 1 are susceptible of seizure or confiscation in the territory of Luxembourg, the Luxembourg judicial authorities concerned may, if objects are required for the purposes of ongoing criminal proceedings, temporarily retain them or hand them, subject to restitution, to the issuing State.

Section 5 - Specialty Rule

Art. 18. 1. If, after the surrender of a person by the authorities of Luxembourg to the issuing State, the competent authority of the issuing State wishes to pursue, condemn, or

deprive of freedom the person surrendered for an offence committed prior to surrender other than one that has motivated this surrender, a request for consent shall be submitted to the Luxembourg authorities. To this written request, presented in accordance with article 1, paragraphs 4 and 5 of this Act, is attached a report listing the statements made by the person surrendered or his refusal to make a statement.

The place of residence of the person surrendered is specified.

The provisions of Articles 12 and 13 of the present Law shall apply under the reserve of the following paragraph.

The person who has been surrendered to the issuing State is not convened, but only advised of the date of the hearing of the Council Chamber which pronounced the surrender and of his right to be represented by a lawyer of his choice or appointed by the Court. This information is sent by mail at least eight days before the date for the hearing.

2. The decision referred to in the preceding paragraph is made no later than 30 days after receipt of the request.

3. Paragraphs 1 and 2 shall not apply in the following cases:

a) when, having had the opportunity of doing so, the person surrendered did not leave the territory of the issuing State within the 45 days following his final discharge, or if he has returned there after having left.

b) the offence is not punishable by a sentence or a measure depriving of liberty;

c) the criminal procedure does not give rise to the application of a measure restricting his personal liberty;

d) when the person surrendered is liable to a sentence or a measure not depriving of liberty, including a financial penalty or a measure in lieu thereof, even if this penalty or measure is likely to restrict his personal liberty;

e) when the person surrendered has given his consent to surrender and waived the rule of specialty;

f) when the person surrendered has expressly waived, after surrender, any benefit from the rule of specialty for specific offences preceding his surrender.

Section 6 - individual cases

Art. 19. When the European arrest warrant was issued for the purposes of execution of a sentence or a measure of security by a decision rendered in absentia, and if the person concerned has not been personally summoned or otherwise informed of the date and place of the hearing which led to the decision in absentia, surrender may be made subject to the condition that the issuing authority give assurances deemed sufficient to ensure the person who is the subject of the European arrest warrant will have the possibility to argue his case in the issuing State and to be tried in his presence.

Art. 20. 1. When the person who is the subject of an European arrest warrant for the purposes of prosecution has the Luxembourg nationality, the surrender may be subject to the condition that the person, after being heard, [be returned by the Issuing State] .

2. The same is true of the foreigner who resides in Luxembourg and whose return to Luxembourg may be appropriate due to his integration or to the community ties he has established in Luxembourg.

3. The serving, by the persons concerned, of the sentence or the security measure pronounced against them, will take place under the conditions of the law of 25 April 2003 on the transfer of sentenced persons.

Art. 21. When the person who is the subject of a European arrest warrant was previously extradited to the Luxembourg from a non-EU State and that this person is protected by the provisions relating to the specialty of the arrangement under which he has been extradited, the public prosecutor shall inform without delay the Minister of justice, so that he immediately request the consent of the State which extradited the person sought.

Art. 22. Where the person sought enjoys a privilege or immunity in Luxembourg, his arrest may not occur and the time limits provided for in articles 12 and 14 begin to run only from the day where this privilege or immunity have been lifted.

Where the lifting of the privilege or immunity is subject to a Luxembourg authority, the State prosecutor shall request it without delay to the competent authority.

Art. 23. If several Member States have issued a European arrest warrant against the same person, the choice of the country to which the person will be surrendered is made by the Council Chamber of the District Court with due regard to all the circumstances and, in particular, the relative seriousness and venue of the offences, the respective European arrest warrants dates as well as the fact that the warrant has been issued for the prosecution or for the execution of a penalty or a custodial sentence.

Art. 24. 1. In the event of conflict between a European arrest warrant and a request for extradition presented by a third country, the public prosecutor informs without delay the Minister of justice, with his reasoned opinion, so that the Minister of justice may decide whether to give priority to the European arrest warrant or to the extradition request.

2. The decision is taken by the Minister of Justice, taking due account of all the circumstances, in particular, of the relative seriousness and venue of the offences, the respective dates of the European arrest warrant and the extradition request, as well as whether the warrant has been issued for the prosecution or for execution of a penalty or a custodial measure of freedom of, as well as those mentioned in the applicable convention.

Art. 25. If a person detained in Luxembourg on the basis of a European arrest warrant is subsequently surrendered to the issuing authority and benefits from an acquittal or dismissal in the issuing State, the detention in Luxembourg cannot give right to compensation within the meaning of the Act of 30 December 1981 on inoperative pre-trial detention.

Chapter III. - European arrest warrant issued by the Luxembourg authorities

Section 1. - Conditions

Art. 26. 1. When there is reason to believe that a person sought in Luxembourg for the purposes of prosecution is located on the territory of an another European Union Member State, the investigating judge shall issue a European arrest warrant in the forms and under the conditions laid down in articles 1 and 2.

2. Where there is reason to believe that a person wanted for the purpose of execution of a sentence or a security measure is located on the territory of an another European Union Member State, the State Prosecutor shall issue a European arrest warrant in the forms and under the conditions laid down in articles 1 and 2.

Art. 27. 1. When the venue of the person is known, the European arrest warrant can be sent directly to the executing authority.

2. The transmission of the European arrest warrant may be made by the following ways:

-by the Schengen information system;

-by Interpol;

-by any means leaving a written record, under conditions allowing the executing State to verify its authenticity.

Art. 28. Any period of detention arising from the execution of a European arrest warrant is deducted from the total length of the custodial sentence to be served in Luxembourg as a consequence of the sentence or freedom custodial security measure.

Section 2. - Specialty Rule

Art. 29 1. A person who has been surrendered to Luxembourg on the basis of a European arrest warrant cannot be prosecuted, sentenced or deprived of his liberty in Luxembourg for an offence committed prior to surrender other than that which led to his surrender.

2. If the competent judicial authorities wish to prosecute, condemn, or deprive of freedom the person surrendered for an offence committed before surrender other than that which led to this surrender, a request for consent shall be submitted to the executing judiciary authority, accompanied by the information referred to in article 1, paragraph 4 of the present law, as well as a translation, if necessary.

3. Paragraphs 1 and 2 shall not apply in the following cases:

- a) when, having had the opportunity to do so, the person surrendered has not left the Luxembourg territory within 45 days of his final discharge, or that he has returned after having left.
- b) the offence is not punishable by a penalty or a security measure depriving of liberty; implying jail time
- c) the criminal procedure does not give rise to the application of a measure restricting personal liberty;
- d) when the person surrendered is liable to a sentence or a measure not depriving of liberty, including a penalty or a measure which in lieu thereof, even if the penalty or measure is likely to restrict his personal liberty;
- e) when the person has given his consent to surrender and waived the rule of specialty;
- f) when the person surrendered has expressly waived, after surrender, any benefit from the rule of specialty for specific offences preceding his surrender.

Section 3 - individual cases

Art. 30. If the European arrest warrant was issued by a Luxembourg judicial authority and the person sought enjoys a privilege or immunity in the executing State, and that the waiver of the privilege or immunity falls under authority of a State other than the executing State or of an international organization, the issuing authority shall address the request for waiver to the State or the international organization concerned in accordance with the applicable law.

Art. 31 1. A person who has been surrendered to Luxembourg pursuant to a European arrest warrant may, without the consent of the executing State, be surrendered to a Member State other than the executing State pursuant to a European arrest warrant issued for an offence committed prior to his surrender in the following cases:

- a) when having had the opportunity to do so, the person sought has not left the Luxembourg territory within 45 days of his final discharge, or that she has returned after having left.
- b) when the person sought agrees to be surrendered to a Member State other than the State of enforcement pursuant to a European arrest warrant. Consent is given in accordance with the provisions of article 10;
- c) where the person does not benefit from the rule of specialty.

2. Apart from the cases referred to in paragraph 1, a request for consent shall be submitted to the executing authority, accompanied by the information mentioned in article 1, paragraph 4, as well as a translation, if necessary.

3. Notwithstanding paragraph 1, a person who has been surrendered pursuant to a European arrest warrant may not be extradited to a third State without the consent of the competent authority of the Member State from which the person sought was surrendered.

Chapter IV. - Transit

Art. 32. 1. Luxembourg allows transit through its territory of a person sought who is being surrendered, provided that it has received information on:

- the identity and nationality of the person subject to the European arrest warrant,
- the existence of a European arrest warrant,
- the nature and the legal qualification of the offence
- the description of the circumstances of the offence, including the date and the place.

2. Where the person who is the object of a European arrest warrant for the purposes of prosecution is a Luxembourg citizen or resides there, the transit can be subordinated to the condition that the person, after being heard, be returned to Luxembourg to undergo the penalty or security measure that would be passed against him in the issuing State.

The serving, by the persons concerned, of the sentence or the security measure pronounced against them, will take place under the terms of the law of 25 April 2003 on the transfer of sentenced persons.

3. When the transit of a Luxembourg national or a person residing in Luxembourg is requested for the purpose of executing a sentence, it may be refused if the competent Luxembourg authorities choose to execute the sentence or measure of safety in accordance with Luxembourg law.

The serving, by the persons concerned, of the sentence or the security measure pronounced against them, will take place under the conditions of the law of 25 April 2003 on the transfer of sentenced persons.

4. The costs of the transit through the territory of Luxembourg are the responsibility of the issuing State.

Art. 33. The general State Prosecutor is the authority responsible for receiving transit requests and the necessary documents, as well as any other official correspondence relating to transit requests.

Art. 34. The use of air travel without a scheduled stopover is permitted without formality. However, in case of an unscheduled landing, articles 32 and 33 shall apply.

Art. 35. Articles 32 and 33 shall apply also where a transit concerns a person who is extradited from a third State to a Member State.

Chapter V. - Transitional Provision

Art. 36. As a transitional rule and until the moment where the Schengen information system will have the capacity to transmit all the information set out in article 1, paragraph 4, the reporting is a valid European arrest warrant pending the reception of the original in due form by the executing judicial authority.

This original or its certified copy must reach, no later than six business days after the date of arrest of the person sought; otherwise the person is, unless he is detained for another reason, automatically freed.

Chapter VI. - Relationship to other legal instruments

Art. 37. 1. This Law replaces, for acts committed after August 7, 2002, in the relations to a Member State of the European Union which has transposed the 13 June 2002 framework decision of the Council on the European arrest warrant and the surrender procedures between the Member States, the corresponding provisions of the following conventions:

a) the European convention on extradition of 13 December 1957, its additional protocol of 15 October 1975, its second additional protocol of 17 March 1978, and the European convention for the Suppression of terrorism on January 17, 1977, insofar as it concerns extradition;

b) the agreement of 26 May 1989 between the 12 Member States of the European communities on the simplification and modernization of the modes of transmission of extradition requests;

c) the 10 March 1995 convention on the simplified extradition procedure between the Member States of the European Union;

d) the convention of 27 September 1996 relating to extradition between the Member States of the European Union;

e) title III, Chapter 4, of the 19 June 1990 convention for the application of the 14 June 1985 Schengen agreement on the gradual abolition of checks at their common borders.

2. The alerts in the Schengen Information System, in accordance with article 95 of the Convention implementing the Schengen Agreement, are valid European arrest warrants upon the entry into force of this Law, subject to the application of the provisions of article 36.

In case an arrest is made before the entry into force of this Law based on an alert in the Schengen Information System from a Member State, the requests for surrender prior to the entry into force of this Law will be governed by applicable instruments existing in the field of extradition in relation to that Member State.

3. In relations with States not transposing into their national law the framework decision 2002/584/JHA of 13 June 2002 on the terms of the European arrest and surrender procedures between Member States at the time of the entry into force of this Law, the existing instruments in the field of extradition in relations with these States will continue to govern requests for surrender until the entry into force of the respective national transposition measures. From the date of entry into force of the respective national transposition measures, the provisions of paragraph 2 shall apply mutatis mutandis, the expression 'entry into force of this Law deemed replaced by 'entry into force of the national transposition measures.

We command and order that this Law be inserted at the Memorial to be enforced and observed by all those concerned.

Law of 3 August 2011, modifying Law of 17 March 2004 on the European arrest warrant and the surrender procedures between Member States of the European Union.

Art. 1. Article 6 of the Law of 17 March 2004 on the European arrest warrant and the surrender procedures between Member States of the European Union is amended as follows:

Art. 6. A report made in accordance with the provisions of article 95 of the 19 June 1990 Convention of Application of the 14 June 1985 Schengen agreement on the gradual abolition of checks at their common borders has the value of a European arrest warrant.

The person sought may be detained on the basis of the report referred to in the preceding paragraph or on presentation of the European arrest warrant at the request of the territorially competent State Prosecutor.

The European arrest warrant may be transmitted in the following ways:

-by the Schengen information system;

-by Interpol;

-by any means leaving a written record, under conditions allowing the Luxembourg authorities to verify its authenticity.

"If the State Prosecutor believes that the information provided by the issuing State in the European arrest warrant is insufficient, he may request the emergency presentation of the necessary additional information and may set a deadline for their delivery. "

Art. II. paragraphs 6. 7. and 8. are added to section 14 of the Act, and worded as follows:

“6. where in exceptional circumstances, Luxembourg cannot meet the deadlines set in this section for the surrender of the person arrested; it shall inform EUROJUST specifying the reasons for the delay. 7. A person who has been surrendered by Luxembourg cannot be delivered subsequently by the issuing State to another Member State pursuant to a European arrest warrant issued for an offence committed prior to his first release, without the consent of the Luxembourg authorities.

The written request for consent is submitted in accordance with article 1, paragraphs 4. and 5. of this Law.

The Luxembourg judicial authority which decided the previous surrender gives the consent requested, when the offence for which it is requested results itself in the obligation to surrender under the terms of this Law. Cases for refusal provided for in articles 3 to 5 of the Law are applicable.

The decision is made no later than thirty days after reception of the request.

Consent is not required in the following cases:

a) When, having had the opportunity to do so, the person sought has not left the territory of the Member State in which it was delivered within 45 days of his final discharge, or has returned after having left.

b) when the person sought agrees to be surrendered to a Member State other than the Issuing Member State under a European arrest warrant.

The consent of the person is given to the competent judicial authorities of the issuing Member State and shall be recorded in accordance with the national law of that State;

c) when the person surrendered does not benefit from the rule of specialty.

8. A person who has been surrendered by Luxembourg cannot be extradited later by the issuing State to a third State under an extradition request issued for an offence committed prior to surrender, without the consent of the Luxembourg authorities. This consent is subject to the conditions of extradition of the conventions and national law.”

The Luxembourg judicial authority which decided the previous delivery gives the consent requested, when the offence for which it is requested results itself the obligation to surrender under the terms of this Law. Cases of refusal provided for in articles 3 to 5 of the Act are applicable.

Art. III. paragraph 1 of subsection 1. Of article 18 of the same law is completed with the following sentences:

“Consent is given when the offence for which it is requested results itself the obligation to surrender under the terms of this Law. Cases of refusal provided for in articles 3 to 5 of the Act are applicable.”

Art. IV. article 26 of the Act is amended as follows:

“1. where there is reason to believe that a person sought in Luxembourg for the purposes of prosecution is located on the territory of an another Member State of the European Union, a European arrest warrant is issued, according to the forms and under the conditions laid down in articles 1 and 2, by the investigation judge and by the investigative and sentencing jurisdictions insofar as they are competent, in accordance with the Code of criminal procedure, to issue an arrest warrant.

2. Where there is reason to believe that a person sought in Luxembourg for the purposes of executing a sentence is in the territory of an another Member State of the European Union, a European arrest warrant is issued by the State Prosecutor in the forms and under the conditions laid down in articles 1 and 2.’

Art. V. Section 36 of the Act is amended as follows:

“As a transitional rule and until the moment where the Schengen information system will have the capacity to transmit all the information set out in article 1, paragraph 4, the reporting is a valid European arrest warrant pending the reception of a copy of the original with its eventual translation, which must be received no later than the sixth working day from the date of arrest of the person sought, otherwise the person shall be released automatically, unless he is detained for another reason.”

Art. VI. paragraph 1. Article 37 of the Act is amended as follows:

art. 37 1. This Law replaces, in the relationship to a Member State of the European Union which has transposed the 13 June 2002 framework decision of the Council on the European arrest warrant and the surrender procedures between the Member States, the corresponding provisions of the following conventions:

a) the European convention on extradition of 13 December 1957, its additional protocol of 15 October 1975, its second additional protocol of 17 March 1978, and the European convention for the Suppression of terrorism on January 17, 1977, insofar as it concerns extradition;

b) the agreement of 26 May 1989 between the 12 Member States of the European communities on the simplification and modernization of the modes of transmission of extradition requests;

c) the 10 March 1995 convention on the simplified extradition procedure between the Member States of the European Union;

d) the convention of 27 September 1996 relating to extradition between the Member States of the European Union;

e) title III, Chapter 4, of the 19 June 1990 convention for the application of the 14 June 1985 Schengen agreement on the gradual abolition of checks at their common borders.

f) Chapter I of the 27 June 1962 Benelux Treaty on extradition and mutual legal assistance in criminal matters. »

Art. VII. paragraph 4. Article 10 of the same Law is repealed.

Law of 27 October 2010, on the strengthening of the legal framework in the fight against money laundering and combating the financing of terrorism; on the Organization controls of the physical transport of incoming cash entering, going through or exiting out of the Grand Duchy of Luxembourg; relating to the

implementation of resolutions of the United Nations Security Council and of acts adopted by the European Union in regard to bans and restrictive measures against certain persons, entities and groups in the fight against the financing of terrorism

Title IX — Modification of the Law of 17 March 2004 on the European arrest warrant and the surrender procedures between Member States of the European Union

Art. 9. Article 20 of the Law of 17 March, 2004 to the European arrest warrant and the surrender procedures between Member States of the European Union is completed by a paragraph 4. which reads as follows:

«4. If surrender is not made, Luxembourg shall submit the case to its competent authorities for the purpose of prosecution under the normal rules. »

345. Regarding the cases and examples of implementation on general issues in the field of extradition, the government stated that in the field of corruption respectively of money laundering in connection with a corruption offense, the judicial authorities of Luxembourg have received from 1 January 2009 to 16 July 2013, 78 coercive requests, none of which has been rejected. 56 Requests were for non-coercive measures were also executed.
346. There has been no request for extradition on the basis of a corruption offense from 2010 to 2013.
347. The government informed the reviewers that the Central authority on international cooperation matters is the Prosecutor General's office.

(b) Observations on the implementation of the article

348. The basic provisions on extradition are found in the Extradition Law of 20 June 2001. This law applies in the absence of bilateral or multilateral agreements and without prejudice to the applicability of the Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States of the European Union. The Law of 17 March 2004 on the European arrest warrant and the surrender procedures between member States of the European Union, as modified by Law of 3 August 2011, domesticates the abovementioned Framework Decision.

Article 44 Extradition

Paragraph 2

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

349. Not all the offences of the Convention are covered by Luxembourg national law.
350. The principle of dual criminality (art. 43.2 UNCAC, art. 3-4 of 20 June 2001 Act) is the substantive condition required as a principle by the multilateral conventions on extradition. This condition is also required by the national law on extradition of June 20, 2001. It is also required in the framework of the 2 bilateral treaties with Australia of 23 April 1987, approved by the Act of 22 June 1988 and with the United States as of 1 October 1996 approved by a law of 20 June 2001.

351. In the framework of the presentations on the basis of a EAW, the condition of dual criminality is no longer observed for a list of 32 categories of offenses, and particularly so for all the corruption offences appearing in point 7 of the list.
352. The Luxembourg authorities clarified that their internal regulation refers to dual “punishability” rather than to dual criminality to show that the exact same offence is not required. They focus on the underlying conduct rather than on the denomination of crime.
353. The requirement of dual criminality is applicable to extradition. The principle of dual criminality only applies in the field of mutual legal assistance if the request concerns coercive measures e.g. if a search has to be performed to execute the request.

(b) Observations on the implementation of the article

354. The reviewing experts note that, apart from the EAW, Luxembourg’s legislation does not allow for extradition in the absence of dual criminality. In any case the offence should be punishable under national law. The experts note however that this provision of the Convention is optional in nature. The requirement of dual criminality is applied, but with a focus on the underlying conduct. However, a flexible approach is taken on the interpretation of this requirement. Minimum penalty requirements are clearly established in the legislation.
355. The law of 17 March 2004, established that the European Arrest warrant could be executed without a dual criminality in corruption and laundering of proceeds of crime cases, provided that the related offences are punishable in the issuing State by a penalty or a measure of deprivation of liberty of a maximum of at least 3 years
356. Notwithstanding the flexible interpretation of the double criminality requirement in domestic extradition proceedings, the reviewing experts encouraged the national authorities to explore the possibility of relaxing the strict application of the double criminality requirement in cases of UNCAC-based offences not established in domestic legislation, in line with article 44, paragraph 2, of the UNCAC. .

Article 44 Extradition

Paragraph 3

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

(a) Summary of information relevant to reviewing the implementation of the article

357. Luxembourg confirmed that it has fully implemented this provision of the Convention.
358. Luxembourg provided the following laws:

June 20, 2001. -Law on extradition

Art3. 1) Facts punishable under Luxembourg law and the law of the requesting State by a prison term sentence of a maximum of at least one year or by a more severe penalty are grounds for extradition.

Where the request for extradition concerns a person convicted of such an offence and sought for execution of a custodial sentence, extradition may be granted only if a sentence of at least one year has been pronounced and the length of the sentence which remains to be served is at least six months.

2) If the request for extradition concerns several separate facts punished each by a custodial sentence under Luxembourg law and under the law of the requesting State, but some do not meet the condition relating to the duration of the sentence referred to in paragraph 1), extradition may be granted for the whole or part of the crimes covered by the extradition request.

3) If the facts upon which the request for extradition is based constitute several offences under the law of the requesting State, extradition may be granted for only part of these offences.

4) In determining whether an offence is grounds for extradition, the facts on which the request for extradition is based are taken into consideration, even though the offence may not qualified by an identical or similar terminology according to Luxembourg law and the law of the requesting State, and there may be no agreement of the constituent elements of the offences in the law of the requesting State and the law of the requested State.

359. Luxembourg did not provide examples of implementation on extradition granted in accordance with the provision under review.

(b) Observations on the implementation of the article

360. The threshold for the identification of extraditable offences is at least one year of imprisonment in the event of a request for extradition for prosecution purposes or a remainder of sentence of at least six months where extradition is requested for purposes of enforcement of such sentence. The domestic extradition law contains a specific provision on accessory offences. Additionally, this provision could be enforced through direct application of the Convention. In light of this clarification, the reviewing governmental experts consider the provision to constitute a set of relevant measures satisfying the purposes of the Convention.

