

# **Franet National contribution to the Fundamental Rights Report 2021**

**Luxembourg**

**Contractor's name:** University of Luxembourg

**Authors' name:** Lilla Vukovich, Birte Nienaber, Stéphanie Meyer, Volha Vysotskaya

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## Contents

Chapter 1. Equality and non-discrimination.....	6
Chapter 2. Racism, xenophobia and related intolerance .....	10
Chapter 3. Roma equality and inclusion .....	14
Chapter 4. Asylum, visas, migration, borders and integration .....	15
Chapter 5. Information society, privacy and data protection .....	20
Chapter 6. Rights of the child .....	29
Chapter 7. Access to justice including crime victims .....	35
Chapter 8. Developments in the implementation of the Convention on the Rights of Persons with Disabilities.....	40

## Policy and legal highlights 2020

<b>Franet country study: policy and legal highlights 2020</b> <b>LUXEMBOURG</b>	
<b>Issues in the fundamental rights institutional landscape</b>	Civil initiative for empowering the Centre for Equal Treatment: the Consultative Commission on Human Rights, together with 20 civil organisations, addressed <a href="#">an open letter to the President of the Parliament and to the Prime Minister</a> requesting that the Centre for Equal Treatment be granted real powers and sufficient resources to fight discrimination in general and racism in particular. Subsequently, <a href="#">the members of the Parliament made an undertaking</a> to enlarge the decision-making powers of CET and to increase its budgetary allocation.
<b>EU Charter of Fundamental Rights</b>	Interpretation of the CJEU regarding Articles 7, 8 and 47 of the Charter is being applied by domestic courts: the CJEU published its latest <a href="#">judgment</a> concerning Luxembourg, touching upon the right to an effective remedy, as well as right to privacy and to protection of personal data guaranteed by the Charter in the context of requests for exchange of information made by foreign tax administrations in tax investigations, clarifying that these rights may be limited, already being <a href="#">applied by the domestic courts</a> .
<b>Equality and non-discrimination</b>	Leave for family support: During the COVID-19 pandemic, the government introduced a <a href="#">new type of paid leave from work</a> ("leave for family support" or " <i>cong� pour soutien familial</i> ") for those who needed to provide daily care for their elderly relatives due to the closure of day-care services for old people.
<b>Racism, xenophobia &amp; Roma integration</b>	Stocktaking of anti-discrimination policies and the proposed development of a national action plan against racism: <a href="#">the members of Parliament have made an undertaking</a> to prepare a study on the phenomenon of racism in Luxembourg, to take stock of anti-discrimination policies and to develop a national action plan against racism.
<b>Asylum &amp; migration</b>	Extension of residence permits and other authorisations to stay that expired during COVID-19 pandemic measures: the <a href="#">law on the state of emergency</a> , as well as the <a href="#">subsequent amendment of the Immigration Act</a> , had extended the lawfulness of the stay of third-country nationals who had no way to regularise their situation nor to leave the country within the allotted time.
<b>Data protection and digital society</b>	Setting up of an information system of personal data in the context of COVID-19: The <a href="#">"COVID laws" adopted in June</a> and <a href="#">July</a> have introduced detailed rules on the collection and processing of personal data in the context of the COVID-19 pandemic, thus clarifying the issue of the anonymization of the collected data within a certain deadline.
<b>Rights of the child</b>	The creation of an Ombudsman for Children and Adolescents: by adopting <a href="#">act of 1 April 2020, the position of Ombudsman for Children and Adolescents</a> ( <i>Ombudsman fir Kanner a Jugendlecher</i> ) was created in Luxembourg, replacing the previous "Ombuds-Comit�". The new Ombudsman is under the sole supervision of the Parliament, thereby strengthening its independence and increasing its importance.
<b>Access to justice, including</b>	Fight against domestic violence as part of the National Action Plan on Gender Equality: the Ministry of Gender Equality announced a comprehensive <a href="#">Action Plan on Gender Equality, in which Chapter 6 is dedicated to the fight against domestic violence</a> , enumerating six

<b>victims of crime</b>	objectives on which the Ministry will work in this respect in the coming years.
<b>Convention on the Rights of Persons with Disability</b>	National Action Plan for the implementation of the Convention on the Rights of Persons with Disabilities: the <a href="#">National Action Plan</a> was presented on 15 January 2020 covering eight priority topics, such as (i) awareness; (ii) equal recognition before the law; (iii) independent living and inclusion in society; (iv) freedom of expression and opinion and access to information; (v) education; (vi) health; (vii) work and employment; and (viii) participation in political and public life.

# Chapter 1. Equality and non-discrimination

## 1. Legal and policy developments or measures relevant to fostering equality and combating discrimination against older people and against LGBTI people.

### Older people during the COVID-19 pandemic:

In Luxembourg, the situation of the elderly has been one of the **major discussion points in public debate** during the COVID-19 pandemic. Several parliamentary questions have been addressed to members of the government, inquiring about the situation of old people living in nursing homes.<sup>1</sup> An important public health measure was the large scale testing performed on the elderly living in these establishments.<sup>2</sup> Furthermore, the Ministry of the Family and Integration published and regularly updated recommendations<sup>3</sup> regarding visiting rules and hygiene requirements for nursing homes, in order to provide the highest possible protection to the elderly people living in these places.<sup>4</sup>

Consequently, during the lockdown in spring, the nursing homes for elderly had been partly or fully closed to prevent the spread of the virus. Some vulnerable people were isolated for weeks, which had a heavy impact on their mental health. The government undertook to guarantee that this situation would not be repeated during autumn, when the virus was detected again in retirement homes.<sup>5</sup> The development of a **national action plan on protecting vulnerable people during the health crisis** while avoiding physical and social isolation has been initiated.<sup>6</sup> The aim of the action plan would be to give clear, precise and consistent instructions to retirement and care homes, to care networks and to infrastructures aimed at elderly, disabled and vulnerable people. This concerned, for example, the regulation of family visits.

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<sup>1</sup> Luxembourg, [Parliamentary question n. 2597 concerning the physical condition of the elderly in structures for the elderly](#) (*Question Parlementaire no. 2597 concernant l'état physique des personnes âgées dans les structures pour personnes âgées*), [Parliamentary question no. 2454 concerning the precautionary measures put in place by the managers of structures and housing for the elderly or dependent in the context of the Covid-19 pandemic](#) (*Question Parlementaire no. 2454 concernant les mesures de précaution mises en place par les gestionnaires de structures et de logements pour personnes âgées ou dépendantes dans le contexte de la pandémie Covid-19*), [Parliamentary question no. 2423 concerning visitation rights in establishments for the elderly or disabled](#) (*Question Parlementaire no. 2423 concernant le droit de visite dans les établissements pour personnes âgées ou en situation de handicap*), [Parliamentary question no. 2353 concerning Internet access in reception structures for the elderly and nursing homes](#) (*Question Parlementaire no. 2353 concernant l'accès Internet dans les structures d'accueil pour personnes âgées et maisons de soins*), [Parliamentary question no. 2379 concerning recommendations for care facilities for the elderly](#) (*Question Parlementaire no. 2379 concernant les recommandations pour les structures d'accueil pour personnes âgées*), etc.

<sup>2</sup> Luxembourg, see more in section 1.3 on page 9 of the [Franet country study](#) released on 30 July 2020.

<sup>3</sup> Luxembourg, website of the Ministry of Family and Integration, [Recommendations to managers of accommodation facilities and professionals](#) (*Recommandations aux gestionnaires des structures d'hébergement et aux professionnels*), last updated on 11 December 2020.

<sup>4</sup> Luxembourg, see about some criticism voiced by a patient advocacy group in respect of the visiting rules in section 1.3 on page 9 of the [Franet country study](#) released on 30 July 2020.

<sup>5</sup> Luxembourg, website of the parliament, [Avoid isolation of vulnerable people](#) (*Eviter l'isolement des personnes vulnérables*), 29 October 2020.

<sup>6</sup> Luxembourg, website of the parliament, [Motion of the CSV political party deposited by Martine Hansen](#) (*Motion du groupe politique CSV déposée par Martine Hansen*), 14 October 2020.

During the lockdown, most structures that provide day-care services for older people had to close their doors as well. Elderly people who suffer from a considerable loss of autonomy and who can no longer carry out certain everyday activities on their own normally visit these day-care centres. These people often live with a family member who has been forced to take leave to care for them, as there had been no specific leave entitlement for people caring for a dependent adult person with whom they live. To address the problem, the government introduced legislation allowing such leave from work ("leave for family support" or "*congé pour soutien familial*"). **Leave for family support** was introduced in early April 2020 with retroactive effect to 18 March 2020<sup>7</sup>. On 22 July 2020, 18 people were using this type of leave, compared to around 50 people in June (these numbers include leave for taking care of an elderly person or someone with disabilities).<sup>8</sup>

On 31 March 2020 the **National Ethics Commission** has issued a **statement setting out guidelines for hospitals, doctors and nurses** to decide who should be treated and who may not in case of shortages in hospitals. The Commission emphasised that all patients are to be treated equally and there must be no discrimination based on age (or any other grounds). All decisions have to be based on objective medical facts. The Commission stressed that the assessment of the patient's overall state of health, as well as the individual prognosis for short and medium-term survival and health, should be the key criteria for treatment choices, particularly if limited resources are available.<sup>9</sup>

#### General measures concerning old people:

Before the pandemic, on 30 January 2020, the Minister for Family and Integration presented **bill n°7524 on the quality of services for the elderly**. As envisaged in the 2018-2023 governmental programme, the bill seeks to reform the act of 8 September 1998 governing relations between the State and the organisations working in the social, family and therapeutic fields.<sup>10</sup> The proposed measures of the bill revolve around three novelties in respect of managing nursing homes for the elderly. Firstly, quality management is to be ensured, which targets both the quality of the structure and the quality of the processes to be implemented, while managing the structure or providing services for the elderly. Thus, the bill specifies the benefits and services to be offered, as well as the infrastructure and equipment needs. The bill touches upon, among other things, complaint management, pricing policy and applied tariffs and the means of ensuring internal and external communication. It also regulates the professional qualifications required of managers and supervisory staff. Moreover, the bill proposes that management staff must understand and be able to express themselves in at least two of the administrative languages of Luxembourg,

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<sup>7</sup> Luxembourg, website of the Luxembourgish government, [Covid-19: Introduction of leave for family support \(Covid-19: Introduction d'un congé pour soutien familial\)](#), 3 April 2020. See also section 1.2.3 on page 5 of the [Franet country study](#) released on 28 May 2020.

<sup>8</sup> Luxembourg, website of the Luxembourgish Parliament, [Vulnerable people facing COVID-19 \(Les personnes vulnérables face au COVID-19\)](#), 22 July 2020.

<sup>9</sup> Luxembourg, website of the National Ethics Commission, [Position statement of the C.N.E. on the essential ethical benchmarks when guiding patients in a context of limited available therapeutic resources due to the pandemic crisis of COVID-19](#), 31 March 2020.

<sup>10</sup> Luxembourg, [act of 8 September 1998 regulating relations between the State and organizations working in the social, family and therapeutic fields \(Loi du 8 septembre 1998 réglant les relations entre l'Etat et les organismes oeuvrant dans les domaines social, familial et thérapeutique\)](#).

including Luxembourgish. Secondly, the bill intends to foster transparency by providing for an official database of the services and benefits offered by facilities for the elderly and their costs, thereby promoting consumer protection. Thirdly, the bill leaves maximum flexibility to managing bodies for the organization of the services for which they are responsible. The bill is still going through the legislative process.<sup>11</sup>

### Measures concerning LGBTIQ+ people:

The safeguarding of rights of LGBTIQ+ people in Luxembourg has been generally solid, supported by the country's continuous third rank at ILGA-Europe Rainbow Map and Rainbow Index 2020.<sup>12</sup> On 15 May 2020, the government adopted the IDAHOBIT 2020 declaration for the International Day against Homophobia, Biphobia, Interphobia and Transphobia, thereby reiterating the government's commitment in the fight against all forms of discrimination against LGBTIQ+ people.<sup>13</sup>

However, at the same time the legislator is being criticised by stakeholders about the absence of any recent progress towards this being embodied in new legislation, for example, in respect of the ban on conversion therapies.<sup>14</sup> This latter issue was the subject of a parliamentary question addressed to several members of the government.<sup>15</sup> In their response, the addressees argued that after further analysis the government would decide whether further action is to be taken.<sup>16</sup>

On 24 November 2020, the Consultative Commission on Human Rights has published its position<sup>17</sup> about the new Gender Equality National Action Plan, which the Ministry of Gender Equality launched on 17 July 2020.<sup>18</sup> Among many other critical statements, the CCDH noted that apart from a remark in the introduction to the national action plan, the latter neglects the fact that some people do not feel that they are either a man or a woman (gender non-binary), an aspect promoted, for example, by the national LGBTI action plan.

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<sup>11</sup> Luxembourg, website of the Parliament, [Bill n° 7524 on the quality of services for the elderly and amending the amended act of 16 May 1975 relating to the status of the co-ownership of built buildings and the amended law of 8 September 1998 regulating relations between the State and bodies working in the fields social, family and therapeutic](#) (*Projet de loi portant no. 7524 sur la qualité des services pour personnes âgées et portant modification de la loi modifiée du 16 mai 1975 portant statut de la copropriété des immeubles bâtis et la loi modifiée du 8 septembre 1998 réglant les relations entre l'Etat et les organismes oeuvrant dans les domaines social, familial et thérapeutique*).

<sup>12</sup> Luxembourg, [ILGA-Europe Rainbow Map and Rainbow Index 2020 for Luxembourg](#).

<sup>13</sup> Luxembourg, [Government declaration on the occasion of the international day against homophobia, biphobia, interphobia and transphobia \(IDAHOBIT\) 2020](#) (*Declaration du gouvernement à l'occasion de la journée internationale contre l'homophobie, la biphobie, l'interphobie et la transphobie (IDAHOBIT) 2020*), 17 May 2020.

<sup>14</sup> Luxembourg, [press release of Rosa Lëtzebuerg asbl](#) regarding Rainbow Map & Index 2020, 15 May 2020.

<sup>15</sup> Luxembourg, website of the Parliament, [Parliamentary question no. 1593 on the subject of conversion therapy](#) (*Question parlementaire no 1593 sur le sujet des thérapies de conversion*), 10 December 2019.

<sup>16</sup> Luxembourg, [Response to parliamentary question no.1593 on the subject of conversion therapy](#) (*Réponse à la question parlementaire n 1593 sur le sujet des thérapies de conversion*), 14 January 2020.

<sup>17</sup> Luxembourg, website of Ministry of Gender Equality, [National Action Plan for Gender Equality](#) (*Plan d'action national pour une égalité entre les femmes et les hommes*), 17 July 2020.

<sup>18</sup> Luxembourg, website of the CCDH, [The position of the Consultative Commission on Human Rights on the National Action Plan for equality between women and men](#) (*La position de la Commission consultative des Droits de l'Homme sur le Plan d'action national pour une égalité entre les femmes et les hommes*), 24 November 2020.



## 2. Findings and methodology of research, studies or surveys on experiences of discrimination against older people and against LGBTI people.

### Older people:

In respect of older people, section 2.2 of the “**Position Statement of the National Ethics Commission (CNE) on the vulnerability of certain people caused by the COVID-19 crisis**”<sup>19</sup> emphasises that any deprivation of contact and support from relatives can lead to numerous psychological traumas, and it will be necessary to find means to ensure that these scenarios will not happen again. CNE therefore recommends the development of specific protocols for visiting sick or dying persons in care homes or hospitals, as well as in respect of the right to die in dignity and for the conduct of funerals. It will also be necessary to ensure that these protocols apply uniformly to all institutions, instead of leaving this decision to the discretion of every institution, as this could lead to arbitrary decisions and therefore to potential discrimination. CNE stresses that visiting rooms should be created or set up in hospitals and care homes (and integrated into the planning and construction of new infrastructures) as well as meeting places for residents and their families, complying with all required hygiene rules. The decision on end-of-life visits and/or care should rest with residents and relatives of all ages. Moreover, excluding children from such visits constitutes an unacceptable discrimination.

### LGBTIQ+ people:

In respect of the situation of the LGBTIQ+ community during the COVID-19 pandemic, Centre LGBTIQ+ CIGALE (a civil-society organisation whose objective is to foster the visibility, non-discrimination and recognition of LGBTIQ+ people in Luxembourg) issued a **publication about the COVID-19 pandemic from an LGBTIQ + perspective**.<sup>20</sup> The publication, which is partly based on some personal experience of the members of the Luxembourgish LGBTIQ+ community, details the difficulties that some of them faced during the quarantine. For example, adolescents and young adults living with their parents are confined to a home where they might have to deal with familial rejection and where they can be exposed to verbal and physical attacks linked to their sexual orientation and/or gender identity. Others live in situations of maladaptation because they have not yet come-out. Without income nor resources, these young people are likely to be in an environment of incomprehension and to be subjected to abusive events. Further, LGBTIQ+ asylum seekers and refugees constitute an extremely vulnerable group. They risk homelessness or compromising their request for international protection if they do not comply with rules of their homes. Therefore, many of them hide their homosexuality, bisexuality and/or transcendence etc. in order to protect themselves against verbal and physical attacks. LGBTIQ+ seniors have lived much of their life in a more stigmatising era, and therefore many have lived in hidden relationships, have never been married or have never had children. In times of a pandemic and quarantine measures, these circumstances might increase the risk of isolation of these people.

<sup>19</sup> Luxembourg, National Ethics Commission, [Position Statement of the National Ethics Commission \(CNE\) on the vulnerability of certain people caused by the COVID-19 crisis](#), 23 July 2020.

<sup>20</sup> Luxembourg, Centre LGBTIQ+ CIGALE, [Rethinking the COVID-19 pandemic from an LGBTIQ + perspective \(Repenser la pandémie COVID-19 dans une perspective LGBTIQ+\)](#), 16 April 2020.

