

# Franet National contribution to the Fundamental Rights Report 2020

**Luxembourg**

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

**Authors' name:** Volha Vysotskaya, Lilla Vukovich, Adolfo Sommaribas,  
Birte Nienaber

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## Franet country study: policy and legal highlights 2019

<b>Issues in the fundamental rights institutional landscape</b>	No important development in 2019.
<b>EU Charter of Fundamental Rights</b>	<b>Domestic courts applying the Charter widely in respect to asylum cases:</b> the Charter is being applied or at least mentioned in administrative judgments on applications for international protection, mostly applying and analysing Article 4 of the Charter ( <a href="#">Prohibition of inhuman or degrading treatment</a> ).
<b>Equality and non-discrimination</b>	<b>Bottom up approach legislation eliminating discrimination against people with disabilities:</b> In Autumn 2019 civil rights activist groups pushed the Government to make the Adapto service (a “taxi” service for people with reduced mobility) <a href="#">free of charge and to start its reform</a> .
<b>Racism, xenophobia &amp; Roma integration</b>	No important development in 2019
<b>Asylum &amp; migration</b>	<b>Best interests of the child during the return procedure of unaccompanied children:</b> <a href="#">The Act of 4 December 2019</a> on the free movement of persons and immigration strengthens best interests of the child and guarantees that no return decision would be made against an unaccompanied minor.
<b>Data protection and digital society</b>	<b>Taking stock one year after GDPR:</b> In 2019, the National Data Protection Committee’s <a href="#">workload doubled</a> ; the committee also increased its budget by 20% and hired new members (internal and external).
<b>Rights of the child</b>	<b>Ongoing youth protection reform regarding procedural safeguards for children in criminal proceedings:</b> Luxembourg is still revising its <a href="#">youth protection system</a> . In 2019, the State Council and human rights organisations raised strong concerns regarding the form and the content of the relevant bill. The bill is <a href="#">foreseen to be thoroughly revised in the next two years</a> .
<b>Access to justice, including victims of crime</b>	<b>Legislative measures on transposing the Victims’ Rights Directive:</b> <a href="#">Bill N°7442</a> under discussion since autumn 2019 includes provisions for the rights of victims in criminal proceedings who are not residents of Luxembourg. In 2019 the parliament proposed <a href="#">Bill No°7407</a> on the Protection of Privacy to make “upskirting” punishable, especially if it was committed against a minor or a person in a vulnerable situation.
<b>Convention on the Rights of Persons with Disability</b>	<b>An intensive year for the development of legislative measures promoting the rights of people with disabilities:</b> <a href="#">Bill N°7346</a> under discussion since 2018 concerns the accessibility in public places. <a href="#">The Act of 28 May 2019</a> concerns the accessibility of websites and mobile applications of public organisations. <a href="#">The Act of 1 August 2019</a> concerns the activities in assistance of inclusive employment of people with disabilities. <b>Policy measures for promoting inclusion and the rights of people with disabilities:</b> the Ministry of Family announced <a href="#">the national action plan</a> for people with disabilities (2019-2024).

# Chapter 1. Equality and non-discrimination

## 1. Legal and policy developments in 2019 relevant to combating discrimination based on gender identity, religion or belief, disability, age or sexual orientation

In 2019 the Minister of Family, Integration and the Greater Region (*Ministre de la Famille, de l'Intégration et à la Grande Région*) signed the Oslo Declaration to renew Luxembourg's commitment to supporting LGBTI rights on the occasion of the IDAHOT+ Forum 2019. The objective is to eradicate discrimination and violence against LGBTI people.<sup>1</sup>

In 2019 some policy changes on eliminating discrimination became possible thanks to the strong will and active work of civil rights organisations. In 2019 the Luxembourgish government announced it would make public transport free of charge by March 2020, primarily as an instrument to fight social inequalities<sup>2</sup>. However, the measure of free public transport would not include the Adapto service – an on-demand, custom-made service for people with reduced mobility who cannot travel by public transport or independently by car<sup>3</sup> (a one-way ticket is 5 euros and a return 8 euros, the accompanying person has to pay the same fee)<sup>4</sup>. Organisations promoting and defending the rights of people with disabilities ([info-handicap.lu](http://info-handicap.lu)) insisted on closing the discriminatory gap; a petition to make the Adapto service free of charge for people with disabilities was launched and gained enough votes to make it to parliament<sup>5</sup>. In autumn 2019 the Minister of Mobility and Public Works (*Ministère de la Mobilité et des Travaux publics*) announced the reform of the Adapto service and confirmed it was to be free for people with reduced mobility. The conditions of the reform would include the following:

- the Adapto transport system will not be replaced by financial assistance; transportation will be maintained, but access and organisation will be reformed.
- the Adapto transport will be reserved for people with disabilities and reduced mobility who have no other possibilities for mobility.
- for this purpose the Ministry of Mobility and Public Works will create a national reservation centre, which will organise itineraries in order to effectively group clients to meet their travel needs in the form of public transit.<sup>6</sup>

The Centre for Equal Treatment (*Centre pour l'égalité de traitement*), the equality body, increased its staff in 2019; they have a new colleague and now include 5 members (the already existing two employees have been retained). As a result, its budget had to be increased to cover the additional salaries.<sup>7</sup>

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<sup>1</sup> Luxembourg, Ministry of Family, Integration and the Greater Region (*Ministre de la Famille, de l'Intégration et à la Grande Région*) (2019), "[Corinne Cahen signe la déclaration IDAHOT 2019 – Déclaration d'Oslo](#)", press release 24 May 2019.

<sup>2</sup> Luxembourg, Luxembourgish Government (*Gouvernement Luxembourgeois*) (2019), "[La gratuité des transports en commun. La cerise sociale sur le gâteau de la stratégie multimodale](#)", press release, 21 September 2019.

<sup>3</sup> Luxembourg, Adapto service, [Information brochure](#).

<sup>4</sup> Luxembourg, [Adapto service](#).

<sup>5</sup> Luxembourg, [Petition N°1329 on free transport for people with reduced mobility](#) (*Gratis transport pour les personnes à mobilité réduite*), 4 July 2019.

<sup>6</sup> Luxembourg, Luxembourgish Government (*Gouvernement Luxembourgeois*), "[Le transport spécifique 'Adapto' sera réformé et profitera de la gratuité des transports publics](#)", press release, 23 September 2019.

<sup>7</sup> Luxembourg, mail exchange with the equality body (*le CET*), mail exchange of 10 September 2019.

In the reflection document of 2018<sup>8</sup>, the Consultative Commission on Human Rights (CCHR, *la Commission consultative des Droits de l'Homme- CCDH*) pointed out at the scarcity of case laws regarding discrimination of people with disabilities. In particular, the committee referred to a complex composition and parallel work of supporting organisations, making it sometimes difficult for victims to file a complaint. The Consultative Commission notes that people in a state of dependency or living in institutions are reluctant to claim what they are entitled to. Furthermore, the Commission, relying on the alternative report on Implementation of the United Nations Convention on the Rights of Persons with Disabilities 2016<sup>9</sup> specifies that people with disabilities fearing their situation may deteriorate is one of the main reasons holding them back<sup>10</sup>; this is followed by a fear of standing-up for oneself, and being unaware of procedures or legal fees.<sup>11 12</sup>

Luxembourg finds itself in a vacuum regarding the promotion of anti-discrimination, intolerance legislation and policy instruments. On the one hand, at national level Luxembourg falls short of specific operational instruments to effectively address these issues. In 2019 the Immigrant Worker Support Association (*Association de Soutien aux Travailleurs Immigrés - ASTI*) addressed in public the current anti-discriminatory politics of the country. It pointed out at the lack of specific instruments and limited power of institutions to combat discrimination and intolerance. In its statement,<sup>13</sup> the association outlined the following 4 central problems:

- For several previous years the National Council for Foreigners (*Conseil National des Etrangers – le CNE*) has not renewed its special commission which had the competence to receive complaints of racial discrimination;
- There is, despite recommendations from ECRI, no system for recording and monitoring racial incidents and a lack of statistics as a result. There is no central body competent to collect statistics on xenophobic phenomena;
- The coalition agreement of the current government 2018-2023 makes no mention of the fight against racial and xenophobic discriminatory phenomena;
- The new "National multi-year action plan for integration of 2018-2023" dropped the "fight against discrimination" objective from its title in comparison to the previous national action plan which was called "National multi-year plan of action for integration and fight against discrimination, 2010-2014". The current action plan thus does not address practical measures against discrimination in society.<sup>14</sup>

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<sup>8</sup> Luxembourg, Consultative Commission on Human Rights (*Commission consultative des droits de l'homme*) (2018), [Document de réflexion: Droits des personnes en situation de handicap. Les institutions et organismes de défense des droits des personnes handicapées.](#)

<sup>9</sup> United Nations (UN) (2016), [Alternative report on implementation of the United Nations convention on the rights of persons with disabilities-Luxembourg.](#)

<sup>10</sup> United Nations (UN) (2016), [Alternative report on implementation of the United Nations convention on the rights of persons with disabilities-Luxembourg.](#)

<sup>11</sup> Luxembourg, Consultative Commission on Human Rights (*Commission consultative des droits de l'homme*) (2018), [Document de réflexion: Droits des personnes en situation de handicap . Les institutions et organismes de défense des droits des personnes handicapées.](#) p.4

<sup>12</sup> Luxembourg, Consultative Commission on Human Rights (*Commission consultative des droits de l'homme*) (2018), [Document de réflexion: Droits des personnes en situation de handicap . Les institutions et organismes de défense des droits des personnes handicapées.](#)

<sup>13</sup> Luxembourg, the Immigrant Worker Support Association (*l'Association de Soutien aux Travailleurs Immigrés - ASTI*) (2019), "[Où sont les instruments de lutte contre les phénomènes racistes et xénophobes?](#)", press release, 21 March 2019.

<sup>14</sup> Luxembourg, the Immigrant Worker Support Association (*l'Association de Soutien aux Travailleurs Immigrés - ASTI*). "[Où sont les instruments de lutte contre les phénomènes racistes et xénophobes?](#)", press release, 21 March 2019.

On the other hand, to close these gaps, the Luxembourgish government wishes to rely on the common European approach in developing new effective instruments. One such instrument could be a new equal treatment directive, which has been blocked by some Member States since 2008<sup>15</sup>.

## **2. Research findings, studies or surveys on either experiences of discrimination or rights awareness**

There are no research findings for the year 2019.

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<sup>15</sup> Luxembourg, Ministry of Family, Integration and the Greater Region (*Ministère de la Famille, de l'Intégration et à la Grande Région*) (2018), [Rapport d'activité 2018](#), p.34.