Article 44 Extradition

Paragraph 4

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

(a) Summary of information relevant to reviewing the implementation of the article

361. Luxembourg indicated that it does not need extradition treaties with specific countries as it has a general law that applies for all the countries that are not applying the EAW. Regarding the agreements on international cooperation, Luxembourg has only concluded two bilateral extradition treaties with Australia and the United States (cf. Art. 44.2). The substantive condition is the double criminality requirement, with a threshold of at least 1 year of imprisonment. In the event of a request for extradition for prosecution, extradition may be granted without major problems with regard to this condition.

362. Luxembourg did not provide specific texts of applicable measures because under the primacy of treaties, all the provisions of the Convention apply directly without any other additional legislative standard than ratification.

363. Regarding the inclusion of UNCAC offences into all existing extradition treaties to which it is party, Luxembourg reported that all existing extradition treaties were concluded before UNCAC. An explicit reference to UNCAC offences (and other offences in general) is not necessary because these treaties do not include lists of offences but a generic explanation on the extraditable offences, which is broad enough to include all criminal offences.

364. Example: Article 2 LUX-USA treaty on extradition:

Infractions donnant lieu à Extradition

1. Donne lieu à extradition, toute infraction qui, aux termes de la législation de chacun des Etats contractants, est punissable d'une peine privative de liberté dont la durée maximum dépasse un an ou d'une peine plus sévère. Pour l'application de ce paragraphe, une infraction comprendra:

(a) une tentative de commettre une infraction, ou la participation en tant qu'auteur ou complice dans la perpétration d'une infraction; et

(b) une «association de malfaiteurs» telle qu'elle est prévue par les lois du Luxembourg, ou une «conspiracy» telle qu'elle est prévue par les lois des Etats-Unis, formée dans le but de commettre une infraction.

2. Lorsque la demande d'extradition concerne une personne réclamée pour l'exécution d'un jugement, l'extradition n'est accordée que si une peine d'au moins six mois d'emprisonnement reste à subir.

3. Pour déterminer si une infraction est une infraction donnant lieu à extradition les Etats contractants:

(a) prendront uniquement en considération les éléments essentiels de l'infraction punissable aux termes de la législation de chacun des deux Etats et ne tiendront pas compte du fait que les législations respectives ne classent pas l'infraction dans la même catégorie d'infractions ou qualifient ou non l'infraction par la même terminologie; et

(b) ne considéreront pas comme un élément essentiel d'une infraction punissable aux Etats-Unis un élément tel le transport entre Etats de l'Union ou l'utilisation des courriers postaux ou de tout autre moyen affectant le commerce entre Etats de l'Union ou le commerce extérieur, puisqu'un tel élément sert à établir la compétence d'un tribunal des Etats-Unis.

4. Une infraction sera considérée comme infraction donnant lieu à extradition, quel que soit l'endroit où le fait ou les faits constituant l'infraction a ou ont été commis.

5. Si, en plus d'une infraction donnant lieu à extradition, telle que stipulée dans le paragraphe 1, la demande

d'extradition comprend une infraction punissable d'une peine privative de liberté aux termes de la législation de chacun des Etats contractants, mais qui ne remplit pas la condition relative au taux de la peine pouvant être appliquée, l'Etat requis accorde l'extradition pour cette infraction, à condition que toutes les autres conditions requises pour l'extradition soient remplies.

6. L'extradition peut être refusée si la prescription de l'action publique ou de la peine est acquise d'après la loi de l'Etat requis. Les actes interruptifs ou suspensifs de la prescription intervenus dans l'Etat requérant seront pris en considération dans toute la mesure du possible.

(b) Observations on the implementation of the article

365. The provision seems to be fully implemented on the basis of the Extradition Law of 20 June 2001. The dual criminality is the standard condition for granting extradition.
366. Luxembourg may extradite even in the absence of an international treaty or convention, applying the domestic law. The Convention has direct force of law by virtue of the primacy of international treaties. Therefore, most of its extradition-related provisions are directly applicable without the need for implementing legislation..

Article 44 Extradition

Paragraph 5

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

367. Luxembourg does not make extradition conditional on the existence of a treaty.

(b) Observations on the implementation of the article

368. Luxembourg does not make extradition conditional on the existence of an extradition treaty. Hence, this provision does not concern Luxembourg.

Article 44 Extradition

Paragraph 6

6. A State Party that makes extradition conditional on the existence of a treaty shall:
(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and
(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

(a) Summary of information relevant to reviewing the implementation of the article

369. Luxembourg does not make extradition conditional on the existence of a treaty.

(b) Observations on the implementation of the article

370. Luxembourg may extradite even in the absence of an international treaty or convention, applying the domestic law. The Convention has direct force of law by virtue of the primacy of international treaties. Therefore, most of its extradition-related provisions are

directly applicable without the need for implementing legislation. Additionally, reciprocity could be used as a legal basis.

Article 44 Extradition

Paragraph 7

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

(a) Summary of information relevant to reviewing the implementation of the article

371. Luxembourg confirmed that it has fully implemented this provision of the Convention.

(b) Observations on the implementation of the article

372. Luxembourg may extradite even in the absence of an international treaty or convention, applying the domestic law. Almost all offences under the Convention have been covered by domestic legislation.

373. Notwithstanding the flexible interpretation of the double criminality requirement in domestic extradition proceedings, the reviewing experts encouraged the national authorities to explore the possibility of relaxing the application of the double criminality requirement in cases of UNCAC-based offences not established in domestic legislation.

Article 44 Extradition

Paragraph 8

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

(a) Summary of information relevant to reviewing the implementation of the article

374. Luxembourg confirmed that it has fully implemented this provision of the Convention.

375. Luxembourg provided the following laws:

20 June 2001. -Law on extradition

Art. 1. 1) in the absence of an international treaty and without prejudice to the legal provisions to certain specific categories of offences, the conditions, procedure and effects of extradition shall be determined by this Law.

(2) This Law applies to criminal cases which, under the law of the requesting State, are of the competence of the judicial authorities.

2. The Minister of Justice may, under the rule of reciprocity, grant the extradition of a person subject to prosecution or conviction for an offence under this Law to a Government of another State.

3. 1) Facts punishable under Luxembourg law and the law of the requesting State by a prison term sentence of a maximum of at least one year or by a more severe penalty are grounds for extradition.

Where the request for extradition concerns a person convicted of such an offence and sought for execution of a custodial sentence, extradition may be granted only if a sentence of at least one year has been pronounced and the length of the sentence which remains to be served is at least six months.

2) If the request for extradition concerns several separate facts punished each by a custodial sentence under Luxembourg law and under the law of the requesting State, but some do not meet the condition relating to the duration of the sentence referred to in paragraph 1), extradition may be granted for the whole or part of the crimes covered by the extradition request.

3) If the facts upon which the request for extradition is based constitute several offences under the law of the requesting State, extradition may be granted for only part of these offences.

4) In determining whether an offence is grounds for extradition, the facts on which the request for extradition is based are taken into consideration, even though the offence may not be qualified by an identical or similar terminology according to Luxembourg law and the law of the requesting State, and there may be no agreement of the constituent elements of the offences in the law of the requesting State and the law of the requested State.

4. 1) Extradition shall not be granted if the offence for which it is requested is a political offence, an offence connected with a political offence or an offence inspired by political motives.

2) The same rule applies if there are serious reasons for believing that the request for extradition, motivated by a general law offence, was presented for the purposes of prosecuting or punishing a person for reasons of race, religion, nationality, belonging to a particular social group or group with political opinions, or that this person's situation might be aggravated for any of these reasons.

3) The attempt on the life of a Head of State or a member of his family shall not be considered a political offence nor an offence related to such an offence.

4) The application of the provisions of the present article does not affect the obligations that the State of Luxembourg assumes or will assume under the terms of international multilateral agreements on extradition for offences thereby specified.

5. Extradition shall not be granted for military offences which are not offences under common law.

6. Extradition shall not be granted for offences on issues of taxes and levies, customs and foreign exchange.

7. 1) Extradition shall not be granted if the person sought is a citizen of Luxembourg.

2) Extradition may be refused if the person sought is a foreigner who resides permanently in the Luxembourg and if extradition is considered inappropriate due to his integration or to the community ties that he has built in Luxembourg, provided however that he may be prosecuted in Luxembourg for the facts for which the extradition is requested.

8. Extradition may be refused if the offence on which the request is based has been committed, according to Luxembourg law, in whole or in part on Luxembourg territory or in a place assimilated to its territory.

2) When the offence motivating the request for extradition has been committed outside the territory of the requesting State, extradition may be refused if the requesting State does not establish either that this offence is related to or connected with other offences committed on its territory, or that facts of co-perpetration, complicity or preparation have been committed

in its territory, or from the effects of the offence occurred on its territory and in particular, that interests within its territory have been affected by this offence, or that for any other reason, the jurisdiction of its judicial bodies is warranted to this offence.

9. 1) Extradition shall not be granted when, in Luxembourg, a *res judicata* decision has already been made against the person sought for the offence for which extradition is requested.

2) Extradition may be refused if the Luxembourg competent authority has decided not to prosecute or to put an end to the prosecution that it has initiated for the offence for which extradition is requested.

3) Extradition may also be refused if evidence is provided that, in a third-party State, a *res judicata* decision has already been made against the person sought for the offence for which extradition is requested.

4) When extradition is requested for a plurality of crimes, it may be granted for those offences not covered by the provisions of the preceding paragraphs.

10. 1) Extradition shall not be granted when, according to Luxembourg law or that of the requesting State, the statute of limitations of public action or punishment has expired previous to the extradition request.

The arrest in Luxembourg, under the provisions of this Law, of the person sought interrupts the statute of limitations of public action or punishment.

Acts interrupting or suspending the statute of limitations made in the requesting State, according to the law of that State, are taken into account for the calculation of the statute of limitations of public action or punishment according to Luxembourg law.

In this case extradition may however be refused if a manifestly excessive period has elapsed, taking also into account the nature of the offence, between the date of the fact or the conviction, on the one hand, and the date of the request for extradition, on the other hand.

2) Extradition shall not be granted when evidence is produced that the public action of the requesting State is extinguished by an amnesty or any other legal cause.

11. Extradition requested for the purposes of execution of a judgment in absentia against which no means of appeal are no longer open, shall not be granted if this extradition may have the effect of imposing a penalty in the person sought without this person being able to exercise the rights of defense guaranteed by article 6.3 (c) of the Convention for the safeguarding of human rights and fundamental liberties. However, extradition may be granted if the requesting State gives assurances deemed sufficient as to the right of the person sought to a new trial safeguarding the rights of the defense.

12. 1) If the fact for which the extradition is requested is punishable by the death penalty under the law of the requesting State, extradition shall be granted only on condition that the requesting State gives assurances deemed sufficient that the death penalty will not be executed.

2) Extradition cannot take place if there are serious reasons to believe that the person sought may be subjected to acts of torture as understood by articles 1 and 3 of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and by article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

13. 1) Extradition shall not be granted if the person sought is a minor of less than sixteen years of age.

2) Extradition may be refused if the person sought is a minor over the age of sixteen years.

14. Extradition may be refused if Luxembourg, taking into account the nature of the offence and the interests of the requesting State, considers that the extradition would be incompatible with humanitarian considerations, such as the age or health of the person sought.

15. 1) The extradition request must be made in writing and submitted through the diplomatic channel.

2) The following documents must be produced in support of a request for extradition:

a) The original or authenticated copy, whether of an enforceable sentence or an arrest warrant or of any other act having the same effect, issued by the competent judicial authority in the manner prescribed by the law of the requesting State;

b) A statement of facts for which the extradition is requested, indicating the time and place of their perpetration;

c) The text of the legal provisions applicable to the offence or offences due to which the extradition is sought or, in the event of breach of the “common law”, a statement on the law applicable to the offence;

d) A description as accurate as possible of the person sought and any other information likely to determine his identity, nationality and age;

e) A declaration concerning the sentence to be imposed if convicted; an indication of the penalty in the sentencing decision shall in principle serve as such a declaration.

16. The request and the documents in support of the application must be written in French or German or be accompanied by a translation into one of these two languages.

17. If, upon receipt of the request for extradition or during the Luxembourg internal procedure for the requested extradition, information provided by the requesting State proved insufficient with regard to the provisions of this Law, the Minister of Justice or the judicial authority concerned may request additional information. In this case, the Minister of Justice may, in the request for additional information or following such request, set a deadline for obtaining such information. If a response considered sufficient is not produced within the period so prescribed in the requesting State, the request for extradition may be refused or the arrest of the person sought thrown out.

18. 1) the person sought can be arrested at the request of the State prosecutor competent in the execution of an enforceable sentence referred to in article 15.2) a), issued in original or authenticated copy.

The person sought can be arrested in execution of an arrest warrant or of any other act having the same effect referred to in article 15.2) a), issued in original or authenticated copy, provided that they are rendered enforceable by the Council Chamber of the District Court of the place of residence or the place where he can be found.

2) The detainee shall be notified:

(1) of the fact referred to in article 15.2) a) pursuant to which he has been arrested.

(2) the facts referred to in article 15.1) and 15.2) b), c) and e).

He shall also be informed

(a) of the right to counsel of his choice or to be appointed by the Court;

(b) of his faculty to agree to extradition.

(3) A report of the preceding arrests, notifications and information shall be drawn up. The statements of the arrested person are recorded in the minutes should he dispute his identification with the person sought.

This report is presented to the State Prosecutor who required the arrest within 48 hours at the latest following the arrest.

19. 1) In the five days running from the day following the arrest recorded in the report referred to in article 18.3), the detainee or his counsel may present a motion for dismissal of the arrest at the registry of the Court or at the registry of the detainment facility.

The Council Chamber of the Court of appeal shall hand down an emergency decision within ten days at the latest of the declaration, after hearing the oral arguments of the public prosecutor, the detainee and his counsel.

The registry of the Court has the duty of notifying the detainee and his counsel, of the place, day and hour of the hearing, at least 24 hours before the hearing.

b) si la demande d'extradition apparaît manifestement mal fondée; ou

c) s'il existe des garanties réelles permettant d'avoir la conviction que la personne réclamée ne se soustraira pas à la remise à l'Etat requérant au cas où l'extradition serait accordée.

2) The dismissal of the arrest may be ordered:

a) if the arrest procedure is vitiated by an irregularity with a serious infringement of the rights of the person sought; or

b) if the extradition request appears manifestly unfounded; or

c) if there are real guarantees guaranteeing that the person sought will not flee from the surrender to the requesting State in the event that extradition be granted.

3) The judgment of the Council Chamber of the Appellate Court cannot be the subject of an appeal in cassation.

4) The dismissal of the arrest does not preclude a new arrest in the event of production by the requesting State of elements which would support the merits of the request for extradition.

20. 1) In case of an emergency, the authorities of the requesting State may request the provisional arrest of the person sought, either through the diplomatic channel, directly by mail or by the International Criminal Police Organization (INTERPOL), or by any other means leaving a written record or accepted by Luxembourg.

2) The request for provisional arrest indicates the existence of one of the elements provided for in article 15.2 a) and is part of the intention to send a request for extradition. It must mention the offence for which the extradition is requested, the time and place where it was committed and, to the extent possible, the description of the person sought.

3) The provisional arrest warrant is issued by the investigating judge of the place of residence of the person sought or the place where he may be found. The requesting State is immediately informed of the answer given to its application.

4) The provisional arrest shall terminate, if, within a period of 18 days after the arrest, Luxembourg has not received the application for extradition accompanied by the documents mentioned in article 15; the provisional arrest may in no case exceed 45 days after the arrest.

5) The person sought may, at any moment during the judicial phase, apply for release under bail. The forms and procedure for this application are governed by the provisions of the Code of Criminal Procedure relating to bail.

Release may be ordered only:

a) if the arrest procedure is vitiated by an irregularity with a serious infringement of the rights of the person sought, or

- b) if the request for provisional arrest appears manifestly unfounded, or
 - c) if there are real guarantees guaranteeing that the person sought will not flee from the surrender to the requesting State in the event that extradition be granted.
- 6) In case the release is ordered, the requesting State shall be notified without delay.
- 7) The release does not preclude a new arrest and extradition if a request is presented later.

21. 1) Extradition shall be granted only after a reasoned opinion from the Council Chamber of the Court of appeal. The hearing shall be public unless the person sought asks for closed chambers.

The public prosecutor, the person and his counsel, summoned by the registry of the Court at least 48 hours before the hearing, shall be heard.

2) The Minister of Justice shall decide on the request for extradition at the light of the evidence and the requested opinion of the Council Chamber of the Court of Appeal.

Extradition may be granted only with the assent of the Council Chamber of the Court

22. Extradition is granted only under the condition that the person who is delivered will not be prosecuted, judged, nor held for execution of a custodial sentence, nor subjected to a measure of safety nor to any other restriction of his personal liberty, for any fact prior to his surrender other than those motivating the extradition, nor will he be re-extradited to a third State for offences prior to his surrender, except when Luxembourg consents to the continuation or the re-extradition.

In case of a request of the requesting State for the purpose of extension of the extradition, said request, done in writing, will be accompanied by the documents laid down in article 15 and a report recording the statements of the extradited or his refusal to make a statement. The place of residence of the extradited must be specified. The consent referred to in the first subparagraph shall be given when the offence for which the extension is requested implies itself the obligation to extradite under the terms of this Law.

In case of a request for the purposes of re-extradition made by a third State, the written request shall indicate the cause of the re-extradition and be accompanied by the documents provided for in article 15 as well as a report recording the statements of the extradited or his refusal to make a statement.

The consent referred to in the first subparagraph shall be given when the offence for which the extension is requested implies itself the obligation to extradite under the terms of this Law.

The opinion of the Council Chamber of the Court of appeal must be requested in either case.

The extradited is not convened, but informed the date which is fixed for the hearing of the Council Chamber of the Court of appeal and of his right to be represented by a lawyer of his choice or appointed by the court. This information is sent by mail at least 15 days before the date on which the hearing is fixed.

The provisions of article 21 are applicable.

The first paragraph of the present article does not apply when, having had the opportunity of doing so, the extradited individual did not leave within 45 days following his final discharge, the territory of the requesting State to which he was surrendered or if he has returned after having left.

23. At any time from the provisional arrest, the person sought may consent to the extradition without further formality.

This consent is irrevocable.

A formal consent pronounced before a magistrate of the competent public prosecutor is necessary. A record of the consent is prepared, and it must be signed by the magistrate and the person sought. This record includes the information given to the person sought on the effects of his consent.

During the declaration referred to in the preceding paragraph, the person sought shall be assisted by his counsel, who will sign the report. If the person sought has not retained counsel, he is to be advised on his right to assistance of counsel. His response is recorded in the report.

The consent may be formulated in writing. In this case, it is attached to the report.

If the person sought understands neither French nor German, the formal consent is collected only under the assistance of an interpreter who will sign the report.

The report, together with the dossier, is immediately forwarded to the Minister of Justice who may grant extradition without further formality.

Article 22, first and last paragraphs, applies also to the extradition without formality.

24. If extradition is requested concurrently by several States, either for the same offence or for different offences, the Minister of Justice will decide, taking into account all the circumstances and especially the relative seriousness, the venue and date of the offences, the respective dates of the extradition requests, the nationality of the person sought and the possibility of a subsequent extradition to another State.

If the extradition is requested concurrently by several States for separate acts, the Minister of Justice may decide on the different requests.

In this case, if two or several requests are honored, the State to which the person is delivered is determined as stated in the first paragraph, the agreement being valid for the further consent to the re-extradition referred to in article 22.

25. 1) The Minister of Justice may, after deciding on the extradition request, postpone the surrender of the person sought so that he may be prosecuted by the judicial authorities of Luxembourg or, if he has already been sentenced, so that he can serve, in Luxembourg, a sentence passed for one act other than that for which the extradition is requested.

2) Instead of deferring the surrender, the Minister of Justice may surrender temporarily to the requesting State, on its request, the person sought in conditions to be determined by mutual agreement with the Minister of Justice of the requesting State. However, Luxembourg grants this temporary surrender only if this is a person who is serving a sentence on its territory and if specific conditions so require.

3) Detention suffered as a result of this surrender, on the territory of the requesting State, is computed on the duration of the sentence that the person sought must serve in Luxembourg territory.

26. In case extradition is granted by the Minister of Justice, the requesting State shall be informed of the place and the date of surrender, as well as the duration of detention suffered by the person sought for extradition.

If the Minister of Justice is led to assume, as a result of the reiterated non reception of the person claimed by the requesting State which has been duly informed, and the absence of valid explanations of its part, that the State has waived the extradition, he will order the dismissal of the arrest of the person sought and may refuse to extradite him in the same State for the same cause.

27. The Minister of Justice may grant transit only on the same conditions as those of extradition.

However the documents provided for in article 15 may be transmitted in a manner provided for in paragraph 1) of article 20.

28. Costs incurred by the extradition are the responsibility of the requesting State upon receiving the person extradited by the authorities from that State delegated for this task.

The costs of transit through the territory of Luxembourg are borne by the requesting State.

29. Generally whatsoever objects in the possession of the person sought, found at the time of the arrest or discovered later, may be seized by the competent investigating judge at the request of the requesting State or on indictment of the State Prosecutor, in the form laid down by Luxembourg law, if these objects can serve as evidence for conviction or are derived from the offence.

The requesting State is immediately informed by one of the means provided for in paragraph 1) of article 20.

This seizure loses any effect, except with the agreement of the person claimed to see the objects seized be delivered to the requesting State, if the State of Luxembourg has not received, from the requesting State within 45 days from the date of the seizure, a letter of petition for the same purpose.

The letter of petition is drawn according to the applicable rules in this matter.

The procedure for the seizure of objects and the execution of the letters rogatory cannot delay the procedure relating to the extradition request.

30. The Law of 13 March 1870 on extradition of criminal foreigners, as subsequently amended, is repealed.

376. Luxembourg did not provide examples of implementation.

(b) Observations on the implementation of the article

377. The threshold for the identification of extraditable offences is at least one year of imprisonment in the event of a request for extradition for prosecution purposes or a remainder of sentence of at least six months where extradition is requested for purposes of enforcement of such sentence. In addition, the law of 17 March 2004 stipulates that the European Arrest warrant could be executed without a dual criminality in corruption and laundering of proceeds of crime cases, provided that the related offences are punishable in the issuing State by a penalty or a measure of deprivation of liberty of a maximum of at least 3 years.

378. Domestic law exists detailing the conditions and procedures. It details a comprehensive list of grounds for refusal: political offences, military offences, statute of limitations, nationality, *ne bis in idem*, discrimination

Article 44 Extradition

Paragraph 9

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

379. Luxembourg confirmed that it has fully implemented this provision of the Convention.

380. In the framework of the EAW it is possible to refer to article 18.3 f) of the Act of March 17, 2004 which provides that the waiving of the rule of specialty by the arrested person, can intervene after his being delivered to the State of issuance and therefore allow prosecution without further formalities.