## Chapter 2. Racism, xenophobia and related intolerance

### 1. Legal and policy developments relating to the application of the Racial Equality Directive

On 27 April 2020, the Consultative Commission on Human Rights (*Commission Consultative des Droits de l'Homme* or *CCDH*), together with 20 civil-society organisations, **addressed an open letter to the President of the Parliament and to the Prime Minister, requesting that they provide the Centre for Equal Treatment (CET) with real powers and sufficient resources** to fight against discrimination in general and racism in particular. The open letter includes a reminder that in Luxembourg the foreign population threshold is around 50 percent, adding to the need for a proactive approach and vigilance in the fight against all forms of racism or xenophobia. The open letter reiterates that in its report published in 2017, the European Commission against Racism and Intolerance (ECRI) recommended that the Luxembourgish lawmaker grant CET the right to receive complaints and to conduct effective investigations, as well as the right to act in justice and to intervene in judicial and administrative proceedings. The signatories thus demand the legislator in line with the abovementioned recommendations to give CET the power to pursue legal actions, to increase the budget of CET and to widen its powers.<sup>21</sup>

On 1 July 2020, during the "hour of topical debates" of the Parliament, **the MPs discussed the situation of discrimination and racism in Luxembourg.**<sup>22</sup> The discussion was triggered, among other things, by the study "Being Black in the EU" which had demonstrated how racism is present in Luxembourg, in particular, in the areas of housing, the labour market and education.<sup>23</sup> The MPs adopted two motions inviting the government, on the one hand, to prepare a study on the phenomenon of racism in Luxembourg<sup>24</sup> and, on the other hand, to take stock of anti-discrimination policies and develop a national action plan against racism, addressing the question in terms of areas such as education, health, employment, policing, social services, the justice system and political participation/representation.<sup>25</sup> The Ministry of the Family and Integration will carry out the abovementioned study, to be presented to the Parliament by the end of 2021. In a resolution adopted during the same parliamentary debate, the Parliament undertook, among other things, to enlarge the decision-making powers

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<sup>21</sup> Luxembourg, Consultative Commission on Human Rights, [Open letter to the President of the Parliament and to the Prime Minister requesting to provide the Centre for Equal Treatment \(CET\) with real powers and sufficient resources to fight against discrimination in general and racism in particular](#) (*Lettre ouverte au Président de la Chambre des Députés et au Premier Ministre Dotons le Centre pour l'Egalité de Traitement (CET) de réelles compétences et de suffisamment de moyens pour lutter contre les phénomènes discriminatoires en général et le racisme en particulier*), 27 April 2020.

<sup>22</sup> Luxembourg, website of the Parliament, [Racism in Luxembourg](#) (*Le racism au Luxembourg*), 1 July 2020.

<sup>23</sup> Luxembourg, website of radio 100.7, [Racism in Luxembourg](#) (*Rassismus zu Lëtzebuerg*), media press release on 2 July 2020

<sup>24</sup> Luxembourg, website of the Parliament, [Motion filed by MP Max Hahn](#) (*Motion déposé par depute Max Hahn*), 1 July 2020.

<sup>25</sup> Luxembourg, website of the Parliament, [Motion filed by MP Sven Clement](#) (*Motion déposé par depute Sven Clement*), 1 July 2020.

of the CET concerning the fight against all forms of discrimination, and to increase the budgetary allocation and the staff of the equality body.<sup>26</sup>

On 2 December 2020, the Minister of Family and Integration presented **the proposed framework for the abovementioned study on racism and ethno-racial discrimination**.<sup>27</sup> The final objective of this study will be to formulate policy recommendations to address the problem better. The study project, which will be carried out in collaboration with experts from CEFIS (Centre for Intercultural and Social Study and Training) and LISER (Luxembourg Institute of Socio-Economic Research), proposes an approach based on a double qualitative and quantitative analysis. The qualitative part of the study will observe the institutional framework and should reflect on the waves of immigration experienced by Luxembourg. It will be deepened through interviews and focus groups in order to understand the experiences of individuals. The quantitative approach will consist of an internet questionnaire with a large sample, constructed in a representative manner using anonymized data from the national register of natural persons, which will include nationality, country of origin of individuals and that of their parents. The project foresees that the study on racism and ethno-racial discrimination will be completed by the end of 2021.

On 2 July 2020, a media outlet reported on a **case of “blackfacing” in a Luxembourgish high school**.<sup>28</sup> A white student with a face painted black appeared on stage at a school performance. A student with African descent asked the management that this blackfacing be discontinued for upcoming performances, but to no avail. The school management defended the practice by stating that there had been no intention to make fun of black people. In response to the incident, CET has prepared a statement stressing that blackfacing is a “symbol of the trauma of racism and enslavement”. For this reason, “the historical, racist legacy associated with blackfacing cannot be ignored”. In conclusion, CET recommended discussing such topics with the students in advance. In this specific case, it would have been necessary to educate the students about the historical legacy of the practice, at least in retrospect.<sup>29</sup>

The Association for the Support of Immigrant Workers (*Association de Soutien aux Travailleurs Immigrés* or *ASTI*) have reported on the difficulties of **undocumented migrants** in the country due to the COVID-19 crisis. ASTI reported that for workers living in Luxembourg in an irregular administrative situation, the interruption of economic activities following the COVID-19 pandemic had been dramatic. Originating from countries outside the EU, these people had mostly worked in conditions that did not comply with the law (i.e. not declared to social security, salary well below the legal minimum wage). Following the termination of several economic activities, these people found themselves without employment, without state aid or the right to social assistance, and this for people

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<sup>26</sup> Luxembourg, website of the Parliament, [Resolution filed by MP Max Hahn](#) (*Résolution déposé par député Max Hahn*), 1 July 2020.

<sup>27</sup> Luxembourg, website of the Parliament, [Analysing ethno-racial discrimination](#) (*Analyser les discriminations ethno-raciales*), 2 December 2020.

<sup>28</sup> Luxembourg, website of woxx.lu, [Racism in Luxembourg schools: “I want public decommissioning”](#) (*Rassismus an Luxemburger Schulen: “Ech wëll eng ëffentlech decommissioning”*), media press release, 2 July 2020.

<sup>29</sup> Luxembourg, website of woxx.lu, [CET denounces blackfacing in Kolléisch](#) (*CET prangert Blackfacing im Kolléisch an*), media press release on 16 August 2020.

who were often living with their children. So far, Luxembourg has not arranged free food aid for undocumented migrants. ASTI has thus set up hotlines for the distribution of food vouchers to social grocery stores, an initiative financed by donations. Up until June 2020, 214 people have contacted ASTI, among them 61 children. They represent 105 households. The origins of the people who requested help is diverse (i.e. Brazilian, Peruvian, Senegalese, Cameroonian, Nigerian, Cape Verdean, and a quarter of the applicants come from the countries of the former Yugoslavia).<sup>30</sup>

On 1 December 2020, **CET has published its 2020 report on discrimination** (*Observatoire des discriminations 2020*).<sup>31</sup> The results of the report were based on an inquiry of approximately 1,000 people in Luxembourg, in respect of their experiences of discrimination, either as victims or as witnesses. According to the findings of the report, 20 percent of the population has been discriminated against at least once in the past three years. By far the most common discrimination was based on nationality (46 percent). In second place, at 28 percent, is gender, and thirdly, with 22 percent each, is related to language skills and appearance. In the course of the press conference held to introduce the report, it was found particularly worrisome that 27 percent of the victims had not reacted to the discrimination they experienced, and had not even spoken to acquaintances about it. A report to the authorities was made only in 10 percent of the cases.

After years of planning, in October 2020 the “**House of Human Rights**” (**Mënscherechtshaus**) finally hosted three important human rights bodies. The Consultative Commission on Human Rights (*Commission Consultative des Droits de l’Homme* or CCDH)<sup>32</sup>, the Centre for Equal Treatment (*Centre pour l’Égalité de Traitement* or CET)<sup>33</sup> and the Ombudsman for Children and Adolescents (*Ombudsman fir Kanner a Jugendlecher* or OKaJu)<sup>34</sup> have moved to the same building, thereby strengthening the cooperation between these bodies.

## **2. Legal and policy developments relating to the application of the Framework Decision on Racism and Xenophobia relevant to combating hate speech and hate crime**

Bill n°7631 concerning a state support scheme in favour of professional journalism<sup>35</sup> was introduced to Parliament on 14 July 2020. The bill intends to reform the system of state subsidies provided to media outlets with an objective of strengthening the diversity of the media in the long term. The bill intends to introduce a neutral financing mechanism, which will be available for all publishers

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<sup>30</sup> Luxembourg, website of ASTI, [ASTI supports the undocumented - those forgotten by the crisis](#) (*L’ASTI soutient les sans-papiers – les oubliés de la crise*), 8 June 2020.

<sup>31</sup> Luxembourg, website of CET, [Discrimination Observatory 2020 - Full report](#) (*Observatoire des discriminations 2020 – Rapport complet*), 1 December 2020.

<sup>32</sup> Luxembourg, website of the CCDH, [We are moving](#), 1 October 2020.

<sup>33</sup> Luxembourg, website of CET, [CET is moving](#) (*De CET plënnert – Le CET déménage – Das CET zieht um*), 8 October 2020.

<sup>34</sup> Luxembourg, website of OKaJu, [New address – new phone number](#) (*Nouvelle adresse - Nouveau no de téléphone*), last accessed on 17 November 2020.

<sup>35</sup> Luxembourg, [bill n°7631 relating to an aid scheme in favour of professional journalism and abrogation amended the law of 3 August 1998 on the promotion of the written press](#) (*Projet de loi no. 7631 relatif à un régime d’aides en faveur du journalisme professionnel et abrogeant la loi modifiée du 3 août 1998 sur la promotion de la presse écrite*), accessed on 1 October 2020.

- printed and online - under equal conditions. Among these well-defined conditions, the text indicates that the media outlet must guarantee the **possibility of eliminating illegal content, in particular, hate speech** in the comment section.<sup>36</sup> The bill is still pending.

**Bill n°7651**<sup>37</sup> was introduced to Parliament **to amend the act of 27 July 1991 on electronic media**.<sup>38</sup> The objective of the bill is to transpose the European Parliament and Council Directive (EU) 2018/1808 of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities. Among many other objectives, in accordance with Article 6 of the Directive, the bill introduces a more precise provision on prohibition of incitement to violence, hatred and terrorism in the audiovisual media. Accordingly, the new Article 26*bis* specifies that content provided by audiovisual media service providers under the jurisdiction of Luxembourg shall not contain (i) any incitement to violence or hatred directed at a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the EU Charter of Fundamental Rights; or (ii) any public provocation to commit a terrorist offense as referred to in the Penal Code. Furthermore, following the wording of the Directive, the amended act will widen its scope to include video-sharing platform providers, who will have to take measures to ensure that user-created content respects the fundamental principles of the Directive (protection of minors, prohibition of incitement to hatred, discrimination). Accordingly, providers of video-sharing platforms under the jurisdiction of Luxembourg shall take the appropriate measures to protect the general public from programmes, user-created videos and audiovisual commercial communications (i) which include incitement to violence or hatred aimed at a group of persons or a member of a group, based on one of the grounds referred to in Article 21 of the EU Charter of Fundamental Rights; or (ii) which contain content whose dissemination constitutes a criminal offense. This latter provision corresponds, among others, to the criminal offenses relating to racism and xenophobia as set out in Article 1 of the Framework Decision on Racism and Xenophobia.

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<sup>36</sup> Luxembourg, website of the government, [Bill concerning the reform of press support - support for professional journalistic work](#) (*Projet de loi concernant la réforme du soutien à la presse - soutien au travail journalistique professionnel*), 21 July 2020.

<sup>37</sup> Luxembourg, website of the Parliament, [Bill amending the amended law of 27 July 1991 on electronic media](#) (*Projet de loi portant modification de la loi modifiée du 27 juillet 1991 sur les médias électroniques*), last accessed on 15 December 2020.

<sup>38</sup> Luxembourg, [act of 27 July 1991 on electronic media](#) (*loi du 27 juillet 1991 sur les médias électroniques*).

## Chapter 3. Roma equality and inclusion

### 1. Measures and developments addressing Roma/Travellers

Following the EU Framework for National Roma Integration Strategies up to 2020 guidelines issued by the European Commission in 2011, Luxembourg has opted for an integrated set of policy measures within the framework of broader social inclusion policies<sup>39</sup> in order to implement its National Roma Integration Strategy (NRIS).

The **second Roma Civil Monitor (RCM) report on Luxembourg** came out in March 2020<sup>40</sup> emphasising the need for more data and information in general about Roma, Sinti and Travellers in Luxembourg, as the only current estimate of their numbers is already a decade old. The report addresses the repeated question of whether the current policy approach was effective and should be maintained post-2020. The report stresses that, through the current policy set-up and measures, Luxembourg falls short of showing how its current policies and programmes promote the social inclusion of Roma and how it ensures the protection of their rights.

The report concludes that a new policy approach should be enforced in order to ensure more adequate solutions to the needs of Roma in Luxembourg. By enlisting a handful of recommendations, the report suggests, among other things, to adopt a specific post-2020 National Roma Strategy, to establish a contact and trust building dialogue with Roma communities in Luxembourg, to perform needs assessment mapping of Roma in Luxembourg and to engage actively in policymaking in this field.

No response was released from the government's side to the report so far, and nor was there any policy development addressing the issue.

### 2. Policy and legal measures and developments directly or indirectly addressing Roma/Travellers inclusion

No information available.

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<sup>39</sup> Luxembourg, [Declaration by the government of Luxembourg regarding the implementation of National Roma Integration Strategy](#), 14 January 2012.

<sup>40</sup> Luxembourg, Roma Civil Monitor, [Civil society monitoring report on implementation of the national Roma integration strategy in Luxembourg](#), March 2020.

## Chapter 4. Asylum, visas, migration, borders and integration

Extension of residence permits and other authorisations to stay that expired during COVID-19 pandemic measures.

EUMS/ Republic of North Macedon ia, Republic of Serbia	Category of TCN	Brief description of the measure	Legal source (legislation or case law as relevant) with hyperlink	Comments
LU	Complete this row if measures concern all/most of the TCN listed below whose (national or EU law based) permission to stay expired during COVID-19 related travel restrictions. In this case indicate in the next rows the categories to which the measure applies	<p>(i) <u>From 18/03/2020 to 24/06/2020</u>: The Grand-ducal decree introduced on 18 March 2020 provided that the validity period of visas, temporary residence permits, residence cards and residence permits which expire after 1 March 2020 will be extended for the duration of the state of emergency.</p> <p>(ii) <u>From 25/06/2020 to 31/08/2020</u>: The state of emergency lasted until 24 June 2020. On 25 June 2020, the act of 20 June entered into force of. This latter piece of legislation laid down that the validity of all residence permits</p>	<p>Article 13 of the <a href="#">grand-ducal decree of 18 March 2020 introducing a series of measures to combat Covid-19</a> (<i>Règlement grand-ducal du 18 mars 2020 portant introduction d'une série de mesures dans le cadre de la lutte contre le Covid-19</i>).</p> <p>Article 1 of <a href="#">act of 20 June 2020 introducing certain temporary measures relating to the application of the amended act of 29 August 2008 on the free movement of persons and immigration</a> (<i>Loi du 20 juin 2020 portant introduction de certaines mesures temporaires</i></p>	<p>The Consultative Commission on Human Rights (<i>Commission Consultative des Droits de l'Homme</i> or CCDH) in its <a href="#">opinion</a> welcomed the government's decision to provide for specific extensions to avoid situations where third-country nationals could find themselves in Luxembourg without a valid residence permit. However, it found it hard to understand why different periods applied to residence permits (i.e. until 31 August 2020) and to visa-free TCNs (i.e. until 31 July 2020). The legislator then explained that the two</p>

		<p>that expire after 1 March 2020 will be extended until 31 August 2020.</p> <p>According to the legislator, this latter date was set to allow (given the accumulated delays due to the health crisis) the Directorate of Immigration to produce the respective documents.</p>	<p><i>relatives à l'application de la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration).</i></p>	<p>dates correspond to two different cases: 31 August was set to overcome the backlog that had accumulated at the Directorate of Immigration, while 31 July seemed realistic in view of the possibilities of travelling, as deconfinement measures had started to progress.</p>
<p>Holders of visas issued based on the <a href="#">Visa Code No. 810/2009</a> (as last amended by <a href="#">Regulation (EU) No. 2019/1155</a>) (Schengen visas)</p>	<p>The measures described in the first and third rows cover all types of visa, temporary residence permits, residence cards and residence permits issued in Luxembourg.</p>	<p>N/A</p>	<p>N/A</p>	
<p>Visa-free TCN who reached the maximum of 90 days in any 180-day period under Article 4 of the <a href="#">Visa List Regulation</a> (Regulation (EU) 2018/1806)</p>	<p>(i) <u>From 18/03/2020 to 24/06/2020</u>: The Grand-ducal decree introduced on 18 March 2020 indicated that the stay of third-country nationals who are not subject to visa requirements and whose stay has just exceeded 90 days, will be declared lawful for the duration of the state of emergency.</p>	<p>Article 13 of the <a href="#">grand-ducal decree of 18 March 2020 introducing a series of measures to combat Covid-19</a> (<i>Règlement grand-ducal du 18 mars 2020 portant introduction d'une série de mesures dans le cadre de la lutte contre le Covid-19</i>).</p> <p>Article 1 of <a href="#">act of 20 June 2020 introducing certain</a></p>	<p>The Consultative Commission on Human Rights (<i>Commission Consultative des Droits de l'Homme</i> or <i>CCDH</i>) in its <a href="#">opinion</a> welcomed the government's decision to provide for specific extensions to avoid situations where third-country nationals could find themselves in Luxembourg without a valid residence</p>	