## Chapter 2. Racism, xenophobia and related intolerance

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

There are no policy or legal developments regarding Racial Equality Directive.<sup>16</sup>

### 2. Legal, policy developments and measures relating to the application of the Framework Decision on Racism and Xenophobia

There are no legal developments with regard to the Framework Decision on Racism and Xenophobia.<sup>17</sup>

In respect to indirect discrimination on the grounds of nationality, there was a legislative development in 2019 in Luxembourg, which was generated by a recent judgment of the CJEU<sup>18</sup>. According to the preceding legal regime, Luxembourg had granted financial aid for higher education studies to non-resident students subject to the condition that, at the date of the application for financial aid, one of the parents of the student had been employed in Luxembourg for a period of at least 5 years during the course of a reference period of 7 years. This regime did not take into account any other connecting factor to Luxembourg. The CJEU criticised the overly strict conditions which could lead to indirect discrimination on the grounds of nationality. The CJEU argued that such a distinction based on residence was liable to operate mainly to the detriment of non-Luxembourgish nationals, as non-residents are in the majority of cases foreign nationals.

Bill No°7469<sup>19</sup> aimed at creating a less restrictive regime in respect of eligibility to financial aid, taking into account more connecting factors to Luxembourg. The proposal brought along three different levels, two of them related to the non-resident worker (parent of the student) and the third one allowed the student to establish a connection with Luxembourg. The first condition was if one of the parents of the student has been employed in Luxembourg for a period of at least 5 years in the course of a reference period of 10 years (contrary to the previous 7 years reference period). The second, alternative condition was if one of the parents had been employed in Luxembourg for a period of at least 10 years cumulatively, without defining any reference period. The third condition was if the student had attended school for at least 5 years in Luxembourg. The bill was voted in by the Parliament and the resulting piece of legislation<sup>20</sup> was published in the National Gazette on 30 October 2019.

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<sup>16</sup> Luxembourg, absence of development was confirmed by CET, the equality body, mail exchange of 11 September 2019.

<sup>17</sup> Luxembourg, absence of development was confirmed by CET, the equality body, mail exchange of 11 September 2019.

<sup>18</sup> Luxembourg, [Nicolas Aubriet v. Ministre de l'Enseignement supérieur et de la Recherche](#), 10 July 2019.

<sup>19</sup> Luxembourg, [Bill No°7469 amending the amended law of 24 July 2014 on State financial assistance for higher education](#) (*Projet de loi 7469 portant modification de la loi modifiée du 24 juillet 2014 concernant l'aide financière de l'Etat pour études supérieures*).

<sup>20</sup> Luxembourg, the [Act of 26 October 2019 amending the amended law of 24 July 2014 on state financial assistance for higher studies](#), (*Loi du 26 octobre 2019 portant modification de la loi modifiée du 24 juillet 2014 concernant l'aide financière de l'Etat pour études supérieures*).

## **Chapter 3. Roma integration**

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

There are no measures addressing Roma segregation.

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

We could not identify any policy or legal measures addressing Roma inclusivity.



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

### Unaccompanied children reaching the age of majority

Area of support	Description
<p><b>Residence permit</b></p> <p><i>Reception conditions Directive (article 6 and 7) and Qualification Directive (articles 24 and 31)</i></p>	<p><i>Please explain whether unaccompanied children (non-asylum seekers and asylum seekers) get temporary permits and if they expire when turning 18. Please elaborate on which type of permit is granted when they reach 18 years and under which conditions (e.g. being enrolled in education or having an employment contract.)</i></p> <p>Unaccompanied children who are under 18 fall into the international protection procedure case. “This is because in practice, no other authorisation of stay is foreseen (neither Immigration law nor Asylum law). But for one exception: victims of human trafficking or those in possession of a residence permit for private reasons based on humanitarian grounds of an exceptional gravity. In these cases, in-case of postponement of removal, the unaccompanied child can remain in the territory“.<sup>21</sup></p> <p>If the unaccompanied child has been granted the status of international protection, his/her status does not necessarily need to be automatically reviewed. If there are no additional criteria to be taken into account – he/she continues to benefit from his/her status<sup>22</sup>. “If an unaccompanied minor has obtained another status different from international protection, the law does not foresee any revision of the status per se, only on the condition that the minor comes of age”. This situation applies to the beneficiary of a residence permit for private reasons and a presumed victim of human trafficking”.<sup>23</sup></p> <p>“In the case of being a victim of human trafficking, the assistance measures are guaranteed until the minor comes of age (art. 1 (1) al. 3).<sup>24</sup> These measures can be extended until three months, after</p>

<sup>21</sup> Luxembourg, European Migration Network Luxembourg (2017), [\(Member\) states' approaches to unaccompanied minors following status determination. Focussed study](#), p.10.

<sup>22</sup> Luxembourg, European Migration Network Luxembourg (2017), [\(Member\) states' approaches to unaccompanied minors following status determination. Focussed study](#).

<sup>23</sup> Luxembourg, European Migration Network Luxembourg (2017), [\(Member\) states' approaches to unaccompanied minors following status determination. Focussed study](#), p.11.

<sup>24</sup> Luxembourg, [Grand-Ducal Decree of 11 September 2014 relating to 1. Execution of Article 2 \(1\) \(a\) and \(2\) and \(4\) of the amended Law of 8 May 2009 on assistance, protection and safety of victims of human trafficking; 2. amendment of the amended Grand-Ducal Decree of 19 March 1999 concerning government approval of service managers for girls, women and women with children](#) (Règlement grand-ducal du 11 septembre 2014 portant 1. exécution de l'article 2, paragraphes (1) point a) et (2) et (4) de la loi modifiée du 8 mai 2009 sur l'assistance, la protection et la sécurité des victimes de la traite des êtres humains; 2. modification du règlement grand-ducal modifié du 19 mars 1999 concernant

	<p>which there is a definitive judgment in the criminal/civil case, even if the minor came into adulthood”.<sup>25</sup> “However, it is only when this information comes to the attention of the authorities that the applicant has misled the authorities or provided them with false information or documentation that the residence permit can be withdrawn, independently, if it is a minor or an adult. In addition, the authorities will evaluate if the conditions under which the authorization of stay was granted are still being fulfilled by the applicant during the renewal of the residence permit (art.111 (2)).”<sup>26</sup></p> <p><sup>27</sup></p>
<p><b>Guardianship (representative under Reception Conditions Directive Article 24.1)</b></p>	<p><i>Please elaborate on how the role of guardians is affected when the child reaches 18, and of any initiatives to expand the guardian’s support, for example transforming the guardian into a ‘mentor’ supporting the child until a certain age.</i></p> <p>Authorities appoint an ad hoc administrator to assist an unaccompanied child during the international protection procedure. A guardian is appointed to assist in everyday life. However, Ad hoc administrators’ support as well as of guardians is withdrawn if the unaccompanied minor turns 18 or his age is determined to be over 18.<sup>28</sup> “In the case where an unaccompanied minor is still considered so when the final decision is notified, the unaccompanied minor will continue to benefit of the guardian and the ad-hoc administrator even though the procedure for the examination of claims for international protection is finished. This is because the ad-hoc administrator is appointed by the Youth Court in order to assist the minor during all the administrative and judicial proceedings. This even allows the ad-hoc administrator to apply for a residence permit for private reasons or to assist the unaccompanied minor during the postponement of removal procedure”(art.3).<sup>29 30</sup></p> <p>“In principle, the guardianship arrangements terminate after the unaccompanied minor has reached his/her majority. However, the Guardianship Judge may, upon request, appoint another guardian to take care of the finances in the case of idleness of the unaccompanied minor who has reached his/her majority</p>

*l'agrément gouvernemental à accorder aux gestionnaires de services pour filles, femmes et femmes avec enfants)),* Memorial A-186 2014.

<sup>25</sup> Luxembourg, European Migration Network Luxembourg (2017), [\(Member\) states’ approaches to unaccompanied minors following status determination. Focussed study](#), p.11

<sup>26</sup> Luxembourg, the [amended Act of 29 August 2008](#) (*Loi du 29 août 2008 portant sur la libre circulation des personnes et l’immigration*).

<sup>27</sup> Luxembourg, European Migration Network Luxembourg (2017), [\(Member\) states’ approaches to unaccompanied minors following status determination. Focussed study](#), p.11.

<sup>28</sup> Luxembourg, European Migration Network Luxembourg (2017), [\(Member\) states’ approaches to unaccompanied minors following status determination. Focussed study](#).

<sup>29</sup> Luxembourg, the [amended Act of 29 August 2008](#) (*Loi du 29 août 2008 portant sur la libre circulation des personnes et l’immigration*).

<sup>30</sup> Luxembourg, European Migration Network Luxembourg (2017), [\(Member\) states’ approaches to unaccompanied minors following status determination. Focussed study](#), p.11.

	(Art.488). <sup>31</sup> In this case, the Guardianship Court can extend the appointment of the guardian: the judge will decide on the extension with the agreement of the person concerned and if the interest of the latter so requires. This extension can only last until the individual’s 21 <sup>st</sup> birthday”(art.1). <sup>32 33</sup>
<p><b>Accommodation</b>  <b>Reception Conditions</b>  <b>Directive Article 24.2</b></p>	<p><i>Please explain what children reaching 18 years are entitled to in terms of accommodation, for example extension of foster care programmes until the age of 21, only transfer to an adult accommodation, or other accommodation support.</i></p> <p>“Unaccompanied children can stay in the reception facility until they reach 18. Depending on their status and the type of the facility, they can stay in the facility or are transferred to another facility centre until they are able to find housing”.<sup>3435</sup> Also foster families can accommodate unaccompanied minors following status determination (Art.63 (3)b).<sup>36</sup> “The families need to file an application to the Ministry of National Education, Children and the Youth in order to obtain an agreement (“agrément”).”<sup>37 38</sup>. “A number of additional conditions, particularly in terms of child-specific training, have to be fulfilled. In addition, a new vocational training of 19 hours has been introduced in the context of applicants for international protection, which focuses on the legal framework, the cultural aspect and particularly on the psycho-traumatological aspect of unaccompanied minors that might have lived traumatic experiences in their country of origin or on the way to Luxembourg.”<sup>39</sup></p> <p>“Victims of human trafficking who reach the age of majority may stay in the same facility until the age of 21 or they may be placed in an adequate facility for adults”.<sup>40</sup></p>

<sup>31</sup> Luxembourg, [the Civil Code \(Code civil\)](#).

<sup>32</sup> Luxembourg, [the amended Act of 10 August 1992 on Youth Protection \(Loi du 10 août 1992 relative à la protection de la jeunesse\)](#), Memorial A-70 1992.

<sup>33</sup> Luxembourg, European Migration Network Luxembourg (2017), [\(Member\) states’ approaches to unaccompanied minors following status determination. Focussed study](#), p.19.

<sup>34</sup> Luxembourg, information is obtained from an interview with Caritas conducted by the European Migration network team in Luxembourg on 13 December 2017 and 5 January 2018.

<sup>35</sup> Luxembourg, European Migration Network Luxembourg (2017), [\(Member\) states’ approaches to unaccompanied minors following status determination. Focussed study](#), p.12.

<sup>36</sup> Luxembourg, [the Act of 18 December 2015 on international protection and temporary protection \(Loi du 18 décembre 2015 relative à la protection internationale et à la protection temporaire\)](#).

<sup>37</sup> Luxembourg, Note: according to the EMN Luxembourg report, the conditions that have to be fulfilled in order to obtain the agreement (“agrément”) are established in the Grand Ducal Decree of 17 August 2011 concerning the accreditation of managers of activities for children, young adults and families in distress.