381. In the framework of the national law of extradition, the lifting of the specialty rule can be done on the advice of the Council Chamber of the Court of Appeal. (Art. 22 of the law of June 20, 2001). The extradited person will not be summoned but rather informed of the date on which the hearing of the Council Chamber is fixed and of his faculty to be represented by a lawyer of his choice or court appointed.

382. The request for extension by the requesting State is accompanied by a charge sheet recording the statements of the extradited and therefore, if applicable, his consent and his waiver of the rule of specialty.

(b) Observations on the implementation of the article

383. The formalities and information necessary in order to process a request for extradition are set forth in Article 10 of the EAW Law and Article 23 of the Extradition Law which provide simplified extradition proceedings. Hence, the provision seems to be fully implemented.

Article 44 Extradition

Paragraph 10

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

384. Luxembourg confirmed that it has fully implemented this provision of the Convention.

385. Luxembourg provided the following laws:

June 20, 2001. -Law on Extradition

20. 1) In case of an emergency, the authorities of the requesting State may request the provisional arrest of the person sought, either through the diplomatic channel, directly by mail or by the International Criminal Police Organization (INTERPOL), or by any other means leaving a written record or accepted by Luxembourg.

2) The request for provisional arrest indicates the existence of one of the elements provided for in article 15.2 a) and is part of the intention to send a request for extradition. It must mention the offence for which the extradition is requested, the time and place where it was committed and, to the extent possible, the description of the person sought.

3) The provisional arrest warrant is issued by the investigating judge of the place of residence of the person sought or the place where he may be found. The requesting State is immediately informed of the answer given to its application.

4) The provisional arrest shall terminate, if, within a period of 18 days after the arrest, Luxembourg has not received the application for extradition accompanied by the

documents mentioned in article 15; the provisional arrest may in no case exceed 45 days after the arrest.

5) The person sought may, at any moment during the judicial phase, apply for release under bail. The forms and procedure for this application are governed by the provisions of the Code of Criminal Procedure relating to bail.

Release may be ordered only:

a) if the arrest procedure is vitiated by an irregularity with a serious infringement of the rights of the person sought, or

b) if the request for provisional arrest appears manifestly unfounded, or

c) if there are real guarantees guaranteeing that the person sought will not flee from the surrender to the requesting State in the event that extradition be granted.

6) In case the release is ordered, the requesting State shall be notified without delay.

7) The release does not preclude a new arrest and extradition if a request is presented later.

(b) Observations on the implementation of the article

386. The Extradition Law provides for the provisional arrest of the person sought to ensure his/her presence in extradition proceedings.

Article 44 Extradition

Paragraph 11

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

387. Luxembourg confirmed that it has fully implemented this provision of the Convention.

388. Luxembourg provided the following laws:

Code of Criminal Procedure

Art. 5-1. (L. 16 juillet 2011) Tout Luxembourgeois, toute personne qui a sa résidence habituelle au

Grand-Duché de Luxembourg, de même que l'étranger trouvé au Grand-Duché de Luxembourg, qui aura commis à l'étranger une des infractions prévues aux articles 112-1, 135-1 à 135-6, 135-9 et 135-11 à 135-13, 163, 169, 170, 177, 178, 185, 187-1, 192-1, 192-2, 198, 199, 199bis, 245 à 252, 310, 310-1, et 368 à 384 du Code pénal, pourra être poursuivi et jugé au Grand-Duché, bien que le fait ne soit pas puni par la législation du pays où il a été commis et que l'autorité luxembourgeoise n'ait pas reçu soit une plainte de la partie offensée, soit une dénonciation de l'autorité du pays où l'infraction a été commise. (L. 26 décembre 2012)

389. Extradition law establish the nationality as one of the grounds for refusal of an extradition request. The authorities stated that citizens of Luxembourg are not extradited outside the European Union.
390. They consider the residents as well as citizens for the nationality purpose. The European Union citizens after five years of residence have the same rights as the citizens.
391. When the principle of refusal for this ground is applied, the principle of prosecute in lieu of extradition is applied.
392. The Act of 27 October 2010 has completed the Act of 20 June 2001 by inserting article 14-1, which stipulates that "if, in application of the preceding provisions, Luxembourg refused extradition, it shall submit the case to its competent authorities for the purposes of prosecution according to the rules laid down."

(b) Observations on the implementation of the article

393. The Extradition Law sets out the principle of *aut dedere, aut judicare*. It establishes nationality as one of the grounds for refusal of an extradition request. Extradition may also be refused if the person sought is a foreigner who resides permanently in the Luxembourg and if extradition is considered inappropriate due to his integration or to the community ties that he has built in Luxembourg, provided however that he may be prosecuted in Luxembourg for the facts for which the extradition is requested. Where a request for extradition is refused on the ground of nationality, the authorities forward the case to prosecution authorities without delay. The prosecution in lieu of extradition is also possible through the direct application of treaties. The Act of October 27, 2010 has completed the Act of June 20, 2001 by inserting article 14-1, in application of the principle "aut dedere aut judicare" .

Article 44 Extradition

Paragraph 12

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

394. Luxembourg confirmed that it has fully implemented this provision of the Convention.
395. The Act of 27 October 2010 has also supplemented the law of 17 March 2004 relating to the EAW by including an article 20.4 stipulating that "If the presentation is not performed, the Luxembourg shall submit the case to its competent authorities for the purposes of prosecution according to the laid down rules."

(b) Observations on the implementation of the article

396. The provision seems to be only relevant in relation to EU Member States because the provision allows to take them back to serve the sentence.
397. The provisions in respect of EAW and extradition are therefore in compliance with article 44.11 of the Convention.

Article 44 Extradition

Paragraph 13

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

(a) Summary of information relevant to reviewing the implementation of the article

398. Luxembourg confirmed that it has fully implemented this provision of the Convention.
399. The applicable measure is the European Convention on transfer of sentenced persons.
400. Under article 1 of the law of 25 April 2003 on the transfer of sentenced persons, if the Luxembourg national who has been the subject of a final conviction pronounced by a foreign jurisdiction and who evades the enforcement of that condemnation seeks refuge on Luxembourg's ground, Luxembourg can take responsibility for the execution of this condemnation at the request of the State which has pronounced the final sentence.
401. This provision is also to be applied in the case of refusal of extradition because of the Luxembourg nationality.

(b) Observations on the implementation of the article

402. The Luxembourg answer made reference to Article 44 para 11 of the Convention. It seems, that the Luxembourg authorities have to exercise their own jurisdiction over the Case including an own (and new) trial against the national or resident. Therefore it was unclear if there is domestic legislation allowing the enforcement of the foreign sentences over an own national or resident, even in the absence of an international legal instrument (with non-Member States of the EU and the COE).
403. A convicted Luxembourg citizen who evades prison on the requesting state could serve the sentence in Luxembourg upon request of the Requesting State.
404. However, Luxembourg is not able to enforce a foreign sentence whenever they rejected a request for extradition (made for enforcement purposes) on grounds of nationality, as envisaged in article 44, paragraph 13, of the Convention. Moreover the execution of a foreign sentence depends on a request of the sentencing State. Therefore, Luxembourg

may wish to consider the introduction of legal provisions that allow for the recognition of foreign sentences for the purpose of enforcement of the sentence.

Article 44 Extradition

Paragraph 14

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

(a) Summary of information relevant to reviewing the implementation of the article

405. Luxembourg confirmed that it has fully implemented this provision of the Convention.

406. Luxembourg provided the following laws:

June 20, 2001. -Law on Extradition

18. 1) the person sought can be arrested at the request of the State prosecutor competent in the execution of an enforceable sentence referred to in article 15.2) a), issued in original or authenticated copy.

The person sought can be arrested in execution of an arrest warrant or of any other act having the same effect referred to in article 15.2) a), issued in original or authenticated copy, provided that they are rendered enforceable by the Council Chamber of the District Court of the place of residence or the place where he can be found.

2) The detainee shall be notified:

(1) of the fact referred to in article 15.2) a) pursuant to which he has been arrested.

(2) the facts referred to in article 15.1) and 152) b), c) and e).

He shall also be informed

(a) of the right to counsel of his choice or to be appointed by the Court;

(b) of his faculty to agree to extradition.

(3) A report of the preceding arrests, notifications and information shall be drawn up. The statements of the arrested person are recorded in the minutes should he dispute his identification with the person sought.

This report is presented to the State Prosecutor who required the arrest within 48 hours at the latest following the arrest.

19. 1) In the five days running from the day following the arrest recorded in the report referred to in article 18.3), the detainee or his counsel may present a motion for dismissal of the arrest at the registry of the Court or at the registry of the detainment facility.

The Council Chamber of the Court of appeal shall hand down an emergency decision within ten days at the latest of the declaration, after hearing the oral arguments of the public prosecutor, the detainee and his counsel.

The registry of the Court has the duty of notifying the detainee and his counsel, of the place, day and hour of the hearing, at least 24 hours before the hearing.

b) si la demande d'extradition apparaît manifestement mal fondée; ou

c) s'il existe des garanties réelles permettant d'avoir la conviction que la personne réclamée ne se soustraira pas à la remise à l'Etat requérant au cas où l'extradition serait accordée.

2) The dismissal of the arrest may be ordered:

a) if the arrest procedure is vitiated by an irregularity with a serious infringement of the rights of the person sought; or

b) if the extradition request appears manifestly unfounded; or

c) if there are real guarantees guaranteeing that the person sought will not flee from the surrender to the requesting State in the event that extradition be granted.

3) The judgment of the Council Chamber of the Appellate Court cannot be the subject of an appeal in cassation.

4) The dismissal of the arrest does not preclude a new arrest in the event of production by the requesting State of elements which would support the merits of the request for extradition.

20. 1) In case of an emergency, the authorities of the requesting State may request the provisional arrest of the person sought, either through the diplomatic channel, directly by mail or by the International Criminal Police Organization (INTERPOL), or by any other means leaving a written record or accepted by Luxembourg.

2) The request for provisional arrest indicates the existence of one of the elements provided for in article 15.2 a) and is part of the intention to send a request for extradition. It must mention the offence for which the extradition is requested, the time and place where it was committed and, to the extent possible, the description of the person sought.

3) The provisional arrest warrant is issued by the investigating judge of the place of residence of the person sought or the place where he may be found. The requesting State is immediately informed of the answer given to its application.

4) The provisional arrest shall terminate, if, within a period of 18 days after the arrest, Luxembourg has not received the application for extradition accompanied by the documents mentioned in article 15; the provisional arrest may in no case exceed 45 days after the arrest.

5) The person sought may, at any moment during the judicial phase, apply for release under bail. The forms and procedure for this application are governed by the provisions of the Code of Criminal Procedure relating to bail.

Release may be ordered only:

a) if the arrest procedure is vitiated by an irregularity with a serious infringement of the rights of the person sought, or

b) if the request for provisional arrest appears manifestly unfounded, or

c) if there are real guarantees guaranteeing that the person sought will not flee from the surrender to the requesting State in the event that extradition be granted.

6) In case the release is ordered, the requesting State shall be notified without delay.

7) The release does not preclude a new arrest and extradition if a request is presented later.

21. 1) Extradition shall be granted only after a reasoned opinion from the Council Chamber of the Court of appeal. The hearing shall be public unless the person sought asks for closed chambers.

The public prosecutor, the person and his counsel, summoned by the registry of the Court at least 48 hours before the hearing, shall be heard.

2) The Minister of Justice shall decide on the request for extradition at the light of the evidence and the requested opinion of the Council Chamber of the Court of Appeal.

Extradition may be granted only with the assent of the Council Chamber of the Court

22. Extradition is granted only under the condition that the person who is delivered will not be prosecuted, judged, nor held for execution of a custodial sentence, nor subjected to a measure of safety nor to any other restriction of his personal liberty, for any fact prior to his surrender other than those motivating the extradition, nor will he be re-extradited to a third State for offences prior to his surrender, except when Luxembourg consents to the continuation or the re-extradition.

In case of a request of the requesting State for the purpose of extension of the extradition, said request, done in writing, will be accompanied by the documents laid down in article 15 and a report recording the statements of the extradited or his refusal to make a statement. The place of residence of the extradited must be specified. The consent referred to in the first subparagraph shall be given when the offence for which the extension is requested implies itself the obligation to extradite under the terms of this Law.

In case of a request for the purposes of re-extradition made by a third State, the written request shall indicate the cause of the re-extradition and be accompanied by the documents provided for in article 15 as well as a report recording the statements of the extradited or his refusal to make a statement.

The consent referred to in the first subparagraph shall be given when the offence for which the extension is requested implies itself the obligation to extradite under the terms of this Law.

The opinion of the Council Chamber of the Court of appeal must be requested in either case.

The extradited is not convened, but informed the date which is fixed for the hearing of the Council Chamber of the Court of appeal and of his right to be represented by a lawyer of his choice or appointed by the court. This information is sent by mail at least 15 days before the date on which the hearing is fixed.

The provisions of article 21 are applicable.

The first paragraph of the present article does not apply when, having had the opportunity of doing so, the extradited individual did not leave within 45 days following his final discharge, the territory of the requesting State to which he was surrendered or if he has returned after having left.

23. At any time from the provisional arrest, the person sought may consent to the extradition without further formality.

This consent is irrevocable.

A formal consent pronounced before a magistrate of the competent public prosecutor is necessary. A record of the consent is prepared, and it must be signed by the magistrate and the person sought. This record includes the information given to the person sought on the effects of his consent.

During the declaration referred to in the preceding paragraph, the person sought shall be assisted by his counsel, who will sign the report. If the person sought has not retained counsel, he is to be advised on his right to assistance of counsel. His response is recorded in the report.

The consent may be formulated in writing. In this case, it is attached to the report.

If the person sought understands neither French nor German, the formal consent is collected only under the assistance of an interpreter who will sign the report.

The report, together with the dossier, is immediately forwarded to the Minister of Justice who may grant extradition without further formality.

Article 22, first and last paragraphs, applies also to the extradition without formality.

24. If extradition is requested concurrently by several States, either for the same offence or for different offences, the Minister of Justice will decide, taking into account all the circumstances and especially the relative seriousness, the venue and date of the offences, the respective dates of the extradition requests, the nationality of the person sought and the possibility of a subsequent extradition to another State.

If the extradition is requested concurrently by several States for separate acts, the Minister of Justice may decide on the different requests.

In this case, if two or several requests are honored, the State to which the person is delivered is determined as stated in the first paragraph, the agreement being valid for the further consent to the re-extradition referred to in article 22.

25. 1) The Minister of Justice may, after deciding on the extradition request, postpone the surrender of the person sought so that he may be prosecuted by the judicial authorities of Luxembourg or, if he has already been sentenced, so that he can serve, in Luxembourg, a sentence passed for one act other than that for which the extradition is requested.

2) Instead of deferring the surrender, the Minister of Justice may surrender temporarily to the requesting State, on its request, the person sought in conditions to be determined by mutual agreement with the Minister of Justice of the requesting State. However, Luxembourg grants this temporary surrender only if this is a person who is serving a sentence on its territory and if specific conditions so require.

3) Detention suffered as a result of this surrender, on the territory of the requesting State, is computed on the duration of the sentence that the person sought must serve in Luxembourg territory.

26. In case extradition is granted by the Minister of Justice, the requesting State shall be informed of the place and the date of surrender, as well as the duration of detention suffered by the person sought for extradition.

If the Minister of Justice is led to assume, as a result of the reiterated non reception of the person claimed by the requesting State which has been duly informed, and the absence of valid explanations of its part, that the State has waived the extradition, he will order the dismissal of the arrest of the person sought and may refuse to extradite him in the same State for the same cause.

27. The Minister of Justice may grant transit only on the same conditions as those of extradition.

However the documents provided for in article 15 may be transmitted in a manner provided for in paragraph 1) of article 20.

28. Costs incurred by the extradition are the responsibility of the requesting State upon receiving the person extradited by the authorities from that State delegated for this task.

The costs of transit through the territory of Luxembourg are borne by the requesting State.

29. Generally whatsoever objects in the possession of the person sought, found at the time of the arrest or discovered later, may be seized by the competent investigating judge at the request of the requesting State or on indictment of the State Prosecutor, in the form laid down by Luxembourg law, if these objects can serve as evidence for conviction or are derived from the offence.

The requesting State is immediately informed by one of the means provided for in paragraph 1) of article 20.

This seizure loses any effect, except with the agreement of the person claimed to see the objects seized be delivered to the requesting State, if the State of Luxembourg has not received, from the requesting State within 45 days from the date of the seizure, a letter of petition for the same purpose.

The letter of petition is drawn according to the applicable rules in this matter.

The procedure for the seizure of objects and the execution of the letters rogatory cannot delay the procedure relating to the extradition request.

407. Luxembourg provided further information about articles 18 to 21 of the Act of June 20, 2001 on extradition shall guarantee to the person to be extradited all the rights required for his defense from the moment of his arrest and throughout of the actual extradition procedure. Some tracks of specific recourses are provided for in all stages of the procedure and that from the moment of arrest. Article 6 of the European Convention of Human Rights is applied by the Council Chamber of the Court of Appeal.

(b) Observations on the implementation of the article

408. Safeguards of due process guarantee all human rights of the person sought from the moment of his/her arrest and throughout the extradition process. Article 6 of the European Convention of Human Rights is applied by the courts in domestic extradition proceedings.

Article 44 Extradition

Paragraph 15

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

(a) Summary of information relevant to reviewing the implementation of the article

409. Luxembourg confirmed that it has fully implemented this provision of the Convention.

410. Luxembourg provided the following laws:

20 June 2001. -Law on Extradition

11. Extradition requested for the purposes of execution of a judgment in absentia against which no means of appeal are no longer open, shall not be granted if this extradition may have the effect of imposing a penalty in the person sought without this person being able to exercise the rights of defense guaranteed by article 6.3 (c) of the Convention for the safeguarding of human rights and fundamental liberties. However, extradition may be granted if the requesting State gives assurances deemed sufficient as to the right of the person sought to a new trial safeguarding the rights of the defense.

12. 1) If the fact for which the extradition is requested is punishable by the death penalty under the law of the requesting State, extradition shall be granted only on condition that the requesting State gives assurances deemed sufficient that the death penalty will not be executed.

2) Extradition cannot take place if there are serious reasons to believe that the person sought may be subjected to acts of torture as understood by articles 1 and 3 of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or

Punishment and by article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

13. 1) Extradition shall not be granted if the person sought is a minor of less than sixteen years of age.

2) Extradition may be refused if the person sought is a minor over the age of sixteen years.

14. Extradition may be refused if Luxembourg, taking into account the nature of the offence and the interests of the requesting State, considers that the extradition would be incompatible with humanitarian considerations, such as the age or health of the person sought.

Additionally cited as applicable measure, article 4.1 of the Extradition Law:

Art. 4. 1) L'extradition n'est pas accordée si l'infraction pour laquelle elle est demandée constitue une infraction politique, une infraction connexe à une telle infraction ou une infraction inspirée par des motifs politiques.

2) La même règle s'applique s'il y a des raisons sérieuses de croire que la demande d'extradition, motivée par une infraction de droit commun, a été présentée aux fins de poursuivre ou de punir une personne pour des considérations de race, de religion, de nationalité, d'appartenance à un certain groupe social ou d'opinions politiques ou que la situation de cette personne risque d'être aggravée pour l'une ou l'autre de ces raisons.

(b) Observations on the implementation of the article

411. The reviewing experts note that cited legislation provides protection to minors of less than sixteen years of age. Reference to the race, religion, nationality, or political views appears on the cited legislation. Although regional treaties contain provisions on discriminatory clauses, it was noted that Luxembourg has ratified the European Convention on Extradition of 1957, which does not contain a distinction between race and ethnic origin. No case law was provided.

Article 44 Extradition

Paragraph 16

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

412. Luxembourg confirmed that it has fully implemented this provision of the Convention, because in practice as long as fiscal aspect is only an annex, the case could be treated as a corruption case.

413. The legal basis is provided by the Convention. Article 44.16 of the Convention applies directly by virtue of the primacy of international treaties.

414. Following the example of the principles applicable in the field of mutual legal assistance, Luxembourg will not refuse the extradition if the facts of corruption are also accessory tax offenses. Extradition is not denied for lack of specific international agreements applicable to the matter, except if the facts are exclusively tax offenses.

(b) Observations on the implementation of the article

415. The reviewing experts noted that this is a mandatory provision. They asked the Luxembourg authorities to elaborate on how to avoid a situation where a corruption case is considered as fiscal offence, given that Article 1(6) of the Extradition Act clearly prescribes

“6. Extradition shall not be granted for offences on issues of taxes and levies, customs and foreign exchange.”

416. The Luxembourg authorities explained that they would never refuse extradition on this ground since they are able to reevaluate the facts.

417. Luxembourg does not refuse extradition for tax offences if the latter are related to other extraditable offences (accessory extradition). Although Art. 1(6) of the Extradition Act simply states that “[e]xtradition shall not be granted for offences on issues of taxes and levies, customs and foreign exchange”, extradition is only denied if the relevant request is based exclusively on tax offenses. The national authorities confirmed that fiscal offences do not pose difficulties in corruption-related investigations.

Article 44 Extradition

Paragraph 17

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

(a) Summary of information relevant to reviewing the implementation of the article

418. Luxembourg confirmed that it has fully implemented this provision of the Convention.

419. Luxembourg provided as the applicable legal measure the Extradition Law of 20 June 2001.

420. Luxembourg reported that in practice there is a standard procedure if there is the concern that the court could refuse extradition. The final decision will be made by the Minister as long as the court – which gives an opinion beforehand – allows it. The council chamber would only provide an opinion. The Minister’s decision is not a decision of a high court and cannot be regarded as such but an administrative decision which can be appealed in administrative courts.

(b) Observations on the implementation of the article

421. The reviewing experts noted that the Extradition Law outlines the procedure that must be followed for the submission and processing of a request for extradition. However, as reported by the authorities, although consultation is not foreseen by law it

is clarified that is a common practice that the authorities consult the requesting State Party when certain questions require clarification .

Article 44 Extradition

Paragraph 18

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

(a) Summary of information relevant to reviewing the implementation of the article

422. Luxembourg confirmed that it has fully implemented this provision of the Convention.
423. Luxembourg did not provide specific text of any other bilateral or multilateral agreement or arrangement related to extradition that have not already been cited in previous answers related to this article. The authorities considered that the European Arrest Warrant is enough.

(b) Observations on the implementation of the article

424. The reviewing experts noted that Luxembourg has entered into a wide range of international agreements in the field of extradition.