		<p>(ii) <u>From 25/06/2020 to 31/07/2020</u>: Act of 20 June 2020 laid down that the stay of third country nationals</p> <ul style="list-style-type: none"> <li>- holding a short-stay visa,</li> <li>- who are not subject to the visa requirement, and whose stay has just exceeded 90 days after 1 March 2020 will be considered lawful until 31 July 2020.</li> </ul> <p>According to the legislator, this latter date seemed realistic in view of the possibilities of travelling, as deconfinement measures had started to progress.</p>	<p><a href="#">temporary measures relating to the application of the amended law of 29 August 2008 on the free movement of persons and immigration</a> (<i>Loi du 20 juin 2020 portant introduction de certaines mesures temporaires relatives à l'application de la loi</i>).</p>	<p>permit. However, it found it hard to understand why different periods applied to residence permits (i.e. until 31 August 2020) and to visa-free TCNs (i.e. until 31 July 2020). The legislator then explained that the two dates correspond to two different cases: 31 August was set to overcome the backlog that have accumulated at the Directorate of Immigration, while 31 July seemed realistic in view of the possibilities of travelling, as deconfinement measures had started to progress.</p> <p>In respect to TCNs who intend to apply for international protection in Luxembourg, the Luxembourg Refugee Council published a <a href="#">statement</a> on 11 August 2020, which heavily criticised the Ministry of Foreign Affairs' Directorate of Immigration that allegedly created unreasonable difficulties for</p>
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				<p>people wanting to apply for international protection.</p> <p>The Ministry reacted to the allegations in a <a href="#">press release</a> on the same day, refuting the charges and emphasising that their staff had, in fact, a legal obligation to inform people who are not qualified to obtain international protection based on the applicable legal provisions.</p> <p>Passerell Luxembourg, a civil society organisation active in the defence of the rights of asylum seekers, <a href="#">filed an appeal to the administrative court</a> against the abovementioned practice of the Directorate of Immigration.</p>
<p>Holders of long-term visas issued by the EUMS (under <a href="#">Regulation (EU) No. 265/2010</a> and beyond, under national law)</p>	<p>The measures described in the first and third rows cover all types of visa, temporary residence permit, residence card and residence permit issued in Luxembourg.</p>	N/A	N/A	N/A

<p> <a href="#">Regulation (EC) No. 1030/2002</a> (as last amended by <a href="#">Regulation (EU) 2017/1954</a>) </p>	<p>The measures described in the first and third rows cover all types of visa, temporary residence permit, residence card and residence permit issued in Luxembourg.</p>	N/A	N/A
<p> <a href="#">Regulation (EC) No. 1931/2006</a> </p>	<p>The measures described in the first and third rows cover all types of visa, temporary residence permit, residence card and residence permit issued in Luxembourg.</p>	N/A	N/A
<p>Any other category of TCN not listed above:</p>	N/A	N/A	N/A

Notes:

TCN = third-country nationals

EUMS = EU Member State

## Chapter 5. Information society, privacy and data protection

### 1. Legal and political initiatives that have been implemented to support access to, and use of, personal data.

#### Data collection during the COVID-19 pandemic:

The government has adopted several “COVID-laws”<sup>41</sup> since the beginning of the health crisis. The **act of 24 June 2020**<sup>42</sup> introduced detailed provisions concerning the collection and processing of personal data in connection with the COVID-19 pandemic. Accordingly, article 8 of the abovementioned act provides that in order to follow the evolution of the spread of COVID-19, the Director of Public Health set up an information system, which contains personal data. The purpose of this information system is (i) to detect, assess, monitor and combat the COVID-19 pandemic and acquire fundamental knowledge about the spread and evolution of the disease, (ii) to guarantee citizens’ access to healthcare and means of protection against COVID-19, (iii) to create the organizational and professional frameworks required to monitor and combat the pandemic, and (iv) to respond to information requests from European or international health authorities. The law gives an exhaustive list of the types of personal data that are managed within this information system. In respect of infected persons these data are, among others, identification data, contact details, contact details of the attending physician, identification data and contact details of the persons with whom the infected persons have had physical contact within 48 hours before the appearance of symptoms or a positive test, etc. Only doctors and health professionals, appointed by the Director of Public Health are authorised to access data, which relate to infected people or people at high risk of becoming infected, and only to the extent strictly necessary for the performance of the tasks entrusted to them. People who are infected or at a high risk of being infected cannot object to the processing of their data in the information system as long as they cannot present a negative COVID-19 test. For the rest of the collected data, which was processed by the Directorate of Health, the rights of data subjects were exercised in line with the GDPR. The law provided that the personal data processed within the information system must be

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<sup>41</sup> Luxembourg, [grand-ducal regulation of 18 March 2020 introducing a series of measures in the context of the fight against Covid-19](#) (*règlement grand-ducal modifié du 18 mars 2020 portant introduction d’une série de mesures dans le cadre de la lutte contre le Covid-19*), [act of 24 March 2020 extending the state of emergency declared by the grand-ducal regulation of 18 March 2020 introducing a series of measures in the fight against Covid-19](#) (*loi du 24 mars 2020 portant prorogation de l’état de crise déclaré par le règlement grand-ducal du 18 mars 2020 portant introduction d’une série de mesures dans le cadre de la lutte contre le Covid-19*).

<sup>42</sup> Luxembourg, [act of 24 June 2020 introducing a series of measures concerning natural persons in the context of the fight against the Covid-19 pandemic and amending the amended law of 11 April 1983 regulating marketing and advertising medication](#) (*loi du 24 juin 2020 portant introduction d’une série de mesures concernant les personnes physiques dans le cadre de la lutte contre la pandémie Covid-19 et modifiant la loi modifiée du 11 avril 1983 portant réglementation de la mise sur le marché et de la publicité des médicaments*).

anonymized after three months from the end of the state of emergency. The act of 24 June 2020, coming from its specific nature, was in effect for only one month and was replaced by a new COVID-law.

The subsequent COVID-law, **act of 17 July 2020**<sup>43</sup> contained similar data protection provisions, with only minor amendments. For example, the new law provided that not only doctors and health professionals, but also state and private employees appointed by the Director of Public Health were authorised to access the relevant data. Furthermore, the most recent relevant legislation, **act of 23 September 2020**<sup>44</sup> contains certain amendments to the latest COVID-law, including provisions on data protection. After having addressed the concerns of the Consultative Commission on Human Rights<sup>45</sup> (*Commission Consultative des Droits de l'Homme* or *CCDH*), act of 23 September 2020 sets forth that the collected data should be anonymized three months after its collection. On the other hand, as part of a scientific or historical study, researchers can make a request within three months and they will receive this data in pseudonymized form. Airlines are obliged to automatically transfer to health authorities the forms filled out by aeroplane passengers to facilitate contact tracing if a passenger tests positive. These data will be anonymized fourteen days after their collection.<sup>46</sup>

**The possibility of setting up a digital contact tracing application** in Luxembourg to supplement the fight against COVID-19 has been debated several times in the Parliament. The question was the subject of several motions submitted by members of Parliament.<sup>47</sup> On a briefing held for MPs on 31 August 2020, the Prime Minister and the Minister of Health explained

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<sup>43</sup> Luxembourg, [act of 17 July 2020 introducing a series of measures to fight the Covid-19 pandemic and amending the amended law of 25 November 1975 concerning the delivery to the public of medicinal products and the amended law of 11 April 1983 regulating the marketing and advertising of medicinal products](#) (*loi du 17 juillet 2020 portant introduction d'une série de mesures de lutte contre la pandémie Covid-19 et modifiant la loi modifiée du 25 novembre 1975 concernant la délivrance au public des médicaments et la loi modifiée du 11 avril 1983 portant réglementation de la mise sur le marché et de la publicité des médicaments*).

<sup>44</sup> Luxembourg, [act of 23 September 2020 amending the amended law of 17 July 2020 on measures to combat the Covid-19 pandemic](#) (*loi du 23 septembre 2020 modifiant la loi modifiée du 17 juillet 2020 sur les mesures de lutte contre la pandémie Covid-19*).

<sup>45</sup> Luxembourg, Consultative Commission on Human Rights, [Opinion on bill n°7645 amending the act on measures to combat the Covid-19 pandemic](#) (*Avis sur le projet de loi n°7645 modifiant la loi sur les mesures de lutte contre la pandémie Covid-19*), 31 August 2020 ; and [Supplementary opinion on bill n°7645 amending the act on measures to combat the Covid-19 pandemic](#) (*Avis complémentaire sur le projet de loi n°7645 modifiant la loi sur les mesures de lutte contre la pandémie Covid-19*), 10 September 2020.

<sup>46</sup> Luxembourg, website of the Parliament, [Green light for the latest version of the "COVID law"](#) (*Feu vert pour la dernière version de la « loi COVID »*), 22 September 2020.

<sup>47</sup> Luxembourg, [Motion by Mr. Fernand Kartheiser, MP on the subject "Invitation of the Government to oppose any attempt to introduce a contact tracing application"](#) (*Motion de Monsieur Fernand Kartheiser, Député sur le sujet « Invitation du Gouvernement à s'opposer à toute tentative d'introduction d'une application de traçage des contacts »*), 17 April 2020; [Motion by Mr. Sven Clement, MP on the subject "Invitation of the Government not to make the use of a mandatory contact tracing application"](#) (*Motion de Monsieur Sven Clement, Député sur le sujet « Invitation du Gouvernement à ne pas rendre l'utilisation d'une application de traçage des contacts obligatoire »*), 17 April 2020; [Motion by Mr. Sven Clement, MP on the subject "Invitation of the Government not to make the use of a mandatory contact tracing application"](#) (*Motion de Monsieur Sven Clement, Député sur le sujet « Invitation du Gouvernement à ne pas rendre l'utilisation d'une application de traçage des contacts obligatoire »*), 7 May 2020; [Motion by Mr.](#)

the Government's approach to the issue. Although having claimed that they have taken steps with technical service providers to understand the potential cost of setting up such a device, the Government maintained a firm position that the digital contact tracing application did not represent a benefit at that time. The Government took this judgment based on their understanding at the time on national epidemiological data, and on reports that these applications had proven to be relatively ineffective in the countries that had introduced them. Thus, analogue contact tracing methodology remained the main approach in the fight against the epidemic in Luxembourg. A majority of MPs reaffirmed their critical position with regard to the use of a digital application. However, critical voices were also raised, arguing that the Government's public position had been so negative on tracing applications that this would have made it more challenging to persuade the public to use the technology if it were to become necessary.<sup>48</sup>

The requirements for remote teaching triggered data protection debates in higher education contexts. During the 2020 summer semester, the University of Luxembourg had to organise exam sessions, for the first time, in a remote setting due to the COVID-19 pandemic. To ensure high-quality diplomas and safety of the exams, the use of a **remote proctoring system, that included AI-based video-surveillance during the exams**, had been considered. However, referring to data protection concerns, the initiative was criticised by the National Union of Luxembourg Students.<sup>49</sup> After reviewing this tool and considering that the University could not ensure its obligation to protect the privacy of the users, the idea of using such software was abandoned for the summer examination period. Other forms of remote exams had been used, such as exams on Webex, take-home exams, essay papers, etc.

#### Law on video-surveillance:

The current video-surveillance regime is based on the previous data protection law<sup>50</sup> and it is being regulated by the grand-ducal regulation of 1 August 2007.<sup>51</sup> However, the previous data protection law has been repealed, thus there is currently no specific and sufficient legal basis for the establishment and operation of video surveillance systems on public places by the

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[Claude Wiseler, MP on the subject "Setting up a tracking application"](#) (*Motion de Monsieur Claude Wiseler, député, sur le sujet « Mise en place d'une application de traçage »*), 23 July 2020.

<sup>48</sup> Luxembourg, website of the Parliament, [Extend and complete the "COVID-law"](#) (*Prolonger et compléter la « loi COVID »*), 1 September 2020.

<sup>49</sup> Luxembourg, website of UNEL, [Exams with video-surveillance questioned](#) (*Les Examens par Videosurveillance Questionnés*), press release on 5 June 2020.

<sup>50</sup> Luxembourg, [act of 2 August 2002 on the protection of personal data](#) (*loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*)

<sup>51</sup> Luxembourg, [grand-ducal regulation of 1 August 2007 authorizing the creation and operation by the Police of a video surveillance system](#) (*règlement grand-ducal du 1er août 2007 autorisant la création et l'exploitation par la Police d'un système de vidéosurveillance des zones de sécurité*)

police. In order to provide **sufficient legal basis for such police operation, bill n°7498**<sup>52</sup> proposes to amend act of 18 July 2018 on the Grand Ducal Police<sup>53</sup> by including the new Article 43*bis*. The new Article lays down the rules of video surveillance in public places. Accordingly, the police may, with the authorisation of the Minister of Justice, place under video surveillance certain places which are accessible to the public and which present a particular risk of crimes against persons or property. The law specifies that these could be (i) places where the same types of crimes are repeatedly committed, (ii) places which, by their configuration, are likely to favour the perpetration of certain types of crimes, (iii) the surroundings of places where national or international events are regularly organized, and (iv) places which, by their nature, bring together a large number of people. The ministerial authorisation would be issued based on an impact analysis carried out by the Director General of the Police and followed by the opinion of the State Prosecutor, as well as the territorially competent mayor. The authorisation would last for a maximum period of three years and it would be renewable by the same procedure. The data collected through such video surveillance must be permanently deleted no later than two months after their recording, unless the data are used in the context of a preliminary investigation or judicial proceedings.

The bill was introduced in November 2019 for deliberation by the Parliament and it is still in the pipeline.

#### Right to know one's biological parents:

On 7 October 2020, bill n°7674 was presented before the Parliament on giving **access to the identities of one's biological parents' in case of adoption, assisted reproduction and anonymous childbirth**.<sup>54</sup> The bill intends to guarantee a right provided for by the UN Convention on the Rights of the Child (art.8). First, the bill regulates access to information about biological parents following an adoption, either national or international. If the identity is unknown in the course of an international adoption, the responsible minister takes steps through diplomatic contacts. Only the child could request identity information. If the child is a minor, he/she could make the request with the support of his/her adoptive parents or the family affairs judge. Second, the text of the bill abandons the anonymity of a sperm donor used during medically assisted reproduction. Third, in the case of anonymous childbirth, a sensitive balance has to be found between the mother's right to remain anonymous in an exceptional situation of distress and the child's right to know his/her biological origins. Bill n°7674 provides that the mother can make a declaration of her identity, in a separate closed envelope and when the child makes a request for information about his/her origins, the mother can decide at that time whether she wants to lift the secrecy of her identity or remain anonymous. In all three cases, the child has the right neither to take the name of the biological parents, nor to inherit nor to receive alimony. The bill is still underway.

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<sup>52</sup> Luxembourg, website of the Parliament, [Bill n° 7498 on amending the amended law of July 18, 2018 on the Grand Ducal Police](#) (*Projet de loi no. 7498 portant modification de la loi modifiée du 18 juillet 2018 sur la Police grand-ducale*).

<sup>53</sup> Luxembourg, [act of 18 July 2018 on the Grand Ducal Police](#) (loi du 18 juillet 2018 sur la Police grand-ducale)

<sup>54</sup> Luxembourg, website of the Parliament, [Give the right to the child to know his origins](#) (*Donner le droit à l'enfant de connaître ses origines*), 7 October 2020.

### Data retention:

There have been no changes to data retention legislation. Bill n°6763 is still pending.<sup>55</sup> The Luxembourgish government confirmed yet again the necessity of a common EU framework that would provide guidelines on the data retention law at national level.<sup>56</sup>

## 2. Artificial intelligence and big data

Please fill in the table below with any initiatives you may identify in your country:

<b>MS</b>	<b>Actor*</b>	<b>Type**</b>	<b>Description</b>	<b>Are Ethical concerns mentioned? (yes/no)</b>	<b>Are Human Rights issues mentioned? (yes/no)</b>	<b>Reference</b>
<b>LU</b>	Government/ Parliamentary	other projects	National Research and Innovation Strategy for Luxembourg	Yes (among the goals set by the strategy:	Yes (among the goals set by the strategy:	Luxembourg, website of the government, <a href="#">National Research and Innovation Strategy for</a>

<sup>55</sup> Luxembourg, website of the Parliament, [Bill n°6763 amending the Code of Criminal Procedure and the amended law of 30 May 2005 on the protection of privacy in the electronic communications sector](#) (*Projet de loi no. 6763 portant modification du Code d'instruction criminelle et de la loi modifiée du 30 mai 2005 concernant la protection de la vie privée dans le secteur des communications électroniques*), accessed on 8 September 2020.

<sup>56</sup> Luxembourg, website of the Parliament, [Parliamentary question n° 1783 on the subject: Legislation on data retention](#) (*Question parlementaire n° 1783 sur le sujet: Législation concernant la conservation des données*), 28 February 2020.



			<p>The strategy focuses on four interdisciplinary research priority areas, such as (i) industrial and service transformation, (ii) personalised healthcare, (iii) sustainable and responsible development and (iv) 21<sup>st</sup> century education. Artificial intelligence is considered as a key, enabling technology that will be used in each of the main four research priority areas. The strategy envisages the elaboration of certain standards by developing a legal framework for the use of AI based on ethical principles.</p>	<p>“Responsible development: regulations and ethics for a data-driven society”)</p>	<p>“Equality of educational opportunity”)</p>	<p><a href="#">Luxembourg</a> presented on 26 February 2020</p>
<b>LU</b>	Independent State Institution	other projects	<p>CodeStart (Training programme for young people to learn digital skills for their future studies, as well as for their future professional careers)</p>	No	No	<p>Luxembourg, <a href="https://digital.luxembourg.lu">digital.luxembourg.lu</a> government website, <a href="#">Codestart</a>, last accessed on 17 November 2020.</p>

LU	Independent State Institution/ Business	other projects	Luxembourg's AI Academy  Several different types of training are offered to different target audiences. For example, <a href="#">artificial intelligence training offered to decision makers in the public service</a> aims at developing specific and practical knowledge to define and implement an artificial intelligence strategy, as well as to foster an "AI-ready" culture and learn to use artificial intelligence with responsibly and confidence.	No	No	Luxembourg, digital.luxembourg.lu government website, <a href="#">AI academy Luxembourg</a> , last accessed on 17 November 2020.
LU	Government/ Parliamentary	other projects	"L'été go equal in digital" (awareness-raising workshops and a conference for students and business representatives)	Yes (ethics in the work place, in particular, fostering equal opportunities at work)	Yes (Specific focus on gender equality and fostering equal opportunities for women and men in the digital sector)	Luxembourg, website of the Ministry of Gender Equality, <a href="#">Digital, a sector of the future for women and men</a> ( <i>Le numérique, un secteur d'avenir pour les femmes et les hommes</i> ), 12 February 2020

<b>LU</b>	Academia	other projects	Planned establishment of a "Centre for Digital Ethics" within the University of Luxembourg	N/A	N/A	Luxembourg, website of the parliament, <a href="#">Response to parliamentary question n°1612 on training citizens in the basics of artificial intelligence</a> ( <i>Réponse à la question parlementaire n° 1612 au sujet de la formation des citoyens aux bases de l'intelligence artificielle</i> ), 14 January 2020.
<b>LU</b>	Independent State Institution	report/study	Position paper of the National Ethics Commission (C.N.E.) on information technology tools used in the fight against the SARS-CoV-2 Coronavirus pandemic ( <i>Prise de position de la Commission Nationale d'Éthique (C.N.E.) sur les aides informatiques dans la lutte contre la pandémie du Coronavirus SARS-CoV-2</i> )	Yes (to establish the red lines of an ethically acceptable framework in digital contact tracing, in particular, the contact tracing must be voluntary, transparent, minimalist and limited in time with a clearly defined objective)	Yes (considerations regarding data protection, privacy and access to information, freedom of movement, freedom of association)	Luxembourg, website of the CNE, <a href="#">Position paper of the National Ethics Commission (C.N.E.) on computer aids in the fight against the SARS-CoV-2 Coronavirus pandemic</a> , last accessed on 27 November 2020.