<sup>38</sup> Luxembourg, European Migration Network Luxembourg (2017), [\(Member\) states’ approaches to unaccompanied minors following status determination. Focussed study](#), p.15.

<sup>39</sup> Luxembourg, European Migration Network Luxembourg (2017), [\(Member\) states’ approaches to unaccompanied minors following status determination. Focussed study](#), p.15.

<sup>40</sup> Luxembourg, European Migration Network Luxembourg (2017), [\(Member\) states’ approaches to unaccompanied minors following status determination. Focussed study](#), p.15.

## Return

### Return Directive, Article 10

*Please explain whether there are any special measures to prepare unaccompanied children for a return procedure and whether young adults receive any form of free assistance during eventual return procedures*

Actual Luxembourgish law foresees the return of unaccompanied minors. The Immigration law stipulates that a return decision can only be taken against a minor who is not accompanied by a legal representative if the return is in his/her best interest, with the exception of decisions based on serious public security grounds (art.111 (2)).<sup>41 42</sup>

“The Minister in charge of Immigration assesses the case, taking into consideration the best interests of the child (art.111 (2)).<sup>43</sup> If necessary, the Minister can grant an additional delay of more than 30 days for the voluntary departure, taking into consideration the circumstances of each case, such as the duration of stay, if the unaccompanied minor is attending school and other social and family links that the children must have in the country (art.111 (2)).<sup>44</sup> The Minister can request an expert opinion to take the decision”.<sup>45</sup>

Currently, “in accordance with the Article 10 of the Directive 2008/115/EC (Return Directive), the Immigration Law (Art.111 (2))<sup>46</sup> provides that a return decision for an unaccompanied minor can only be taken if it is in the best interest of the minor. However, the Law does not specify how the interests of the child are determined. Therefore, on 7 July 2017, the Council of government<sup>47</sup> adopted the creation of a new collegiate body (“*organe collégiale*”) with the function of assessing the best interest of the child in the context of the return of unaccompanied minors. The ad-hoc administrator is invited to attend the commission meeting for the minor s/he represents. Based on the elements of his/her application, an individual opinion assessing the

<sup>41</sup> Luxembourg, [the amended Act of 29 August 2008](#) (*Loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration*), Memorial A-242 April 2019.

<sup>42</sup> Luxembourg, European Migration Network Luxembourg (2017), [\(Member\) states' approaches to unaccompanied minors following status determination. Focussed study.](#)

<sup>43</sup> Luxembourg, [the amended Act of 29 August 2008](#) (*Loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration*), Memorial A-242 April 2019.

<sup>44</sup> Luxembourg, [the amended Act of 29 August 2008](#) (*Loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration*), Memorial A-242 April 2019.

<sup>45</sup> Luxembourg, European Migration Network Luxembourg (2017), [\(Member\) states' approaches to unaccompanied minors following status determination. Focussed study.](#) p.34.

<sup>46</sup> Luxembourg, [the amended Act of 29 August 2008](#) (*Loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration*), Memorial A-242 April 2019.

<sup>47</sup> Luxembourg, Government of Luxembourg (*Gouvernement luxembourgeois*), “[Résumé des travaux du Conseil de Gouvernement](#)”, press release, 7 July 2017.

	<p>best interest of the child, in the context of his return, will be given for each minor”<sup>4849</sup></p> <p>Furthermore, some changes were implemented with the Act of 4 December 2019.<sup>50</sup> The bill strengthens the best interests of the child and stipulates that no return decision would be taken against an unaccompanied minor, except if she/he has seriously violated public security, or if the expulsion is necessary in his/her interest (art.3 of the Act of 4 December 2019).</p> <p>Interests of the child are evaluated by a special committee (<i>une commission consultative</i>) (art.3). The child is accompanied by the ad hoc administrator in the administrative and judicial procedures regarding the entrance and stay in the territory (art. 103 amending of the Act of 1 July 2011).</p> <p>The best interests of the child are also taken into account during the retur. If there is a risk of fleeing during the return preparations, or obstacles posed by the minor to the return preparations, the minor could be placed into a suitable institution adapted to the needs of his/her age (art. 120 amending of the Act of 1 July 2011).</p> <p>“Currently, there are no special/transitional arrangements for the return of unaccompanied minors approaching 18 years of age.<sup>51</sup> If they are under 18 years old when the return takes place, they will be treated as unaccompanied minors and they can benefit from all the return and reintegration assistance provided for this vulnerable group. If the return is going to take place when they are of age, they will be treated as adults.”<sup>52</sup></p>
<b>Others</b>	<p><i>e.g. special permissions to stay based on education or employment programme, etc.</i></p> <p>n.a.</p>

<sup>48</sup> Luxembourg, the Ministry of Foreign and European Affairs (*Ministère des Affaires étrangères et européennes*) (2018), [Bilan de l'année 2017 en matière d'asile et d'immigration](#), p. 13.

<sup>49</sup> Luxembourg, European Migration Network Luxembourg (2017), [\(Member\) states' approaches to unaccompanied minors following status determination. Focussed study](#).

<sup>50</sup> Luxembourg, The Act of 4 December 2019 amending the amended law of 29 August 2008 on the free movement of people and immigration (*Loi du 4 décembre 2019 portant modification de la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration*), Memorial A-884 December 2019.

<sup>51</sup> Luxembourg, European Migration Network Luxembourg (2017), [\(Member\) states' approaches to unaccompanied minors following status determination. Focussed study](#).

<sup>52</sup> Luxembourg, European Migration Network Luxembourg (2017), [\(Member\) states' approaches to unaccompanied minors following status determination. Focussed study](#).

## Chapter 5. Information society, data protection

### 1. Activities developed and launched by national data protection supervisory authorities (SAs) to implement and enforce the GDPR

Since the implementation of the GDPR, the National Data Protection Committee's workload has doubled<sup>53 54</sup>. In 2018<sup>55</sup> the committee received 1112 written requests (528 in 2017)<sup>56 57</sup>. The number of complaints has also more than doubled and increased from 200 in 2017 to 450 in 2018<sup>58 59</sup>.

Under the new Act of 5 May 2018 a lot of work of the committee is devoted to training and informing work, including:

- raising-awareness campaigns (conferences, brochures, media appearance);
- creation of new brochures and their dissemination;
- translation of the data protection law of 1 August 2018 into English and German,
- developing various forms and documents (*formularies*) for the public as well as instructions for further procedures;
- GDPR compliance support tool<sup>60</sup> (available on the commission's website to test the organisation's compliance with the GDPR);
- participation in conferences and training sessions.

Also, following GDPR, the committee has reorganised its units and developed a new internal structure. To manage the increasing workload, the committee has been increasing its staff in recent years (2017 – 25 people; 2018 – 36 people). In 2019 the committee hired 2 additional officers (Data Protection Commissioner and an alternate member of the CNPD – fourth commissioner and a fourth substitute member)<sup>61</sup>. The objective to the end of 2019 is to increase its membership to 46<sup>62</sup>. Managing an increase of the workload and additional members has only become possible due to the increase of the budget, which has been growing since 2017 and almost doubled in 2018. In 2019 the budget increased by 20% compared to the previous year.<sup>63</sup>

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<sup>53</sup> Luxembourg, Luxembourg Confederation of Commerce (*Confédération Luxembourgeoise de Commerce*)(2019), "[RGPD, un an après - quel bilan?](#)", press release, June 2019.

<sup>54</sup> Luxembourg, Note: information provided by National Commission on Data Protection, mail exchange of 20 September 2019.

<sup>55</sup> Luxembourg, Note: information regards 2018 year only, there are no data on requests and complaints for 2019 yet.

<sup>56</sup> Luxembourg, Luxembourg Confederation of Commerce (*Confédération Luxembourgeoise de Commerce*) (2019), "[RGPD, un an après - quel bilan?](#)", press release, June 2019.

<sup>57</sup> Luxembourg, Note: information provided by National Commission on Data Protection, mail exchange of 20 September 2019.

<sup>58</sup> Luxembourg, Luxembourg Confederation of Commerce (*Confédération Luxembourgeoise de Commerce*) (2019), "[RGPD, un an après - quel bilan?](#)", press release, June 2019.

<sup>59</sup> Luxembourg, Note: information provided by National Commission on Data Protection, mail exchange of 20 September 2019.

<sup>60</sup> Luxembourg, [GDPR Compliance support tool](#).

<sup>61</sup> Luxembourg, National Commission on Data Protection (*Commission Nationale des Productions des Données*) (2019), "[Mot de bienvenue au nouveau commissaire et membre suppléant de la CNPD](#)", press release, 08 March 2019.

<sup>62</sup> Luxembourg, Note: information provided by National Commission on Data Protection, mail exchange of 20 September 2019.

<sup>63</sup> Luxembourg, Note: information provided by National Commission on Data Protection, mail exchange of 20 September 2019.

Following the implementation of the GDPR, the national data protection committee set up an open data protection laboratory (DaProLab)<sup>64</sup> to evaluate the impact of the new legislation on society. For each session, the laboratory invites experts (max. 15) to discuss and exchange opinions on a particular topic. In 2019 the Daprolab was held 3 times<sup>65</sup> and touched upon the impact of data protection, infringement of databases in health, as well as the assessment of data protection in the financial/insurance sectors.

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<sup>64</sup> Luxembourg, Note: for instance: National Commission on Data Protection (*Commission Nationale des Protections des Données*) (2019), [Announcement of one of the daprolab meeting in 2019](#) .

<sup>65</sup> Luxembourg, Note: reporting period September 2019.

## 2. Artificial intelligence and big data

MS	Actor*	Type*	Description	Are Ethical concerns mentioned? (yes/no)	Are Human Rights issues mentioned?(yes/no)	Reference
LU	Government / Parliamentary	Other projects/Strategic document	Artificial Intelligence: a strategic vision for Luxembourg	Yes Ethics, privacy regulation & security	Yes Fundamental rights and freedoms	<a href="https://digital-luxembourg.public.lu/sites/default/files/2019-06/AI_EN_1.pdf">https://digital-luxembourg.public.lu/sites/default/files/2019-06/AI_EN_1.pdf</a>
LU	Government / Parliamentary	Other projects	The data driven innovation for the development of a trusted and sustainable economy in Luxembourg	yes	yes	<a href="https://digital-luxembourg.public.lu/sites/default/files/2019-05/The-Data-driven-Innovation-Strategy_0.pdf">https://digital-luxembourg.public.lu/sites/default/files/2019-05/The-Data-driven-Innovation-Strategy_0.pdf</a>
LU	Independent state institutions	Report	Artificial Intelligence opportunities, risks and recommendations for the financial sector ( published date 12.2018)	yes	no	<a href="https://www.cssf.lu/fileadmin/files/Publications/Rapports_ponctuels/CSSF_White_Paper_Artificial_Intelligence_201218.pdf">https://www.cssf.lu/fileadmin/files/Publications/Rapports_ponctuels/CSSF_White_Paper_Artificial_Intelligence_201218.pdf</a>