II. EXTRADITION AND MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

A. NATIONAL LEGISLATION

1. L. 20 June 2001 on extradition

2. L. 18 May 1999 introducing certain measures to facilitate cooperation with: 1. the international Tribunal established by the United Nations Security Council of the in its Resolution 827 of 25 May 1993, for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Socialist Federal Republic of Yugoslavia since 1991

2 the international Tribunal created by the United Nations Security Council in its Resolution 955 of 8 November 1994 for the trial of persons responsible for acts of genocide or other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighboring States, between 1 January and 31 December 1994

3. L. 8 August 2000 on international mutual legal assistance in criminal matters

4. L. 17 March 2004 on the European Arrest Warrant and surrender procedures among European Union Member States (extradition)

5. L. 21 March 2006 on the joint investigation teams

6. L. 25 August 2006 relating to the DNA identification in criminal procedures

7. L. December 19, 2008 aimed at inter-administrative and judicial cooperation and the strengthening of the direct Tax Administration, the Land Registration and Estates Department and the of customs and Excise Administration

B. MULTILATERAL CONVENTIONS

1. 13 December 1957. – European Convention on Extradition
2. 15 October 1975. – Additional Protocol to the European Convention on Extradition
3. 20 avril 1959. – European Convention on Mutual Assistance in Criminal Matters
4. 17 March 1978. – Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters,

Signed in Strasbourg
5. 27 June 1962. – 1. Treaty on Extradition and Mutual Assistance in Criminal Matters between the Kingdom of

Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands. 2. Protocol on civil liability for agents in mission in the territory of another party (mutual legal assistance + extradition)
6. 14 June 1985. – Schengen Agreement and Convention for its implementation
7. L. January 1994 approving the agreement between the Member States of the European communities on the simplification and modernisation of the modes of transmission of requests for extradition signed at Donostia-San Sebastian, May 26, 1989 (extradition)
8. L. 14 June 2001 Approving the Council of Europe Convention on Laundering, search, seizure and confiscation of the proceeds of crime and financing of terrorism, signed in Strasbourg on 8 November 1990
9. 10 March 1995. – Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the simplified extradition procedure between the Member States of the European Union, signed in Brussels (extradition)
10. 27 September 1996. – Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the extradition procedure between the Member States of the European Union, signed in Dublin (extradition)
11. L. 18 December 2007.– approving the United Nations Convention against transnational organized crime, adopted by the United Nations General Assembly in New York, November 15, 2000
- 12 L. 18 December 2008 approving the Cooperation Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, to combat fraud and any other illegal activity to the detriment of their financial interests
13. Reference.

C. BILATERAL CONVENTIONS

1. Australia (mutual legal assistance and extradition)
2. Belgium (Extradition)
3. United States of America (mutual legal assistance and extradition)
4. Great Britain (extradition)

Article 45 Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

(a) Summary of information relevant to reviewing the implementation of the article

426. Luxembourg provided the following agreement:

Law of 31 July 1987 approving the Convention of 21 March 1983 on the transfer of sentenced persons and regulating the transfer of persons sentenced and detained abroad

Art. 1. (1) the Convention on the transfer of sentenced persons opened for signature in Strasbourg, 21 March 1983 is Approved. (2) The Government of Luxembourg declares that in accordance with article 17.3 of the Convention, requests for transfers and supporting documents must be accompanied by a translation in German or French.

Art. 2. when, pursuant to a treaty or an international agreement, a person detained in pursuance of a sentence imposed by a foreign jurisdiction is transferred to Luxembourg territory to carry out the portion of the sentence remaining to be served, the execution of the penalty is carried out in accordance with the provisions of Luxembourg law.

Art. 3. Upon arrival on Luxembourg soil, the sentenced inmate is presented to the State Attorney General or his delegate in the enforcement of sentences, who will establish his identity through an interrogation and draw up a report of the examination. However, if the interrogation cannot be immediate, the convicted person is led to the holding facility, where he cannot be detained for more than 24 hours. At the expiration of this period, he shall be taken automatically to the State Prosecutor or his delegate. In the light of the documents noting the agreement of the States on the transfer and the consent of the person concerned as well as the original or a copy of the foreign judgment, accompanied, where appropriate, of an official translation, the State general Attorney or his delegate shall order the immediate imprisonment of the convict.

Art. 4. The sentence pronounced abroad is, by virtue of the convention or international agreement, directly and immediately binding on the national territory for the part that remained to be served in the foreign State. However, when the sentence is, by its nature or duration, more stringent than the penalty provided for by Luxembourg law for the same facts, the Luxembourg tribunal correctional, seized by the State Prosecutor by a summons or by the convicted person upon request, shall substitute the sentence that approximates it the most in Luxembourg law or shall reduce this sentence to the legally applicable maximum. He shall determine as a result, depending on the circumstances, the nature, and within the limit of the part that remained to be served in the foreign State, the length of the sentence to be served.

Art. 5. The tribunal shall decide in a public hearing, after hearing the state prosecutor, the convicted person and, where appropriate, the Commission selected by him or appointed by the Court at his request. The decision is immediately enforceable notwithstanding appeal.

Art. 6. The time for transfer shall be fully counted in the duration of the sentence which is served in Luxembourg.

Art. 7. The application of the penalty is governed by Luxembourg law.

Art. 8. No criminal proceeding may be initiated or continued and no conviction can be executed for the same acts against the convicted person serving in Luxembourg, pursuant to a treaty or an international agreement, a custodial sentence handed down by a foreign court.

Law of 25 April 2003 on the transfer of sentenced persons.

Art. 1. -when a Luxembourg citizen, who has been the subject of a final conviction handed down by a foreign court, evades the execution of this sentence and takes refuge on Luxembourg soil. Luxembourg can assume the execution of this sentence at the request of the State which handed down the final sentence. When a foreign national. Who was the subject of a final conviction by a Luxembourg Court, evades the execution of this sentence and takes refuge on the territory of his state, Luxembourg can petition this State to assume the execution of the sentence. At the request of the State which gave the final sentence, the State Prosecutor can proceed to arrest the person sentenced pending a decision on the request of support for execution. The duration of this prison is calculated as part of the total duration of the sentence. The transfer of the enforcement does not require the consent of the sentenced person.

Art. 2 - Where a person regularly established in Luxembourg is the subject of a final sentence abroad and this conviction or administrative decision taken as a result of this conviction involves a definitive measure of expulsion or deportation, the Luxembourg authorities can give their consent to the transfer of this person at the request of the sentencing State. When a person is subject to a final sentence in Luxembourg and this conviction or an administrative decision taken as a result of this conviction has a definitive measure of expulsion or deportation, the Luxembourg authorities may request another State to accept the transfer of the sentenced person. In the cases provided for in paragraphs 1 and 2, the sentencing State shall provide: a declaration containing the opinion of the person convicted concerning the planned transfer; a copy of the final measure of expulsion or deportation. The transfer of the execution of the sentence does not require the consent of the sentenced person.

Art. 3 - When a person detained in pursuance of a sentence imposed by a foreign jurisdiction is transferred to Luxembourg territory to carry out the portion of the sentence remaining to be served or has taken refuge on Luxembourg territory before completing his sentence, the execution of the penalty is pursued in accordance with the provisions of Luxembourg law.

Art. 4. - Upon his arrival on Luxembourg soil or immediately after his arrest, the convicted person is presented to the general State Prosecutor or his delegate in the enforcement of sentences, who shall conduct his examination to ascertain his identity and shall write a report. However, if the examination cannot be immediate, the convicted person is led to the house arrest where he cannot be detained for more than 24 hours. At the expiration of this period, he shall be lead automatically before the State Prosecutor or his delegate. In the light of the evidence noting the agreement of the States on the transfer and the consent of the person concerned, if required, as well as the original or a copy of the sentence, accompanied, where appropriate, by an official translation, the general Attorney State or his delegate shall order the immediate incarceration of the convicted.

Art. 5 - The sentence pronounced in a foreign State is, by virtue of the convention or international agreement, directly and immediately binding on the national territory for the part that remained to be served in the foreign State.

Art. 6. The time for transfer shall be fully counted in the duration of the sentence which is served in Luxembourg.

Art. 7. The application of the penalty is governed by Luxembourg law.

Art. 8. No criminal proceedings may be initiated or continued and no conviction can be executed for the same acts against the convicted person serving in Luxembourg a custodial sentence handed down by a foreign court.

Art. 9. - The Minister of Justice is responsible for the reception and sending of requests for transfer within the meaning of this Law.

Art. 10. – Articles 2 to 8 of the Law of 31 July 1987 approving the Convention of 21 March 1983 on the transfer of sentenced persons and regulating the transfer of persons sentenced and detained abroad are repealed.

427. Luxembourg has not concluded bilateral treaties on the matter. It could use as legal basis the internal law and reciprocity.

(b) Observations on the implementation of the article

428. . The transfer of sentenced persons is possible on the basis of the Convention on the transfer of sentenced person of 1983 and the Protocol of 1997. The Act of April 25, 2003 is applied in the absence of applicable multilateral or bilateral conventions.

429. Luxembourg is encouraged to consider the expansion of its network of bilateral treaties on transfer of sentenced persons because of the high number of foreign prisoners in its penitentiary institutions

Article 46 Mutual legal assistance

Paragraph 1

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

430. Luxembourg confirmed that it has fully implemented this provision of the Convention through the legal instruments of the European Union (EAW and others) and its law on mutual legal assistance (MLA).

431. Luxembourg provided the following summary of applicable mutual legal assistance laws and arrangement:

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2 the international Tribunal created by the United Nations Security Council in its Resolution 955 of 8 November 1994 for the trial of persons responsible for acts of genocide or other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighboring States, between 1 January and 31 December 1994

3. L. 8 August 2000 on international mutual legal assistance in criminal matters

4. L. 17 March 2004 on the European Arrest Warrant and surrender procedures among European Union Member States (extradition)
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4. 17 March 1978. – Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters,
Signed in Strasbourg
5. 27 June 1962. – 1. Treaty on Extradition and Mutual Assistance in Criminal Matters between the Kingdom of
Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands. 2. Protocol on civil liability for agents in mission in the territory of another party (mutual legal assistance + extradition)
6. 14 June 1985. – Schengen Agreement and Convention for its implementation
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- 12 L. 18 December 2008 approving the Cooperation Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, to combat fraud and any other illegal activity to the detriment of their financial interests
13. Reference.

C. BILATERAL CONVENTIONS

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1. Australia (mutual legal assistance and extradition)
2. Belgium (Extradition)
3. United States of America (mutual legal assistance and extradition)
4. Great Britain (extradition)

432. The authorities further stated that Art. 46 of the Convention is directly applicable such because of the primacy of international treaties. This provision alone can constitute the legal basis for the execution of requests for mutual assistance and has been the basis for an application that have been addressed to Luxembourg e.g. by Egypt.

433. The district court in Diekirch also executed a request for mutual assistance requiring a measure of coercion and another without measures of coercion.

434. Cf. requests for mutual legal assistance by Egypt (2011) in application of the Convention, and a recent request from Senegal.

(b) Observations on the implementation of the article

435. The legal framework for mutual legal assistance is set out in Law of 8th August 2000. In addition, Luxembourg has entered into a number of bilateral and multilateral agreements on MLA. The Convention could be used as legal basis. Mutual legal assistance can also be afforded on the basis of reciprocity.

Article 46 Mutual legal assistance

Paragraph 2

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

436. Luxembourg confirmed that it has fully implemented this provision of the Convention. The authorities stated that mutual legal assistance may also be provided in relation to alleged offences involving legal persons.

437. Luxembourg provided as applicable measures the Law of 3 March 2010. specific text about the applicable measures but

Loi du 3 mars 2010

1. introduisant la responsabilité pénale des personnes morales dans le Code pénal et dans le Code d'instruction criminelle
2. modifiant le Code pénal, le Code d'instruction criminelle et certaines autres dispositions législatives.

438. Luxembourg did not provide examples of implementation or other relevant cases.

(b) Observations on the implementation of the article

439. The criminal responsibility of legal persons was established. In practice, they receive the same treatment as natural persons. Mutual legal assistance may also be provided in relation to alleged offences involving legal persons, according to Law of March 3rd, 2010..

Article 46 Mutual legal assistance

Subparagraph 3 (a) to 3 (k)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*
- (j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*
- (k) The recovery of assets, in accordance with the provisions of chapter V of this Convention. (b) Effecting service of judicial documents;*

(a) Summary of information relevant to reviewing the implementation of the article

440. Luxembourg confirmed that it could afford the forms of mutual legal assistance listed in the provision above.

441. Luxembourg provided the following laws:

August 8th, 2000 Law on Mutual Assistance in Criminal Matters, text coordinated to 3 November 2010

Version applicable from 1 December 2010

Art. 1. This law applies to requests for mutual legal assistance in criminal matters, hereinafter referred to as “requests for mutual legal assistance”, submitted to the Grand Duchy of Luxembourg for a seizure of objects, documents, funds or assets of any kind on its territory, the communication of information or documents ordered in accordance with Articles 66-2 to 66-4 of the Code of Criminal Procedure, a search, or any other investigative measure involving a similar degree of constraint and that are issued by:

- judicial authorities of requesting States that have not entered into international agreements with the Grand Duchy of Luxembourg relating to mutual legal assistance;
- judicial authorities of requesting States that have entered into international agreements with the Grand Duchy of Luxembourg relating to mutual legal assistance, unless the provisions of this law conflict with those of said international agreements;

– an international judicial authority recognised by the Grand Duchy of Luxembourg.”

Art. 2. (1) Subject to the special provisions of agreements included in the conventions providing for the possibility of direct transmission, requests for assistance are to be sent by the competent authorities of the requesting State to the Attorney general of State of Luxembourg.

(2) They are returned after execution either through the official channels or by the direct route.

(3) If the requesting State addresses the request for assistance directly to the judicial authorities or to the Luxembourg Minister of Justice, these must transmit the request as soon as possible to the Procureur Général d’Etat.

(4) After reviewing the request for mutual assistance in the aspects of his jurisdiction, the Procureur Général d’Etat transmits it to the judicial authorities for execution if it considers that there is no reason for objections.

(5) However, if the case on which the request for assistance is based appears serious and there is urgency consisting in particular in a risk of destruction of the evidence, the requested competent judicial authority can proceed with the tasks requested.

Art. 3. The Procureur Général d’Etat may refuse to provide mutual legal assistance in the following cases:

- if the request for mutual legal assistance is likely to endanger sovereignty, jeopardise security, pose a threat to public order or harm other essential interests of the Grand Duchy of Luxembourg;

- if the request for mutual legal assistance deals with offences likely to be qualified by Luxembourg law as either political offences or as offences connected to political offences.

Subject to the provisions of conventions, any request for mutual legal assistance is refused if it involves offences related to taxes, customs duties or currency exchange under Luxembourg law.

No appeal may be brought against the decision of the Procureur Général d’Etat.”

This text has been recently changed. Article 3 of the Law of 8 August 2000, as amended by article 10 of *Law of 27 October 2010 relating to the Fight against Money Laundering and Terrorist Financing*, indicates that “Subject to the provisions of conventions, a request for mutual legal assistance is refused if it exclusively involves offences related to taxes, customs duties or currency exchange under Luxembourg law”.

Art. 4. The requests for assistance that do not include the following data shall be denied:

- a) the authority which issued the request,
- b) the object and the grounds of the application,
- c) the date and place of the commission of the facts, a brief statement of the facts, and the relationship between these facts and the object of the taking of evidence requested,
- d) insofar as possible, the identity and the nationality of the person concerned,
- e) the name and address of the recipient, if applicable,
- f) the text of the indictment and penalties attached,
- g) a translation into French or German of the request for mutual assistance and documents to be produced.

The execution of a request for mutual assistance shall also be refused if, without having to proceed to an in-depth consideration of the merits, it is predictable, with regard to the requirements set out in article 4, point (c)), that the means to be implemented are not able to achieve the objective referred to in the request for assistance or go beyond what is necessary to achieve it.

In the event that the request for assistance is incomplete or the information provided by the authorities of the requesting State prove insufficient, additional information may be requested.

Requests for assistance which do not meet the conditions of this article shall be denied

- by the Procureur Général d'Etat, subject to the powers of the other judicial authorities, in the event where the Grand Duchy of Luxembourg is not bound to the requesting State by an agreement on mutual legal assistance;

- by the judicial authorities in the case where the Grand Duchy of Luxembourg is linked to the requesting State under an agreement on mutual legal assistance.

Art. 5. The request for mutual assistance must meet the following requirements:

it must emanate from a competent judicial authority under the law of the requesting State;

The fact supporting the request must be likely to be characterized as a crime or offence, punishable by a custodial sentence of a maximum of at least one year under Luxembourg law and the law of the requesting State;

the person named in the application must not have been judged in the Grand Duchy of Luxembourg for the same fact;

the requested measure must be taken under Luxembourg law by the Luxembourg judicial authorities for purposes of investigation or prosecution as if it were a similar domestic case.

Except as otherwise provided in a norm of international law, the statute of limitations of public action must not have been acquired, neither according to Luxembourg law nor according to the law of the requesting State.

Acts interrupting or suspending time limitation which have been accomplished in the requesting State under the laws of this State are taken into account for the calculation of the period of limitation according to the laws of Luxembourg.

Art. 6. The execution of mutual assistance measures is entrusted to the authority which would be competent if the offence had been committed in the Grand Duchy of Luxembourg. (law of October 27, 2010)

Art. 7. Financial institutions and their directors, officers and employees shall not disclose to the customer or to other persons without the express prior consent of the authority having ordered the measure the fact that documents have been seized or that documents or information have been communicated in execution of a request for mutual legal assistance. A fine of between €1,250 and €1,250,000 shall be imposed on any person who knowingly contravenes this obligation."

« **Art. 8.** » Mutual legal assistance cases are treated as urgent and priority cases. The requested authority shall inform the applicant authority of the State of the procedure and of any delay.

Art. 9. (1) The Chambre du Conseil automatically examines the regularity of the proceedings. If it observes any ground of nullity, it declares the relevant measure null and void as well as any later measures deriving from the null and void measure.

(2) If objects or documents have been seized or if objects, documents or information have been forwarded to the investigating judge, their transfer to the requesting State is subject to the agreement of the Chambre du Conseil.

(3) Applications by the Procureur d'Etat for the verification of the regularity of proceedings and for the transmission of objects, documents or information are referred to the Chambre du Conseil.

(4) With the exception of persons who have not been informed of the measure ordered in execution of the request for mutual legal assistance by virtue of the provisions of Article 7, the person who is the subject of the investigation as well as any third party involved able to demonstrate a legitimate personal interest (intérêt personnel légitime) may file a statement containing observations on the regularity of the proceedings with the registrar of the Chambre du Conseil of the district court.

Requests for restitution may also be formulated in this statement containing observations on the regularity of the proceedings.

Any such statement must be filed within a period of ten days from the notification of the measure to the person who is to execute the ordered measure, after which time it shall no longer be possible to seek such a remedy.

Any statement filed by one of the persons mentioned in the first subparagraph of this paragraph shall be declared inadmissible unless it is signed by an attorney (avocat à la Cour) at whose offices the person elects domicile. This election of domicile shall have effect for as long as there is no new election of domicile.

(5) Persons entitled to file a statement, together with their management and employees, may not inform the persons to whom the measure ordered in execution of the request for mutual legal assistance was not revealed by virtue of the provisions of Article 7 as to the existence of, or terms of, the statement, subject to the fine provided for in Article 7."

Art. 10. (1) No later than twenty days after the matter is referred to the Chambre du Conseil, the latter shall decide, in a single ruling, on the regularity of the proceedings, the transfer to the requesting State of the objects, documents or information, as well as on the observations and requests for restitution formulated in the statements filed under the conditions set forth in Article 9.

(2) The Chambre du Conseil shall order the restitution of any objects, documents, funds or assets of any kind that are not directly related to the acts on which the request for mutual legal assistance is based.

(3) A copy of the order is communicated to the Procureur Général d'Etat and served to the attorney at the offices where domicile was elected by virtue of the provisions of Article 9.

(4) No appeal may be brought against the order of the Chambre du Conseil.

(5) Persons having filed a statement, and their directors, officers and employees, may not inform the persons to whom the measure ordered in execution of the request for mutual legal assistance has not been revealed by virtue of the provisions of Article 7 as to the existence of, or terms of, this order, subject to the fine provided for in Article 7."

Art. 11. (1) If assets other than those referred to in Article 9 have been seized in execution of the request for mutual legal assistance, the owner as well as any other person having rights regarding these assets, may claim restitution until such time as a foreign judgment for confiscation or restitution relating to these assets is referred to the criminal court for registration and enforcement (exequatur).

(2) In order to be admissible, any request of this type shall be filed with the registrar of the Chambre du Conseil of the competent district court by the owner or any other person having rights regarding these assets, and shall be signed by an attorney at whose offices domicile was elected. This election of domicile shall have effect for as long as there is no new election of domicile. Any summons or notification is made at the elected domicile.

(3) In the event that a request provided for in paragraphs 1 and 2 of this article has been filed, the following procedure is observed:

a) At least eight days before the hearing, the registrar summons the applicant at his or her elected domicile and his or her attorney by registered letter with acknowledgement of receipt, informing them of the date, time and place of the hearing.

b) This period of eight days may not be increased on grounds of distance.

c) The Chambre du Conseil rules on the basis of a reasoned order, after having heard the oral arguments of all attorneys and parties, the applicants' attorneys as well as the Procureur d'Etat.

d) The order issued by the Chambre du Conseil is only enforceable once the time for filing notice of appeal has expired.

e) The registrar serves notice of the Chambre du Conseil's order by sealed, registered letter, with acknowledgement of receipt, to the elected domicile.

(4) Appeals may be brought against orders issued by the Chambre du Conseil:

- by the Procureur Général d'Etat and the Procureur d'Etat in all cases;
- by the applicant, if the order is prejudicial to his or her rights.

Appeals must be lodged within the following time limits, after which it will no longer be possible to seek such a remedy:

- within ten days of the Chambre du Conseil's order by the Procureur Général d'Etat;
- within three days of the Chambre du Conseil's order by the Procureur d'Etat;
- within three days of the Chambre du Conseil's order by the applicant.

(5) The procedure before the Chambre du Conseil of the district court also applies before the Chambre du Conseil of the appeals court.

(6) The judgment by the Chambre du Conseil of the appeals court is enforceable without requiring any other formality.

(7) No appeal to the Cour de Cassation is admissible."

«**Art. 12.**» By way of derogation of article 9, and even in the event of the filling of a (October 27, 2010 Act) "mémoire", the judge presiding the Chambre du Conseil may, on the Procureur d'Etat's written request, allow the transmission without delay to the judicial authority of the requesting State the results from the execution of an international letter rogatory if there is serious and concurring evidence that the conduct of the procedure (Act of October 27, 2010) 'article 9' might endanger the physical or psychological well-being of a person.

No appeal of this decision is admissible. (law of October 27, 2010)

Art. 13. Information obtained via mutual legal assistance may not be used by the requesting State for investigative purposes or to be produced as evidence in criminal or administrative proceedings other than those for which the mutual legal assistance was granted."

Amendments to the Law of 8 August 2000 on mutual legal assistance in criminal matters, provided for by Article 12 of this law, with the exception of point 8 of said article, apply to all requests for mutual legal assistance under the Law of 8 August 2000 referred to competent authorities from the date of the entry into force of this law.

We instruct and order that this Law be inserted into the Official Journal to be enforced and complied with by all whom it may concern.