			<p>C.N.E. believes that digital contact tracing should be considered as a useful tool, however, its use should not go without the setting of strict conditions. C.N.E. calls for the establishment of red lines for an ethically acceptable framework. The essential elements of such an ethical framework are, irrespective of the technical concerns of creating the technology, that tracing must be voluntary, transparent, minimalist and limited in time, with a clearly defined objective.</p>			
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## Chapter 6. Rights of the child

### 1. Measures taken during the COVID-19 to ensure the well-being of children living in poverty and the protection of children from violence.

<p><b>Measures to address the specific vulnerabilities of children living in poverty</b></p>	<ul style="list-style-type: none"> <li>- From the beginning of the lockdown and, in particular, from the closing of schools, the State introduced <b>extraordinary parental leave</b> (for children under 13 years) which allowed one of the parents taking care of the child/children to stay at home.<sup>57</sup> Parents were able to alternate the leave for family reasons.<sup>58</sup></li> <li>- In order to ensure continuity of education for children from socioeconomically disadvantaged backgrounds, the Ministry of National Education, Childhood and Youth published a document titled "<b>A common effort to ensure the educational path of all students</b>".<sup>59</sup> To prevent pupils from finding themselves isolated at home and not participating in distance learning, a systematic procedure had been put in place at national level, which made it possible to identify this target population and support the pupils concerned with a series of measures.<sup>60</sup></li> <li>- According to the Ministry of National Education, Childhood and Youth, after having noted that the computer equipment essential for distance education was lacking in some families, sustained efforts were made, both by high school management and by municipal authorities, <b>to provide families with the required computer equipment.</b><sup>61 62</sup></li> <li>- In order to help children to overcome study difficulties and to fill in any knowledge gaps caused by the lockdown in spring, the Ministry of Education offered <b>additional tutoring lessons to primary and secondary school students</b> before the start of the autumn school term. Apart from the online material (<a href="http://www.schouldoheem.lu">www.schouldoheem.lu</a>) and the helpline set up by the Ministry, as of 31 August 2020 tutorial classes were offered with personal presence in several schools around the country. Pupils in primary</li> </ul>
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<sup>57</sup> Luxembourg, website of the government, [Leave for family reasons in connection with the coronavirus epidemic](#), News press release 15.03.2020.

<sup>58</sup> Luxembourg, see more on page 6 of the [Franet country study](#) released on 8 April 2020.

<sup>59</sup> Luxembourg, Ministry of National Education, Childhood and Youth (*Ministère de l'Éducation nationale, de l'Enfance et de la Jeunesse*), [A common effort to ensure the educational path of all students](#) (*Un effort commun pour assurer le parcours scolaire de tous les élèves*), 02.04.2020.

<sup>60</sup> Luxembourg, see more in section 1.2.2 on page 3 of the [Franet country study](#) released on 28 May 2020.

<sup>61</sup> Luxembourg, website of the Parliament, [Response to the parliamentary question no. 2093 on homeschooling](#) (*Réponse à la question parlementaire sur le sujet "Homeschooling"*), 9 June 2020.

<sup>62</sup> Luxembourg, see also in section 1.2.2. on page 5 of the [Franet country study](#) released on 29 July 2020.

	<p>education registered in particularly large numbers (4,830 which represents some 15% of pupils), and 1,100 high school students also took part in the tutoring classes.<sup>63</sup></p> <ul style="list-style-type: none"> <li>- In November 2020, the Luxembourg Chamber of Employees (<i>Chambre des Salariés Luxembourg</i>) had prepared a bill providing for the immediate <b>increase by 7.7% of all family benefits</b> and <b>increasing family allowance</b> from 265 to 285 euros, as well as the reintroduction of the automatic adjustment of family benefits. The Chamber of Employees supported the reform, especially because the health and economic crisis have aggravated the difficulties and inequalities affecting families with children.<sup>64</sup></li> <li>- Launched in April 2020 to support people facing economic hardship following the health crisis, <b>Caritas</b> have distributed more than 215,000 euros by mid-July in direct aid, mainly for food purchases. During this period, through the Caritas Helpline, 807 people were provided with some type of help, including a form of <b>one-off financial assistance</b> or access to social grocery stores. Out of these 807 people, 278 were children.<sup>65</sup></li> <li>- The government has adopted an amendment to the regulation on the granting of "<b>cost of living allowance</b>" (<i>allocation de vie chère</i>) in order to grant beneficiaries <b>twice the normal amount for 2020</b>. This modification aims to provide specific support to low-income people or families who have been particularly severely impacted by the COVID-19 crisis. The "cost of living allowance" is a state subsidy that can be requested if the annual household income stayed below a certain amount.<sup>66</sup></li> </ul>
<p><b>Measures to protect children from violence</b></p>	<ul style="list-style-type: none"> <li>- In reply to a parliamentary question in August 2020, the government had released relevant data in respect of violence against children during the confinement period. The statistics show that the Public Prosecutor's Office registered 75 cases of violence against minors between 13 March and 13 July 2020, compared to 156 cases in the same period in 2019. During this four-month period, 63 children were placed in a special institution or with a foster family, while during the same period in 2019 this number was 140. The statistics thus show a decrease, however, this</li> </ul>

<sup>63</sup> Luxembourg, website of the government, [Guaranteeing equal opportunities: a comprehensive school support program](#) (*Garantir l'égalité des chances: un programme global de soutien scolaire*), 1 September 2020

<sup>64</sup> Luxembourg, website of the Luxembourg Chamber of Employees, [Proposal for a law on the revaluation of family benefits](#) (*Proposition de loi concernant la revalorisation des prestations familiales*), November 2020.

<sup>65</sup> Luxembourg, website of Caritas, [Caritas News N°126](#), September 2020.

<sup>66</sup> Luxembourg, website of the government, [Amounts doubled for cost-of-living allowance](#) (*Montants doublés pour l'allocation de vie chère*), 20 May 2020.

	<p>development can be explained by the fact that during confinement the children had neither attended school nor attended any reception or leisure facilities. Hence, children had less contact with educators who might otherwise have been able to detect signs of abuse and report this.<sup>67</sup></p> <ul style="list-style-type: none"> <li>- <b>BeeSecure</b> has an important role in raising awareness about the use of new technologies (sexting, grooming, and cybercrime)<sup>68</sup> and its Helpline continues to provide help during the COVID-19 situation regarding the recognition and protection of children from online dangers.<sup>69</sup></li> <li>- In reply to a parliamentary question, data was released on the <b>deterioration of young people’s mental health</b> since the beginning of the health crisis.<sup>70</sup> An increasing number of children and teenagers had contacted the different hotlines and services (i.e. <i>SOS détresse, Kanner-Jugendtelefon</i>) due to increased feelings of anxiety since the start of the pandemic. Young people appear to have difficulties in handling with isolation, calls regarding depression and suicidal thoughts have doubled, while those that concern self-destructive behaviour have quadrupled. These worrisome findings correspond to the results of the Covid-Kids survey carried out by the University of Luxembourg.<sup>71</sup> The rapid implementation of the National Mental Health Action Plan was supposed to address the issue, but, according to the Minister of Health, the pandemic delayed its preparation.</li> <li>- According to the Minister of Justice, a bill will be soon introduced with the aim of <b>modifying Article 638 of the Code of Criminal Procedure</b>, which deals with offences for which the limitation period is valid only from the moment when the minor victim reaches adulthood. The amendment will serve the purpose to ensure that Luxembourgish law complies with the EU directive on combating the sexual abuse and sexual exploitation of children, as well as child pornography.<sup>72</sup></li> </ul>
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<sup>67</sup> Luxembourg, website of the Parliament, [Response to parliamentary question no. 2487 regarding violence against children](#) (*Réponse à la question parlementaire no. 2487 concernant la violence contre les enfants*), 18 August 2020.

<sup>68</sup> Luxembourg, website of the Parliament, [Response to parliamentary question no. 2514 regarding sexual abuse](#) (*Réponse à la question parlementaire no. 2514 sur le sujet abus sexuel*), 4 September 2020.

<sup>69</sup> Luxembourg, BeeSecure website, [Covid-19: Recognizing and protecting yourself from online dangers](#) (*Covid-19 : discerner les dangers en ligne et s’en protéger*), 29 April 2020.

<sup>70</sup> Luxembourg, website of the Parliament, [Response from the Minister of Health to parliamentary question n°2957 on “Evolution of the suicide rate during the Covid-19 crisis”](#) (*Réponse de Madame la Ministre de la Santé à la question parlementaire n°2957 « Évolution du taux de suicide durant la crise de la Covid-19 »*), 9 November 2020.

<sup>71</sup> Luxembourg, delano.lu, [Children suffer from confinement: study](#), news press release on 28 October 2020.

<sup>72</sup> Luxembourg, website of the Parliament, [Response to parliamentary question no. 2514 regarding sexual abuse](#) (*Réponse à la question parlementaire no. 2514 sur le sujet abus sexuel*), 4 September 2020.

	<ul style="list-style-type: none"> <li>- <b>Child pornography</b> became a widely discussed topic in Luxembourg, driven by the statistics published by the police, showing increasing numbers for 2019.<sup>73</sup> In this respect, on 19 August 2020 the Public Prosecutor’s Office announced zero tolerance of any related crime. Upon the removal of inflatable sex toys depicting young children from an online sales company based in France, which also delivers its products to Luxembourg, the Public Prosecutor’s Office issued a reminder that watching, acquiring or owning pornographic objects involving or presenting minors would entail fines of up to 50,000 euros as well as prison terms of up to three years.<sup>74</sup></li> <li>- By the act of 1 April 2020,<sup>75</sup> the position of “<b>Ombudsman fir Kanner a Jugendlecher</b>” (Ombudsman for Children and Adolescents) was created in Luxembourg. Before that day, the “Ombuds-Comité” was the responsible body in the field of children’s rights and it was affiliated to different ministries. The new Ombudsman, however, is under the sole supervision of the Parliament, which strengthens the independence and the importance of this body.</li> </ul>
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## 2. Legal and policy measures or initiatives developed about criminal proceedings

<p><b>Legislative changes</b></p>	<ul style="list-style-type: none"> <li>- The transposition and implementation of Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings was supposed to take effect in Luxembourg through bill n°7276 on establishing a youth protection system.<sup>76</sup> The bill was heavily</li> </ul>
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<sup>73</sup> Luxembourg, website of the Parliament, [Parliamentary question no. 2584 regarding the fight against child pornography](#) (question parlementaire no. 2584 sur le sujet de la lutte contre le pédopornographie) 24 July 2020 and [Response to parliamentary question no. 2584 regarding the fight against child pornography](#) (Réponse à la question parlementaire no. 2584 sur le sujet de la lutte contre le pédopornographie), 27 August 2020.

<sup>74</sup> Luxembourg, website of the Luxembourgish judiciary, [Press release from the Public Prosecutor’s Office of Luxembourg in relation to the sale of inflatables with sexual connotation representing minors](#) (Communiqué du parquet de Luxembourg en relation avec la vente de poupées gonflables à connotation sexuelle représentant des mineurs), 19 August 2020.

<sup>75</sup> Luxembourg, [act of 1 April 2020 establishing the Ombudsman fir Kanner at Jugendlecher and amending \(1\) the amended act of 25 March 2015 setting the salary system and the conditions and methods of advancement of State officials; \(2\) the amended act of 16 December 2008 on child and family assistance](#) (loi du 1er avril 2020 instituant l’Ombudsman fir Kanner a Jugendlecher et portant modification (1) de la loi modifiée du 25 mars 2015 fixant le régime des traitements et les conditions et modalités d’avancement des fonctionnaires de l’État, (2) de la loi modifiée du 16 décembre 2008 relative à l’aide à l’enfance et à la famille).

<sup>76</sup> Luxembourg, website of the Parliament, [Bill n° 7276 on establishing a youth protection system and amending the amended law of 7 March 1980 on the organization of the judiciary](#) (Projet de loi no 7276 instituant un régime de protection de la jeunesse et portant modification de la loi modifiée du 7 mars 1980 sur l’organisation judiciaire).



	<p>criticised by several stakeholders.<sup>77</sup> Thus, the Ministry of Justice decided to <b>remove the bill from the parliamentary agenda</b>, and to <b>draft a completely new bill</b> that meets the requirements set by the Convention on the Rights of the Child.<sup>78</sup></p> <ul style="list-style-type: none"> <li>- According to the communication from the Ministry of Justice,<sup>79</sup> future legislation will comply with European and international standards and will be based on <b>three pillars</b>: (i) the separation of provisions of a protective nature from those of a criminal nature; (ii) the ban on the placement of a minor in a penitentiary centre for adults; and (iii) guarantees in respect of review procedures and the right to be heard.</li> <li>- The Minister of Justice mandated an <b>expert</b> in family law and juvenile justice systems to draft the bill, after having consulted all concerned actors (magistracy, medico-psycho-social and educational actors, field associations).<sup>80</sup></li> <li>- According to the provisional schedule, the bill will be introduced before the Parliament in the course of 2021.<sup>81</sup></li> </ul>
<p><b>Policy developments</b></p>	<ul style="list-style-type: none"> <li>- As a working practice, district judges dealing with juveniles and the management of the State Socio-Educational Centre (<i>Le Centre socio-éducatif de l'État</i> or <i>CSEE</i>) agreed that for each minor placed in the Juvenile Security Unit (<i>Unité de sécurité pour mineurs</i> or <i>UNISEC</i>) of Luxembourg, <b>at least two interviews are held systematically with the judge</b> with responsibility for juveniles who is in charge of the minor during the three-month placement period at UNISEC. The first interview takes place during the 6th or 7th</li> </ul>

<sup>77</sup> Luxembourg, website of the Parliament, [State Council opinion 7276/03](#), (*Avis du Conseil d'État sur le projet de loi 7276*); [Consultative Commission on Human Rights opinion on bill n° 7276](#) (*Avis de la Commission Consultative des Droits de l'Homme sur le projet de loi 7276*); [Ombudscommittee for the Children Rights opinion on bill n° 7276](#), (*Avis 7276/05 de l'Ombuds Comité fir d'Rechter vum Kand*).

<sup>78</sup> Luxembourg, website of the Parliament, [Answer to parliamentary question no. 1482 concerning Security Unit for Juvenile Offenders in Dreiborn](#) (*Réponse à la question parlementaire no. 1482 concernant l'Unité de sécurité pour mineurs délinquants à Dreiborn*), 13 January 2020.

<sup>79</sup> Luxembourg, Communiqué of the Ministry of Justice, [Sam Tanson finalises ratification of the Convention on the Rights of the Child](#) (*Sam Tanson concrétise la ratification de la Convention des droits de l'enfant*), 28 January 2020.

<sup>80</sup> Luxembourg, Communiqué of the Ministry of Justice, [Sam Tanson finalises ratification of the Convention on the Rights of the Child](#) (*Sam Tanson concrétise la ratification de la Convention des droits de l'enfant*), 28 January 2020.

<sup>81</sup> Luxembourg, website of the Parliament, [Answer to the parliamentary question no. 1778 on placement of a minor in the Luxembourg Prison Centre](#) (*Réponse à la question parlementaire no. 1778 sur le sujet de Placement d'un mineur au Centre pénitentiaire de Luxembourg*), 26 February 2020.

	<p>week from the placement of the minor, and the second during the 11th week.<sup>82</sup></p> <ul style="list-style-type: none"> <li>- As it was emphasised by the Minister of Justice,<sup>83</sup> regular contact of minors placed in UNISEC with their relatives is considered a priority. Therefore, the scope for organising <b>outside telephone calls</b> has been extended, following the recommendations of the Ombudsman.<sup>84</sup></li> </ul>
<b>Other measures or initiatives</b>	<ul style="list-style-type: none"> <li>- In respect of the <b>follow-up of young people</b> after their stay at UNISEC, CSEE is in the process of diversifying its educational service offering with a view to providing more individualized and differentiated care for each young person.<sup>85</sup></li> </ul>

<sup>82</sup> Luxembourg, website of the Parliament, [Answer to parliamentary question no. 1482 concerning Security Unit for Juvenile Offenders in Dreiborn](#) (Réponse à la question parlementaire no. 1482 concernant l'Unité de sécurité pour mineurs délinquants à Dreiborn), 13 January 2020.

<sup>83</sup> Luxembourg, website of the Parliament, [Answer to parliamentary question no. 1482 concerning Security Unit for Juvenile Offenders in Dreiborn](#) (Réponse à la question parlementaire no. 1482 concernant l'Unité de sécurité pour mineurs délinquants à Dreiborn), 13 January 2020.

<sup>84</sup> Luxembourg, Office of the Ombudsman, [Visit Report, 20 July – 1 August 2018, CSEE Security Unit](#) (Rapport de Visite, 20 juillet – 1er août 2018, L'Unité de sécurité du CSEE)

<sup>85</sup> Luxembourg, website of the Parliament, [Answer to parliamentary question no. 1482 concerning Security Unit for Juvenile Offenders in Dreiborn](#) (Réponse à la question parlementaire no. 1482 concernant l'Unité de sécurité pour mineurs délinquants à Dreiborn), 13 January 2020.