LU	DPA	Report/study	AI Governance point of view of a DPA	Yes	Yes, GDPR, fundamental rights, rights and freedoms of individuals	<a href="https://cnpd.public.lu/dam-assets/fr/actualites/international/2019/cdpd2019-presentation-CNPD.pdf">https://cnpd.public.lu/dam-assets/fr/actualites/international/2019/cdpd2019-presentation-CNPD.pdf</a>
LU	Independent state institution	Report/study	Commission de Surveillance du Secteur Financier (CSSF) (December 2018). Artificial intelligence: Opportunities, Risks and Recommendation for the Financial Sector	yes	Yes ( i.e. gender bias)	<a href="https://www.cssf.lu/fileadmin/files/Publications/Rapports_ponctuels/CSSF_White_Paper_Artificial_Intelligence_201218.pdf">https://www.cssf.lu/fileadmin/files/Publications/Rapports_ponctuels/CSSF_White_Paper_Artificial_Intelligence_201218.pdf</a>
LU	Government / Parliamentary	bill	Bill 7332 on the establishment of health observatory	no	No. The observatory will collect data on the health of citizens. The observatory will centralize data on health that are collected by national actors. The data will be anonymised before being treated in the observatory. Some people at the observatory will have access to data management.	<a href="https://www.chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RoleDesAffaires?action=doDocpaDetails&amp;backto=/wps/portal/public/Accueil/Actualite&amp;id=7332">https://www.chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RoleDesAffaires?action=doDocpaDetails&amp;backto=/wps/portal/public/Accueil/Actualite&amp;id=7332</a>

### 3. Data retention

There have been no changes to the data retention legislation. Bill 6763 is still pending. In 2019 on several occasions the Luxembourgish government confirmed the necessity for a common EU framework that would provide guidelines on the data retention law at national level, as “this is part of the common area of freedom, security and justice”. Then the Luxembourgish government would proceed and have the national law conform to the European common rules.<sup>66 67</sup>

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<sup>66</sup> Luxembourg, [L'Accord de coalition 2018-2023](#), p.27

<sup>67</sup> Luxembourg, [Parliamentary question 791 and 813: Judgments of the European Union Court of Justice concerning data retention \(Question écrite n° 791 et 813: Arrêts de la Cour de Justice de l'Union Européenne au sujet de la conservation de données\)](#), 17 July 2019.

## Chapter 6. Rights of the child

### 1. Procedural safeguards for children who are suspects in criminal proceedings

<b>Legislative changes</b>	<i>e.g. reform of the criminal code</i> Luxembourg favors a protection of minors approach over juvenile criminal law <sup>68</sup> . In discussions regarding youth protection reform, the Minister of Justice stressed that the government would not transpose directive 2016/800 as it is; rather, only several elements of the directive would be incorporated in Bill N°7276 on youth protection <sup>69</sup> . The bill containing these elements was deposited in April 2018 <sup>70</sup> . In 2019, In 2019, the State Council raised a number of concerns <sup>71</sup> . Human rights organisations (the Consultative commission on human rights <sup>72</sup> , Ombudscommittee for the children rights <sup>73</sup> ) also criticised the bill. They all recommend a thorough remission of the bill regarding both its form (clarification of terms, more precisions, conformity to child friendly justice principle) and content (increasing the role of the parents/tutors, specifying a closer link between parents and professionals; fixing various alternatives to prison in case of minors, etc.). <sup>74</sup>
<b>Policy developments</b>	<i>e.g. guidance or training for law enforcement officers on the treatment of child suspects; amendment of police academy curriculum; training of judges; developing indicators to monitor the situation of child suspects and improve data collection</i> n.a.
<b>Other measures or initiatives</b>	<i>E.g. relevant activities to promote alternatives to detention; community involvement or general initiatives related to the dissemination and information in relation to the entering into force of the Directive.</i> n.a.

### 2. Legal and policy measures or initiatives developed about child internet safety

In 2019 the Luxembourgish Parliament has been working on the Audiovisual media service Directive transposition. Some of its elements are already included in the Grand-Ducal Decree of 8

<sup>68</sup> Luxembourg, the Ministry of Foreign and European Affairs (*Ministère des Affaires Étrangères et Européennes*) (2019), [Rapport sur la transposition des directives européennes et l'application du droit de l'Union 2018](#), p.36.

<sup>69</sup> Luxembourg, the Government of Luxembourg (*le Gouvernement Luxembourgeois*) (2018), "[Félix Braz et Claude Meisch ont présenté la réforme du régime de la protection de la jeunesse](#)", press release, 28 March 2018.

<sup>70</sup> Luxembourg, [Bill N°7276 establishing a youth protection regime and amending the amended Act of 7 March 1980 on the judicial system](#) (*Projet de loi 7276 instituant un régime de protection de la jeunesse et portant modification de la loi modifiée du 7 mars 1980 sur l'organisation judiciaire*).

<sup>71</sup> Luxembourg, [State Council opinion 7276/03](#), (*Avis du Conseil d'État sur le projet de loi 7276*).

<sup>72</sup> Luxembourg, Consultative Commission on Human Rights (*la Commission Consultative des Droits de l'Homme*). [Consultative Commission on Human Rights opinion on the bill 7276/04](#) (*Avis de la Commission Consultative des Droits de l'Homme sur le projet de loi 7276*).

<sup>73</sup> Luxembourg, [Ombudscommittee for the Children Rights opinion on bill 7276/05](#), (*Avis 7276/05 de l'Ombuds Comité fir d'Rechter vun Kand*).

<sup>74</sup> Luxembourg, Note: the bill remains pending and there have been no developments since February 2019. It should be revised in the coming years.

January 2015 on the protection of minors in audiovisual media services<sup>75</sup> (*Règlement grand-ducal du 8 janvier 2015 relatif à la protection des mineurs dans les services des médias audiovisuels*). The Decree was modified in 2017<sup>76</sup> (*Règlement grand-ducal du 31 mai 2017 modifiant le règlement grand-ducal du 8 janvier 2015 relatif à la protection des mineurs dans les services des médias audiovisuels*). In 2019 the State Council approved the draft of the Grand-ducal decree regarding "commercial communications in audiovisual media services" which would allow more advertisements during prime time (so far, there was a maximum of 12 minutes per hour). This Grand-ducal decree draft reviews the provisions concerning the transmission time for television advertising and teleshopping in television services and proposes to amend Article 6 of the Regulation<sup>77</sup>. The new or revised elements regarding child internet safety (for instance, regarding video sharing platforms [article 28b] or pornography and gratuitous violence) have thus far not been part of the transposition process. The Ministry of State has not yet presented the text of the possible bill which will incorporate some elements of the directive and amend the existing media law<sup>78</sup>. Furthermore, in 2019 national authorities discussed and addressed an increasing level of sexual abuse material on the internet that is shared and exchanged by young people on social platforms. The police published an official statement<sup>79</sup> with information and warnings to prevent further cross-postings. A parliamentary question was addressed to the Minister of Education regarding interventions and measures taken by national authorities<sup>80</sup>. In this regard, Bee Secure has provided a large number of events to raise awareness, prevent sexual abuse and inform young people this year<sup>81</sup>. As a result, several measures have been implemented to address this issue:

- The Bee Secure centre<sup>82</sup> developed a number of practical tools for online safety in childcare centres (*maison relais*): provided detailed information on filters for safe internet use (on how to configure a safe list)<sup>83</sup>.
- The centre also launched a range of tools to raise awareness (video ads, brochures, etc.) in regard to personal relationships in the era of social media<sup>84</sup>. These measures are particularly aimed at young people; the materials use channels commonly used by young people and use youth-friendly language. One such activity, for instance, is Privacy Salon 2019<sup>85</sup>, which addresses disinformation on the internet.
- In March 2019 the Bee Secure initiative co-organised and participated in the events during the EU Media literacy week.<sup>86</sup>

The telephone and online support organisation for children and youth (*Kannerjudendtelephone*) provides continuous support to young people of different ages and is active on social platforms

<sup>75</sup> Luxembourg, [Grand-Ducal Decree of 8 January 2015 on the protection of minors in audiovisual media services](#) (*Règlement Grand-Ducal du 8 janvier 2015 relatif à la protection des mineurs dans les services des médias audiovisuels*).

<sup>76</sup> Luxembourg, [Grand-Ducal Decree of 31 May 2017 amending the Grand-Ducal Regulation of 8 January 2015 on the protection of minors in audiovisual media services](#) (*Règlement grand-ducal du 31 mai 2017 modifiant le règlement grand-ducal du 8 janvier 2015 relatif à la protection des mineurs dans les services des médias audiovisuels*).

<sup>77</sup> Luxembourg, "[Résumé des travaux du Gouvernement Luxembourgeois](#)", press release, 28 June 28 2019.

<sup>78</sup> Luxembourg, Note: Information received and confirmed from Luxembourg Independent Audiovisual Authority (*Autorité Luxembourgeoise Indépendante de l'Audiovisuel*), mail exchange 13 September 2019.

<sup>79</sup> Luxembourg, Police of the Grand Duchy (*La Police du Grand-Duché*) (2019), "[Contenu pédopornographique sur les réseaux sociaux](#)", press release, 31 March 2019.

<sup>80</sup> Luxembourg, [Parliamentary question 558 on social media](#) (*Question écrite n° 558 sur médias sociaux*), 25 April 2019.

<sup>81</sup> Luxembourg, Note: we have identified 7 events/campaigns on Bee Secure website January-September 2019 regarding this subject.

<sup>82</sup> Luxembourg, [Bee-Secure platform](#).

<sup>83</sup> Luxembourg, Bee-Secure (2019), [Bee Secure filter](#) (*filter Bee Secure*).

<sup>84</sup> Luxembourg, Bee Secure (2019), [Love stories 4.0](#).

<sup>85</sup> Luxembourg, Bee-Secure (2019), "[Next digital privacy salon 12/03/19: A deep dive into disinformation](#)", press release, 5 March 2019.

<sup>86</sup> Luxembourg, Official Portal of the Grand Duchy of Luxembourg (*le Portail Officiel du Grand-Duché de Luxembourg*) (2019), "[Education aux médias: lutter contre les fake news](#)", press release, 2 April 2019.

Since 2019 Kannerjugendtelephone offers help and professional support (counselors) for English-speaking children and their parents (previously only in German and French).<sup>87</sup>

Another channel for communicating with young people about the safe use of the internet is sexual education<sup>88</sup>. In 2019 several ministries (the Ministry of Health, Ministry of National Education, Ministry of Family and the Ministry of Equality between Women and Men) launched a national action plan on emotional and sexual health 2019 – 2022 (*Promotion de la santé affective et sexuelle-PAN-SAS*). Its main objectives include the promotion of emotional and sexual health in all schools, education for children and young people, raising awareness and information about the advantages and disadvantages of new media.<sup>89</sup> The dialogue between children, young people and the internet is, in particular, closely interwoven in the plan, which also addresses stereotyping, and sexual education of boys and girls through visual media.<sup>90 91</sup>

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<sup>87</sup> Luxembourg, The Kanner-Jugendtelefon (2019), [Annual report 2018](#).

<sup>88</sup> Luxembourg, [Reply from the Minister of National Education, Children and Youth to question N557 by Mr Fernand Kartheiser concerning sex education parliamentary question 557](#) (*Réponse du Ministre de l'Éducation nationale, de l'Enfance et de la Jeunesse à question N°0557 de Monsieur Fernand Kartheiser concernant éducation sexuelle*), 6 May 2019.