442. The Luxembourg authorities were requested to deliver additional information, whether or not a judicial or Court decision of the requesting State is required for requests under 3 (c) (f). Luxembourg stated that it does not require a formal decision of a jurisdiction, but the request must come from an authority which is regarded as competent judicial authority by the applicant State. The request must also relate to an investigation, prosecution or judicial proceedings in the requesting State. Thus for example Luxembourg accepts requests for mutual legal assistance from a police or customs authority, or from a member of the police of the Finnish borders. Finland considers in effect, pursuant to its national law, that these authorities are judicial authorities.

(b) Observations on the implementation of the article

443. For incoming requests, Luxembourg will examine if the requesting authority is a judicial authority. Domestically, the investigating judge is the authority in charge of issuing the order.

444. In its response, Luxembourg has outlined a number of provisions that may be considered as contributing to the purposes enumerated in the present provision. No specific provision defines the purposes that would be acceptable in an MLA request. Mutual Legal assistance can be requested and obtained for all the purposes set forth in article 46, paragraph 3, of UNCAC

Article 46 Mutual legal assistance

Paragraphs 4 and 5

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

445. Luxembourg confirmed that it could transmit information as described above.

446. Luxembourg provided as the applicable legal measure article 26-2 of the Criminal Procedure Code.

Art. 26-2. (L. 11 août 1998) Dans le cadre de la coopération internationale pour la lutte contre le blanchiment ou le financement du terrorisme instituée par des traités internationaux auxquels le Grand-Duché est partie ou moyennant réciprocité, le procureur d'Etat peut communiquer aux

autorités d'un autre Etat responsables de la lutte contre le blanchiment ou le financement du terrorisme, des informations sur des actes de blanchiment ou de financement du terrorisme tels que définis aux articles 506-1 et 135-5 du Code pénal ainsi qu'à l'article 8-1 de la loi modifiée du 19 février 1973 concernant la vente de substances médicamenteuses et la lutte contre la toxicomanie. Cette communication ne peut se faire que sous la réserve que les autorités réceptrices n'utilisent les informations transmises qu'aux seules fins de lutte contre le blanchiment ou le financement du terrorisme et aux conditions que ces informations tombent sous le secret incombant à l'autorité qui les reçoit et que celle-ci ne les communique à de tierces personnes ou à une autre autorité qu'après avoir recueilli l'accord exprès du procureur d'Etat de Luxembourg. (L. 12 novembre 2004)

- 447. In application of article 46.4 of the Convention, which is of direct application in view of the primacy of treaties, the spontaneous exchanges of information are legally possible.
- 448. As reported by Luxembourg, some international agreements (Convention of the Council of Europe 1959 and EU Convention 2000) have specific provisions on spontaneous communication of information. In practice, requests can be made and received via Interpol. Egmont is the channel used for Financial Intelligence Unit communication.
- 449. Generally the public prosecutor from one of the two district courts is responsible for the spontaneous exchange of information.
- 450. Information coming from FIU could be exchanged. There are explicit provisions for spontaneous information-sharing
- 451. Another strategy used for the exchange of information is the use of letters rogatory.

(b) Observations on the implementation of the article

- 452. Spontaneous information exchange is already foreseen under Article 7 of the EU Convention on Mutual legal assistance of 2000, and the Convention of the Council of Europe. The Convention can be used as the basis for spontaneous transmission of information outside the European Union framework.

Article 46 Mutual legal assistance

Paragraph 8

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

- 453. Luxembourg confirmed that it has fully implemented this provision of the Convention.
- 454. Luxembourg did not cite the applicable measures, but confirmed that bank secrecy is not a ground of refusal in the Luxembourg law on mutual legal assistance.

(b) Observations on the implementation of the article

455. Requests for legal assistance could not be declined on the ground of bank secrecy even if there was no explicit provision which would prohibit such a denial of MLA.
456. The reviewing team took note of the ratification of the 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and its protocol of 2001, Article 7 of which provides that a Member State shall not invoke banking secrecy as a reason for refusing any cooperation regarding a request for mutual assistance from another Member State, thereby not impeding full compliance with article 46 paragraph 8 of the Convention against Corruption. Although bank secrecy is not mentioned in the domestic legislation, the national authorities confirmed that bank secrecy does not pose difficulties in corruption-related investigations.

Article 46 Mutual legal assistance

Subparagraph 9 (a) to (c)

- (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;*
- (b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention*
- (c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.*

(a) Summary of information relevant to reviewing the implementation of the article

457. Luxembourg confirmed that it has fully implemented Subpara. a.
458. Luxembourg indicated that it has not implement Subparas. b and c.
459. Luxembourg provided the following laws:

Code d'instruction criminelle

Art. 5-1. (L. 16 juillet 2011) Tout Luxembourgeois, toute personne qui a sa résidence habituelle au

Grand-Duché de Luxembourg, de même que l'étranger trouvé au Grand-Duché de Luxembourg, qui

aura commis à l'étranger une des infractions prévues aux articles 112-1, 135-1 à 135-6, 135-9 et 135-

11 à 135-13, 163, 169, 170, 177, 178, 185, 187-1, 192-1, 192-2, 198, 199, 199bis, 245 à 252, 310,

310-1, et 368 à 384 du Code pénal, pourra être poursuivi et jugé au Grand-Duché, bien que le fait ne

soit pas puni par la législation du pays où il a été commis et que l'autorité luxembourgeoise n'ait pas

reçu soit une plainte de la partie offensée, soit une dénonciation de l'autorité du pays où l'infraction a été commise. (L. 26 décembre 2012)

460. The principle of dual criminality only applies in the field of mutual legal assistance if the request concerns coercive measures for which an order of a Luxembourg judge of instruction proves necessary.
461. For all other requests of mutual assistance (e.g. hearing of witnesses, notification of acts etc) qualified as "minor" mutual assistance, the condition of dual criminality is not required. Luxembourg grants in practice mutual legal assistance in the most extensive manner. The statistics show that during the period from 1 January 2009 to 16 July 2013, 57 requests for mutual non-coercive mutual assistance on corruption related cases were presented to the 2 district public prosecutors and were executed. During the same period, 79 requests for mutual assistance concerning measures of coercion were presented to Luxembourg as regards corruption or money laundering in connection with an offense of corruption and none has been refused.

(b) Observations on the implementation of the article

462. It seems that Art 5-1 of the Code d'instruction criminelle (**CIC**) refers more to Luxembourg's extraterritorial jurisdiction than the double criminality standard applied in mutual legal assistance.
463. For Art. 46.9 (b), this leads to the question how a letter rogatory will be handled where a witness or a defendant is present in Luxembourg and willing to cooperate in cases not punishable under Luxembourg law. On this point, the authorities explained that as has been pointed out under Art. 46.9 (a), the dual incrimination is not required as a condition of substance for the requests for mutual legal assistance requiring a simple hearing of a witness or a suspect. No request for mutual legal assistance has been refused on the basis of the fact that it concerned only "minor issues". It is not for the Luxembourg judicial authorities to assess the timeliness of a foreign request for mutual assistance.
464. For Art. 46.9 (c), the provision is fulfilled, with the exception that the coercive measures require double incrimination. With regards to this, we noted that Luxembourg has criminalized almost all offences provided by the Convention.
465. In contrast to the approach taken in relation to extradition, Dual criminality is not required to grant MLA requests, unless coercive measures are involved, in which case judicial authorization is mandatory. Requests for assistance that do not involve coercion will be executed even in the absence of dual criminality, as long as the grounds for refusal set out in the MLA law do not apply.

Article 46 Mutual legal assistance

Paragraphs 10, 11 and 12

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

- (a) The person freely gives his or her informed consent;
- (b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

- (a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;
- (b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;
- (c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;
- (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

466. Luxembourg confirmed that it has fully implemented this provision of the Convention.

467. Luxembourg provided the following laws:

Law of 31 July 1987 approving the Convention of 21 March 1983 on the transfer of sentenced persons and regulating the transfer of persons sentenced and detained abroad

Art. 1. (1) the Convention on the transfer of sentenced persons opened for signature in Strasbourg, 21 March 1983 is Approved. (2) The Government of Luxembourg declares that in accordance with article 17.3 of the Convention, requests for transfers and supporting documents must be accompanied by a translation in German or French.

Art.2. when, pursuant to a treaty or an international agreement, a person detained in pursuance of a sentence imposed by a foreign jurisdiction is transferred to Luxembourg territory to carry out the portion of the sentence remaining to be served, the execution of the penalty is carried out in accordance with the provisions of Luxembourg law.

Art. 3. Upon arrival on Luxembourg soil, the sentenced inmate is presented to the State Attorney General or his delegate in the enforcement of sentences, who will establish his identity through an interrogation and draw up a report of the examination. However, if the interrogation cannot be immediate, the convicted person is led to the holding facility, where he cannot be detained for more than 24 hours. At the expiration of this period, he shall be taken automatically to the State Prosecutor or his delegate. In the light of the documents noting the agreement of the States on the transfer and the consent of the person concerned as well as the original or a copy of the foreign judgment, accompanied, where appropriate, of an official translation, the State general Attorney or his delegate shall order the immediate imprisonment of the convict.

Art. 4. The sentence pronounced abroad is, by virtue of the convention or international agreement, directly and immediately binding on the national territory for the part that remained to be served in the foreign State. However, when the sentence is, by its nature or duration, more stringent than the penalty provided for by Luxembourg law for the same facts, the Luxembourg tribunal correctional, seized by the State Prosecutor by a summons or by the convicted person upon request, shall substitute the sentence that approximates it the most in Luxembourg law or shall reduce this sentence to the legally applicable maximum. He shall determine as a result, depending on the circumstances, the nature, and within the limit of the part that remained to be served in the foreign State, the length of the sentence to be served.

Art. 5. The tribunal shall decide in a public hearing, after hearing the state prosecutor, the convicted person and, where appropriate, the Commission selected by him or appointed by the Court at his request. The decision is immediately enforceable notwithstanding appeal.

Art. 6. The time for transfer shall be fully counted in the duration of the sentence which is served in Luxembourg.

Art. 7. The application of the penalty is governed by Luxembourg law.

Art. 8. No criminal proceeding may be initiated or continued and no conviction can be executed for the same acts against the convicted person serving in Luxembourg, pursuant to a treaty or an international agreement, a custodial sentence handed down by a foreign court.

Law of 25 April 2003 on the transfer of sentenced persons.

Art. 1.-when a Luxembourg citizen, who has been the subject of a final conviction handed down by a foreign court, evades the execution of this sentence and takes refuge on Luxembourg soil. Luxembourg can assume the execution of this sentence at the request of the State which handed down the final sentence. When a foreign national. Who was the subject of a final conviction by a Luxembourg Court, evades the execution of this sentence and takes refuge on the territory of his state, Luxembourg can petition this State to assume the execution of the sentence. At the request of the State which gave the final sentence, the State Prosecutor can proceed to arrest the person sentenced pending a decision on the request of support for execution. The duration of this prison is calculated as part of the total duration of the sentence. The transfer of the enforcement does not require the consent of the sentenced person.

Art. 2 - Where a person regularly established in Luxembourg is the subject of a final sentence abroad and this conviction or administrative decision taken as a result of this conviction involves a definitive measure of expulsion or deportation, the Luxembourg authorities can give their consent to the transfer of this person at the request of the sentencing State. When a person is subject to a final sentence in Luxembourg and this conviction or an administrative decision taken as a result of this conviction has a definitive measure of expulsion or deportation, the Luxembourg authorities may request another State to accept the transfer of the sentenced person. In the cases provided for in paragraphs 1 and 2, the sentencing State shall provide: a declaration containing the opinion of the person convicted concerning the planned transfer; a copy of the final measure of expulsion or deportation. The transfer of the execution of the sentence does not require the consent of the sentenced person.

Art. 3 - When a person detained in pursuance of a sentence imposed by a foreign jurisdiction is transferred to Luxembourg territory to carry out the portion of the sentence remaining to be served or has taken refuge on Luxembourg territory before completing his sentence, the execution of the penalty is pursued in accordance with the provisions of Luxembourg law.

Art. 4. - Upon his arrival on Luxembourg soil or immediately after his arrest, the convicted person is presented to the general State Prosecutor or his delegate in the enforcement of sentences, who shall conduct his examination to ascertain his identity and shall write a report. However, if the examination cannot be immediate, the convicted person is led to the house arrest where he cannot be detained for more than 24 hours. At the expiration of this

period, he shall be lead automatically before the State Prosecutor or his delegate. In the light of the evidence noting the agreement of the States on the transfer and the consent of the person concerned, if required, as well as the original or a copy of the sentence, accompanied, where appropriate, by an official translation, the general Attorney State or his delegate shall order the immediate incarceration of the convicted.

Art. 5. - The sentence pronounced in a foreign State is, by virtue of the convention or international agreement, directly and immediately binding on the national territory for the part that remained to be served in the foreign State.

Art. 6. The time for transfer shall be fully counted in the duration of the sentence which is served in Luxembourg.

Art. 7. The application of the penalty is governed by Luxembourg law.

Art. 8. No criminal proceedings may be initiated or continued and no conviction can be executed for the same acts against the convicted person serving in Luxembourg a custodial sentence handed down by a foreign court.

Art. 9. - The Minister of Justice is responsible for the reception and sending of requests for transfer within the meaning of this Law.

Art. 10. – Articles 2 to 8 of the Law of 31 July 1987 approving the Convention of 21 March 1983 on the transfer of sentenced persons and regulating the transfer of persons sentenced and detained abroad are repealed.

468. The applicable legal framework for transfer of detainees for the purpose of assisting in investigations would be the Convention and the reciprocity.

469. The temporary transfer may therefore be carried out on the basis of these provisions of the Convention.

(b) Observations on the implementation of the article

470. As reported by Luxembourg, the Convention could be directly applicable, in absence of other specific legal provisions.

471. If the conditions under para 9 (a) and (b) are met, a person in custody should be transferred for proposes of providing assistance by identification, testimony other in other form and not for serving the sentence in the other State. Therefore reference to the Convention of transfer of sentenced persons of 1983 seems to be inappropriate. Moreover the provision also applies to persons held in pretrial arrest.

472. The situation of the provision is described similarly in Article 11 of the COE Convention on Mutual legal Assistance of 1959 und Article 9 of the EU Convention on Mutual legal assistance of 2000. Luxembourg considers the provisions of articles 46.10 to 12 as directly applicable.

Article 46 Mutual legal assistance

Paragraph 13

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory

with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

(a) Summary of information relevant to reviewing the implementation of the article

473. Luxembourg indicated that it established a central authority as described above.

474. Luxembourg provided the following laws:

August 8th, 2000 Law on Mutual Assistance in Criminal Matters, text coordinated to 3 November 2010

Version applicable from 1 December 2010

Art. 2. (1) Subject to the special provisions of agreements included in the conventions providing for the possibility of direct transmission, requests for assistance are to be sent by the competent authorities of the requesting State to the Attorney general of State of Luxembourg.

(2) They are returned after execution either through the official channels or by the direct route.

(3) If the requesting State addresses the request for assistance directly to the judicial authorities or to the Luxembourg Minister of Justice, these must transmit the request as soon as possible to the Procureur Général d'Etat.

(4) After reviewing the request for mutual assistance in the aspects of his jurisdiction, the Procureur Général d'Etat transmits it to the judicial authorities for execution if it considers that there is no reason for objections.

(5) However, if the case on which the request for assistance is based appears serious and there is urgency consisting in particular in a risk of destruction of the evidence, the requested competent judicial authority can proceed with the tasks requested.

475. Luxembourg reported about the composition and structure of the Central Authority. The Prosecutor General's office is competent to handle the mutual legal assistance requests. This office is headed by the Prosecutor General, who has one deputy. The staff is composed by ten General Advocates.

476. Regarding the means of communication, in practice, requests can be made and received via Interpol. Egmont is the via used for the Financial Intelligence Units communication.

(b) Observations on the implementation of the article

477. The central authority for international cooperation in Luxembourg is the Prosecutor General's Office of the State of Luxembourg.

478. It was recommended to Luxembourg to notify to notify the Secretary General of the United Nations about the central authority for processing MLA requests, as well as the acceptable languages

Article 46 Mutual legal assistance

Paragraph 14

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

(a) Summary of information relevant to reviewing the implementation of the article

479. Luxembourg provided the following laws:

August 8th, 2000 Law on Mutual Assistance in Criminal Matters, text coordinated to 3 November 2010

Version applicable from 1 December 2010

Art. 1. This law applies to requests for mutual legal assistance in criminal matters, hereinafter referred to as “requests for mutual legal assistance”, submitted to the Grand Duchy of Luxembourg for a seizure of objects, documents, funds or assets of any kind on its territory, the communication of information or documents ordered in accordance with Articles 66-2 to 66-4 of the Code of Criminal Procedure, a search, or any other investigative measure involving a similar degree of constraint and that are issued by:

- judicial authorities of requesting States that have not entered into international agreements with the Grand Duchy of Luxembourg relating to mutual legal assistance;
- judicial authorities of requesting States that have entered into international agreements with the Grand Duchy of Luxembourg relating to mutual legal assistance, unless the provisions of this law conflict with those of said international agreements;
- an international judicial authority recognised by the Grand Duchy of Luxembourg.”

Art. 2. (1) Subject to the special provisions of agreements included in the conventions providing for the possibility of direct transmission, requests for assistance are to be sent by the competent authorities of the requesting State to the Attorney general of State of Luxembourg.

(2) They are returned after execution either through the official channels or by the direct route.

(3) If the requesting State addresses the request for assistance directly to the judicial authorities or to the Luxembourg Minister of Justice, these must transmit the request as soon as possible to the Procureur Général d’Etat.

(4) After reviewing the request for mutual assistance in the aspects of his jurisdiction, the Procureur Général d’Etat transmits it to the judicial authorities for execution if it considers that there is no reason for objections.

(5) However, if the case on which the request for assistance is based appears serious and there is urgency consisting in particular in a risk of destruction of the evidence, the requested competent judicial authority can proceed with the tasks requested.

Art. 3. The Procureur Général d'Etat may refuse to provide mutual legal assistance in the following cases:

- if the request for mutual legal assistance is likely to endanger sovereignty, jeopardise security, pose a threat to public order or harm other essential interests of the Grand Duchy of Luxembourg;
- if the request for mutual legal assistance deals with offences likely to be qualified by Luxembourg law as either political offences or as offences connected to political offences.

Subject to the provisions of conventions, any request for mutual legal assistance is refused if it involves offences related to taxes, customs duties or currency exchange under Luxembourg law.

No appeal may be brought against the decision of the Procureur Général d'Etat.”

This text has been recently changed. Article 3 of the Law of 8 August 2000, as amended by article 10 of *Law of 27 October 2010 relating to the Fight against Money Laundering and Terrorist Financing*, indicates that “Subject to the provisions of conventions, a request for mutual legal assistance is refused if it exclusively involves offences related to taxes, customs duties or currency exchange under Luxembourg law”.

Art. 4. The requests for assistance that do not include the following data shall be denied:

- a) the authority which issued the request,
- b) the object and the grounds of the application,
- c) the date and place of the commission of the facts, a brief statement of the facts, and the relationship between these facts and the object of the taking of evidence requested,
- d) insofar as possible, the identity and the nationality of the person concerned,
- e) the name and address of the recipient, if applicable,
- f) the text of the indictment and penalties attached,
- g) a translation into French or German of the request for mutual assistance and documents to be produced.

The execution of a request for mutual assistance shall also be refused if, without having to proceed to an in-depth consideration of the merits, it is predictable, with regard to the requirements set out in article 4, point (c)), that the means to be implemented are not able to achieve the objective referred to in the request for assistance or go beyond what is necessary to achieve it.

In the event that the request for assistance is incomplete or the information provided by the authorities of the requesting State prove insufficient, additional information may be requested.

Requests for assistance which do not meet the conditions of this article shall be denied

- by the Procureur Général d'Etat, subject to the powers of the other judicial authorities, in the event where the Grand Duchy of Luxembourg is not bound to the requesting State by an agreement on mutual legal assistance;

-by the judicial authorities in the case where the Grand Duchy of Luxembourg is linked to the requesting State under an agreement on mutual legal assistance.

Art. 5. The request for mutual assistance must meet the following requirements:

it must emanate from a competent judicial authority under the law of the requesting State;

The fact supporting the request must be likely to be characterized as a crime or offence, punishable by a custodial sentence of a maximum of at least one year under Luxembourg law and the law of the requesting State;

the person named in the application must not have been judged in the Grand Duchy of Luxembourg for the same fact;

the requested measure must be taken under Luxembourg law by the Luxembourg judicial authorities for purposes of investigation or prosecution as if it were a similar domestic case.

Except as otherwise provided in a norm of international law, the statute of limitations of public action must not have been acquired, neither according to Luxembourg law nor according to the law of the requesting State.

Acts interrupting or suspending time limitation which have been accomplished in the requesting State under the laws of this State are taken into account for the calculation of the period of limitation according to the laws of Luxembourg.

Art. 6. The execution of mutual assistance measures is entrusted to the authority which would be competent if the offence had been committed in the Grand Duchy of Luxembourg. (law of October 27, 2010)

Art. 7. Financial institutions and their directors, officers and employees shall not disclose to the customer or to other persons without the express prior consent of the authority having ordered the measure the fact that documents have been seized or that documents or information have been communicated in execution of a request for mutual legal assistance. A fine of between €1,250 and €1,250,000 shall be imposed on any person who knowingly contravenes this obligation.”

Art. 8. Mutual legal assistance cases are treated as urgent and priority cases. The requested authority shall inform the applicant authority of the State of the procedure and of any delay.

Art. 9. (1) The Chambre du Conseil automatically examines the regularity of the proceedings. If it observes any ground of nullity, it declares the relevant measure null and void as well as any later measures deriving from the null and void measure.

(2) If objects or documents have been seized or if objects, documents or information have been forwarded to the investigating judge, their transfer to the requesting State is subject to the agreement of the Chambre du Conseil.

(3) Applications by the Procureur d’Etat for the verification of the regularity of proceedings and for the transmission of objects, documents or information are referred to the Chambre du Conseil.

(4) With the exception of persons who have not been informed of the measure ordered in execution of the request for mutual legal assistance by virtue of the provisions of Article 7, the person who is the subject of the investigation as well as any third party involved able to demonstrate a legitimate personal interest (intérêt personnel légitime) may file a statement containing observations on the regularity of the proceedings with the registrar of the Chambre du Conseil of the district court.

Requests for restitution may also be formulated in this statement containing observations on the regularity of the proceedings.

Any such statement must be filed within a period of ten days from the notification of the measure to the person who is to execute the ordered measure, after which time it shall no longer be possible to seek such a remedy.

Any statement filed by one of the persons mentioned in the first subparagraph of this paragraph shall be declared inadmissible unless it is signed by an attorney (avocat à la Cour) at whose offices the person elects domicile. This election of domicile shall have effect for as long as there is no new election of domicile.

(5) Persons entitled to file a statement, together with their management and employees, may not inform the persons to whom the measure ordered in execution of the request for mutual legal assistance was not revealed by virtue of the provisions of Article 7 as to the existence of, or terms of, the statement, subject to the fine provided for in Article 7.”