# Chapter 7. Access to justice including crime victims

## 1. Victims' Rights Directive

The transposition of a segment of the Victims' Right Directive was introduced in 2019 through bill n°7442<sup>86</sup> and was finally adopted in December 2020. The new act of 15 December 2020 amending the law of 10 August 1991 on the legal profession<sup>87</sup> has its **focus on the provision of free legal aid**. The new law transposes elements of the Directive on Legal Aid (2016/1919) and, at the same time, it transposes article 13 of the Victims' Right Directive. Accordingly, the act proposes that, in a criminal procedure taking place in Luxembourg, any person considered a victim and constituting a civil party under the provisions of the Criminal Procedure Code shall be entitled to legal aid, without condition of residence and irrespective of his/her nationality. The proposed amendment is important because the previous legislation was silent on the situation of civil party victims in criminal proceedings who had not resided in Luxembourg, or were third country nationals.

To address the challenges of the **COVID-19 situation in criminal proceedings**, a new piece of legislation was adopted on 20 June 2020.<sup>88</sup> The law alleviates the burden of personal presence on victims who would normally need to appear in the course of criminal proceedings as a witness. Article 3 of the act prescribes rules on witness questioning, putting forward that the

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<sup>86</sup> Luxembourg, [bill n°7442 on the transposition of Directive \(EU\) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for persons whose surrender is requested in the context of the European arrest warrant proceedings; transposition of certain provisions of Directive 2012/29 / EU of the European Parliament and of the Council of 25 October 2012 laying down minimum standards on the rights, support and protection of crime victims and replacing Framework Decision 2001/220/JHA](#) (*Projet de loi 7442 portant : - transposition de la directive (UE) 2016/1919 du Parlement européen et du Conseil du 26 octobre 2016 concernant l'aide juridictionnelle pour les suspects et les personnes poursuivies dans le cadre des procédures pénales et pour les personnes dont la remise est demandée dans le cadre des procédures relatives au mandat d'arrêt européen ; - transposition de certaines dispositions de la directive 2012/29/UE du Parlement européen et du Conseil du 25 octobre 2012 établissant des normes minimales concernant les droits, le soutien et la protection des victimes de la criminalité et remplaçant la décision-cadre 2001/220/JAI*).

<sup>87</sup> Luxembourg, [act of 15 December 2020 amending the amended law of 10 August 1991 on the legal profession for the purposes of transposing: 1° Directive \(EU\) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for persons whose surrender is requested in the context of procedures relating to the European arrest warrant; 2° certain provisions of Directive 2012/29 / EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards concerning the rights, support and protection of victims of crime and replacing Framework Decision 2001/220/JHA Council](#) (*Loi du 15 décembre 2020 portant modification de la loi modifiée du 10 août 1991 sur la profession d'avocat aux fins de transposition de : 1°la directive (UE) 2016/1919 du Parlement européen et du Conseil du 26 octobre 2016 concernant l'aide juridictionnelle pour les suspects et les personnes poursuivies dans le cadre des procédures pénales et pour les personnes dont la remise est demandée dans le cadre des procédures relatives au mandat d'arrêt européen ; 2°certaines dispositions de la directive 2012/29/UE du Parlement européen et du Conseil du 25 octobre 2012 établissant des normes minimales concernant les droits, le soutien et la protection des victimes de la criminalité et remplaçant la décision-cadre 2001/220/JAI du Conseil*).

<sup>88</sup> Luxembourg, [act of 20 June 2020 on the temporary adaptation of certain procedural modalities in criminal matters](#) (*loi du 20 juin 2020 portant adaptation temporaire de certaines modalités procédurales en matière pénale*).

questioning of witnesses by a police officer or by the investigating judge, within the framework of the preparatory investigation, may take place by means of audio-visual telecommunication or by audio conference. The legislation was supposed to remain in force until 31 December 2020, and by act of 19 December 2020,<sup>89</sup> its applicability was extended until 15 September 2021.

On 2 December 2020, the Ministry of Justice signed a cooperation agreement with the Mediation Centre ASBL, giving it a mandate to become a **provider of restorative justice services**.<sup>90</sup> The non-profit organisation, working in the civil, family and criminal fields, will provide a space for communication between victims and perpetrators. This communication, depending on the situation, can allow exchanges of information, enable the negotiation of personal commitments likely to bring clarification and appeasement, foster negotiations related to reparation or compensation, enable the expression of emotions in serious cases where reparation in the strict sense is not conceivable or sufficient. The objective, in general, is to allow the reparation of the damage suffered by the victim and to underline the responsibility of the perpetrator and thus to avoid recidivism. Furthermore, the Ministry of Justice, in collaboration with the Competence Centre of the University of Luxembourg and the Belgian association Médiante ASBL, has launched a pilot training programme allowing 10 preselected candidates to become facilitators in restorative justice. The facilitators will act as temporary contractors within the new "Restorative Justice Service" programme hosted by the Mediation Centre. The Centre will be responsible for the professional practice, principles, methods and tools of restorative justice to be implemented within the framework of the pilot project. The role of the facilitator will be to assist, in a fair and impartial manner, in the participation of the parties in the redress process.

## 2. Violence against women

### General measures in respect of domestic violence:

On 17 July 2020, the Ministry of Gender Equality announced a comprehensive **Action Plan on Gender Equality** in Luxembourg.<sup>91</sup> **Chapter 6 is dedicated to the fight against domestic violence**, enumerating six objectives that will be in the focus of the Ministry's work in this respect. These objectives are the followings:

(i) **To analyse current legislation on domestic violence.** The Ministry's goal is to establish an inter-ministerial working group in charge of providing a critical look at legislation and administrative procedures in place, to foster collaboration between the various actors and to develop, if necessary,

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<sup>89</sup> Luxembourg, [act of 19 December 2020 amending the amended act of 20 June 2020 temporarily adapting certain procedural modalities in criminal matters](#) (*loi du 19 décembre 2020 portant modification de la loi modifiée du 20 juin 2020 portant adaptation temporaire de certaines modalités procédurales en matière pénale*).

<sup>90</sup> Luxembourg, website of the government, [Signature of a cooperation agreement in restorative justice between the Ministry of Justice and the Mediation Center](#) (*Signature d'une convention de coopération en justice restaurative entre le ministère de la Justice et le Centre de médiation*), 2 December 2020.

<sup>91</sup> Luxembourg, website of Ministry of Gender Equality, [National Action Plan for Gender Equality](#) (*Plan d'action nationale pour une égalité entre les femmes et les hommes*), 17 July 2020.

possible avenues for improvement. The focus will be in particular on new forms of violence such as cyber-violence, on the effective protection of victims and on relations between the various actors in the chain of intervention.

(ii) **To invest in prevention.** The action plan emphasizes that gender-based violence is both a cause and a consequence of inequalities between women and men. In order to combat this phenomenon, gender stereotypes, sometimes present even from early age, must be detected and eliminated. The action plan aims at putting forward measures to break stereotypes and prejudices relating to sexes and thus reduce gender-based violence. To achieve this, the action plan proposes the elaboration of multi-year national action plans on sexual and emotional health, and launching and maintaining information and awareness campaigns.

(iii) **To improve the collection and processing of statistical data on domestic violence and gender-based violence.** The action plan proposes the professionalization of data collection and statistics on violence. This would be achieved through the creation, in stages, of an Observatory for the equality of women and men, addressing domestic violence as a priority area.

(iv) **To monitor the support of victims.** The government aims to provide sufficient and efficient network of reception structures and consultation centres for the benefit of victims of domestic violence, both for adults and minors. The goal set by the action plan is to guarantee housing for any victim of domestic violence in an emergency. To this end, the action plan aims at supporting the expansion and availability of these structures.

(v) **To coordinate the support frameworks available for victims of human trafficking better.** The goal of the Ministry is to optimise support activities for victims of human trafficking. To achieve this, it is suggested that there be analysis of whether to merge the two assistance services, in accordance with the recommendation of the Consultative Commission on Human Rights.

(vi) **To assess the national strategy on prostitution.** It is envisaged to carry out the assessment of the 2016 National Action Plan (PAN) "Prostitution" and to institutionalize the "Prostitution" Committee by means of a grand-ducal regulation.

On 24 November 2020, the **Consultative Commission on Human Rights has published its criticism of the new Gender Equality Action Plan.**<sup>92</sup> First, the CCDH noted the absence of implementation deadlines, concrete measures, details on the actors who would be in charge of the various actions, indicators of progress assessment and any reporting on budgetary data that seems essential for evaluating an effective policy. The CCDH argued that the action plan was only a collection of ideas and actions already in place, missing a real strategy especially in the areas of violence and employment. The CCDH therefore invited the government to reconsider the recommendations received from the UN Committee for the Elimination of All Forms of Discrimination against Women (CEDAW), among others, in respect of

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<sup>92</sup> Luxembourg, website of the CCDH, [The position of the Consultative Commission on Human Rights on the National Action Plan for equality between women and men](#) (*La position de la Commission consultative des Droits de l'Homme sur le Plan d'action national pour une égalité entre les femmes et les hommes*), 24 November 2020.

the fight against sexual and gender-based violence, trafficking and the exploitation of prostitution.

#### Domestic violence during the COVID-19 pandemic:

On 11 June 2020, the Ministry of Gender Equality held a press conference about the 2019 annual report of the Committee responsible for monitoring domestic violence in Luxembourg.<sup>93</sup> In the course of that event, the minister highlighted that the already existing collaboration with the police, the judiciary and victim support services had been reinforced during the COVID-19 crisis in order to fight domestic violence. From the start of the state of emergency, **a crisis management system has been put in place** to avoid a substantial increase in domestic violence. The system notably provided for (i) weekly monitoring of the evolution of domestic violence, (ii) development of the [www.violence.lu](http://www.violence.lu) information site (with a FAQ "Domestic violence and COVID-19" in Luxembourgish, Portuguese, French and English languages)<sup>94</sup>, (iii) setting up a Helpline<sup>95</sup>, and (iv) the maintenance of an effective expulsion system. According to the statistics, the evictions and police interventions during the acute phase of the COVID-19 crisis (March, April and May 2020) had shown no substantial increase compared to the monthly figures of previous years.<sup>96</sup>

In response to a parliamentary question, on 16 December 2020 relevant ministers provided information and **statistical data about the prevalence of domestic violence in Luxembourg during the COVID-19 crisis**.<sup>97</sup> Referring to the administrative data collected as part of weekly monitoring, the Minister for Gender Equality noted that preliminary figures had suggested a rather stable situation compared to comparable weeks and months of 2019. This finding was confirmed by comparing the figures of police interventions and expulsions per month. In this context, the revealed data showed that police interventions in domestic violence had taken place 91 times in March 2020, 73 times in April 2020, 79 times in May 2020<sup>98</sup> and 79 times in November 2020<sup>99</sup> (compared to 74 times in March 2019, 52 times in April

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<sup>93</sup> Luxembourg, website of the Grand Ducal Police, [Domestic violence: Taina Bofferding updates on recent developments and aid measures](#) (*Violence domestique: Taina Bofferding fait le point sur les récentes évolutions et les mesures d'aide*), 11 June 2020.

<sup>94</sup> Luxembourg, Luxembourgish government, [violence.lu](http://www.violence.lu) website, [F.A.Q. - COVID19 and Domestic Violence](#), accessed on 11 September 2020.

<sup>95</sup> Luxembourg, Luxembourgish government, [website of the domestic violence Helpline](#), accessed on 11 September 2020.

<sup>96</sup> Luxembourg, website of the Grand Ducal Police, [Domestic violence: Taina Bofferding updates on recent developments and aid measures](#) (*Violence domestique: Taina Bofferding fait le point sur les récentes évolutions et les mesures d'aide*), 11 June 2020.

<sup>97</sup> Luxembourg, website of the Parliament, [Parliamentary question n°3213 on domestic violence in Luxembourg during the Covid-19 crisis](#) (*Question parlementaire n°3213 concernant la violence domestique au Luxembourg lors de la crise de la Covid-19*), 16 December 2020.

<sup>98</sup> Luxembourg, website of the Grand Ducal Police, [Domestic violence: Taina Bofferding updates on recent developments and aid measures](#) (*Violence domestique: Taina Bofferding fait le point sur les récentes évolutions et les mesures d'aide*), 11 June 2020.

<sup>99</sup> Luxembourg, website of the Parliament, [Parliamentary question n°3213 on domestic violence in Luxembourg during the Covid-19 crisis](#) (*Question parlementaire n°3213 concernant la violence domestique au Luxembourg lors de la crise de la Covid-19*), 16 December 2020.

2019, 76 times in May 2019 and 77 times in November 2019)<sup>100</sup>. In respect of expulsions of the aggressor from the family home, the data indicated that it had taken place 26 times in March 2020, 19 times in April 2020, 23 times in May 2020<sup>101</sup> and 29 times in November 2020<sup>102</sup> (compared to 21 times in March 2019, 14 times in April 2019, 22 times in May 2019 and 29 times in November 2019).<sup>103</sup>

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<sup>100</sup> Luxembourg, website of the government, [Cooperation committee between professionals in the field of combating violence - Report to the government for the year 2019](#) (*Comité de coopération entre les professionnels dans le domaine de la lutte contre la violence - Rapport au gouvernement pour l'année 2019*), page 13, last accessed on 16 December 2020.

<sup>101</sup> Luxembourg, website of the Grand Ducal Police, [Domestic violence: Taina Bofferding updates on recent developments and aid measures](#) (*Violence domestique: Taina Bofferding fait le point sur les récentes évolutions et les mesures d'aide*), 11 June 2020.

<sup>102</sup> Luxembourg, website of the Parliament, [Parliamentary question n°3213 on domestic violence in Luxembourg during the Covid-19 crisis](#) (*Question parlementaire n°3213 concernant la violence domestique au Luxembourg lors de la crise de la Covid-19*), 16 December 2020.

<sup>103</sup> Luxembourg, website of the government, [Cooperation committee between professionals in the field of combating violence - Report to the government for the year 2019](#) (*Comité de coopération entre les professionnels dans le domaine de la lutte contre la violence - Rapport au gouvernement pour l'année 2019*), page 13, last accessed on 16 December 2020.

# Chapter 8. Developments in the implementation of the Convention on the Rights of Persons with Disabilities

## 1. CRPD policy & legal developments

### National Action Plan:

In its 2018-2023 coalition agreement, the Luxembourgish government has committed to develop a second **National Action Plan for the implementation of the Convention on the Rights of Persons with Disabilities for the period of 2019 to 2024**.<sup>104</sup> The Action Plan, which was presented on 15 January 2020,<sup>105</sup> was drafted by the Ministry of Family and Integration, in consultation with other ministerial departments, associations and various other relevant actors, as well as with the Superior Council of Persons with Disabilities (*Conseil supérieur des personnes handicapées* or *CSPH*, a consultative organ of the Ministry) and with an "Action Plan" Steering Group.

According to the Ministry's announcement, the choice of topics was made by the CSPH together with the Steering Group. This was done in order to ensure that the topics themed in the second National Action Plan coincided with the topics felt as being the most pressing by people with disabilities in Luxembourg. These two consultation bodies mainly consist of people with disabilities and representatives of associations of and for people with disabilities. In order to obtain clearly defined priorities and optimal results, these two bodies have decided to limit themselves to eight themes deemed to be priorities: (i) Awareness; (ii) Equal recognition before the law; (iii) Independent living and inclusion in society; (iv) Freedom of expression and opinion and access to information; (v) Education; (vi) Health; (vii) Work and employment; and (viii) Participation in political and public life.

The National Action Plan includes 29 priorities, 55 objectives and 97 concrete actions that the ministries have committed to achieve. For each of the 97 concrete actions, a deadline is indicated, which will allow external evaluators to make a first mid-term evaluation during 2022. The final evaluation will take place in 2025.<sup>106</sup>

Despite the COVID-19 crisis, the work in respect of some of the measures of the National Action Plan has already commenced. According to the Minister

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<sup>104</sup> Luxembourg, website of the Government, "[Inclusion concerns us all! "National Action Plan for the Implementation of the Convention on the Rights of Persons with Disabilities 2019 – 2024](#)" (« *L'inclusion nous concerne tous !* » *Plan d'action national de mise en œuvre de la Convention relative aux droits des personnes handicapées 2019 – 2024*), January 2020.

<sup>105</sup> Luxembourg, website of the Government, "[Presentation of the new national action plan for the implementation of the Convention on the Rights of Persons with Disabilities 2019-2024](#)" (*Présentation du nouveau plan d'action national de mise en œuvre de la Convention relative aux droits des personnes handicapées 2019-2024*), 15 January 2020.

<sup>106</sup> Luxembourg, website of the Government, section 3 of "[Inclusion concerns us all! "National Action Plan for the Implementation of the Convention on the Rights of Persons with Disabilities 2019 – 2024](#)" (« *L'inclusion nous concerne tous !* » *Plan d'action national de mise en œuvre de la Convention relative aux droits des personnes handicapées 2019 – 2024*), January 2020.



of Family and Integration,<sup>107</sup> a significant awareness-raising campaign will be launched to make young people aware of the competences and needs of people with disabilities. In respect of the objective of participation in political and public life, the Minister emphasised that the government intended to take steps towards guaranteeing voting rights for people with disabilities, whereupon a ban on voting by adults under guardianship would be abolished. A harmonised text of 10 July 2020 of the proposed revision of the Constitution already anticipates the reform, bringing along a general provision allowing the judge to examine whether a person can vote or even stand as a candidate.

#### Further measures and legislation:

On 1 February 2020, the act of 1 August 2019 on activity to assist the **inclusion of employees with disabilities in the private sector** has entered into force.<sup>108</sup> The law implements Article 27 of the CRPD and amends the national Labour Code. The initiative, promoted by the government,<sup>109</sup> facilitates professional inclusion, as well as provisional mechanisms for keeping people with disabilities employed in the long term.