<sup>89</sup> Luxembourg, Ministry of Health, Ministry of National Education, Ministry of Family and the Ministry of Equality between Women and Men (*Ministère de l'Égalité entre les Femmes et les Hommes*) (2019), [Promotion de la santé affective et sexuelle-PAN-SAS](#), p.11.

<sup>90</sup> Luxembourg, Ministry of Family and the Ministry of Equality between Women and Men (*Ministère de l'Égalité entre les Femmes et les Hommes*) (2019), "[Lancement du nouveau Plan d'action national « Promotion de la santé affective et sexuelle »](#)", press release, 26 February 2019.

<sup>91</sup> Luxembourg, National Reference Center for the promotion of sexual and emotional health (*Centre national de Référence pour la promotion de la santé affective et sexuelle*) (2019), "[Conférence de lancement du Plan d'action « Promotion de la santé affective et sexuelle »](#)".

## Chapter 7. Access to justice including crime victims

### 1. Victims' Rights Directive

The transposition of a relevant segment of the Victims' Right Directive took place in 2019 in Luxembourg. Bill N°7442<sup>92</sup>, which proposes the modification of Act of 18 August 1995 on the legal profession, has its main focus on provision of free legal aid. The bill 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 bill proposes that in a criminal procedure taking place in Luxembourg, any person having the quality of victim and constitutes 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 current legislation is silent on the situation of civil party victims in criminal proceedings who do not reside in Luxembourg or are third country nationals. The bill is still pending.

Another aspect regarding victims' rights regards restorative justice (its elements of Victims' Rights Directive were transposed into the Act of 8 March 2017)<sup>93</sup>. The new government 2018-2023 made it a prime objective to introduce it into the Criminal Code<sup>94</sup>. The draft bill of the Grand ducal decree which implemented Article 8-1 of the Code of Criminal Procedure, lays down the procedure for approval as a restorative justice facilitator (*Projet de règlement grand-ducal portant exécution de l'article 8-1 du Code de procédure pénale et fixant la procédure d'agrément aux fonctions de facilitateur en justice restaurative*).<sup>95</sup> This decree was introduced in late 2018. However, in 2019 the State Council noted that the Code of Criminal Procedure, as such, does not provide an appropriate framework for the organisation of this regime, and thus could not be introduced in its present form.<sup>96</sup>

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<sup>92</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>93</sup> Luxembourg, Ministry of Justice (*Ministère de la Justice*) (2019), [Rapport d'activité 2018](#).

<sup>94</sup> Luxembourg, [L'Accord de coalition 2018-2023](#).

<sup>95</sup> Luxembourg, [Grand Ducal Decree draft on the implementation of Article 8-1 of the Code of criminal procedure and laying down the procedure for approval of restorative justice](#) (*Projet de règlement grand-ducal portant exécution de l'article 8-1 du code de procédure pénale et fixant la procédure d'agrément aux fonctions de facilitateur en justice restaurative*).

<sup>96</sup> Luxembourg, [Opinion of the State Council N° CE 53.094 on the Grand Ducal Decree draft implementing Article 8-1 of the code of criminal procedure and laying down the approval procedure for facilitating functions in restorative justice](#) (*Avis N° CE : 53.094 sur le Projet de règlement grand-ducal portant exécution de l'article 8-1 du code de procédure pénale et fixant la procédure d'agrément aux fonctions de facilitateur en justice restaurative*), p.2.

In March 2019 in a case of domestic violence, a judge allowed a video-conference testimony of the victim of a domestic crime<sup>97</sup>. The initiative was requested by the prosecution to allow the victim to testify in a video conference in a nearby room to allow the victim to answer the judge's questions safely and avoid any contact with the offender in the same courtroom. The video-conference hearing was conducted out of respect for both the rights of the victim and those of the defense.

## 2. Violence against women

The phenomenon of "upskirting" has increased with the emergence of social networks and new technologies. In September 2017 an incident caused public outrage that involved a man filming under women's skirts on public transport<sup>98</sup>. The spokesperson for the judicial administration stated that "in view of the principle of strict interpretation of the criminal law, there is no indecent assault, no public outrage to morality, no invasion of privacy". Furthermore, the current legislation on protection of privacy (Art. 11 (2))<sup>99</sup> punishes the observing of a person without her consent by means of any device, only if the incident takes place in a place *not* accessible to the public. Since the abovementioned events took place on public transport, i.e. in a place accessible to the public, the perpetrator could not be prosecuted on this basis. Yet "upskirting", in other words, observing a person in an intimate way without the perpetrator's interaction with the victim, is often a serious form of sexual and moral harassment, which required a response from the legislator.

Bill No°7407<sup>100</sup> was introduced in 2019 and proposes a new article 2bis of the Act on the Protection of Privacy providing that "upskirting" would be punishable by imprisonment from eight days to one year and by criminal fine of 251 to 5,000 euros. The new legislation would also enlist aggravating circumstances, such as if the incident was committed against a minor or a person whose particular vulnerability, due to age, illness, infirmity, physical or mental disability or pregnancy, is apparent to the perpetrator, or if it was committed by a person abusing his power, by several persons or on public transport. The bill remains pending.

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<sup>97</sup> Luxembourg, Ministry of Justice (*Ministère de la Justice*) (2019), "[Communiqué du parquet de Diekirch concernant une affaire de violence domestique traitée jeudi, le 28 mars 2019, en chambre correctionnelle](#)", press release, 28 March 2019.

<sup>98</sup> Luxembourg, Explanatory statements to [Bill No°7407 on amending the law of 11 August 1982 on the protection of privacy](#) (*Proposition de loi modifiant la loi du 11 août 1982 concernant la protection de la vie privée*).

<sup>99</sup> Luxembourg, the [Act of 11 August 1982 on the protection of privacy](#) (*la loi du 11 août 1982 concernant la protection de la vie privée*).

<sup>100</sup> Luxembourg, [Bill No°7407 on amending the law of 11 August 1982 on the protection of privacy](#) (*Proposition de loi modifiant la loi du 11 août 1982 concernant la protection de la vie privée*).

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

## 1. CRPD policy & legal developments

Bill N°7346 concerning the accessibility to all places open to the public, public roads and collective housing 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*)<sup>101</sup> was introduced into the Parliament in 2018 and still is being discussed by national actors. The bill follows the idea of “design for all” (universal design Art.2 of the CRPD). In this regard, the bill enlarges the scope of the application of the obligation of accessibility for places open to the public, both young and old. It also introduces and specifies the definition of a person with disabilities: any person who has a physical, mental, intellectual or sensory disability, whose interaction with various barriers may interfere with his or her full and effective participation in society on the basis of equality with others (Art. 2 - 4<sup>o</sup><sup>102</sup>).

The Act of 28 May 2019<sup>103</sup> transposes directive 2012/2016 and concerns the accessibility of websites and mobile applications of public organisations. The law aims at reducing “the uncertainties within the European internal market that weigh on developers and to encourage European interoperability”<sup>104</sup>. The Consultative Commission on Human Rights notes that unfortunately the law includes only the minimum elements necessary for transposing the directive that aims at harmonising internet access in the EU, as the directive sets only the minimum criteria of accessibility; Member states should use it as a base and extend it in their own legislation<sup>105</sup>. Regarding the public sector, the bill exempts several public institutions, such as schools and nurseries, some non-governmental organisations that do not correspond to the needs of people with disabilities and certain public media (i.e. live broadcast) (Art.1).

In 2019 the Parliament adopted the Act of 1 August 2019 (*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*

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<sup>101</sup> Luxembourg, [Bill N°7346 concerning the accessibility to all places open to the public, public roads and collective housing buildings](#) (*Projet de loi 7346 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*).

<sup>102</sup> Luxembourg, [Bill N°7346 on the accessibility to all places open to the public, public roads and collective housing buildings](#) (*Projet de loi 7346 portant sur l'accessibilité à tous des lieux ouverts au public, des voies publiques et des bâtiments d'habitation collectifs*).

<sup>103</sup> Luxembourg, [the Act of 28 May 2019 on the accessibility of websites and mobile applications of public sector bodies](#) (*Loi du 28 mai 2019 relative à l'accessibilité des sites internet et des applications mobiles des organismes du secteur public*). Mémorial A-373 2019.

<sup>104</sup> Luxembourg, [Bill N°7351 on the accessibility of websites and mobile applications of public sector bodies](#) (*Projet de loi 7351 relative à l'accessibilité des sites Internet et des applications mobiles des organismes du secteur public*).

<sup>105</sup> Luxembourg, [Opinion 7351/07 of the Consultative Commission on Human Rights \(3/2019\)](#) (*L'Avis de la Commission consultative 7351/07 des Droits de l'Homme (3/2019)*), p.14.



*les salariés handicapés et les salariés en reclassement externe*)<sup>106</sup> on activity to assist in the inclusion of employees with disabilities in employment in the private sector. The law implements Art. 27 of the CRPD and amends the national Labour code. In this way, the law facilitates professional inclusion as well as the provisional mechanisms for keeping people with disabilities employed in the long term. The activities of assistance are specified as the following:

- (1) evaluation of the work situation and the description of the problems and specific needs of the employee with disabilities at the place of work;
- (2) identification of the needs of the employer and the personnel of the organisation, in particular with respect to preparation, information and raising awareness programs;
- (3) the establishment of an individualised inclusion project containing a detailed work program with a schedule of actions to be carried out specifying the number of hours, duration and periodicity of assistance;
- (4) drafting of quarterly declarations and annual reports specifying the evolution of the situation of work environment of the employee with disabilities (Art. L. 553-2).

The law is inclusive of both the employee and employer and ensures that all decisions relating to assistance are taken into account<sup>107</sup>. This assistance should be requested jointly by the employer and employee to the Employment Agency (*l'Agence pour le Développement de l'Emploi- l'ADEM*): the assistance is supported by the Employment Fund.

In 2019 the Ministry of Family, Integration and the Greater Region announced the national action plan for people with disabilities (2019-2024)<sup>108</sup>. The action plan would include various topics, ranging from 'raising awareness' campaigns (Art. 8 of the CRPD, recognition of the status of a legal person on the conditions of legality (Art. 12), autonomous life and social inclusion (Art. 19), freedom of expression, opinion and access to information (Art. 21), education (Art. 24), health (art. 25), work and employment (Art. 27), participation in political and social life (Art. 29).<sup>109 110</sup>

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<sup>106</sup> Luxembourg, [the 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*) Memorial A-545 2019.

<sup>107</sup> Luxembourg, the Government of Grand Duchy (*le Gouvernement Luxembourgeois*), "[Vote du projet de loi portant création d'une activité d'assistance à l'inclusion dans l'emploi](#)", press release, 11 July 2019.

<sup>108</sup> Luxembourg, Luxembourg, the National action plan has not been launched yet.

<sup>109</sup> Luxembourg, Ministry of Family, Integration and the Greater Region (*Ministère de la Famille, de l'Intégration et à la Grande Région*) (2019), [Sujets du futur plan d'action](#).

<sup>110</sup> Luxembourg, the Government of Grand Duchy (*le Gouvernement Luxembourgeois*), "[Vote du projet de loi portant création d'une activité d'assistance à l'inclusion dans l'emploi](#)", press release, 11 July 2019.