Art. 10. (1) No later than twenty days after the matter is referred to the Chambre du Conseil, the latter shall decide, in a single ruling, on the regularity of the proceedings, the transfer to the requesting State of the objects, documents or information, as well as on the observations and requests for restitution formulated in the statements filed under the conditions set forth in Article 9.

(2) The Chambre du Conseil shall order the restitution of any objects, documents, funds or assets of any kind that are not directly related to the acts on which the request for mutual legal assistance is based.

(3) A copy of the order is communicated to the Procureur Général d’Etat and served to the attorney at the offices where domicile was elected by virtue of the provisions of Article 9.

(4) No appeal may be brought against the order of the Chambre du Conseil.

(5) Persons having filed a statement, and their directors, officers and employees, may not inform the persons to whom the measure ordered in execution of the request for mutual legal assistance has not been revealed by virtue of the provisions of Article 7 as to the existence of, or terms of, this order, subject to the fine provided for in Article 7.”

Art. 11. (1) If assets other than those referred to in Article 9 have been seized in execution of the request for mutual legal assistance, the owner as well as any other person having rights regarding these assets, may claim restitution until such time as a foreign judgment for confiscation or restitution relating to these assets is referred to the criminal court for registration and enforcement (exequatur).

(2) In order to be admissible, any request of this type shall be filed with the registrar of the Chambre du Conseil of the competent district court by the owner or any other person having rights regarding these assets, and shall be signed by an attorney at whose offices domicile was elected. This election of domicile shall have effect for as long as there is no new election of domicile. Any summons or notification is made at the elected domicile.

(3) In the event that a request provided for in paragraphs 1 and 2 of this article has been filed, the following procedure is observed:

a) At least eight days before the hearing, the registrar summons the applicant at his or her elected domicile and his or her attorney by registered letter with acknowledgement of receipt, informing them of the date, time and place of the hearing.

b) This period of eight days may not be increased on grounds of distance.

c) The Chambre du Conseil rules on the basis of a reasoned order, after having heard the oral arguments of all attorneys and parties, the applicants’ attorneys as well as the Procureur d’Etat.

d) The order issued by the Chambre du Conseil is only enforceable once the time for filing notice of appeal has expired.

e) The registrar serves notice of the Chambre du Conseil’s order by sealed, registered letter, with acknowledgement of receipt, to the elected domicile.

(4) Appeals may be brought against orders issued by the Chambre du Conseil:

- by the Procureur Général d’Etat and the Procureur d’Etat in all cases;

- by the applicant, if the order is prejudicial to his or her rights.

Appeals must be lodged within the following time limits, after which it will no longer be possible to seek such a remedy:

- within ten days of the Chambre du Conseil's order by the Procureur Général d'Etat;
- within three days of the Chambre du Conseil's order by the Procureur d'Etat;
- within three days of the Chambre du Conseil's order by the applicant.

(5) The procedure before the Chambre du Conseil of the district court also applies before the Chambre du Conseil of the appeals court.

(6) The judgment by the Chambre du Conseil of the appeals court is enforceable without requiring any other formality.

(7) No appeal to the Cour de Cassation is admissible.”

Art. 12. By way of derogation of article 9, and even in the event of the filing of a (October 27, 2010 Act) “mémoire”, the judge presiding the Chambre du Conseil may, on the Procureur d'Etat's written request, allow the transmission without delay to the judicial authority of the requesting State the results from the execution of an international letter rogatory if there is serious and concurring evidence that the conduct of the procedure (Act of October 27, 2010) 'article 9' might endanger the physical or psychological well-being of a person.

No appeal of this decision is admissible. (law of October 27, 2010)

Art. 13. Information obtained via mutual legal assistance may not be used by the requesting State for investigative purposes or to be produced as evidence in criminal or administrative proceedings other than those for which the mutual legal assistance was granted.”

Amendments to the Law of 8 August 2000 on mutual legal assistance in criminal matters, provided for by Article 12 of this law, with the exception of point 8 of said article, apply to all requests for mutual legal assistance under the Law of 8 August 2000 referred to competent authorities from the date of the entry into force of this law.

We instruct and order that this Law be inserted into the Official Journal to be enforced and complied with by all whom it may concern.

480. Luxembourg stated that the acceptable languages for MLA requests are German, French and Luxemburgish, which are the 3 official judicial languages. Other languages can be foreseen in each treaty or by a declaration made by Luxembourg. Requests sent via fax and email are generally accepted. The original must be provided when the case appears is lodged in court (accusation chamber). Only the USA may provide a pdf. Oral requests are refused but oral consultations are welcomed. Luxembourg has an informal arrangement between the Luxembourg State Prosecutor and the United States Department of Justice.

481. Article 3 of the domestic law does not require the original but a simple request written in German, French or Luxemburgish.

(b) Observations on the implementation of the article

482. In practice Luxembourg judicial authorities are satisfied with a request signed by a judicial authority of the requesting State that can be sent by fax or even by email.

483. Luxembourg has not made the notification to the Secretary-General of the United Nations. Therefore, it was recommended to notify the acceptable languages to the Secretary-General of the United Nations.

Article 46 Mutual legal assistance

Paragraphs 15 and 16 of article 46

15. A request for mutual legal assistance shall contain:

- (a) The identity of the authority making the request;*
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*
- (e) Where possible, the identity, location and nationality of any person concerned; and*
- (f) The purpose for which the evidence, information or action is sought.*

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

(a) Summary of information relevant to reviewing the implementation of the article

484. Luxembourg confirmed that it has fully implemented this provision of the Convention.

485. Luxembourg provided the following laws:

August 8th, 2000 Law on Mutual Assistance in Criminal Matters, text coordinated to 3 November 2010

Version applicable from 1 December 2010

Art. 4. The requests for assistance that do not include the following data shall be denied:

- a) the authority which issued the request,
- b) the object and the grounds of the application,
- c) the date and place of the commission of the facts, a brief statement of the facts, and the relationship between these facts and the object of the taking of evidence requested,
- d) insofar as possible, the identity and the nationality of the person concerned,
- e) the name and address of the recipient, if applicable,
- f) the text of the indictment and penalties attached,
- g) a translation into French or German of the request for mutual assistance and documents to be produced.

The execution of a request for mutual assistance shall also be refused if, without having to proceed to an in-depth consideration of the merits, it is predictable, with regard to the requirements set out in article 4, point (c)), that the means to be implemented are not able to achieve the objective referred to in the request for assistance or go beyond what is necessary to achieve it.

In the event that the request for assistance is incomplete or the information provided by the authorities of the requesting State prove insufficient, additional information may be requested.

Requests for assistance which do not meet the conditions of this article shall be denied

- by the Procureur Général d'Etat, subject to the powers of the other judicial authorities, in the event where the Grand Duchy of Luxembourg is not bound to the requesting State by an agreement on mutual legal assistance;

-by the judicial authorities in the case where the Grand Duchy of Luxembourg is linked to the requesting State under an agreement on mutual legal assistance.

486. Luxembourg did not provide examples of implementation or related cases.

(b) Observations on the implementation of the article

487. The reviewing experts were satisfied with the information provided on the requirements that the request should fulfil.

Article 46 Mutual legal assistance

Paragraph 17

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

(a) Summary of information relevant to reviewing the implementation of the article

488. Luxembourg confirmed that it has fully implemented this provision of the Convention.

489. Luxembourg did not provide specific text about the applicable policies or other measures nor examples of implementation.

490. Luxembourg did not provide information on requests executed in ways specified in the request other than those envisaged in its domestic law.

491. Luxembourg was required to inform on the legal bases to which extent procedures of the requesting State specified in the request can be applied in the execution of the request.

492. Article 46.17 of the Convention being applicable as a legal basis in virtue of the primacy of international treaties, Luxembourg executes the requests for mutual legal assistance and in particular the specific formalities required for, as long as they do not contravene the national law. (ex. Certification of books or business documents or in relation with objects seized with the United States)

(b) Observations on the implementation of the article

493. Similar provisions are in force under Article 4 of the EU Convention on mutual legal assistance of 2000.

494. In principle, requests are executed based on Luxembourg domestic law. In practice, Luxembourg would endeavour to satisfy conditions or follow procedures stipulated by the requesting States, in particular regarding compliance with evidentiary requirements, insofar as such requirements were not in conflict with domestic legislation or constitutional principles.

Article 46 Mutual legal assistance

Paragraph 18

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

495. Luxembourg confirmed that it has fully implemented this provision of the Convention.
496. The authorities stated that the videoconference hearing is commonly practiced by Luxembourg at the request of foreign judicial authorities. The provision is applied for witnesses and experts but not for defendants.
497. The condition of dual incrimination does not apply and the hearing with this particular technique is the equivalent of a simple hearing.

(b) Observations on the implementation of the article

498. While there was no specific text provided concerning videoconferencing, the authorities informed the experts that it is possible; the legal basis is article 46.18 of the Convention, which applies directly.
499. The provision is considered implemented, especially because in other international and European instruments videoconferencing is also foreseen under similar requirements.
500. Luxembourg was asked to inform the experts about the standard procedure on videoconferencing especially if a general permission is given to the extent that the hearing is conducted by a judicial authority of the requesting State. The authorities reported that the request for assistance must involve a judicial investigation in the requesting State. Details of a video conference have to be agreed on a case-by-case basis.
501. Video conference hearings are commonly carried out by Luxembourg at the request of foreign judicial authorities. This form of assistance is carried out for the hearing of witnesses and experts but not of defendants.

Article 46 Mutual legal assistance

Paragraph 19

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the

requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

502. Luxembourg confirmed that it has fully implemented this provision of the Convention.

503. The convention goes beyond the national legal framework.

504. In application of article 13 of the Act of August 8, 2000 on mutual assistance, the information obtained through mutual assistance may not be used neither for the purposes of investigations nor for the purposes of their production as a means of evidence in other criminal or administrative proceedings other than that for which the assistance was granted.

505. The release of the rule of specialty is done under the same conditions as in the mutual assistance request itself, therefore respecting the condition of dual criminality if these information was received earlier in the framework of the execution of coercive measures. The orders issued by the examining magistrate will be the subject of a new notification without writ of execution in order to allow the appropriate persons entitled under article 9 of the Act of August 8, 2000 to present a memoir containing their observations, respectively their request for restitution. The Chamber of the Council will be called upon to examine the simple regularity of the procedure pursuant to article 10 of the law of mutual legal assistance. The transmission will be done by the central authority regarding mutual legal assistance therefore in the present case the general prosecutor.

(b) Observations on the implementation of the article

506. This mandatory provision can be considered as implemented.

507. The applicable legal basis is the Convention, article 46.19 which goes beyond the national law.

508. In application of article 13 of the MLA Act, information obtained through MLA may not be used in criminal or administrative proceedings other than that for which the assistance was granted (rule of specialty)

Article 46 Mutual legal assistance

Paragraph 20

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

509. Luxembourg confirmed that it has fully implemented this provision of the Convention.

(b) Observations on the implementation of the article

510. The authorities reported that the content of letters rogatory will not be made public. Only the prosecution service and the judge can have access to it. Luxembourg ensures confidentiality of the facts and substance of the request if the requesting State so required.

Article 46 Mutual legal assistance

Paragraph 21

21. Mutual legal assistance may be refused:

- (a) If the request is not made in conformity with the provisions of this article;*
- (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;*
- (c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;*
- (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.*

(a) Summary of information relevant to reviewing the implementation of the article

511. Luxembourg confirmed that it has fully implemented this provision of the Convention.
512. Luxembourg provided the following laws:

August 8th, 2000 Law on Mutual Assistance in Criminal Matters, text coordinated to 3 November 2010

Version applicable from 1 December 2010

Art. 3. The Procureur Général d'Etat may refuse to provide mutual legal assistance in the following cases:

- if the request for mutual legal assistance is likely to endanger sovereignty, jeopardise security, pose a threat to public order or harm other essential interests of the Grand Duchy of Luxembourg;
- if the request for mutual legal assistance deals with offences likely to be qualified by Luxembourg law as either political offences or as offences connected to political offences.

Subject to the provisions of conventions, any request for mutual legal assistance is refused if it involves offences related to taxes, customs duties or currency exchange under Luxembourg law.

No appeal may be brought against the decision of the Procureur Général d'Etat.”

Art. 4. The requests for assistance that do not include the following data shall be denied:

- a) the authority which issued the request,
- b) the object and the grounds of the application,
- c) the date and place of the commission of the facts, a brief statement of the facts, and the relationship between these facts and the object of the taking of evidence requested,
- d) insofar as possible, the identity and the nationality of the person concerned,
- e) the name and address of the recipient, if applicable,
- f) the text of the indictment and penalties attached,

g) a translation into French or German of the request for mutual assistance and documents to be produced.

The execution of a request for mutual assistance shall also be refused if, without having to proceed to an in-depth consideration of the merits, it is predictable, with regard to the requirements set out in article 4, point (c)), that the means to be implemented are not able to achieve the objective referred to in the request for assistance or go beyond what is necessary to achieve it.

In the event that the request for assistance is incomplete or the information provided by the authorities of the requesting State prove insufficient, additional information may be requested.

Requests for assistance which do not meet the conditions of this article shall be denied

- by the Procureur Général d'Etat, subject to the powers of the other judicial authorities, in the event where the Grand Duchy of Luxembourg is not bound to the requesting State by an agreement on mutual legal assistance;

- by the judicial authorities in the case where the Grand Duchy of Luxembourg is linked to the requesting State under an agreement on mutual legal assistance.

Art. 5. The request for mutual assistance must meet the following requirements:

1) it must emanate from a competent judicial authority under the law of the requesting State;

2) The fact supporting the request must be likely to be characterized as a crime or offence, punishable by a custodial sentence of a maximum of at least one year under Luxembourg law and the law of the requesting State;

3) the person named in the application must not have been judged in the Grand Duchy of Luxembourg for the same fact;

4) the requested measure must be taken under Luxembourg law by the Luxembourg judicial authorities for purposes of investigation or prosecution as if it were a similar domestic case.

5) Except as otherwise provided in a norm of international law, the statute of limitations of public action must not have been acquired, neither according to Luxembourg law nor according to the law of the requesting State.

Acts interrupting or suspending time limitation which have been accomplished in the requesting State under the laws of this State are taken into account for the calculation of the period of limitation according to the laws of Luxembourg.

(b) Observations on the implementation of the article

513. The authorities explained that the refusal of a mutual legal assistance request is always preceded by consultations .

514. The reviewing governmental experts consider the provisions to constitute a set of relevant measures satisfying the purposes of the Convention.

Article 46 Mutual legal assistance

Paragraph 22

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

515. Luxembourg provided the following laws:

August 8th, 2000 Law on Mutual Assistance in Criminal Matters, text coordinated to 3 November 2010

Version applicable from 1 December 2010

Art. 3. The Procureur Général d'Etat may refuse to provide mutual legal assistance in the following cases:

- if the request for mutual legal assistance is likely to endanger sovereignty, jeopardise security, pose a threat to public order or harm other essential interests of the Grand Duchy of Luxembourg;
- if the request for mutual legal assistance deals with offences likely to be qualified by Luxembourg law as either political offences or as offences connected to political offences.

Subject to the provisions of conventions, any request for mutual legal assistance is refused if it involves offences related to taxes, customs duties or currency exchange under Luxembourg law.

No appeal may be brought against the decision of the Procureur Général d'Etat.”

This text has been recently changed. Article 3 of the Law of 8 August 2000, as amended by article 10 of *Law of 27 October 2010 relating to the Fight against Money Laundering and Terrorist Financing*, indicates that “Subject to the provisions of conventions, a request for mutual legal assistance is refused if it exclusively involves offences related to taxes, customs duties or currency exchange under Luxembourg law”.

(b) Observations on the implementation of the article

516. Luxembourg confirmed that it has fully implemented this provision of the Convention, because in practice as long as fiscal aspect is only an annex, the case could be treated as a corruption case.
517. The legal basis is provided by the Convention, which applies directly by virtue of the primacy of international treaties.
518. Luxembourg does not refuse mutual legal assistance if the relevant request also includes tax offences which are accessory to corruption offenses.
519. A mutual legal assistance request would not be refused on the sole ground that the offence also involved fiscal matters.

Article 46 Mutual legal assistance

Paragraph 23

23. Reasons shall be given for any refusal of mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

520. Luxembourg confirmed that it has fully implemented this provision of the Convention, but did not provide specific text about the applicable measures, nor the examples of implementation.

(b) Observations on the implementation of the article

521. The response provided was based on the practice. No specific legislation or examples of cases to illustrate this provision were provided.

Article 46 Mutual legal assistance

Paragraph 24

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

(a) Summary of information relevant to reviewing the implementation of the article

522. Luxembourg confirmed that it has fully implemented this provision of the Convention.

523. Luxembourg provided the following laws:

August 8th, 2000 Law on Mutual Assistance in Criminal Matters, text coordinated to 3 November 2010

Version applicable from 1 December 2010

« Art. 8. » Mutual legal assistance cases are treated as urgent and priority cases. The requested authority shall inform the applicant authority of the State of the procedure and of any delay.

(b) Observations on the implementation of the article

524. A detailed timeline for the execution of MLA requests is not set out in domestic legislation. However, MLA cases are treated as a priority pursuant to mutual legal assistance legislation. The duration depends on the complexity of the case and the actions requested.

Article 46 Mutual legal assistance

Paragraph 25

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(a) Summary of information relevant to reviewing the implementation of the article

525. Luxembourg confirmed that it has fully implemented this provision of the Convention.

(b) Observations on the implementation of the article

526. As duly reported by the authorities this optional ground on refusal has never been used to date, mutual legal assistance requests are always executed. .

Article 46 Mutual legal assistance

Paragraph 26

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

(a) Summary of information relevant to reviewing the implementation of the article

527. Luxembourg did not provide specific text about the applicable measures. However, the authorities indicated that there are always consultations with the requesting state in practice.

(b) Observations on the implementation of the article

528. The refusal of an MLA request is always preceded by consultations..

Article 46 Mutual legal assistance

Paragraph 27

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

(a) Summary of information relevant to reviewing the implementation of the article

529. Luxembourg indicated that article 46.27 of the Convention is directly applicable by virtue of the primacy of international treaties even if a similar provision does not appear in the national law on mutual legal assistance.

(b) Observations on the implementation of the article

530. Regarding the safe conduct of witnesses, Article 11 of the CoE Convention on Mutual legal Assistance in Criminal Matters of 1959 is in force in relation to Luxembourg
531. No specific legal provision is applicable, but UNCAC could be used as a legal basis to provide the safe conduct of witnesses.

Article 46 Mutual legal assistance

Paragraph 28

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

(a) Summary of information relevant to reviewing the implementation of the article

532. Luxembourg confirmed that it has fully implemented this provision of the Convention but did not provide specific text of the applicable measures.
- .

(b) Observations on the implementation of the article

533. The costs of MLA requests are borne by Luxembourg.. Judicial fees are borne by Luxembourg even if they are very high.

Article 46 Mutual legal assistance

Subparagraph 29 (a) and (b)

29. The requested State Party:
(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;
(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

(a) Summary of information relevant to reviewing the implementation of the article

534. Luxembourg stated that the documents accessible to the public are provided in the framework of mutual assistance requests requiring no measure of coercion, thus outside of the condition of dual incrimination. They further added that most of these documents are available online.
535. All documents not accessible to the public but deemed relevant as a means of evidence in the context of a criminal investigation, may be seized by the competent examining judge in

accordance with the specific provisions of the Code of Criminal Investigation and other applicable legal provisions.

536. Police and public prosecutors have access to certain non-public documents based on article 48(24) CIC without the need for a court decision.

(b) Observations on the implementation of the article

537. The authorities confirmed that public information is provided to the requesting state without need of court decision. There are no provisions on domestic legislation preventing the supply of governmental records.

538. Providing government records is at the discretion of the requested State.

539. Documents accessible to the public are provided in the framework of MLA requests requiring no measure of coercion, thus outside of the condition of dual incrimination. All documents not accessible to the public but deemed relevant as a means of evidence in the context of a criminal investigation may be seized by the competent examining judge in accordance with the specific provisions of the CIC and other applicable legal provisions.

540. As reported by the government, Luxembourg law enables judicial authorities to provide non-public government records to foreign judicial authorities. .

Article 46 Mutual legal assistance

Paragraph 30

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

(a) Summary of information relevant to reviewing the implementation of the article

541. Luxembourg confirmed that it has fully implemented this provision of the Convention.

542. Luxembourg provided the specific text about the bilateral or multilateral agreements or arrangements or other measures.

543. The Luxembourg authorities told the experts that they do not consider it necessary to conclude more MLA agreements.

(b) Observations on the implementation of the article

544. The reviewing experts note that Luxembourg has entered into numerous international mutual legal assistance agreements, both multilateral and bilateral. The reviewing experts therefore consider Luxembourg to be in compliance with this provision of the Convention.

Article 47 Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

545. Luxembourg indicated that there is no specific text concerning the transfer of criminal procedures. Some EU text exist in that area but have not yet been implemented. In practice the transfer is possible and is decided upon by the competent judicial authorities from Luxembourg and the other country(ies) concerned.
546. The good administration of justice is not a criteria to establish competence. Moreover, the denunciation of the criminal facts is widely practiced by the members of the public prosecutor of two district courts even in the absence of written circulars.
547. Generally it is an appreciation in opportunity, either that the defendant(s) is(are) domiciled abroad, or that the foreign judicial authorities have initiated proceedings against a larger number of co-suspects, or that most of the victims are domiciled abroad. The official denunciation of offenses is carried out in direct consultation with foreign competent judicial authorities or otherwise following a coordination with EUROJUST.

II. EXTRADITION AND MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

A. NATIONAL LEGISLATION

1. L. 20 June 2001 on extradition
2. L. 18 May 1999 introducing certain measures to facilitate cooperation with: 1. the international Tribunal established by the United Nations Security Council of the in its Resolution 827 of 25 May 1993, for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Socialist Federal Republic of Yugoslavia since 1991
- 2 the international Tribunal created by the United Nations Security Council in its Resolution 955 of 8 November 1994 for the trial of persons responsible for acts of genocide or other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighboring States, between 1 January and 31 December 1994
3. L. 8 August 2000 on international mutual legal assistance in criminal matters
4. L. 17 March 2004 on the European Arrest Warrant and surrender procedures among European Union Member States (extradition)
5. L. 21 March 2006 on the joint investigation teams
6. L. 25 August 2006 relating to the DNA identification in criminal procedures
7. L. December 19, 2008 aimed at inter-administrative and judicial cooperation and the strengthening of the direct Tax Administration, the Land Registration and Estates Department and the of customs and Excise Administration

B. MULTILATERAL CONVENTIONS

1. 13 December 1957. – European Convention on Extradition
2. 15 October 1975. – Additional Protocol to the European Convention on Extradition
3. 20 avril 1959. – European Convention on Mutual Assistance in Criminal Matters
4. 17 March 1978. – Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters,
Signed in Strasbourg
5. 27 June 1962. – 1. Treaty on Extradition and Mutual Assistance in Criminal Matters between the Kingdom of
Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands. 2. Protocol on civil liability for agents in mission in the territory of another party (mutual legal assistance + extradition)
6. 14 June 1985. – Schengen Agreement and Convention for its implementation
7. L. January 1994 approving the agreement between the Member States of the European communities on the simplification and modernisation of the modes of transmission of requests for extradition signed at Donostia-San Sebastian, May 26, 1989 (extradition)
8. L. 14 June 2001 Approving the Council of Europe Convention on Laundering, search, seizure and confiscation of the proceeds of crime and financing of terrorism, signed in Strasbourg on 8 November 1990
9. 10 March 1995. – Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the simplified extradition procedure between the Member States of the European Union, signed in Brussels (extradition)
10. 27 September 1996. – Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the extradition procedure between the Member States of the European Union, signed in Dublin (extradition)
11. L. 18 December 2007.– approving the United Nations Convention against transnational organized crime, adopted by the United Nations General Assembly in New York, November 15, 2000
- 12 L. 18 December 2008 approving the Cooperation Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, to combat fraud and any other illegal activity to the detriment of their financial interests
13. Reference.