The law creates the post of "inclusion assistant", funded by the Employment Fund. The employer and employee from the Employment Development Agency (*Agence pour le Développement de l'Emploi or ADEM*) should request it jointly. Following the acceptance of such a request, the Ministry of Family and Integration issues an authorisation for the inclusion assistant.<sup>110</sup> The activities of the assistant include: (i) the evaluation of the work situation and the description of the problems and specific needs of the employee with disabilities at the work place; (ii) the identification of the needs of the employer and the personnel of the organisation; (iii) the establishment of an individualised inclusion project containing a detailed work programme with a schedule of actions, specifying the number of hours, duration and timing of assistance; and (iv) the drafting of quarterly declarations and annual reports specifying the evolution of the situation regarding the work environment of the employee with disabilities.<sup>111</sup>

On 7 April 2020, entered into force the act of 3 April 2020 on certain **authorised uses of copyrighted works in favour of blind and visually impaired people**.<sup>112</sup> The new law was triggered by the adoption of the

<sup>107</sup> Luxembourg, website of the Parliament, [Answer to question n°2667 concerning measures for people with disabilities in the context of the coronavirus pandemic](#) (*Response à la question n°2667 concernant mesures pour les personnes handicapées dans le cadre de la pandémie du coronavirus*), 22 September 2020.

<sup>108</sup> Luxembourg, [act of 1 August 2019 supplementing the Labor Code by creating an activity to assist in the inclusion of employees with disabilities and external employees](#) (*Loi du 1er août 2019 complétant le code du travail en portant création d'une activité d'assistance à l'inclusion dans l'emploi pour les salariés handicapés et les salariés en reclassement externe*).

<sup>109</sup> Luxembourg, website of the government, [Become an inclusion assistant!](#) (*Devenez assistant à l'inclusion!*) 31 January 2020.

<sup>110</sup> Luxembourg, website of the Ministry of Family and Integration, [Inclusion assistant](#) (*Assistant à l'inclusion*), accessed on 15 September 2020.

<sup>111</sup> Luxembourg, Article 553-2 of the [Labour Code](#) (*Code du travail*).

<sup>112</sup> Luxembourg, [act of 3 April 2020 amending the amended law of 18 April 2001 on copyright, related rights and databases with a view to transposing Directive \(EU\) 2017/1564 of the European Parliament and of the Council of September 13, 2017 on certain authorized uses of certain works and other subject matter protected](#)

Marrakesh Treaty under the aegis of the World Intellectual Property Organization, which was signed on behalf of the European Union on 30 April 2014. In order to comply with the provisions provided for in the Marrakesh Treaty, the law of the EU as well as that of the Member States must be adapted to introduce a mandatory and harmonised exception for the uses of certain works by the beneficiaries. The explanation of the new law<sup>113</sup> reminds that Luxembourg has an obligation under the CRPD to guarantee people with disabilities the right to access information and education, and the right to participate in cultural, economic and social life on an equal basis with other people. Thus, Article 30 of CRPD requires the taking of every appropriate measure to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory obstacle to accessing cultural products by people with disabilities.

Consequently, the law transposed the relevant EU Directives into Luxembourgish law by inserting a new article 10<sup>ter</sup> to the act of 18 April 2001 on copyright.<sup>114</sup> The legislation thereby fosters the availability and cross-border exchange of certain works in formats accessible for people who are blind, visually impaired or with other difficulties with reading printed texts.

Bill n°7346 concerning the **accessibility to public places, public roads and residential buildings**<sup>115</sup> was introduced into the Parliament in 2018 and still is being discussed by national actors. The bill intends, in compliance with the CRPD, to eliminate discrimination by providing universal accessibility to public places, as well as reasonable steps to accommodate people with disabilities. The bill also introduces a general legal definition of the notion of “a person with disabilities” based on that of the CRPD.

As part of the introduction of free public transport in Luxembourg, the **specific Adapto transport systems** underwent a reform, with effect from 1 March 2020.<sup>116</sup> The Adapto transport service has likewise become free-of-charge as of that date, as well as the conditions of access to the transport

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[by copyright and neighbouring rights in favour of the blind, visually impaired and people with other reading difficulties of printed texts and modifying Directive 2001/29/EC on the harmonization of certain aspects of copyright and related rights in the information society](#) (loi du 3 avril 2020 portant modification de la loi modifiée du 18 avril 2001 sur les droits d'auteur, les droits voisins et les bases de données en vue de la transposition de la directive (UE) 2017/1564 du Parlement européen et du Conseil du 13 septembre 2017 sur certaines utilisations autorisées de certaines œuvres et d'autres objets protégés par le droit d'auteur et les droits voisins en faveur des aveugles, des déficients visuels et des personnes ayant d'autres difficultés de lecture des textes imprimés et modifiant la directive 2001/29/CE sur l'harmonisation de certains aspects du droit d'auteur et des droits voisins dans la société de l'information).

<sup>113</sup> Luxembourg, website of the Parliament, [Report of the Committee on the economy, consumer protection and space to bill n° 7352](#) (Rapport de la commission de l'économie, de la protection des consommateurs et de l'espace au projet de loi n° 7352), 12 March 2020.

<sup>114</sup> Luxembourg, Article 10<sup>ter</sup> of [act of 18 April 2001 on copyright, neighboring rights and databases](#) (loi du 18 avril 2001 sur les droits d'auteur, les droits voisins et les bases de données).

<sup>115</sup> Luxembourg, website of the Parliament, [bill n°7346 concerning the accessibility to all places open to the public, public roads and residential buildings](#) (Projet de loi portant sur l'accessibilité à tous des lieux ouverts au public, des voies publiques et des bâtiments d'habitation collectifs et portant abrogation de la loi du 29 mars 2001 portant sur l'accessibilité des lieux ouverts au public), accessed on 15 September 2020.

<sup>116</sup> Luxembourg, website of the government, [Reform of specific "Adapto" transport: new methods and creation of a unique reservation platform!](#) (Réforme du transport spécifique "Adapto": nouvelles modalités et création d'une plateforme unique de réservation!), 28 January 2020.

services having been modified. Adapto is a specialised transport service that functions as an individualised collective transport system, intended for citizens with an irreversible disability or a physical, mental, sensory or psychic impairment, with reduced mobility, and for people with a progressive disease who have no other means of transport. The system works on an on-demand basis where the customers are picked up at a place of departure indicated by them.<sup>117</sup> The services of Adapto can be requested by phone, as well as through designated websites or a phone application.<sup>118</sup>

Seven months after the implementation of the reform, on 13 October 2020, two parliamentary committees (Mobility, Family and Integration) evaluated the transport system, pointing out that at that moment 5,268 people with disabilities have registered to have the right to use the Adapto service. All previous beneficiaries had to re-submit their request, by returning a form completed by their attending physician, to prove that they met the criteria to be able to take advantage of the system. Although the service appears to function well, some MPs have nevertheless raised complaints concerning, in particular, support when being transported, the training of drivers and the allocation of 360 trips available to each beneficiary per year. Furthermore, according to the MPs, a commission is to be established to deal with complaints in the event of refusal to grant the Adapto card. This future evaluation unit, independent of the Ministry and composed of doctors and representatives of associations, requires a legal basis that is still lacking. Until the adoption of such legislation, the 730 people who currently benefit from an Adapto card - without however meeting the criteria according to the definition of the Ministry - keep their rights.<sup>119</sup>

On 18 November 2020, the Ministry of Family and Integration announced its budget predictions for the next year. The budget provides for the means to create a reference centre to help people who have hearing difficulties or comprehension problems ("*Zentrum für alternative Kommunikationsformen*"). The future centre will offer sign-language translations, as well as simplified ("*vereinfachte Sprache*") and easily understandable ("*leichte Sprache*") texts. This aid aims to guarantee social inclusion and the maintenance of autonomy of the people concerned.<sup>120</sup>

#### People with disabilities during COVID-19 pandemic:

In their joint answer to a parliamentary question, the Minister for Family and Integration, the Minister for Health and the Minister for Higher Education and Research replied to an inquiry in respect of **the government's measures**

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<sup>117</sup> Luxembourg, website of [adapto](#), accessed on 15 September 2020.

<sup>118</sup> Luxembourg, website of the government, [Reform of specific "Adapto" transport: new methods and creation of a unique reservation platform!](#) (*Réforme du transport spécifique "Adapto": nouvelles modalités et création d'une plateforme unique de réservation!*), 28 January 2020.

<sup>119</sup> Luxembourg, website of the Parliament, [Monitoring of the reform of the "Adapto" service](#) (*Un suivi de la réforme du service « Adapto »*), 13 October 2020.

<sup>120</sup> Luxembourg, website of the Parliament, [A communication centre for easy language](#) (*Un centre de communication pour le langage facile*), 18 November 2020.

**for people with disabilities during the COVID-19 pandemic.**<sup>121</sup> In the parliamentary document, they explained that to ensure that people with disabilities have access to all relevant information, all press releases were translated into German sign language. Furthermore, Klaro, the official centre for plain language in Luxembourg, translated the safety measures into plain language, and a short clip explaining the rules to be followed was published. To ensure that all measures are understandable for people with disabilities, the awareness campaign was made visually comprehensible using pictograms. Sector leaders have done a lot of information work explaining the Large Scale Testing method. Care home residents have been given the choice of whether or not they want to be tested. In case of a test, the procedure, as well as a result, was communicated in different ways. Autonomous residents received the result by SMS; others received it from their doctor or family members.

## **2. CRPD monitoring at national level**

There has been no change regarding the structures and roles established under article 33 of the CRPD, as set forth by the act of 28 July 2011.<sup>122</sup> As it is also mentioned by the 2019-2024 National Action Plan, two actors, the Consultative Commission on Human Rights (CCDH) and the Centre for Equal Treatment (CET), were appointed in 2011 as national independent mechanisms to promote and monitor the CRPD, whereas the Ombudsman was appointed as an independent mechanism to protect the application of the CRPD, as provided for in article 33(2) of the CRPD.

The CCDH and the CET, in their capacity as national independent mechanisms, expressed their **opinion on the 2019-2024 National Action Plan** in their joint statement in February 2020.<sup>123</sup> The monitoring bodies welcomed the National Action Plan in general, however also noted regretfully that the people concerned and their organisations were unable to consult or comment on the entire draft of the Action Plan just before its adoption by the government in December 2019. They observed that the participatory approach had thus been applied only at the beginning of the work, but not for the final development of the National Action Plan. As a criticism, they also noted that, at the time of the general presentation of the National Action Plan on 11 February 2020, the German and plain language versions were not yet available. Further, the monitoring bodies urged the government to proceed as soon as possible with the reform of the guardianship regime and of the national law for the protection of adults, which had already been announced in the 2012 National Action Plan, as well as in the 2013-2018 coalition agreement.

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<sup>121</sup> Luxembourg, website of the Parliament, [Answer to question n°2667 concerning measures for people with disabilities in the context of the coronavirus pandemic](#) (*Response à la question n°2667 concernant mesures pour les personnes handicapées dans le cadre de la pandémie du coronavirus*), 22 September 2020.

<sup>122</sup> Luxembourg, [the Act of 28 July 2011 approving the Convention on the Rights of Persons with Disabilities](#) (*Loi du 28 juillet 2011 portant approbation de la Convention relative aux droits des personnes handicapées*).

<sup>123</sup> Luxembourg, website of the Centre for Equal Treatment, [Joint statement from the Consultative Commission on Human Rights \(CCDH\) and the Center for Equal Treatment \(CET\) on the new National Action Plan for the implementation of the Convention on the Rights of Persons with Disabilities 2019- 2024](#) (*Communiqué commun de la Commission consultative des Droits de l'Homme (CCDH) et du Centre pour l'égalité de traitement (CET) sur le nouveau Plan d'action national de mise en œuvre de la Convention relative aux droits des personnes handicapées 2019-2024*), 12 February 2020.

On 9 July 2020, the three monitoring bodies, the CCDH, the CET and the Ombudsman published an **open letter on worrisome practices in institutions for people with disabilities**.<sup>124</sup> These practices have been reported to the monitoring bodies, revealing some degrading and humiliating incidents experienced by people with disabilities. The monitoring bodies emphasised that these practices were contrary to the culture of good treatment and respect for the dignity and privacy of persons with disabilities. Moreover, they were in breach of several Articles of the CRPD (i.e. Article 5 - Prohibition of discrimination, Article 15 - Right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, Article 19 - Independent living and inclusion in society and Article 22 - Respect for private life).

The organisations that signed the open letter underlined that these practices were not necessarily voluntary, nor the result of ill will, abusive behaviour or the expression of institutional abuse. However, they might have resulted from a lack of staff in these institutions (where work can be relatively burdensome), as well as a lack of training and staff awareness of human rights and, more particularly, of the rights of people with disabilities.<sup>125</sup>

The signatories suggest in the open letter the establishment of an independent body in charge of the promotion and protection of the rights and interests of people with disabilities, both in the public and private sectors. This independent body should be able to deal with complaints, and even take legal action. An additional mission of this body would be the external control of the institutions hosting people with disabilities, in particular, people in a situation of dependency. One possible proposal would be to extend the Ombudsman's field of competence, and to include visits to institutions for people with disabilities within its missions of external control. The CCDH, the CET and the Ombudsman thus appeal to the government to expand the powers of the Ombudsman to external monitoring of institutions for people with disabilities. Pending this implementation, the three signatory organisations invite the authorities to have the situation in the institutions analysed by an independent expert in order to collect testimonies, identify the causes of the problems and make recommendations to remedy them as soon as possible. They also stress the importance of organising the necessary human rights training for the staff of the institutions.

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<sup>124</sup> Luxembourg, website of the Centre for Equal Treatment, [Open letter from the Consultative Commission on Human Rights \(CCDH\), the Center for Equal Treatment \(CET\) and the Ombudsman on worrisome practices in institutions for people with disabilities](#) (*Lettre ouverte de la CCDH, du CET et de l'Ombudsman sur des pratiques inquiétantes dans les institutions pour personnes en situation de handicap*), 9 July 2020.

<sup>125</sup> Luxembourg, in this respect, [the labour union OGBL reported](#) that one of the leading associations (“Fondation Kräizbiërg”) which provides accommodation and inclusion workshops to people with disabilities had been heavily criticised in the media, covering up scandalous practices and the working conditions, while employees complained of unfair sanctions, understaffing and humiliating working conditions, press release on 11 September 2020.

# Annex 1 – Promising Practices

<b>Thematic area</b>	<p><b>EQUALITY AND NON-DISCRIMINATION</b></p> <p>Please provide one example of a promising practice to tackle discrimination against older people or LGBTI people such as awareness raising campaigns or ethical codes for healthcare staff held in your country in 2020. Where no such examples are available, please provide an example of an awareness raising campaign held in your country in 2020 relevant to equality and non-discrimination of older people or LGBTI people, preferably one conducted by a national equality body.</p>
Title (original language)	LGBTI inclusion in the workplace – 2020 Project
Title (EN)	LGBTI inclusion in the workplace – 2020 Project
Organisation (original language)	IMS Luxembourg - Inspiring More Sustainability
Organisation (EN)	IMS Luxembourg - Inspiring More Sustainability
Government / Civil society	Civil Society
Funding body	Ministry of the Family, Integration and the Greater Region European Social Fund
Reference (incl. url, where available)	<a href="https://imslux.lu/eng/nos-activites/pole-de-specialites/25_lgbti-inclusion#2020-project">https://imslux.lu/eng/nos-activites/pole-de-specialites/25_lgbti-inclusion#2020-project</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	2020 (no exact date indicated)
Type of initiative	Raising awareness, informing, developing practical knowledge and understanding
Main target group	Private sector

Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	<p>The new project for the inclusion of LGBTI people into companies aims to meet certain objectives of the National Action Plan announced in 2019. These are (i) to guarantee equal access to employment and improve counter-discrimination in employment and work, and (ii) to promote and increase the visibility of diversity policies by focusing on sexual orientation, gender identity or expression and variation of gendered characteristics.</p> <p>The main goals of the project are to raise awareness and provide tools to a diverse range of staff profiles in companies (human resources, middle and top management) in order to encourage the development of open, inclusive and respectful working environments.</p>
Highlight any element of the actions that is transferable (max. 500 chars)	<p>To achieve the abovementioned goals, IMS proposes awareness raising measures on the issue of LGBTI equality in the workplace through :</p> <ul style="list-style-type: none"> <li>- the production and publication of a practical guide, including good practices at national and European level;</li> <li>- the identification of ambassadors at European level through the European Diversity Charters network coordinated at the European Commission / DG Justice to feed into the publication;</li> <li>- the organisation of a conference which would be open to all.</li> </ul>
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	<p>LGBTI Inclusion, as a framework project, has been operational in Luxembourg since 2016, through the organisation of various workshops, conferences and the creation of a network by participating private sector players (see <a href="https://imslux.lu/eng/nos-activites/pole-de-specialites/25_lgbti-inclusion#history">https://imslux.lu/eng/nos-activites/pole-de-specialites/25_lgbti-inclusion#history</a>). The project thus already proved sustainable and attracted a considerable number of major companies present in Luxembourg, employing thousands of people.</p>
Give reasons why you consider the practice as having concrete measurable impact	<p>The different activities of the project will aim at:</p> <ul style="list-style-type: none"> <li>- making companies work internally and propose solutions to be tested;</li> <li>- creating an opportunity for equal treatment of LGBTI people;</li> <li>- fostering inter-company collaboration;</li> <li>- giving visibility to the diversity and inclusion policy.</li> </ul>

	These tools thus will be developed and used by organisations themselves and will hopefully lead to a more inclusive working environment, not only on a hypothetical basis, but also on a practical level.
Give reasons why you consider the practice as transferable to other settings and/or Member States?	The described objectives and tools are universal and envisaged in the working environment, irrespective of the Member State or the setting. The proposed actions can be achieved in any current setting. The objectives foster an exchange about and an evaluation of the working culture.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	The members involved in the project are stakeholders that play a role in future policy formulation (IMS, the Ministry of Family and Integration).
Explain, if applicable, how the practice provides for review and assessment.	n.a.