**See section 1.1 of Chapter 1 for more information on policy changes regarding people with disabilities.**

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

There has been no change regarding the structures and roles established under article 33 of the Convention, i.e. Act of 28 July 2011<sup>111</sup>.

It is nonetheless worthwhile recalling an opinion of the Consultative Commission on Human Rights (CCHR) on the organisations and institutions protecting the rights of people with disabilities (CCDH 2018) issued in 2018<sup>112</sup>. In this document the Consultative Commission discusses the mandates of the organisations monitoring the CCHR in Luxembourg. The Consultative Commission also addresses the blind spots and limits of the organisations' capacities. Among such remarks are the following:

1. The Commission specifies that the CCHR and the Centre for Equal Treatment (CET) are national independent mechanisms for the promotion and monitoring work in Luxembourg (Art 32(2)). They also develop activities for raising awareness and informing the public on the convention; they also “analyse the conformity of national legislation with the Convention and participate in exchanges with organisations of people with disabilities and other actors in civil society”.<sup>113</sup> Moreover, the difficulty or assuring the realisation of these activities lies in the mandates of both organisations: the CCHR cannot take individual complaints, while the CET cannot represent the interests of victims in court and has very limited human resources<sup>114 115</sup>
2. The ombudsperson is the independent national mechanism that protects the rights of people with disabilities (Art.3-4 of the Act of 28 July 2011). However, the ombudsperson is only competent for cases regarding administrations in the public sector (CCDH)<sup>116</sup>. Notably, the CCHR refers to an example where a person with disabilities has a dispute touching upon the rights of a disabled person living in a private

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<sup>111</sup> Luxembourg, [the Act of 28 July 2011 approving the Convention on the Rights of Persons with Disabilities \(Loi du 28 juillet 2011 portant approbation de la Convention relative aux droits des personnes handicapées\)](#), Memorial A-169 2011.

<sup>112</sup> Luxembourg, Consultative Commission on Human Rights (*Commission consultative des droits de l'homme*) (2018), [Document de réflexion: Droits des personnes en situation de handicap. Les institutions et organismes de défense des droits des personnes handicapées](#).

<sup>113</sup> Luxembourg, Consultative Commission on Human Rights (*Commission consultative des droits de l'homme*) (2018), [Document de réflexion: Droits des personnes en situation de handicap. Les institutions et organismes de défense des droits des personnes handicapées](#), p.2.

<sup>114</sup> Luxembourg, Note: The Centre for Equal Treatment increased its budget and personel in 2019 see Ch.1.

<sup>115</sup> Luxembourg, Consultative Commission on Human Rights (*Commission consultative des droits de l'homme*) (2018), [Document de réflexion: Droits des personnes en situation de handicap. Les institutions et organismes de défense des droits des personnes handicapées](#).

<sup>116</sup> Luxembourg, Consultative Commission on Human Rights (*Commission consultative des droits de l'homme*) (2018), [Document de réflexion: Droits des personnes en situation de handicap. Les institutions et organismes de défense des droits des personnes handicapées](#), p.2.

institution (most institutions are private) is different to the ones in public institutions. (CCDH)<sup>117</sup>.

The Consultative Commission on Human Rights points out at the legislative gaps that persist to exit with regard to the CET, i.e. its mandate should be extended and the CET should be attached to Parliament (Art. 11 (2))<sup>118 119</sup>. Regarding the role of the Ombudsperson, its mandate should be extended to the detention centers. The CCHR notes that the Ombudsperson also acts as a national mechanism for the prevention of torture in places of detention; however, the Ombudsperson cannot go to nursing homes according to the limits of the law of the April 11, 2010 instituting this controller. Thus, “there is no independent and external body in Luxembourg that can exercise control in institutions including those for people with disabilities”<sup>120</sup>.

Table: Structures set up for the implementation and monitoring of the CRPD

EUMS	Focal points within government for matters relating to the implementation of the CRPD – Article 33 (1)	Coordination mechanism – Article 33 (1)	Framework to promote, protect and monitor implementation of the CRPD – Article 33 (2)
LU	Ministry of Family, Integration and the Greater Region ( <i>Ministère de la Famille, de l'Intégration et à la Grande Région</i> ); contact person for disability matters in each ministry		<a href="#">Consultative Commission for Human Rights</a> ( <i>Commission consultative des Droits de l'Homme du Grand-Duché de Luxembourg</i> ); <a href="#">Centre for Equal Treatment</a> ( <i>Centre pour l'égalité de traitement</i> ); <a href="#">Ombudsman</a> ( <i>Médiateur au service de citoyens</i> )  121

<sup>117</sup> Luxembourg, Consultative Commission on Human Rights (*Commission consultative des droits de l'homme*) (2018), [Document de réflexion: Droits des personnes en situation de handicap . Les institutions et organismes de défense des droits des personnes handicapées](#), p.3.

<sup>118</sup> Luxembourg, the Act of 28 November 2006 on the 1. transposition of Directive 2000/43 / EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (*Loi du 28 novembre 2006 portant 1. transposition de la directive 2000/43/CE du Conseil du 29 juin 2000 relative à la mise en œuvre du principe de l'égalité de traitement entre les personnes sans distinction de race ou d'origine ethnique*), Memorial A-207 2006.

<sup>119</sup> Luxembourg, Consultative Commission on Human Rights (*Commission consultative des droits de l'homme*) (2018), [Document de réflexion: Droits des personnes en situation de handicap . Les institutions et organismes de défense des droits des personnes handicapées](#).

<sup>120</sup> Luxembourg, Consultative Commission on Human Rights (*Commission consultative des droits de l'homme*) (2018), [Document de réflexion: Droits des personnes en situation de handicap. Les institutions et organismes de défense des droits des personnes handicapées](#), p.3.

<sup>121</sup> Luxembourg, Art. 2. « *La Commission consultative des Droits de l'Homme et le Centre pour l'égalité de traitement sont désignés comme mécanismes nationaux indépendants de promotion et de suivi d'application, prévus à l'article 33, paragraphe 2 de la Convention* ».

## Annex 1 – Promising Practices

Thematic area	<b>EQUALITY AND NON-DISCRIMINATION</b> Please provide one example of a rights awareness campaign held in your country in 2019 relevant to equality and non-discrimination, preferably one conducted by a national equality body. Where no such campaign was held, please provide an example of a promising practice implemented in 2019 in your country (this could include in-innovative initiatives at local level) to combat discrimination on any one of the following grounds: religion or belief, disability, age, sexual orientation, gender identity or sex characteristics Where relevant, always highlight any relevance or reference to multiple discrimination.
Title (original language)	Des filles travailleuses et des garçons pleins de talents? Comment enseigner l'égalité des sexes à l'école ?
Title (EN)	Hardworking girls and talented boys? How to teach gender equality in schools?
Organisation (original language)	Le Centre pour l'égalité de traitement , L'Institut de formation de l'Education nationale (IFEN), l'Université du Luxembourg
Organisation (EN)	The Centre for Equal Treatment (the equality body) The National Education Training Institute, University of Luxembourg
Government / Civil society	Government
Funding body	Government
Reference (incl. url, where available)	<a href="http://cet.lu/en/">http://cet.lu/en/</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	07 November 2019
Type of initiative	educational
Main target group	Professionals, stakeholders, non governmental organisations and activists, academics , general public
Indicate level of implementation: Local/Regional/National	national
Brief description (max. 1000 chars)	The event hasn't started yet, we would be able to provide more details in later submissions
Highlight any element of the actions that is transferable (max. 500 chars)	The event hasn't started yet, we would be able to provide more details in later submissions
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	One off activity
Give reasons why you consider the practice as having concrete measurable impact	Practical, pragmatic
Give reasons why you consider the practice as transferrable to other settings and/or Member States?	The event hasn't started yet, we would be able to provide more details in later submissions

Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	The event hasn't started yet, we would be able to provide more details in later submissions
Explain, if applicable, how the practice provides for review and assessment.	The event hasn't started yet, we would be able to provide more details in later submissions

Thematic area	<b>EQUALITY AND NON-DISCRIMINATION</b>
Title (original language)	les ateliers de co-création sur la thématique de l'inclusion des personnes LGBTI
Title (EN)	co-creative workshops on the inclusion of LGBTI people
Organisation (original language)	IMS - Inspiring More Sustainability
Organisation (EN)	IMS - Inspiring More Sustainability
Government / Civil society	Non governmental organisation
Funding body	Ministry of Work and Employment
Reference (incl. url, where available)	<a href="https://imslux.lu/fra/news/230_retour-sur-les-ateliers-de-co-creation-sur-la-thematique-de-l-inclusion-des-personnes-lgbti">https://imslux.lu/fra/news/230_retour-sur-les-ateliers-de-co-creation-sur-la-thematique-de-l-inclusion-des-personnes-lgbti</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	25 October 2018 -7 May 2019
Type of initiative	Practically oriented workshop
Main target group	Private sector
Indicate level of implementation: Local/Regional/National	national
Brief description (max. 1000 chars)	It is a series of workshops that offers a collaboration of stakeholders to reflect how to address gender identity and sexual orientation in their diversity policy.
Highlight any element of the actions that is transferable (max. 500 chars)	The workshops were organised along the progression; first, participants exchanged their ideas during a world café. They formulated three priority streams: <ul style="list-style-type: none"> <li>• Inclusive corporate culture: recruiting and retaining employees</li> <li>• Well-being and health: improving working conditions and preventing psychosocial risks</li> <li>• Organizational accountability and leadership role in civil society</li> </ul> Then, workshops were prepared and organised to achieve a specific progress on these three topics by mobilizing each of the participants.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	It is a set of workshops that gathers engaged people looking for improving working culture in their companies.

Give reasons why you consider the practice as having concrete measurable impact	The tools that are discussed and developed during the workshops are/could be used by organisations themselves. They draw lessons from the exchanges and discussions: the organisation that prepares these workshops (IMS) is the organiser of the Diversity Charter in Luxembourg; their observations, analysis and results are used by them in the formation of future policies.
Give reasons why you consider the practice as transferrable to other settings and/or Member States?	The practice allows an exchange and an evaluation of the working culture. The members involved in the exchange practice are stakeholders that are part of future policy formulations.
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 exchange practice are stakeholders that are part of future policy formulation (IMS, the Ministry of Employment and Work).
Explain, if applicable, how the practice provides for review and assessment.	n.a.

Thematic area	<b>RACISM, XENOPHOBIA AND RELATED INTOLERANCE</b>
	Please provide one example of a promising practice to address discriminatory ethnic profiling within law enforcement agencies and other relevant national authorities. Where no such practice exists, please provide one example of a promising practice related to combating racism, xenophobia and related intolerances.
	No promising practice has been identified for this thematic area.

Thematic area	<b>ROMA INTEGRATION</b>
	Please provide one example of promising practice in relation to addressing a Roma/Travellers segregation at either national, regional or local. These could be (not limited to) in the area of segregation in education, residential segregation, segregation in healthcare services or in employment.
	No promising practice has been identified for this thematic area.