C. BILATERAL CONVENTIONS

1. Australia (mutual legal assistance and extradition)
2. Belgium (Extradition)
3. United States of America (mutual legal assistance and extradition)
4. Great Britain (extradition)

(b) Observations on the implementation of the article

548. The provision seems to be only partly implemented.

549. Luxembourg declares being in compliance with this provision and refers to the 1959 European Convention on Mutual Assistance in Criminal Matters and the 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union
550. The reviewing experts invited Luxembourg to consider the establishment of guidelines for the public prosecutor to identify cases, where a transfer of the proceeding is appropriate, adding that it may be useful to expand the network of treaties with non-european countries. There should be also criteria which State having also jurisdiction in the Cases is most favorable for carrying out the proceedings.
551. The current situation, as explained by the authorities have a solution depending on the stage of the case. Although no corruption case has been transferred yet. The cases that have been actually dealt on this transfer include traffic accidents involving two persons of same nationality.
552. Luxembourg has no specific law concerning the transfer of criminal proceedings. In practice, the transfer is possible and is decided upon by the competent judicial authorities of Luxembourg and the other country concerned.

Article 48 Law enforcement cooperation

Subparagraph 1 (a)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:
(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(a) Summary of information relevant to reviewing the implementation of the article

553. Luxembourg cited the following applicable measures:

II. EXTRADITION AND MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

A. NATIONAL LEGISLATION

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4. 17 March 1978. – Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters,
Signed in Strasbourg
5. 27 June 1962. – 1. Treaty on Extradition and Mutual Assistance in Criminal Matters between the Kingdom of
Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands. 2. Protocol on civil liability for agents in mission in the territory of another party (mutual legal assistance + extradition)
6. 14 June 1985. – Schengen Agreement and Convention for its implementation
7. L. January 1994 approving the agreement between the Member States of the European communities on the simplification and modernisation of the modes of transmission of requests for extradition signed at Donostia-San Sebastian, May 26, 1989 (extradition)
8. L. 14 June 2001 Approving the Council of Europe Convention on Laundering, search, seizure and confiscation of the proceeds of crime and financing of terrorism, signed in Strasbourg on 8 November 1990
9. 10 March 1995. – Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the simplified extradition procedure between the Member States of the European Union, signed in Brussels (extradition)
10. 27 September 1996. – Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the extradition procedure between the Member States of the European Union, signed in Dublin (extradition)
11. L. 18 December 2007.– approving the United Nations Convention against transnational organized crime, adopted by the United Nations General Assembly in New York, November 15, 2000
- 12 L. 18 December 2008 approving the Cooperation Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, to combat fraud and any other illegal activity to the detriment of their financial interests
13. Reference.

C. BILATERAL CONVENTIONS

- . 1. Australia (mutual legal assistance and extradition)

2. Belgium (Extradition)
3. United States of America (mutual legal assistance and extradition)
4. Great Britain (extradition)

554. Regarding Article 1 of the Law of 8 August 2000 on international mutual legal assistance in criminal matters, Luxembourg delivered Articles 66-2 to 66-4 of the CoCP providing for the communication of information or documents.

555. Luxembourg also provided information on the search of banking information:

Art. 66-2. CIC (A. 27 October 2010) (1) If the preparatory investigation requires it and the ordinary means of investigation have proved ineffective due to the nature of the facts and of the special circumstances of the case, the examining judge may, in exceptional cases, concerning one or more of the events listed below, order the credit institutions that he will designate to inform him if the accused owns, controls or has proxy on one or several accounts of any nature whatsoever, or has held, controlled or had proxy on such an account for one or more of the events listed below:

1. Crimes and offenses against the security of the State within the meaning of articles 101 to 123 of the Penal Code
 2. (A. 26 December 2012) acts of terrorism and financing of terrorism within the meaning of articles 135-1 to 135-6, 135-9 and 135-11 to 135-13 of the Penal Code
 3. Offenses to the amended Act of March 15, 1983 on weapons and ammunition in the framework of a criminal association or of a criminal organization
 4. Human trafficking, pimping, prostitution and exploitation of human beings within the meaning of articles 379 to 386 of the Penal Code
 5. Homicide and assault and battery in the framework of a criminal association or of a criminal organization within the meaning of articles 392 to 417 of the Penal Code
 6. Flights and extortion in the framework of a criminal association or of a criminal organization within the meaning of articles 461 to 475 of the Penal Code
 7. offenses to the amended Act of February 19, 1973 concerning the sale of medicinal substances and the fight against drug abuse in the context of a criminal association or of a criminal organization
 8. money laundering and concealment within the meaning of articles 505 and 506-1 of the Penal Code
 9. corruption and traffic of influence within the meaning of articles 246 to 252, art. 310 and 310-1 of the Penal Code
 10. aid to unauthorized entry and residence within the meaning of the Act of August 29, 2008 relating to the free movement of persons within the framework of a criminal association or of a criminal organization
 11. counterfeiting within the meaning of articles 162 to 170 of the Penal Code
 12. abduction of minors within the meaning of articles 368 to 371-1 of the Penal Code.
- (2) If the answer is in the affirmative, the credit institution shall notify the account number as well as the balance, and transmits the data relating to the identification of the account and in particular the opening documents of the latter.
- (3) The decision is transferred to the procedure file after completion of the procedure.

Monitoring of bank accounts

Art. 66-3. CIC (A. 27 October 2010) (1) If the preparatory investigation requires it, and if the ordinary means of investigation have proved ineffective due to the nature of the facts and of the special circumstances of the case, the examining judge may, on an exceptional basis, concerning one or more of the events listed below, order a credit institution to inform him during a fixed period of time of any operation that will be performed or scheduled to be performed in the account of the specified accused person:

1. Crimes and offenses against the security of the State within the meaning of articles 101 to 123 of the Penal Code
 2. (A. 26 December 2012) acts of terrorism and financing of terrorism within the meaning of articles 135-1 to 135-6, 135-9 and 135-11 to 135-13 of the Penal Code
 3. Offenses to the amended Act of March 15, 1983 on weapons and ammunition in the framework of a criminal association or of a criminal organization
 4. Human trafficking, pimping, prostitution and exploitation of human beings within the meaning of articles 379 to 386 of the Penal Code
 5. Homicide and assault and battery in the framework of a criminal association or of a criminal organization within the meaning of articles 392 to 417 of the Penal Code
 6. Flights and extortion in the framework of a criminal association or of a criminal organization within the meaning of articles 461 to 475 of the Penal Code
 7. Offenses to the amended Act of February 19, 1973 concerning the sale of medicinal substances and the fight against drug abuse in the context of a criminal association or of a criminal organization
 8. money laundering and concealment within the meaning of articles 505 and 506-1 of the Penal Code
 9. corruption and traffic of influence within the meaning of articles 246 to 252, art. 310 and 310-1 of the Penal Code
 10. aid to unauthorized entry and residence within the meaning of the Act of August 29, 2008 relating to the free movement of persons within the framework of a criminal association or of a criminal organization
 11. counterfeiting within the meaning of articles 162 to 170 of the Penal Code
 12. abduction of minors within the meaning of articles 368 to 371-1 of the Penal Code.
- (2) The measure is ordered for a duration which is indicated in the order. It will cease as of right one month of the order date. It may however be extended each time for a month, without the total duration exceeding three months.
- (3) The decision is transferred to the procedure file after completion of the procedure.

Banking information and documents.

Art. 66-4. CIC (A. 27 October 2010) Where it is useful to the manifestation of truth, the examining judge may order a credit institution to transmit information or documents concerning the accounts or the operations which have been carried out during a determined period on one or several accounts that he will specify.

556. Luxembourg provided information on the legal bases regarding the national implementation of communication channels and the exchange of data, that Article 48.1 (a) of the Convention concerns the cooperation and the exchange of information between national authorities, respectively competent services for the detection and suppression of corruption offenses covered by the Convention. Moreover, the Act of November 12, 2004 relating to the fight against money laundering and the financing of terrorism subjects all credit institutions, the professionals in the financial sector concerned thereof (article 2 of the Act) and therefore other management companies, pension funds, managers and advisers of the collective investment institutions ..., the insurance and reinsurance undertakings, the company auditors, accountants, real estate agents, notaries, lawyers, the casinos and the valuables traders, under penalty of a criminal fine of 1250.- to 1,250,000 .- euro, to the obligation to inform without delay the Financial Intelligence Unit of the public prosecutor at the district court of Luxembourg of all suspicion of money laundering. This statement is accompanied by all the information and evidence which have motivated the declaration. This obligation to report suspicious transactions applies without the declarants' assessment of the underlying offense.

557. In addition, the tax authorities, on the basis of article 23 (2) of the Code of criminal investigation, as well as by application of article 16 (2) of the December 19, 2008 Act on inter administrative and judicial cooperation, must denounce the facts constituting a criminal offense to the prosecutor.
558. In addition they transmit, on the basis of article 23 (3) of the Code of Criminal investigation, statements of suspicious transactions to the Financial Intelligence Unit of the Public Prosecutor of the District Court of Luxembourg when they know, suspect or have good reason to suspect, that a money laundering or financing of terrorism is in progress, in which corruption is one of the primary offenses, was carried out, or has been intended, in particular in consideration of the person concerned, his evolution, the origin of the assets, the nature, purpose or terms of the transaction. They will promptly provide the prosecutor with all the information, minutes of proceedings and acts that are related, Article 5, par. 4 Law on AML/CFT of 12 November 2004, as amended, specifically provides that no professional secrecy applies *vis-à-vis* the FIU .
559. Article 16 of the Act of December 19, 2008 stipulates in its paragraph (1) that tax administrations transmit "to the judicial authorities, at their request," the useful information in the context of a criminal action, which applies without distinction to a request for information from the Public Prosecutor or the examining judge; and in paragraph (2) the text requires the officials of tax administrations to point out to the attorney the offenses of which they would come to have knowledge in the context of their functions

(b) Observations on the implementation of the article

560. This article is a mandatory measure. On the basis of the provided information, it can be considered as only partially implemented.
561. In the context of international mutual legal assistance in criminal matters, the provisions of the Law of 8 August 2000, as amended on 1 December 2010, Art. 2, can be considered as implemented.
562. In the context of police cooperation with EU-MS and/or Schengen countries, which is implemented by the Schengen Agreement and the European Convention on Mutual Assistance in Criminal Matters, some information, e.g. cooperation at police level and via Europol, etc., could be improved. The authorities stated that being a member of several networks such as EUROPOL, INTERPOL, Schengen Information Service, Bureau de Cooperation Policière. The exchanges of information are possible while the decision is made by the judiciary.
563. Law enforcement authorities engage in broad, consistent and effective cooperation with international counterparts to combat transnational crime, including corruption offences. The Central authority to deal with the cooperation is the Prosecutor's General's Office.
- .
564. In conclusion the legal basis used for this cooperation could be the Convention. This legal framework was already used for an MLA request coming from Egypt. The request has to be issued by a judicial authority.

565. The reviewing experts note that Luxembourg has entered into numerous channels of communication to enhance the exchange of information through agencies. However, more efforts should be made to implement the UNCAC article 48 and to improve cooperation, which is currently only possible via judicial bodies.

Subparagraph 1 (b), (c), (d) and (f)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

566. Luxembourg confirmed that it has fully implemented this provision of the Convention.

567. Luxembourg cited the same legal texts as for Subpara. 1(a).

(b) Observations on the implementation of the article

568. Luxembourg provided information on the practical implementation of article 48 (1) (b) and stated that it is using the networks of Egmont, CARIN, Siena, Europol and FIU Net as channels to exchange information. According to the information provided, the provision is implemented because these cooperation channels provide for quick and effective exchange of information.

569. On the implementation of article 48 (1) (c), the reviewers considered the measures to provide necessary items or quantities of substances for investigative purposes as successfully implemented. The authorities informed that there are other channels of exchange of law enforcement information, than Interpol. Direct or spontaneous exchange of information between judicial authorities is always possible and even standard for EU countries (MLA Convention 2000) and also under the Council of Europe MLA Convention (1959).

570. Regarding the implementation of article 48 (1) (d), the above mentioned legal national framework was considered as a relevant set of measures. However, Luxembourg was required to provide information on relevant analyses and reports of typologies. In the same vein, the authorities stated that at the airport there is a specialized group. Moreover, law enforcement officials exchange information. They use the FATF Typologies and in the context of the report of activities of the FIU (Cellule de Renseignement Financier). Hence, according to the information provided, the provision is implemented
571. Concerning the implementation of article 48 (1) (e), Luxembourg does not have liaison officers but may have recourse if necessary to the liaison officers of neighboring countries.
572. A member of the Luxembourg judicial police is seconded to Europol. The judicial authorities often have recourse to EUROJUST and the RJE if there is a coordination to be organized between judicial authorities of States Parties. Regarding the measures and channels to facilitate the cooperation between the competent authorities, the authorities stated that the Europol, Eurojust, EU exchange of magistrates, Benelux cooperation provide for a framework in which, Luxembourg could rely on Dutch and Belgian liaison officers . They use the existing European Network in Criminal Matters, and could perform prosecutor exchange with Trier. It was noted that the Prüm Treaty includes common training of police
573. The reviewing experts would recommend Luxembourg to set up collaboration agreements.
574. On article 48 (1) (f) There is partial compliance with the obligations of article 48,1(f).
575. As regards the information exchange, i.e. the first part of the recommendation (f), reference can be made to the multilateral conventions specified by the Luxembourg authorities. In this context, particular mention should be made of the Convention implementing the Schengen Agreement (CIS) regulating, inter alia, the cooperation between the police and judicial authorities of the States Parties to prevent and combat crime.
576. With respect to the coordination of administrative and other measures, the Luxembourg authorities are asked to report on relevant practice-oriented cases. Authorities reported that they use COPRECOR, EUROPOL and INTERPOL frameworks to facilitate the exchange of police information.

Paragraph 2

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

(a) Summary of information relevant to reviewing the implementation of the article

577. Luxembourg confirmed that it has entered into bilateral or multilateral agreements or arrangements on direct cooperation with law enforcement agencies of other States parties.
578. Luxembourg cited the same legal texts as for Subpara. 1(a).
579. Luxembourg provided information on law enforcement cooperation making use of bilateral or multilateral agreements or arrangements, including international or regional organizations, using the existing agreements of the European Union and Benelux.
580. Luxembourg indicated that it considered this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention.

(b) Observations on the implementation of the article

581. This article seems to be implemented in the Luxembourg Law System. There are also a number of bilateral and multilateral conventions guaranteeing this implementation.

Paragraph 3

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

(a) Summary of information relevant to reviewing the implementation of the article

582. Luxembourg cited the same legal texts as for Subpara. 1(a).

(b) Observations on the implementation of the article

583. Although there is no explicit provision in Luxembourg's legislation that offences covered by this Convention and committed through the use of modern technology are prosecuted, not only the laws stated but also the fact that Luxembourg ratified UNTOC meet the goal of this article.
584. Additionally, the authorities stated that the Council of Europe Convention on cyber-crime (Budapest Convention) and its Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems have been ratified by a Bill of 18th July 2014.
585. The police forces have a cyber-crime unit, the government itself has a cyber-security board and the prosecution office in Luxembourg has specialized magistrates for cyber-crime offences. Training sessions are being developed with companies specialized in the IT-sector

Article 49 Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that

the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

(a) Summary of information relevant to reviewing the implementation of the article

586. Luxembourg confirmed that it has fully implemented the provision of the Convention.

587. Luxembourg cited the following texts about the applicable bilateral or multilateral agreements or arrangements or other measures.

21 March 2006 – Law on the Joint Investigation Teams

Art 1. 1. The competent judicial authorities of the Grand Duchy of Luxembourg may conclude an agreement with the competent judicial authorities of one or several Member States of the European Union to create a joint investigation team to carry out criminal investigations in the territory of one or more of the States that create the team. A joint investigation team is set up with a specific purpose and for a limited time period which can be extended through the agreement of all parties.

2. A joint investigation team may specially be created when:

a) Within the scope of an investigation or preliminary criminal procedure conducted by the Grand Duchy of Luxembourg or another EU Member State, there are grounds for carrying out difficult investigations, involving the mobilization of significant resources, which concern also, in the first case, other Member States, in the second case, the Grand Duchy of Luxembourg;

b) The Grand Duchy of Luxembourg and one or more Member States of the European Union are conducting preliminary investigations or procedures for criminal offences which, based on the facts which are at their origin, require a coordinated and concerted action in the territory of the Grand Duchy of Luxembourg or of the Member States.

3. The team is created in one of the States in which the investigation must be carried out.

4. The team consists of representatives of the competent authorities of the Grand Duchy of Luxembourg (hereinafter referred to as the “Luxembourg Members”) and of representatives of the competent authorities of Member States of the European Union that are parties to the agreement referred to in article 2 (hereinafter referred to as the “foreign members assigned to the team”).

5. The team acts in accordance with the law of the State in which it operates.

2. 1. The State Prosecutor or the investigating judge may address a request for mutual legal assistance in criminal matters aimed at the establishment of a joint investigation team to the competent judicial authorities of a Member State of the European Union. He informs as soon as possible the State Attorney General on the application and the follow-up derived thereof.

2. Requests for mutual legal assistance in criminal matters aimed at the creation of a joint investigation team should be sent by the competent judicial authorities of one of the Member States of the European Union to the State Attorney General.

After reviewing the request for assistance on the aspects referred to in the following paragraph, the State Attorney General transmits it to the competent judicial authority if he considers that there are no reasons for objection.

The State Attorney General may deny the request for assistance in the following cases:

-If the request for assistance is likely to prejudice the sovereignty, security, public order or other essential interests of the Grand Duchy of Luxembourg;

-If the request for assistance relates to offences likely to be qualified by the Luxembourg law either as political offences or offences related to political offences;

-If the request for assistance relates to offences regarding taxes and levies, customs or exchange under Luxembourg law, subject to the provisions of international conventions.

When a joint investigation team includes Luxembourg members and members of at least another State member of the European Union, the State Attorney General may report the creation of the team to Eurojust.

3. Requests for assistance aimed at the creation of a joint investigation team include the following information:

- a) The judicial authority issuing the request.
- b) The object and the grounds for the request;
- c) A brief statement of the facts;
- d) insofar as possible, the identity and nationality of the person or persons concerned;
- e) The name and address of the recipient, if applicable;
- f) The text of the indictment and related sanctions;
- g) A translation in French, German or English of the request for mutual assistance and pertaining documents;
- h) Proposals for the composition of the team.

4. The creation of a joint investigation team shall be the subject of a written agreement between the judicial authorities of the States concerned. This agreement is signed, for the Grand Duchy of Luxembourg, by the State Prosecutor or the investigating judge.

The agreement specifies the purpose of the joint investigation team, the duration for which it is constituted, its area of intervention, the means to be implemented, the names and responsibilities of the persons who make up the team, the names and functions of each of the persons who, depending on the State in the territory of which the team operates, are responsible for the team, as well as any possible special conditions.

3. 1. When the joint investigation team operates on the territory of the Grand Duchy of Luxembourg, its members must conduct their operations in accordance with Luxembourg law and under the authority of the State Prosecutor or the investigating judge who is the leader of the team, with the possibility of delegation to a judicial police officer.

2. The State Prosecutor or the investigating judge may decide that foreign members assigned to the team may not be present during a determined investigative or criminal procedure act.

3. The State Prosecutor or the investigating judge may entrust the foreign members assigned to the team the task of carrying out certain acts that fall within responsibility of the judicial police, subject to the consent of the competent authorities of the State that assigned them.

Foreign members who are entrusted, under the preceding paragraph, with certain acts, are always accompanied, in performing these acts, by a Luxembourg official who is an officer of the judicial police and under whose direction they act, under penalty of nullity of the acts carried out.

An original of the minutes that they have established and which must be written or translated into French or German shall be given to the Luxembourg judicial authorities.

4. When the joint investigation team operates on the territory of the Grand Duchy of Luxembourg, the Grand Duchy creates the organizational conditions necessary to allow it to do so.

5. In the agreement creating the joint investigation team referred to in article 2, it can be agreed that representatives of international bodies or third countries participate in the team. They may be present when acts of investigation or criminal procedure are carried out, with the agreement of the judge who is the leader of the team. They cannot of themselves carry out such acts.

4. 1. When the joint investigation team operates abroad and it needs that an investigation measure be carried out in the Grand Duchy of Luxembourg, the Luxembourg members assigned to the team may ask the State Prosecutor or, if appropriate, the Luxembourg investigating judge, to accomplish this investigation measure on the territory of the Grand Duchy of Luxembourg.

These measures are considered by the State Prosecutor or the investigating judge under the conditions which would apply if they were requested in the context of an investigation or criminal procedure carried out in the Grand Duchy of Luxembourg.

2. The Luxembourg members assigned to the joint investigation team may, in accordance with Luxembourg law and within the limits of their competence, provide the team of available information for the purposes of the investigation or the preliminary criminal procedure conducted by the team.

5. 1. Information obtained on a regular basis by a Luxembourg member through his participation in a joint investigation team in another State party to the Agreement that created the team and which cannot be obtained any other way by the Luxembourg competent authorities may be used for the following purposes:

- a) For the purposes for which the team was created;
- b) To find, investigate on and prosecute other criminal offences subject to the prior consent of the other State party to the agreement where the information was obtained;
- c) To prevent an immediate and serious danger to public security, and without prejudice to the provisions of point b) if subsequently an inquiry or pre-trial criminal procedure is opened;
- d) For other purposes, provided that this has been agreed to by the States that have created the team.