<b>Thematic area</b>	<b>RACISM, XENOPHOBIA AND RELATED INTOLERANCE</b> Please provide one example of a promising practice to address racism and xenophobia in the context of the COVID-19 pandemic. Where no such practice exists, please provide one example of a promising practice related to combating racism, xenophobia and related intolerances.
Title (original language)	Dialog statt Hass / Dialoguer au lieu de häir
Title (EN)	Dialogue instead of hate
Organisation (original language)	SOS Radicalisation a.s.b.l. (respect.lu)
Organisation (EN)	SOS Radicalisation a.s.b.l. (respect.lu)
Government / Civil society	Civil society



Funding body	Ministry of the Family, Integration and the Greater Region
Reference (incl. url, where available)	<a href="https://respect.lu/projets-et-evenements/">https://respect.lu/projets-et-evenements/</a> <a href="https://mfamigr.gouvernement.lu/fr/le-ministere/attributions/integration/niveau-national/projets.html">https://mfamigr.gouvernement.lu/fr/le-ministere/attributions/integration/niveau-national/projets.html</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	1 September 2020 – 31 December 2020
Type of initiative	educational
Main target group	authors of hate speech
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	The “Dialogue instead of hate” project invite the authors of hate comments (in addition to the financial penalty they will receive) to examine their crime by inviting them to reflect on it. The organisers will make the participants aware of the questions related to hate speech, conscious communication and discrimination. Together they will explore the legal limits of freedom of expression, in particular, by giving the participants the possibility to put themselves in the shoes of the victim group that they have attacked.
Highlight any element of the actions that is transferable (max. 500 chars)	The project aims at fostering active and practical discussion with the authors of disturbing comments, intending to understand the driving forces behind the desire to commit these offences and to build up an understanding of the phenomenon, together with the actual perpetrator. The project intends to raise awareness and catch the problem at the most crucial point.
Give reasons why you consider the practice as sustainable (as opposed to ‘one off activities’)	Active and effective education of repeat hate speech offenders can lead to long-term improvements for the individuals, as well as having the potential to trigger a positive chain-reaction of reducing hatred on online forums.

Give reasons why you consider the practice as having concrete measurable impact	The presence of hate crime (including online hate crime) is measurable by police statistics; therefore, it will be possible to measure improvement in this field.
Give reasons why you consider the practice as transferable to other settings and/or Member States?	Similar education of hate crime perpetrators in other Member States might lead to similar desired achievements.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	n.a.
Explain, if applicable, how the practice provides for review and assessment.	n.a.

<b>Thematic area</b>	<p><b>ROMA EQUALITY AND INCLUSION</b></p> <p>Please provide one example of promising practice in relation to the legal and policy developments in regard to Roma/Travellers (or any group covered by this term as per the Council of Europe definition) in 2020 that relate to the (1) application of the EU Framework on national Roma integration strategies and (2) the preparations for the new post-2020 initiative on Roma equality, inclusion and participation or in relation to any measures in your country in 2020 to address Roma inclusion and prevent discrimination, hate crime and hate speech with a particular focus on COVID-19.</p>
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	No promising practice has been identified for this thematic area.

<b>Thematic area</b>	<b>INFORMATION SOCIETY, PRIVACY AND DATA PROTECTION</b> Please, provide one example of a promising practice related to any of the topics addressed in the chapter – i.e. in relation to data protection, and/or artificial intelligence systems - in 2020.
Title (original language)	DATA DETOX KIT : faites le ménage dans vos données
Title (EN)	DATA DETOX KIT: clean up your data
Organisation (original language)	BeeSecure
Organisation (EN)	BeeSecure
Government / Civil society	Government
Funding body	EU, Government
Reference (incl. url, where available)	<a href="https://www.bee-secure.lu/fr/news/data-detox-kit-faites-le-menage-dans-vos-donnees/">https://www.bee-secure.lu/fr/news/data-detox-kit-faites-le-menage-dans-vos-donnees/</a> <a href="https://www.bee-secure.lu/wp-content/uploads/2018/07/202008bs_pub_data-detox_web_fr.pdf">https://www.bee-secure.lu/wp-content/uploads/2018/07/202008bs_pub_data-detox_web_fr.pdf</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	11 September 2020
Type of initiative	informative
Main target group	general population

Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	BeeSecure - in collaboration with Mozilla Foundation and Tactical Technology Collective - has put together a complete tool to carry out effective "data detoxes" as part of its "BIG DATA - Who does what with my data?" campaign in 2017-2018. Because of a comprehensive update of that project, the Data Detox Kit was published in 2020. The kit gives a clear explanation to the reader about the possible uses of his/her personal data on the Internet, and describes daily actions which enable them to take control of their online privacy, security and well-being. The kit is available in French and German and can be downloaded directly on the BeeSecure website or requested in hard copy.
Highlight any element of the actions that is transferable (max. 500 chars)	The Data Detox Kit helps the reader to <ul style="list-style-type: none"> <li>- control his/her smartphone data to improve online privacy,</li> <li>- change his/her settings to protect personal data,</li> <li>- change the default settings to increase online well-being,</li> <li>- avoid online misinformation.</li> </ul> It is an information brochure that exists in print and electronic versions.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	The Data Detox Kit is accessible online, it is easy to distribute and thus educate a large number of people. It is easy to present this information at various thematically related events.
Give reasons why you consider the practice as having concrete measurable impact	n.a.
Give reasons why you consider the practice as transferable to other settings and/or Member States?	It is an informative brochure, it is easy to distribute, in print or electronically. It could serve as the basis for further discussions at relevant meetings.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the	It is part of the National Youth Service and helpline kannerjugendtelefon.lu - these actors rely on their established channels for disseminating information.

design, planning, evaluation, review assessment and implementation of the practice.	
Explain, if applicable, how the practice provides for review and assessment.	n.a.

<b>Thematic area</b>	<b>RIGHTS OF THE CHILD</b> Please provide one example of a promising practice relating to the topics addressed in this chapter.
Title (original language)	Auch Kinder haben Sorgen – BOD hilft: Wie mit Kindern über ihre Ängste und Sorgen sprechen?
Title (EN)	Children have worries too - BOD helps: How to talk to children about fears and worries?
Organisation (original language)	Kanner-Jugendtelefon, Caritas Jeunes et Familles asbl
Organisation (EN)	Children-Youth Telephone, Caritas Youth and Family non-profit association
Government / Civil society	Civil society
Funding body	Government, Donations
Reference (incl. url, where available)	<a href="https://www.enfancejeunesse.lu/fr/archives/agenda/auch-kinder-haben-sorgen-bod-hilft-eine-veranstaltung-vom-kanner-a-jugendtelefon-kjt">https://www.enfancejeunesse.lu/fr/archives/agenda/auch-kinder-haben-sorgen-bod-hilft-eine-veranstaltung-vom-kanner-a-jugendtelefon-kjt</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	Starting year: 2019 – three year programme
Type of initiative	Educational: Training course
Main target group	Education staff and children from 4 to 12 years old
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	This practice-oriented seminar is aimed at educators who are in contact with the worries of children on a daily basis. Many children are unable to talk about their problems if there are difficult family situations or their friends rarely talk about these topics. Many studies indicate how difficult it can be for children to open up to adults about their feelings. Some emotions are either difficult to express or are taboo. The doll BOD, mascot of the KJT, used as a pedagogical tool, helps them to talk about worries and feelings.

<p>Highlight any element of the actions that is transferable (max. 500 chars)</p>	<p>In this Seminar the educational staff learns:</p> <ul style="list-style-type: none"> <li>- To develop empathy and sensitivity for the needs of the individual child</li> <li>- To support and encourage children in developing awareness of their own feelings and needs</li> <li>- Strengthening self-esteem and self-confidence</li> <li>- Encouraging children to get help via the hotline 116111</li> <li>- Pedagogical resource-oriented behaviour</li> </ul>
<p>Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')</p>	<p>It is a three-year campaign trying to educate and raise awareness in as many staff members and children as possible. The Red Cross and others are currently in the process of putting the training program into effect in their facilities.</p>
<p>Give reasons why you consider the practice as having concrete measurable impact</p>	<p>It is a recognised training course for all educational staff with accreditation from the Ministry of Education.</p>
<p>Give reasons why you consider the practice as transferable to other settings and/or Member States?</p>	<p>The training content has already been created, making it easy to transfer the education program by benefiting from the organisers' experience earned since 2019.</p>
<p>Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.</p>	<p>It is part of the National Youth Service (Caritas) and helpline kannerjugendtelefon.lu - these actors rely on their established channels in disseminating information. This has also recently had a spillover effect on other national organisations offering this training.</p>
<p>Explain, if applicable, how the practice provides for review and assessment.</p>	<p>n.a.</p>

<b>Thematic area</b>	<b>ACCESS TO JUSTICE, INCLUDING RIGHTS OF CRIME VICTIMS</b> Please provide one example of a promising practice relating to the topics addressed in this chapter.
Title (original language)	Lët'z say NO to violence against women! (Orange Week 2020)
Title (EN)	Lët'z say NO to violence against women! (Orange Week 2020)
Organisation (original language)	Conseil National des Femmes du Luxembourg
Organisation (EN)	Luxembourg National Council of Women
Government / Civil society	Civil society
Funding body	Ministry of Equality between Women and Men
Reference (incl. url, where available)	<a href="https://www.cnfl.lu/actualites/news/orange-week/">https://www.cnfl.lu/actualites/news/orange-week/</a> <a href="https://www.cnfl.lu/files/96413.pdf">https://www.cnfl.lu/files/96413.pdf</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	25 November - 10 December 2020
Type of initiative	Awareness raising campaign
Main target group	general population
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	An awareness raising campaign about violence against women composed of different actions. It included a targeted campaign on social media asking participants to share their messages in different formats (e.g. a selfie taken with the campaign mask and shared online, posting any type of orange decoration, posting an individual message calling for an end to violence against women and girls). The participants could also order "solidarity candles" which would be illuminated on 25 November 2020. Further, several



	events and workshops were organised in different parts of the country (some of which, however, were cancelled due to the pandemic).
Highlight any element of the actions that is transferable (max. 500 chars)	The idea of building a campaign through on sharing a defined message on social media is easily transferrable, to either other countries or other types of campaign. Moreover, during the pandemic, it is a safe way to raise awareness. It is attractive to many participants, for example, the University of Luxembourg has joined the campaign and turned its website orange as a sign of commitment to the campaign.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	The campaign has attracted substantial attention in recent years and it takes place each year, even in a pandemic.
Give reasons why you consider the practice as having concrete measurable impact	The campaign is attractive to many participants, for example, the University of Luxembourg has joined the campaign and turned its website orange as a sign of commitment to the campaign.
Give reasons why you consider the practice as transferable to other settings and/or Member States?	The Orange Week, being a well-known global awareness raising campaign, is by itself highly transferable due to being present in several countries. This year in particular, building a campaign through sharing a defined message on social media is also easily transferable, to either other countries or other types of campaign. Moreover, during the pandemic, it is a safe way to raise awareness.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	n.a.
Explain, if applicable, how the practice provides for review and assessment.	n.a.

Thematic area	<b>DEVELOPMENTS IN THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)</b> Please provide one promising practice example of projects or programmes implementing the CRPD or furthering the rights of persons with disabilities.
Title (original language)	(Handi)Cap' Emploi
Title (EN)	(Handi)Cap' Work
Organisation (original language)	IMS Luxembourg - Inspiring More Sustainability
Organisation (EN)	IMS Luxembourg - Inspiring More Sustainability
Government / Civil society	Civil Society
Funding body	Ministry of the Family, Integration and the Greater Region, Ministry of Labour European Social Fund
Reference (incl. url, where available)	<a href="https://chartediversite.lu/en/projects/handicap-emploi">https://chartediversite.lu/en/projects/handicap-emploi</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	From 01/01/2020 to 31/12/2021
Type of initiative	Raising awareness, informing, developing practical knowledge and understanding
Main target group	Organisations from different sectors and sizes, including Human Resources (the project is structurally designed and does not directly target beneficiaries).
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	Through inter-organisational working groups, the project aims to use the ideas and practices initiated by the group, as well as the motivations of the companies involved, to drive the implementation of a "Handi-Welcoming Employer Brand" (« <i>marque employeur</i>

	<p><i>handi-accueillante</i> ») integrated into the Lëtzebuerg Diversity Charter project. The project will thus be built in two parts:</p> <ul style="list-style-type: none"> <li>- a reflection section on the “bridges” (<i>passerelles</i>) to be created between sheltered workshops and companies, as a vector of inclusion and awareness,</li> <li>- a component of reflection and development of a “Handi-Welcoming Employer” checklist.</li> </ul>
Highlight any element of the actions that is transferable (max. 500 chars)	The project aims at promoting a practical understanding and implementation of certain laws. The workshops encourage participants to develop tools that would allow organisations to become leaders in this area in Luxembourg. The obtained practical knowledge provides tested solutions for a more inclusive work environment, with expert support and experience with a <i>passerelle</i> .
Give reasons why you consider the practice as sustainable (as opposed to ‘one off activities’)	n.a.
Give reasons why you consider the practice as having concrete measurable impact	The meetings are held on an on-going basis, and feature questions addressed in the previous cycle. The participants themselves, based on their experience and examples, formulate the questions and objectives. Furthermore, creating a “Handi-Welcoming Employer” checklist facilitates a quantitative approach to help evaluate the impact.
Give reasons why you consider the practice as transferable to other settings and/or Member States?	A diverse working group (in terms of sector, size, realities, etc.) can offer analysis and inputs that can give insight into the problems faced by other organisations in Europe.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	n.a.

Explain, if applicable, how the practice provides for review and assessment.

n.a.

# Annex 1 – Case Law

<b>Thematic area</b>	<b>EQUALITY AND NON-DISCRIMINATION</b> Please provide one high court decision addressing discrimination against older people or against LGBTI people. Where relevant, always highlight any relevance or reference to multiple or intersectional discrimination in the case you report.
<b>Decision date</b>	13 November 2020
<b>Reference details</b>	Judgment of the Constitutional Court, Judgment n°00159 <a href="http://legilux.public.lu/eli/etat/leg/acc/2020/11/13/a921/jo">http://legilux.public.lu/eli/etat/leg/acc/2020/11/13/a921/jo</a>
<b>Key facts of the case</b> (max. 500 chars)	A and his wife B lodged a complaint before the tax administration of direct contributions (the “tax authority”) having sought the deduction of their taxable income, as per Article 111 (1) c) of the act on income tax. According to this provision, contributions paid to housing savings banks by virtue of a home savings contract should be considered deductible as a special expense. The same legislation specifies that the maximum deductible annual amounts depend on the taxpayer’s age at the start of the tax year, meaning that beyond the age of 40 years the maximum annual deductible amount is half of that available for those aged between 18 and 40. The tax authority rejected their complaint and this decision was upheld by the administrative court.
<b>Main reasoning/argumentation</b> (max. 500 chars)	A and B lodged a constitutional complaint arguing that the relevant provision of the act on income tax (in so far as it provides only for taxpayers aged 18 to 40 for the doubling of the maximum amounts of contributions deductible from the taxable income under a housing savings contract) does not comply with article 10 <i>bis</i> of the Constitution, as it creates unjustified discrimination on the basis of age. Article 10 <i>bis</i> of the Constitution provides that Luxembourgers are equal before the law.
<b>Key issues (concepts, interpretations) clarified</b>	The Constitutional Court emphasised that the legislator could, without violating the constitutional principle of equality before the law, subject certain categories of persons to different legal regimes, on the condition that the established difference derives from objective disparities, that it is rationally justified, adequate and proportionate to its purpose. The

<p><b>by the case</b> (max. 500 chars)</p>	<p>purpose for a taxpayer to conclude a home savings contract is to be granted a loan for the construction, acquisition or transformation of real estate. By providing for a doubling of the maximum annual amount of contributions paid under a home savings contract (deductible from taxable income in favour of those taxpayers who have not passed the age of 40 at the beginning of the tax year), the legislator intended to promote the ability of young adults to own their first home for personal housing needs. The legislator's desire to treat taxpayers who have not passed the age of 40 at the start of the tax year more favourably than those who are older stems from the observation that the former generally have less financial capacities than the latter.</p>
<p><b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>The Constitutional Court held that this difference in treatment had resulted from a rationally justified differentiation, which had been in a reasonable relationship of proportionality with the aim pursued. Therefore, it declared that the challenged provision of the act on income tax complied with the principle of equality before the law, as enshrined in Article 10<i>bis</i> of the Constitution.</p>
<p><b>Key quotation in original language and translated into English with reference details</b> (max. 500 chars)</p>	<p>« <i>En prévoyant un dédoublement du montant annuel maximal des cotisations versées au titre d'un contrat d'épargne-logement déductible du revenu imposable en faveur des seuls souscripteurs n'ayant pas dépassé l'âge de 40 ans accomplis au début de l'année d'imposition, le législateur a entendu favoriser l'accès des jeunes adultes à leur premier logement utilisé pour les besoins personnels d'habitation. La volonté du législateur de traiter de manière plus favorable les souscripteurs qui n'ont pas dépassé l'âge de 40 ans accomplis au début de l'année d'imposition que ceux plus âgés procède du constat que les premiers disposent en règle générale de capacités financières plus réduites que les seconds. Cette différence de traitement procède d'une différenciation rationnellement justifiée qui se trouve dans un rapport raisonnable de proportionnalité avec le but poursuivi.</i> »</p> <p>“By providing for a doubling of the maximum annual amount of contributions paid under a home savings contract deductible from taxable income in favour of subscribers only who have not passed the age of 40 at the beginning of the tax year, the legislator intended to promote the access of young adults to their first home to be used for personal housing needs. The legislator's desire to treat subscribers who have not passed the age of 40 at the start of the tax year more favourably than those who are older stems from the observation that the former generally have less financial capacities than the latter. This difference in treatment</p>