Thematic area	<b>Asylum, visas, migration borders and integration</b>
	Please provide a promising practice on the support provided to unaccompanied children when reaching majority.
Title or short description of promising practice in original language and in English	Life plan or life project (“projet de vie”) for minors. The life plan project is offered to minors with an objective of assisting in formulating their future life project. In the context of unaccompanied minor, the project is seen as a tool that offers stability and general well-being as well as elements of their integration, such as education, acquisition of language skills, extracurricular activities, etc.
Organisation (Government / Civil)	Caritas (for unaccompanied minors especially towards reaching majority)

society) in charge of promising practise (original language/English )	
Funding body	Government
Reference (incl. url, where available)	n.a.
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	On going
Main target group (around 1000 characters)	Young people under 18
Indicate level of implementation: Local/Regional/National	national
Indicate success factors – why has the practice effectively promoted integration?	EMN Luxembourg report emphasises that it is of great importance to provide the minors with an environment of trust and support, to listen to them and to reassure them in order to be able to understand their current situation
If the initial funding of the initiative ended, how has the initiative been continued/followed-up?	n.a.
Explain, if applicable, how the practice is being reviewed and assessed.	n.a.
Does the initiative apply to both asylum seekers and protection status holders – and/or support the transition from one to the other?	Y
Does the initiative specifically support persons in need of international protection as they turn 18? If so, which type of support is provided?	N + description of support if relevant

Thematic area	<b>INFORMATION SOCIETY, DATA PROTECTION</b> Please provide one example of a promising practice in relation to one of the topic addressed in this Chapter
Title (original language)	Les applications “sportives”
Title (EN)	"Sports" applications and sports watch
Organisation (original language)	bee-secure.lu
Organisation (EN)	bee-secure.lu
Government / Civil society	Government
Funding body	The EU, Government,
Reference (incl. url, where available)	<a href="https://www.bee-secure.lu/sites/default/files/Sport%20Digital%20FR_v1.1.1-layout.pdf">https://www.bee-secure.lu/sites/default/files/Sport%20Digital%20FR_v1.1.1-layout.pdf</a>

Indicate the start date of the promising practice and the finishing date if it has ceased to exist	n.a.
Type of initiative	informative
Main target group	general population
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	The brochure provides a discussion about sports apps and smart watches that collect personal data. In particular, the brochure addresses the following questions: 1. Is the collected data accurate and accurate enough? 2. Are they correctly interpreted? 3. Is the transmission to our smartphone and / or the cloud secure? 4. Is their storage properly secured? 5. How are our data used by transfer and transfer services?
Highlight any element of the actions that is transferable (max. 500 chars)	It is an information brochure that exists in print and electronic version
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	It is easy to disseminate and 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 transferrable to other settings and/or Member States?	It is an informative brochure, it is easy to disseminate, in print or electronically. It could serve the basis for further discussions at relevant meetings.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	It is part of the National Youth Service and helpline kannerjugendtelefon.lu - these actors rely on their established channels in disseminating information.
Explain, if applicable, how the practice provides for review and assessment.	n.a.

Thematic area	<b>RIGHTS OF THE CHILD</b> Please provide one example of a promising practice in relation to one of the topic ad-dressed in this Chapter.
Title (original language)	Internet dans les maisons relais? Sûrement!
Title (EN)	Internet in the boarding schools? Sure!
Organisation (original language)	Bee-secure.lu
Organisation (EN)	Bee-secure.lu
Government / Civil society	Government



Funding body	EU, Luxembourgish state
Reference (incl. url, where available)	<a href="https://www.bee-secure.lu/sites/default/files/publications/201902BS_SECURE-MR_Print.pdf">https://www.bee-secure.lu/sites/default/files/publications/201902BS_SECURE-MR_Print.pdf</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	2019, (there was a testing phase in 2017 in one maison relais in the country)
Type of initiative	Raising awareness campaign
Main target group	Teachers, educational specialists
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	The guide provides information on setting up an appropriate security concept for the use of the Internet within this type of structure in particular.
Highlight any element of the actions that is transferable (max. 500 chars)	It provides a clear structure on how and what professionals can show and talk about with children about Internet in institutions. They should not forbid it, but educate it and discuss it. The guide offers an outline of dangers in the Internet; this information is explained from a pedagogical-didactical perspective. It also offers 10 practical tips on how professionals could talk about internet with children and young people.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	It is easy to disseminate, it exists as a brochure in print and electronic form.
Give reasons why you consider the practice as having concrete measurable impact	Before launching the practice, a test phase was conducted in one of the institutions. It thus draws conclusions and lessons from the previous experiment.
Give reasons why you consider the practice as transferrable to other settings and/or Member States?	It is important to show and be able to discuss Internet with children. This practical guide give a specific outline (steps) what and how educational professionals could talk about sage Internet with children. The brochure exists in the electronic and paper format, it is easy to disseminate. It is a pedagogical tool
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	This publication was produced by the National Youth Service (La Service National de la Jeunesse) as part of the BEE SECURE project. The project is implemented by the National Youth Service, KannerJugendTelefon (KJT) and SecurityMadeIn.lu (SMILE g.i.e.).
Explain, if applicable, how the practice provides for review and assessment.	n.a. It is a new initiative

Thematic area	<b>ACCESS TO JUSTICE, INCLUDING RIGHTS OF CRIME VICTIMS</b> Please provide one example of a promising practice in relation to one of the topic ad-dressed in this Chapter
Title (original language)	No name - La nouvelle campagne de prévention (FR)
Title (EN)	No name - Prevention campaign against any form of violence in the form of brochures and an updated internet site
Organisation (original language)	le Ministère de l'Egalité entre les Femmes et les Hommes
Organisation (EN)	The Ministry of Equality between Women and Men
Government / Civil society	Government
Funding body	Government
Reference (incl. url, where available)	<a href="http://violence.lu/">http://violence.lu/</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	25 September 2019
Type of initiative	prevention
Main target group	everyone
Indicate level of implementation: Local/Regional/National	national
Brief description (max. 1000 chars)	Through a brochure, a poster and the website <a href="http://www.violence.lu">www.violence.lu</a> , the ministry wants to raise awareness on these different dimensions of violence.
Highlight any element of the actions that is transferable (max. 500 chars)	n.a.
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	n.a.
Give reasons why you consider the practice as transferrable to other settings and/or Member States?	n.a.
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.
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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)	Group de travail – (handi)cap emploi - mise en pratique dans l’entreprise
Title (EN)	Working group - (handi)cap jobs - practice in the business
Organisation (original language)	IMS - Inspiring More Sustainability
Organisation (EN)	IMS - Inspiring More Sustainability
Government / Civil society	Civil society
Funding body	NGO’s funds
Reference (incl. url, where available)	n.a. . (description and announcement of one of the meetings : <a href="https://imslux.lu/fra/agenda/141_groupe-de-travail-handi-cap-emploi-mise-en-pratique-dans-l-entreprise">https://imslux.lu/fra/agenda/141_groupe-de-travail-handi-cap-emploi-mise-en-pratique-dans-l-entreprise</a> )
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	November 2018 – 8 October 2019 (6 workshops in 2019)
Type of initiative	Raising awareness, informing, developing practical knowledge and understanding
Main target group	Company managers, employers
Indicate level of implementation: Local/Regional/National	national
Brief description (max. 1000 chars)	It is a practical workshop that united employers of Luxembourgish companies to discuss the working environment of/with people with disabilities.
Highlight any element of the actions that is transferable (max. 500 chars)	The workshops proposed the participants to develop tools that would allow companies to become one of the leading companies on this subject in Luxembourg; the obtained practical knowledge provides test solutions for a more inclusive work environment with expert support. In the end, the participants become visible as an inclusive employer.
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 take the cyclical shape and take from the questions addressed in the previous cycle. The questions and objectives are formulated by the participants themselves, based on their experience and examples. Each cycle reviews the solutions discussed throughout the previous workshops and participants choose a project on which they wish to position themselves in order to test them internally. The discussion results are taken back to the companies and implemented there immediately.
Give reasons why you consider the practice as transferrable to other settings and/or Member States?	It is important to have a practical implementation and a meaning of certain laws in practice. These companies that meet for these events critically reflect and shape aspects of the working environment.

<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>n.a.</p>
<p>Explain, if applicable, how the practice provides for review and assessment.</p>	<p>n.a.</p>

## Annex 2 – Case law

Thematic area	<p><b>EQUALITY AND NON-DISCRIMINATION</b></p> <p>Please provide one high court decision addressing discrimination on any one of the following grounds: gender identity, religion or belief, disability, age, or sexual orientation. Where relevant, always highlight any relevance or reference to multiple discrimination in the case you report</p>
Decision date	19/12/2018 (published on 27/12/2018, please see explanation in the evaluation sheet)
Reference details	Luxembourg / Administrative Tribunal of Luxembourg (1st Chamber) / Case no. 40686 <a href="http://www.ja.etat.lu/40001-45000/40686.pdf">http://www.ja.etat.lu/40001-45000/40686.pdf</a>
Key facts of the case (max. 500 chars)	The plaintiffs are a homosexual couple (Mexican and American nationals) who got married in New York. They are parents of two minor surrogate children, twins born in the US. In 2015, the father with American nationality lodged an application for the re-acquisition of his Luxembourgish nationality, at the same time requesting Luxembourgish nationality for his two minor children as well. While the application concerning the father and one child was granted, the case of the second child got suspended and the authority requested DNA analysis proving the biological paternity of the Luxembourgish father. The plaintiffs disputed the necessity of the DNA analysis, but to no avail. In 2017 the Luxembourgish father and the child participated in a DNA test which revealed that he is not the biological father of the child. The Minister therefore denied the Luxembourgish nationality of that child.
Main reasoning/argumentation (max. 500 chars)	The plaintiffs argued that by a judgment of the High Court of California the two of them had been declared to be the legal parents of both minor children and that in the children's birth certificates the plaintiffs appear as their parents. They argued that the Minister had not relied on any legal basis justifying the request for a DNA analysis and that the DNA analysis had been requested only because they were a homosexual couple. Relying on Article 8 of the ECHR they argued that the method of conception they had used to have children, which was a legally accepted practice in the US, should be protected as part of their private and family life. They also argued under Article 14 of the ECHR that the Ministry's decision had resulted in discrimination against one of the children compared to the other one.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Contrary to the state party, who argued that under Luxembourgish law the applicable rule would be the principle of biological filiation, the Court noted that according to the birth certificate which was issued upon the judgment of the High Court of California, the two plaintiffs had been declared as being the legal parents of the twin children. The same judgment stated that the mother having carried the twins and her husband were not the legal parents of either of the children. The Court therefore found that the only filiation ties recognized to the child are those stemming from his birth certificate and from the judgment of the High Court of California, which declared, in accordance with the rules of California, the plaintiffs as being the legal parents of the child.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Court annulled the administrative decision and referred the case back to the Minister.
Key quotation in original language and	« Force est dès lors au tribunal de constater que les seuls liens de filiation reconnus à l'enfant ... sont ceux découlant de son certificat de naissance et