2. Information obtained on a regular basis by a foreign member assigned to the joint investigation team in the framework of his participation in the team in the Grand Duchy of Luxembourg, and which cannot be obtained otherwise by the competent authorities of that State, may be used for the following purposes:

- a) For the purposes for which the team was created;
- b) To find, investigate on and prosecute other criminal offences, subject to the consent of the Grand Duchy of Luxembourg. Consent can only be withheld in those cases where such a use would represent a danger for preliminary investigations or criminal procedures in the Grand Duchy of Luxembourg [could refuse mutual assistance]
- c) To prevent an immediate and serious danger to public security, and without prejudice to the provisions of point b) if subsequently a criminal investigation is opened;
- d) For other purposes, provided that this has been agreed by the States who have created the team.

6. Foreign members assigned to the joint investigation team acting on the territory of the Grand Duchy of Luxembourg shall be assimilated to the Luxembourg members with respect to offences committed against them or that they might commit.

7. 1. (a) When Luxembourg members participating in a joint investigation team are on a mission in the territory of another State party to the Agreement that created the team, the Grand Duchy of Luxembourg is responsible for any damages caused during the course of the mission, in accordance with the law of the State in whose territory they are operating.

b) When the Luxembourg members who participated in a joint investigation team have caused damage to anyone on the territory of another State party to the Agreement who created the team, the Grand Duchy of Luxembourg fully reimburses that State the amounts it has paid to the victims or their dependants.

2. a) the Grand Duchy of Luxembourg assumes, in the conditions applicable to damages caused by the Luxembourg members, the remediation of damages caused in its territory by foreign members assigned to the team during the conduct of their mission and in the context of their participation in it.

b) without prejudice to the exercise of its rights with respect to third parties and with the exception of the full refund by the other State party to an agreement having established a joint investigation team of the sums paid in accordance with letter a) of the present paragraph to the victims or their dependants, the Grand Duchy of Luxembourg renounces the right to request that State the reimbursement of the amount of damages it suffered and were caused by foreign members assigned to the team through their participation in it, when they were on a mission on its territory and during the conduct of their mission.

588. Article 49 of the Convention is in itself the legal basis for the establishment of joint investigation teams by virtue of the primacy of international treaties.

(b) Observations on the implementation of the article

589. Following from the text provided by Luxembourg it seems that joint investigation teams (JITs) are only foreseen in relation to EU-Member States. Joint investigation teams can also be established with non-EU Member States on a case-by-case basis in application of the Law of 21 March 2006, using UNCAC as legal basis.

590. JITs have not been set up for corruption cases yet. The reviewing experts note that joint investigations are very effective instruments and can be set up on the basis of UNCAC. Therefore, it is recommended to consider setting up joint investigation teams in cross-border investigations.

Article 50 Special investigative techniques

Paragraph 1

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

(a) Summary of information relevant to reviewing the implementation of the article

591. Luxembourg confirmed that it has fully implemented the provision of the Convention.

592. Luxembourg provided the following laws:

Code of Criminal Procedure

Chapter VII. – On Surveillance

(L. 3 December 2009)

Art. 48-12. (L. 3 December 2009) (1) Surveillance is, for the purposes of this Code, the systematic Surveillance of one or more persons, of their presence or their behavior, or specific things, places and events.

(2) A systematic observation within the meaning of this chapter is an observation of more than five consecutive days or more of five non-consecutive days over a period of one month, an observation in which technical means are used, or an observation with an international character.

(3) A technical means within the meaning of this chapter is a configuration of components that detect signals, transmit them, activate their recording and record signals, with the exception of technical means used for the execution of a measure referred to in article 67-1 or a measure referred to in articles 88-1 to 88-4.

A device used for the taking of photographs is considered technical means within the meaning of this chapter in the case of a surveillance carried out outside a private venue in line with paragraph 2 of this article and in the case referred to in paragraph 3 of Article 48-13.

Article 48-13. (Act of 3 December 2009) (1) The State Prosecutor or investigation magistrate may decide to conduct a surveillance provided that the enquiry or preparatory investigation demands it and that the ordinary means of investigation prove inoperative on account of the nature of the offence and the specific circumstances of the case.

(2) The State Prosecutor or investigation magistrate may decide to conduct a surveillance made by technical means when the conditions of paragraph (1) are met and that there is serious evidence that offences are likely to carry a criminal penalty or a correctional penalty whose maximum sentence is equal to or greater than one year imprisonment.

(3) The sole investigation magistrate may decide to conduct a surveillance made by technical means in order to obtain a view of the interior of a home, or of a dependence of said domicile within the meaning of articles 479, 480 and 481 of the penal Code, or of a local used for professional purposes, when the conditions of paragraph (1) are fulfilled and there is serious evidence as to the existence of facts which carry a criminal penalty or a correctional penalty the maximum is equal to or greater than four years ' imprisonment.

Art. 48-14. (L. 3 December 2009) (1) the decision of the Prosecutor of State or of the investigation magistrate to conduct the surveillance shall be given in writing and must contain, under penalty of nullity, the following:

1 ° the serious evidence of the offence referred to in paragraphs (2) or (3) of article 48-13 and which justify the surveillance;

2 ° the specific reasons for which the investigation or the preparatory instruction requires an surveillance;

3 ° the name or, if not known, a description as specific as possible the person observed, as well as things, places or events referred to in article 48-12, paragraph (1);

4 ° the manner in which the surveillance will be implemented, including permission to use technical means in the cases provided for in article 48-13, paragraphs (2) and (3). In the case of article 48-13, paragraph (3), the decision of the investigating judge must mention as precisely as possible the address or location of the home that is the subject of the surveillance;

5 ° the period during which the surveillance can be carried out and which may not exceed one month counting from the date of the decision;

6 ° the name and rank of the judicial police officer who leads the implementation of the surveillance.

(2) In case of urgency, the decision to do the surveillance may be granted verbally. This decision should be confirmed as soon as possible in the form set out in paragraph (1).

(3) The State Prosecutor or the investigation magistrate may at any time, in a reasoned way, change, supplement or extend his decision. He may at any time withdraw his decision. He checks if the conditions referred to in articles 48-12 and 48-13 are met whenever his decision is amended, supplemented or extended and is in accordance with subsection (1), 1 ° to 6 °.

Art. 48-15. (L. 3 December 2009) the surveillance is directed and executed by an officer of the judicial police, who shall write a report.

However, the implementation of the observation can also be carried out by judicial police officers acting under his direction.

Art. 48-16. (L. 3 December 2009) the surveillance, with the exception provided for by article 48-13, paragraph (3), may also be decided under the same conditions by the State Attorney General in the context of the execution of penalties or custodial measures, when the person has fled from these measures.

Article 48-17. (Act of 3 December 2009) (1) If the enquiry or preparatory instruction so demands and the ordinary means of investigation prove inoperative on account of the nature of the offence and the specific circumstances of the case, the State Prosecutor or the investigating magistrate to whom the case has been referred may exceptionally decide that an undercover operation be carried out, under their respective supervision, under the conditions set forth in this chapter for one or more of the offences listed below:

1. felonies or misdemeanours against the security of the State within the meaning of Articles 101 to 123 of the Penal Code,
2. acts of terrorism and of terrorist financing within the meaning of Articles 135.1 to 135.8 of the Penal Code,
3. infringements of the Act of 15 March 1983 as amended on arms and munitions in connection with a criminal conspiracy or organised crime,
4. people trafficking, procuring, prostitution and exploitation of human beings within the meaning of Articles 379 to 386 of the Penal Code,
5. homicide and deliberate assault in connection with a criminal conspiracy or organised crime within the meaning of Articles 392 to 417 of the Penal Code,
6. theft or extortion in connection with a criminal conspiracy or organised crime within the meaning of Articles 461 to 475 of the Penal Code,
7. infringements of the Act of 19 February 1973 as amended concerning the sale of medicinal substances and the fight against drug addiction in connection with a criminal conspiracy or organised crime,
8. money laundering and handling the proceeds of money laundering within the meaning of Articles 505 and 506.1 of the Penal Code
9. bribery and trading in influence within the meaning of Articles 246 to 252, 310 and 310.1 of the Penal Code,

10. aiding illegal entry and residence within the meaning of the Act of 29 August 2008 relating to the free movement of persons in connection with a criminal conspiracy or organised crime,

11. counterfeiting within the meaning of Articles 162 to 170 of the Penal Code,

12. abduction of minors within the meaning of Articles 368 to 371.1 of the Penal Code.

(2) An undercover operation may not be ordered with regard to an accused person after their first questioning by the investigating magistrate and any such operations ordered beforehand must cease, without prejudice to the provisions of Article 48.21.

(3) An undercover operation consists in observing persons with regard to whom there is serious evidence that they are committing one or more of the offences referred to in the previous paragraph, whereby the undercover operative passes himself off to such persons as, for example, a co-perpetrator, accomplice or handler of the proceeds of the offence.

(4) An undercover operation may be performed only by a criminal police officer or a foreign agent authorised by his national law to perform that type of measure, acting under the responsibility of a criminal police officer tasked with coordinating the operation. The criminal police officer or foreign agent is authorised to use a false identity for the purpose and, if necessary, to commit the acts mentioned in Article 48.19, paragraph 1. Such acts may not constitute an incitement to commit offences, otherwise they shall be void.

(5) The coordinating criminal police officer shall draw up a report of the undercover operation. The report shall include the information strictly necessary to find that the offences have been committed and shall not endanger the security of the undercover officer or requisitioned persons within the meaning of Article 48.19, paragraph 2.

Art. 48-18. (L. 3 December 2009) (1) the decision of the Prosecutor of State or the investigating judge to conduct an undercover operation shall be put in writing and must include, under penalty of nullity, the following:

1 ° the serious evidence of the offences referred to in subsection (1) of article 48-17 and justifying the undercover operation.

2 ° the specific reasons for which the investigation or the prosecution require an undercover operation;

3 ° the period during which the undercover operation will apply and which may not exceed four months from the date of the decision;

4 ° the name and rank of the officer of the judicial police under whose responsibility the operation takes place.

(2) The undercover operation may be renewed under the same conditions of form and duration. Under penalty of nullity the renewal decision must contain, in addition to the elements described above in paragraph (1), the reasons for which the renewal of the undercover operation is essential to the investigation or prosecution.

(3) The State Prosecutor or the investigating judge may at any time withdraw his decision and interrupt the undercover operation before the expiration of the fixed period, without prejudice to the provisions laid down in article 48-21.

(4) The decision shall be put in the record of the proceedings after completion of the undercover operation

Art. 48-19. (L. 3 December 2009) (1) judicial police officers or foreign agents allowed to carry out an undercover operation may, without being criminally responsible for these acts:

-acquire, hold, carry, or deliver substances, property, products, documents, or information derived from the commission of the offences or for the commission of such offences;

-Use or put at the disposal of the persons engaged in these offences, legal or financial means as well as the means of transport, deposit, accommodation, conservation and telecommunications.

(2) The liability exemption provided in paragraph (1) shall also apply to acts committed for the sole purpose of the undercover operation, to the persons required by judicial police officers or foreign agents to allow the realization of this operation.

Art. 48-20. (L. 3 December 2009) (1) the real identity of the judicial police officers or foreign agents who carried out the undercover operation under an assumed identity must never appear at any stage of the procedure.

(2) The revelation of the identity of these judicial police officers or foreign officials is punishable by penalties provided for in article 458-1 of the Criminal Code.

Art. 48-21. (L. 3 December 2009) if a decision to interrupt the operation is made, or at the end of the deadline set by the decision authorizing the infiltration and in the absence of an extension, the officer of the judicial police or the foreign undercover agent can continue the activities mentioned in paragraph (1) of article 48-19, without being criminally responsible, for the time strictly necessary to allow to stop its surveillance in conditions ensuring his security though this duration does not exceed four months. The magistrate that took the decision provided for in paragraph (1) of article 48-17 shall be informed as soon as possible. If, at the end of the period of four months, the undercover agent cannot cease its operation in conditions ensuring his security, the judge shall decide the extension for a period of at most four months.

Art. 48-22. (L. 3 December 2009) (1) the judicial police officer under whose responsibility the undercover operation takes place may only be heard as a witness about the operation.

(2) However, if it is clear from the report mentioned in paragraph (5) of article 48-17, that the person charged or appearing before the trial court is directly concerned by findings made by a judicial police officer or a foreign agent personally conducting undercover operations, that person may ask to be confronted with this officer of judicial police or this foreign agent through a technical device allowing the hearing of a witness at the distance or to have his counsel question this witness in this same way. The voice of the witness is then rendered unidentifiable by appropriate technical processes.

(3) The questions put to the officer of the judicial police or to the foreign undercover agent on the occasion of this confrontation should not have as their object or effect to reveal, directly or indirectly, his true identity.

Art. 48-23. (L. 3 December 2009) No conviction may be pronounced on the sole basis of declarations made by the judicial police officers or by the foreign undercover agents having carried out an undercover operation.

The provisions of the present article are nevertheless not applicable when the judicial police officers or the foreign agents reveal their true identity.

593. Luxembourg provided additional data on further investigative techniques, in particular regarding the provision of information on telecommunication data or on the surveillance of telecommunication ("telephone tapping") as well as the provision of information on bank accounts and bank operations (Art. 66-2 to 66-3 CIC – see above Art. 48 UNCAC – and Art. 66-4 et seq. CIC).

594. The interception of goods or funds could be carried out in flagrante delicto. The authorization for the continuation of their routing is the very objective of the observation and therefore does not require specific statutory provision.

Banking information and documents.

Art. 66-4. CIC (A. 27 October 2010) Where it is useful to the manifestation of truth, the examining judge may order a credit institution to transmit information or documents concerning the accounts or the operations which have been carried out during a determined period on one or several accounts that he will specify.

Art. 66-5. CIC (A. 27 October 2010) (1) the order provided for by articles 66-2, 66-3 and 66-4 is brought to the knowledge of the referred credit institution by notification made either by an agent of the public force, or by registered letter with advice of receipt, or by fax or electronic mail.

(2) The credit institution which has been notified the order communicates the required information or documents by electronic mail to the examining judge within the time limit specified in the ordinance. The examining judge acknowledges receipt by email.

(3) The refusal to lend assistance in the execution of orders on the basis of articles 66-2 and 66-3 will be punished with a fine of 1,250 to 125,000 euros.

Telephone markings.

Art. 67-1. CIC (A. 21 November 2002) (1) (A. 24 July 2010) When the examining judge to whom facts have been which prevail a criminal penalty or a correctional penalty whose maximum is equal to or greater than one year of imprisonment, considers that there are circumstances which make the marking of telecommunications or the location of the origin or destination of telecommunications necessary to the manifestation of the truth, he can proceed, requiring as needed the technical support of the telecommunications operator and/or supplier of a telecommunications service:

1. to the tracking of call data from telecommunication media from which or to which calls are addressed or have been addressed;
2. to the localization of the origin or destination of telecommunications.

In the cases referred to in paragraph 1, for each medium of telecommunication whose call data are identified or whose origin or destination of the telecommunication is localized, the day, time, duration, and, if necessary, the place of the telecommunication will be indicated and recorded in the minutes.

The examining judge indicates the factual circumstances of the cause which justify the measure in a reasoned order that he communicates to the State Attorney.

He specifies the time period during which it may apply, this duration may not exceed one month from the date of the order, without prejudice to renew it.

(2) Each telecommunications operator and each supplier of a telecommunications service communicates the information that has been requested as soon as possible.

Any person who, on account of his function, has knowledge of the measure or contributes to it, is required to keep the secret. Any breach of confidentiality is punishable under article 458 of the Penal Code.

Any person who refuses to lend his technical support to the requisition referred to in this article, is punishable by a fine of 100 to 5,000 euros.

(3) (A. 12 August 2003) The person whose media of telecommunication has been subject to the measure referred to in paragraph (1) is informed of the measure ordered during the course of the investigation and in any case no later than within 12 months from the date of the order.

However, this time limit of 12 months does not apply when the measure has been ordered in an investigation regarding facts which are within the framework or in relationship with a criminal association or organization within the meaning of articles 322 to 324ter of the Penal Code, or which are located in the framework or in relation with terrorism within the meaning of articles 135-1 to 135-6, 135-9 and 135-11 to 135-13 of the Penal Code, or within the meaning of article 10, paragraph 1 of the amended Act of February 19, 1973 concerning the sale of medicinal substances and the fight against drug addiction. (A. 26 December 2012)

The request for a declaration of invalidity must be produced under penalty of foreclosure, under the conditions laid down in article 126 of the Code of Criminal Investigation.

When the measures of marking of telecommunications ordered by the examining judge have given no results, the data obtained will be removed from the folder of the instruction and

destroyed as they relate to non-charged persons.

Telephone tapping

Art. 88-1 . (A. 26 November 1982) The examining judge may, in exceptional cases and by specially reasoned decision based on the elements of the case and by reference to the conditions listed below, order the use of technical means of surveillance and control of all forms of communication, if:

- a) the criminal prosecution has for object a fact of particular gravity implying a criminal penalty or a correctional penalty whose maximum is greater than or equal to two years of imprisonment; and if
- b) specific facts make the person to monitor suspicious, either to have committed the offense or to have participated, or to receive or transmit information intended for the accused or the suspect or that come from him; and if
- c) the ordinary means of investigation have proved ineffective due to the nature of the facts and the special circumstances of the case.

The ordered measures will be lifted as soon as they will no longer be needed. They will cease as of right one month from the date of the order. They may however be extended each time for a month, without the total period exceeding one year, by a reasoned order of the examining judge, approved by the president of the Chamber of the Council of the Court of Appeal who shall decide within two days of receipt of the order, the Attorney General of State being heard on his conclusions.

These measures may not be ordered for an accused person after his first interrogation by the examining magistrate, and those measures previously ordered will cease their effects as of right upon this date.

These measures may not be ordered for a person bound by professional secrecy within the meaning of article 458 of the Penal Code, unless he is himself suspected of having committed or having participated in the offense.

The State prosecutor will be allowed to oppose, in all cases, the orders of the examining judge. The opposition will be filed within a period of two days from the date of the order. It will be brought before the president of the Chamber of the Council of the Court of Appeal who shall decide within two days of receipt of the order, the Attorney general of State being heard on his conclusions.

Art. 88-2 . (A. May 30, 2005) The decisions by which the examining judge or the president of the Chamber of the Council of the Court of Appeal will have ordered the surveillance and control of telecommunications as well as of mail correspondence entrusted to the post will be notified to the postal and telecommunications operators which will proceed without delay to their execution.

(A. 30 May 2005) these decisions and the developments that will follow will be entered in a special register kept by each post and telecommunications operator.

(A. May 30, 2005) Recorded telecommunications and correspondences as well as the data or information obtained by other technical means of monitoring and control on the basis of article 88-1 will be presented sealed and against receipt to the examining judge who will establish the minute of their delivery. He will order a copy of the correspondences that can be used for conviction or discharge and will transfer these copies, the records as well as all other data and information received in the file. He will return the writings that he does not deem necessary to enter to the post-office operators, who will deliver them without delay to the addressee.

(A. 7 July 1989) When the measures of surveillance and control of communications ordered on the basis of article 88-1 will have yielded no results, the copies and records as well as all other data and information placed on the record will be destroyed by the examining judge no later than twelve months after the order for termination of the monitoring measures. In the case the examining judge considers that these copies or these records or the data or information received may be used for the continuation of the investigation, he orders their retention in the folder by a reasoned order of based on all the elements of the case. The State Prosecutor and the person

whose correspondence or telecommunications were monitored, informed in accordance with paragraph 6 of this article, will be able to oppose this ordinance in the conditions set out in the last paragraph of article 88-1. Where, as a result of measures for the monitoring and control of communications ordered on the basis of article 88-1, the accused will have been the subject of a decision of no- grounds, of acquittal or conviction having acquired the force of res judicata, the copies and records as well as all other data and information will be destroyed by the Attorney General of State or the State Prosecutor in the month following the date when the judicial decision acquired the force of res judicata.

(A. May 30, 2005) Communications with persons bound by professional secrecy within the meaning of article 458 of the Penal Code and not suspected to have themselves committed the offense or to have taken part in it may not be used. Their registration and transcript will be immediately destroyed by the examining judge.

(A. 7 July 1989) The person whose correspondence or telecommunications were monitored is informed of the ordered measure no later than in the twelve months following the cessation of the aforesaid measure.

(A. 26 November 1982) after the first interrogation, the accused and his council can take communication of recorded telecommunications, of correspondence and all other data and information placed on the record.

(A. 26 November 1982) The accused and his counsel have the right to reproduce the recordings in the presence of an officer of the judicial police.

(b) Observations on the implementation of the article

595. As a good practice, it should be noted that the protection of undercover investigators is explicitly defined by law and that any breach of this regulation will be punished (Art. 48-20, Code of Criminal Procedure).

596. Regarding the existing guidelines, the authorities explained that few people are involved and this minimizes the need for circulars and guidelines. Also they stated that no challenge has been outlined on the admissibility of evidence obtained through special investigative techniques.

597. Luxembourg authorities provided detailed legal framework for all special investigative techniques. On the controlled delivery issue, they informed that it does not require specific statutory provision.

Paragraph 2

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

(a) Summary of information relevant to reviewing the implementation of the article

598. Luxembourg stated that the special investigation techniques mentioned in the framework of previous paragraph (50.1) provided for by the Code of Criminal Investigation, can all be carried out at the request of the judicial authorities of the States Parties by way of mutual assistance and therefore in application of international treaties on mutual assistance otherwise that on the basis of the UNCAC.

599. Luxembourg did not provide specific texts about the applicable bilateral or multilateral agreements or arrangements or other measures.

(b) Observations on the implementation of the article

600. The Convention could be used as a legal framework in absence of treaty. In this connection the authorities informed the experts that they do not consider the conclusion of bilateral treaties to be necessary.

601. The reviewing experts concluded that the provision has been legislatively implemented..

Paragraph 3

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

(a) Summary of information relevant to reviewing the implementation of the article

602. Luxembourg confirmed that it has fully implemented this provision of the Convention, using UNCAC as legal basis. In the light of developments in paragraph 50.2 above, all the special investigation techniques can be performed at the request of the foreign judicial authorities on the basis of a simple request for mutual legal assistance.

603. The articles CIC 66.2 (search all banks) CIC 66.4 (banking information and documents) and CIC 67-1 67-1 67-1 67-1 (telephone markings) are those who are the more often applicable within the framework of the execution of requests for mutual assistance.

(b) Observations on the implementation of the article

604. The authorities stated that they have used the special investigative techniques on a case by case basis. They cited the example of the mutual legal assistance request with Egypt.

605. However, Luxembourg would be asked to provide examples of implementation, such as related court or other cases. Furthermore, we would be interested in cases where decisions to use special investigative techniques were taken on a case-by-case bases.

606. It was explained that the treaty basis requirement, could be interpreted flexibly, on a case by case basis.

Paragraph 4

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

(a) Summary of information relevant to reviewing the implementation of the article

607. Luxembourg provided the following laws: Art. 48-12 CIC to 48-23 CIC (see above).

608. Article 50.4 of the Convention is directly applicable by virtue of the primacy of international treaties.

(b) Observations on the implementation of the article

609. As it has been confirmed post- country visit, if an international cooperation issue may arise on controlled delivery, the Convention would be directly applicable.