	results from a rationally justified differentiation which is in a reasonable relationship of proportionality with the aim pursued.”
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<b>Thematic area</b>	<b>RACISM, XENOPHOBIA AND RELATED INTOLERANCE.</b> Please provide the most relevant high court decision concerning the application of <u>either</u> the Racial Equality Directive <u>or</u> the Framework Decision on racism and xenophobia, addressing racism, xenophobia and other forms of intolerance more generally.
<b>Decision date</b>	03/03/2020
<b>Reference details</b>	Luxembourg / Court of Appeal (5th Chamber) / Case no. 87/20 V. <a href="https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9es/CSJ/05_Chambre%20correctionnelle/2020/20200303_87A-accessible.pdf">https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9es/CSJ/05_Chambre%20correctionnelle/2020/20200303_87A-accessible.pdf</a>
<b>Key facts of the case</b> (max. 500 chars)	On 8 September 2015, the Minister of Family and Integration published on Facebook a photo of herself surrounded by Syrian refugees who had just arrived in Luxembourg. She added a comment to this photo in which she explained in particular that a Syrian mother had asked her if her children could attend school in Luxembourg as it was important to the mother that her children could have future prospects. Through the BeeSecure platform the police were notified about the following comment underneath the Minister’s social media post: “... <i>you should rather explain why our children are repeatedly beaten and robbed by migrant children (sic) or why migrant children are allowed to act publicly in schools with drugs, and the school management does nothing because it is worried about the image of the school or that teachers fear for their lives. You can also explain to us why OUR students are doing so badly in EVERY PISA STUDY? Could it be because there are 20 children of foreign origin with a migration background in each class with 25 children?</i> ”
<b>Main reasoning/argumentation</b> (max. 500 chars)	The accused claimed before the court that his remarks had not been directed against the children but against government policy. He argued that his comments constituted only the expression of his opinion and while he might have offended or shocked some people, he had not exceeded the limits of his fundamental right to freedom of expression. He argued that the moral element of the offense was missing as well, as the accused had not had the deliberate will to provoke a reaction of hatred by the public towards refugees. The public prosecution argued that the accused had posted negative comments against a specific group



	of people, namely, the children of immigrants and, as such, his comments shall not be covered by the right to freedom of expression as set out in Article 10 of the ECHR.
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	The court held that freedom of expression, although being a cornerstone of democratic principles, must not go beyond its limits, thereby endangering the reputation and the rights of others. The remarks of the accused stigmatized and discriminated against a well-defined category of the population living in the Grand Duchy, namely, migrants or refugees (including their children in particular) that Luxembourg had decided to host. The moral element, which the offense of incitement to hatred requires, is the fact of wilfully provoking the public to a reaction of hatred or violence towards a person or group or a community. The court argued that the accused's words had certainly been likely to give a disturbing image of the children of refugees or immigrants, and had created (particularly among less informed members of the public), a feeling of mistrust, hostility, even hatred towards these migrant groups. This was all the more so as the remarks suggested that it was the reader's children who were in danger now and in the future.
<b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)	The accused was found guilty of incitement of hatred under Article 457-1 of the Criminal Code. He was sentenced to pay a 750 euros criminal fine.
<b>Key quotation in original language and translated into English with reference details</b> (max. 500 chars)	<p><i>« Par ses propos de nature générale P1 a stigmatisé et discriminé une catégorie bien déterminée de la population habitant le Grand-Duché, à savoir les migrants ou réfugiés que le Luxembourg a décidé d'accueillir et qui se trouvent au centre de la crise « migratoire » que connaît l'Europe, et notamment leurs enfants, qui sont opposés aux enfants indigènes. »</i></p> <p>"By his remarks of a general nature, P1 stigmatized and discriminated against a well-defined category of the population living in the Grand Duchy, namely the migrants or refugees that Luxembourg has decided to host, and who are at the centre of the "migratory" crisis that Europe has experienced. This relates in particular their children, who are set in opposition to indigenous children."</p>

<b>Thematic area</b>	<b>ROMA EQUALITY AND INCLUSION</b> Please provide the most relevant high court decision addressing violations of fundamental rights of Roma and Travellers.
	No case law has been identified for this thematic area.

<b>Thematic area</b>	<b>INFORMATION SOCIETY, PRIVACY AND DATA PROTECTION</b> Please provide the most relevant high court decision related to the topics addressed in the chapter, i.e. in relation to data protection, and/or artificial intelligence systems.
<b>Decision date</b>	15/07/2020
<b>Reference details</b>	Luxembourg / Court of Appeal (7th Chamber) / Case no. 107/20 – VII – CIV <a href="https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9es/CSJ/07_Cambre%20civil/2020/20200715_CAL-2019-00278a-accessible.pdf">https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9es/CSJ/07_Cambre%20civil/2020/20200715_CAL-2019-00278a-accessible.pdf</a>
<b>Key facts of the case</b> (max. 500 chars)	In 2014 company X began to market its financial product “myPos” which consists of mobile payment terminals accepting payments by bank cards on an electronic money account. Due to internal restructuring, company X ceased its activities in Luxembourg at the end of 2015. As of 2016 the “myPos” service has been offered by another credit institution authorised in Malta. On 17 August 2016 a newspaper published an article signed by C with the title: “X at the heart of a Greek fraud” revealing that Greek traders are said to have bypassed the capital controls for a year by using the terminals sold by X. The article alleged that the company “considers that everything is legal... but discreetly leaves Luxembourg”. The article revealed the name of Y, a member of the board of the company. The same day the article was published on TUMBLR and Twitter as well.
<b>Main reasoning/argumentation</b> (max. 500 chars)	Y launched a civil lawsuit against the newspaper and C. Amongst several claims, he argued that the newspaper and C have breached the applicable data protection laws by revealing his name in the article. Before the Court of Appeal, he requested that his name be deleted from the offending article and from any re-publication thereof. In support of his claim, he argued that the public's right to information could not override his individual rights not to have his name associated with a scandal. Moreover, even if the collection of his name could appear legitimate at the stage of the journalist's investigations, its subsequent retention and publication in the contested article would not be justified in any way, given that he was not involved in the acts highlighted by the journalist.

<p><b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)</p>	<p>In respect of the right to object (GDPR Art. 21), the court noted that such right was relative and to be applied within its limits. In principal, the data subject has the right to object only "for reasons relating to his particular situation". In the present case, Y invoked its interest in not having its name associated with a scandal. However, the court held that the association of Y's name with such a scandal was directly caused by his position as the company's manager, moreover, his name was made available in a public registry. Y thus did not put forward "reasons relating to his particular situation" and therefore did not justify his right to exercise the right of opposition.</p> <p>In respect of the right to be forgotten (GDPR Art. 17), the court noted that journalists were not subject to the prohibition on processing sensitive data, for example, if this data was made public by the data subject or was directly related to the public life of the data subject. As the name of Y was made public in respect of his professional activity, it is covered by the notion of "public life". The interference with Y's fundamental rights was thus justified by the overriding interest of the public to know and verify the precise identity of the representative of company X.</p>
<p><b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>The Court of Appeal upheld the court of first-instance's judgment, which had dismissed all of the plaintiff's claims.</p>
<p><b>Key quotation in original language and translated into English with reference details</b> (max. 500 chars)</p>	<p><i>« Outre le fait qu'il résulte des développements précédents que la Cour vient à la conclusion que le prédit article n'est pas diffamatoire, il y a lieu de constater que l'association du nom de l'appelant aux faits relatés dans cet article tient sa cause dans le fait que l'appelant occupait à ce moment la fonction de dirigeant de l'entreprise ayant commercialisé les terminaux MyPos et que son nom était à ce titre public pour avoir été publié au RCS en tant que représentant légal de cette entreprise. Y) ne fait ainsi pas valoir « des raisons tenant à sa situation particulière ». Il ne justifie dès lors pas de son droit à exercer le droit d'opposition consacré par l'article 21 du RGDP. »</i></p> <p>"In addition to the fact that it follows from the foregoing developments that the Court came to the conclusion that the foretold article is not defamatory, it should be noted that the association of the appellant's name with the facts related in this article is caused by the fact</p>

	<p>that the appellant, at that time, held the position of manager of the company which marketed the MyPos terminals, and that his name was in this capacity public, as it had been published as the legal representative of this company in the RCS. Y thus does not put forward "reasons relating to his particular situation". He therefore does not justify his right to exercise the right of opposition enshrined in Article 21 of the GDPR."</p>
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<b>Thematic area</b>	<b>RIGHTS OF THE CHILD</b> Please provide the most relevant high court decision relating to the topics addressed in this chapter.
<b>Decision date</b>	12/02/2020
<b>Reference details</b>	Luxembourg / Court of Appeal (10th Chamber) / Case no. 68/20 X. See on page 55 of the <a href="#">Criminal Law Bulletin</a> (2019-2020) of the Superior Court of Justice
<b>Key facts of the case</b> (max. 500 chars)	The accused was sentenced to 24 months of imprisonment by the Luxembourg District Court on 16 May 2019 for two counts of burglary, committed by breaking into the premises of company X and removing a laptop, a loudspeaker, a tablet and 161 stainless steel sheets. The court of first-instance took into account the criminal record of the accused, which featured two previous convictions, one of them by a French Juvenile court at the age of 14. On appeal, the Court of Appeal heard the case.
<b>Main reasoning/argumentation</b> (max. 500 chars)	The accused argued before the Court of Appeal that the 24-month imprisonment was too severe. He emphasised that the court of first-instance should not have taken into account the criminal record from the period of minority of the accused.
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	The Court of Appeal confirmed that under art. 32 of the act of 10 August 1992 on youth protection, the criminal responsibility of a minor cannot be prosecuted according to the ordinary procedure, unless " <i>the minor has committed an act qualified as an offense and if he was over 16 years of age at the time of the act</i> ". The court held that the previous court decision concerning the accused minor could be brought to the attention of the Luxembourg courts. This decision, however, cannot be taken into consideration for the assessment of the benefit of the probation, whereas at the time of the fact giving rise to the offense, the accused was only 14 years old. Considering that the offense committed by a minor under 16 years old is not punishable under Luxembourgish law, it follows that to apply a less severe punishment on appeal cannot be precluded on the ground that the accused was found guilty by another Juvenile Court in France at age 14.

<p><b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>The Court of Appeal reformed the court of first-instance judgment in terms of punishment. It ruled that the 24 months of imprisonment would be suspended under the probationary suspension regime for a period of three years, as well as imposing on him the obligation to compensate the victims.</p>
<p><b>Key quotation in original language and translated into English with reference details</b> (max. 500 chars)</p>	<p><i>« Il se dégage des dispositions légales qui précèdent que la décision du tribunal pour enfants de [...] du [...] renseignée sur le document Ecris pouvait être portée à la connaissance des juridictions luxembourgeoises. Cette décision ne saurait cependant être prise en considération pour l'appréciation du bénéfice du sursis, simple ou probatoire, alors qu'au moment du fait ayant donné lieu à l'infraction, soit le [...], P1, né le [...], n'était âgé que de 14 ans. Le fait infractionnel commis par un mineur de moins de 16 ans n'étant pas punissable suivant la loi luxembourgeoise, il en découle que la décision du tribunal pour enfants de [...] du [...] ne s'oppose pas à un aménagement de la peine. »</i></p> <p>"It emerges from the foregoing legal provisions that the decision of the juvenile court of [...] of [...], provided in the Ecris document, could be brought to the attention of the Luxembourg courts. However, this decision cannot be taken into consideration for the assessment of the benefit of the suspension, simple or probative, whereas at the time of the fact giving rise to the infringement, that is to say on [...], P1, born on [...], was only 14 years old. Since the offense committed by a minor under 16 years of age is not punishable under Luxembourg law, it follows that the decision of the juvenile court of [...] of [...] does not preclude a change of the sentence."</p>

<b>Thematic area</b>	<b>ACCESS TO JUSTICE, INCLUDING RIGHTS OF CRIME VICTIMS</b> Please provide the most relevant high court decision relating to the topics addressed in this chapter.
<b>Decision date</b>	18/02/2020
<b>Reference details</b>	Luxembourg / Court of Appeal (5th Chamber) / Case no. 75/20 V. See page 22 of the <a href="#">Criminal Law Bulletin</a> (2019-2020) of the Superior Court of Justice
<b>Key facts of the case</b> (max. 500 chars)	The accused and the victim met for the first time in the evening of 29 April 2017 in a nightclub. They consumed alcohol, then kissed and danced in a very intimate way. The victim did not hide her attraction to the accused. Then they left the nightclub to go to the car of the accused who allegedly wanted to take some cigarettes. There he invited the victim to the car where he initiated a sexual relationship. At this point the victim expressed several times that she did not want a sexual relationship with the accused, however, she could not physically defend herself, as she was under the influence of alcohol. The accused still continued his activities and penetrated the victim several times. Later the accused opened the door of the car, so the victim could leave.
<b>Main reasoning/argumentation</b> (max. 500 chars)	On 6 June 2019, the Luxembourg District Court acquitted the accused arguing that in view of the behaviour of the victim preceding the acts of the sexual penetration and the detailed, clear and consistent statements of the accused, there remained a doubt whether the victim had clearly and unequivocal manifested her absence of consent before the act of sexual penetration. On appeal, the public prosecutor argued that the court of first-instance relied solely on the behaviour of the victim before the sexual act and on the statements of the accused. However, the court did not take into consideration the credibility of the victim's further statements. If the court did not believe the victim, it should have given reasons. The representative of the prosecution argued that the statements of the victim were nevertheless credible and plausible.
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	The Court of Appeal emphasised that article 375 of the Criminal Code allowed for proving the victim's lack of consent by any means. Use of violence, serious threats, cunning, artifice or abuse of a person unable to give free consent or to put up resistance is a non-exhaustive list of circumstances that allow for the establishment of a victim's lack of consent. As it resulted from the analysis of the victim's depositions, the Court of Appeal accepted as established that



	<p>she expressed her refusal to any sexual penetration by the accused, at the very moment he initiated it. Taking into account the circumstances in which the sexual acts took place, the verbal objections that the victim expressed and the violence that the accused exercised in restraining her, the court concluded that the victim did not consent to the sexual intercourse.</p>
<p><b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>The lack of consent on the part of the victim was therefore established. The accused was sentenced to 24 months of imprisonment, suspended for 5 years. He was also ordered to pay compensation to the victim as civil party for 8,055 euros.</p>
<p><b>Key quotation in original language and translated into English with reference details</b> (max. 500 chars)</p>	<p><i>« Le libellé actuel de l'article permet d'apporter la preuve de l'absence de consentement de la victime par tout moyen de preuve sans être limité par l'énumération des circonstances contenues dans l'article 375 du Code pénal. L'usage de violences, de menaces graves, la ruse, les artifices ou l'abus d'une personne hors d'état de donner un consentement libre ou d'opposer de la résistance ne constituent qu'une énumération non limitative des circonstances permettant d'établir l'absence de consentement de la victime. »</i></p> <p>"The current wording of the article allows proof of the victim's lack of consent by any means of proof, without being limited by the enumeration of the circumstances contained in article 375 of the Criminal Code. The use of violence, serious threats, cunning, artifice or abuse of a person unable to give free consent or to put up resistance is a non-exhaustive list of the circumstances allowing for the establishment of a victim's lack of consent."</p>

<b>Thematic area</b>	<b>Developments in the implementation of the Convention on the Rights of Persons with Disabilities (CRPD)</b> Please provide the most relevant high court decision making reference to the CRPD or employing the CRPD in their reasoning.
<b>Decision date</b>	05/08/2020
<b>Reference details</b>	Luxembourg / Administrative Tribunal of the Grand Duchy of Luxembourg (1 <sup>st</sup> chamber) / case no. 42793  <a href="https://ja.public.lu/40001-45000/42793.pdf">https://ja.public.lu/40001-45000/42793.pdf</a>
<b>Key facts of the case</b> (max. 500 chars)	On 8 February 2018, the plaintiff lodged an application for international protection with the Ministry of Foreign and European Affairs, Directorate of Immigration. In his application, he explained that he was from Columbia where he had been the victim of an attack by the paramilitary group ACC (" <i>Autodefensas Campesinas del Casanare</i> "). On 17 January 2000, he was kidnapped and tortured, as a result of which he became disabled. In September 2016, he lodged a complaint against the Colombian government and the ACC in order to receive compensation for the physical and psychological damage he had allegedly suffered. As a consequence, of the filing of his complaint, he received death threats by phone and by e-mail. He filed a new complaint with the prosecutor in respect of the threats, but he was denied police protection. Then he decided to leave Columbia, requested international protection first in Germany on 29 May 2017 and then in Luxembourg. The Ministry refused his request as being unfounded.
<b>Main reasoning/argumentation</b> (max. 500 chars)	The plaintiff appealed the decision before the Administrative Tribunal. Among many other arguments, he put forward that the CRPD, ratified by Luxembourg by act of 28 July 2011, would introduce the prospect of better balance and well-being for people with disabilities. He believed that the CRPD should be applied to his case since a return to Colombia would expose him to reliving a traumatic and unworthy situation. He argued that CRPD would oblige all signatory states to ensure access for people with disabilities to fundamental rights on equal terms in several regards. The plaintiff considered that the German authorities had not provided him with dignified and adequate treatment taking into account his situation as a person with disabilities, and thus he concluded that sending him back to that country would amount to disregarding the principles established by the CRPD.

<p><b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)</p>	<p>The court noted that the applicant was wrong in invoking a violation of the CRPD in order to call into question the refusal of his request for international protection. According to the court's understanding, the rights guaranteed by the CRPD, as presented by the plaintiff, would not have been provided in Germany, the country in which he had filed a first request for international protection. However, beyond the question of whether the CRPD is likely to have an impact on the examination of the conditions for granting international protection, the applicant's argument is in any event irrelevant since the court is not deciding about transferring him to Germany, but on leaving the territory towards his country of origin, Colombia. Hence, the conditions of reception of the applicant in Germany are irrelevant for the assessment of the merits of the appealed decisions.</p>
<p><b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>The plaintiff's appeal was dismissed and therefore the administrative decision refusing his request for international protection was upheld.</p>
<p><b>Key quotation in original language and translated into English with reference details</b> (max. 500 chars)</p>	<p><i>« Ladite convention obligerait tous les Etats signataires d'assurer l'accès pour les personnes en situation de handicap aux droits fondamentaux dans des conditions d'égalité en ce qui concerne l'accessibilité des structures bâties et de toutes les structures de la société, l'autodétermination, la mobilité, le droit à l'information, le droit à la libre expression, la possibilité de choisir le lieu et la façon de vivre, le droit à l'éducation et au travail, l'accès à la justice, ainsi que la participation à la vie sociale, culturelle et sportive. »</i></p> <p>"The said convention would oblige all signatory states to ensure access for people with disabilities to fundamental rights on equal terms with regard to the accessibility of built structures and all structures of society, self-determination, mobility, the right to information, the right to free expression, the possibility of choosing the place and the way of life, the right to education and to work, access to justice, as well as participation in social, cultural and sporting life."</p>