translated into English with reference details (max. 500 chars)	du jugement de la Cour supérieure de Californie du 26 juin 2015 qui a déclaré, conformément aux règles de droit applicables en Californie, Monsieur ..., ainsi que son époux, comme étant les parents légaux de l'enfant .... » “It is therefore for the court to find that the only filiation ties recognized to the child ... are those stemming from his birth certificate and from the judgment of the High Court of California of June 26, 2015, who declared, in accordance with the rules in California, Sir ..., as well as her husband, as being the legal parents of the child ....” (page 12, paragraph 6)
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Thematic area	<b>RACISM, XENOPHOBIA AND RELATED INTOLERANCE</b> Please provide the most relevant high court decision concerning the application of either the Racial Equality Directive, the Framework Decision on racism and xenophobia, or relevant to addressing racism, xenophobia and other forms of intolerance more generally.
Decision date	8/2/2019
Reference details	Luxembourg / Administrative Tribunal of Luxembourg / Case no. 42279 <a href="http://www.ja.etat.lu/40001-45000/42276.pdf">http://www.ja.etat.lu/40001-45000/42276.pdf</a>
Key facts of the case (max. 500 chars)	The plaintiff worked as a trainee at the Office of Administration of Bridges and Roads. His public service was terminated with immediate effect by the Minister of Sustainable Development and Infrastructure. According to the reasoning, the termination was the result of the occurrence of several incidents during which the plaintiff made insulting and/or racist remarks regarding his colleagues at work. In particular, he addressed in the presence of other colleagues racist, discriminatory, insulting and humiliating remarks to one of his colleagues who is handicapped. Other times he insulted a colleague by using the words “Aus dem Wee, Neger” (Out of the way, Negroes). Other times he insulted his colleague calling him “Neger” and “Drecksinder” (dirty kid). He also used xenophobic and discriminatory comments regarding another colleague calling him “dreckechen Portugies” (dirty Portuguese) and “dreckechen Ausländer” (dirty foreigner).
Main reasoning/argumentation (max. 500 chars)	The plaintiff requested the stay of the execution of the administrative decision. He argued that the measure of the Minister was disproportionate. He deeply regretted having verbally offended some of his colleagues. In this respect, he claimed that when recalling the events between him and one of the insulted colleagues, namely the colleague with a disability status, his comments were rather appreciated in a friendly context (sic), strengthening ties between colleagues.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Court argued that such remarks, with a racist, discriminatory and insulting nature, were even likely to give rise to criminal prosecution on the basis of Article 457-1 of the Penal Code which punishes publicly inciting to hatred. The Court noted the seriousness of the proven facts against the applicant and the insulting, even racist and discriminatory nature of his comments. It held that a possible disproportionate reaction by the Minister (as claimed by the plaintiff), although should be further analysed by the trial court, seemed to be unfounded.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Having regard to the circumstances of the case, the plaintiff’s request for the stay of the execution of the administrative decision was dismissed.
Key quotation in original language and translated into English with reference details (max. 500 chars)	« Or, il apparaît que de tels propos, à connotation raciste, discriminatoire et insultante marquée, seraient même susceptibles de donner lieu à des poursuites pénales sur base de l’article 457-1 du Code pénal, le soussigné se devant à cet égard de relever que cet article sanctionne le fait d’inciter publiquement, dans des écrits, à la haine à l’égard d’une personne,

	<p>physique ou morale, d'un groupe ou d'une communauté en se fondant sur un des éléments visés à l'article 454 du Code pénal, ... »</p> <p>“However, it appears that such remarks, with racist, discriminatory and insulting nature, are even likely to give rise to criminal prosecution on the basis of Article 457-1 of the Penal Code, the undersigned must in this respect to raise that this article punishes publicly inciting, in writings, hatred against a natural or legal person, a group or a community on the basis of one of the elements referred to in Article 454 of the Criminal Code, ...” (page 11, paragraph 6)</p>
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Thematic area	<p><b>ROMA INTEGRATION</b></p> <p>Please provide the most relevant high court decision addressing violations of fundamental rights of Roma in the context of education, employment, health, housing, etc. In particular, focus on cases where discrimination or segregation (not limited to segregation in education or housing) are addressed.</p>
	No case law has been identified for this thematic area.

Thematic area	<p><b>INFORMATION SOCIETY, DATA PROTECTION</b></p> <p>Please provide the most relevant high court decision in relation to one of the topic addressed in this Chapter</p>
Decision date	25/4/2019
Reference details	Luxembourg / Administrative Court of Luxembourg / Case no. 42992C <a href="http://www.ja.etat.lu/40001-45000/42092C.pdf">http://www.ja.etat.lu/40001-45000/42092C.pdf</a>
Key facts of the case (max. 500 chars)	The Director of the Tax Administration approached a Luxembourgish limited liability company in order to request certain information concerning an individual, a client of the company. The injunction was initiated on the basis of the French Tax Authorities' request for information sent to the Luxembourgish Tax Administration under the tax treaty between the two countries, as well as under directive 2011/16/EU. The company refused to provide the requested information about its client. As a consequence, the Tax Administration imposed a fine on the company. The company challenged the administrative decision before the court, which then annulled the decision arguing that it had violated Articles 7 and 8 of the Charter in so far as it sought to obtain and transfer to the French authorities information which could not be regarded as “foreseeably relevant”.
Main reasoning/argumentation (max. 500 chars)	In its appeal against the first-instance court's judgment the state party argued that all the information requested in the injunction would be sufficiently related to the intended tax case and that their “foreseeable relevance” cannot be excluded. The company argued that that the information sought by the French authority was not likely to be relevant and that it went beyond the standards as derived from directive 2011/16/EU. It considered that the wording of the questions was of a "general and abstract" nature and that the request was likely to be characterized as “fishing expedition” for information contrary to Articles 7 and 8 of the Charter.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Court noted that the essence of the dispute concerns the “foreseeable relevance” of the information requested by the French authority. The Court emphasized that in its Berlioz judgment the CJEU defined the scope of the review to be exercised by the competent court, namely, only to verify that the injunction was based on a sufficiently reasoned request from the requesting authority concerning information which do not appear

	to be manifestly devoid of all foreseeable relevance having regard, on the one hand, to the taxpayer and the information holder and, on the other hand, to the tax purpose pursued.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Contrary to the first-instance court's judgment, the Court arrived to the conclusion that the injunction had sufficiently met the requirements of "foreseeable relevance" and thus the injunction decision must be considered to have been validly issued in respect of the company. Therefore, the Court overturned the first-instance court's judgment and reinstated the administrative decision imposing administrative fine on the company.
Key quotation in original language and translated into English with reference details (max. 500 chars)	« Contrairement aux premiers juges, la Cour arrive partant à la conclusion que la décision d'injonction du 29 décembre 2017 suffit dans son intégralité au critère de la pertinence vraisemblable pour le cas d'imposition en cause. La décision d'injonction doit partant être considérée comme ayant valablement été émise à l'égard de la société [...] et ne pêche en aucun de ses volets par une illégalité qui serait de nature à mettre en question le principe ou le montant de la décision de fixation d'amende du 6 août 2018. » "Unlike the first judges, the Court arrives to the conclusion that the injunction decision of 29 December 2017 is sufficient in its entirety to the criterion of the foreseeable relevance for the tax case in question. The injunction decision must therefore be considered to have been validly issued in respect of the company [...] and is not to be considered illegal fishing expedition in any of its parts, which would be such as to call into question the main argument or the amount of the fine in the decision of 6 August 2018." (page 9, paragraph 6)

Thematic area	<b>RIGHTS OF THE CHILD</b>
	Please provide the most relevant high court decision in relation to one of the topic addressed in this Chapter.
	No case law has been identified for this thematic area.

Thematic area	<b>ACCESS TO JUSTICE, INCLUDING RIGHTS OF CRIME VICTIMS</b>
	Please provide the most relevant high court decisions in relation to one of the topic ad-dressed in this Chapter.
Decision date	10/1/2019
Reference details	Luxembourg / Court of Cassation / Case no. 05/2019 (4061) <a href="https://justice.public.lu/content/dam/justice/fr/jurisprudence/cour-cassation/penal/2019/01/20190110-4061a.pdf">https://justice.public.lu/content/dam/justice/fr/jurisprudence/cour-cassation/penal/2019/01/20190110-4061a.pdf</a>
Key facts of the case (max. 500 chars)	The defendant was sentenced by the District Court of Luxembourg to imprisonment accompanied by a partial probation and a fine for intentional assault on his spouse resulting in incapacity to work and for possession of a prohibited weapon. According to the police reports, after the incident the victim went to the police station. The police officers were able to note the state of shock in which the victim had been arriving. The victim was clearly able to identify the perpetrator, her spouse. Her wounds were documented by photos and supported by a medical certificate. The nature of the injuries showed that they must have come



	from the use of an electric pulse gun. The first-instance judgment was upheld by the Court of Appeal.
Main reasoning/argumentation (max. 500 chars)	The defendant challenged the judgment before the Court of Cassation. Firstly, he asked the court to approach the CJEU with a preliminary ruling request, in order to find out whether the Luxembourgish criminal proceedings, namely, the use of the terms "victim" and "accused" in the applicable procedural laws, as well as in the challenged judgment, had been in conformity with the directive (EU) 2016/343 on reinforcing certain aspects of the presumption of innocence. He argued that the systematic and repeated use of the terms "victim" to designate his wife, and "accused" to designate him throughout the procedure, during the hearings and in the decision resulted in creating in the mind of any reasonable person a climate of suspicion towards the defendant, for the benefit of the victim. He further argued that his conviction had been based on the evidence produced solely by the victim, thereby questioning the lawfulness of the proceedings.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	First, the Court declared the request for preliminary ruling inadmissible because the questions had not been put in the context of a plea of cassation. Further, the Court dismissed the defendant's all arguments for different reasons. The Court argued, among others, that the appeal had only intended to question the assessment of evidence and establishment of facts, which was outside of the scope of the Court of Cassation. Moreover, the Court found the lower level courts' judgments well established and properly reasoned.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Court of Cassation rejected the defendant's appeal.
Key quotation in original language and translated into English with reference details (max. 500 chars)	« Attendu que sous le couvert de la violation de l'article 6, paragraphe 1, de la Convention de sauvegarde des droits de l'homme et des libertés fondamentales, le moyen ne tend qu'à remettre en discussion l'appréciation souveraine, par les juges du fond, des faits commis par le demandeur en cassation, appréciation qui échappe au contrôle de la Cour de cassation ; Qu'il en suit que, sous ce rapport, le moyen ne saurait être accueilli; » "Whereas, relying on the violation of Article 6, paragraph 1, of the Convention for the Protection of Human Rights and Fundamental Freedoms, the plea only tends to call into question the sovereign assessment, by the trial judge, of the facts committed by the plaintiff in cassation, which assessment is beyond the control of the Court of Cassation; It follows that, in this respect, the plea cannot be accepted;" (page 18, paragraphs 6 and 7)

Thematic area	<p><b>Developments in the implementation of the Convention on the Rights of Persons with Disabilities (CRPD)</b></p> <p>Please provide the most relevant high court decision making reference to the CRPD or employing the CRPD in their reasoning.</p>
Decision date	12/9/2019
Reference details	Luxembourg / Administrative Tribunal of Luxembourg / Case no. 43453 <a href="http://www.ja.etat.lu/40001-45000/43453.pdf">http://www.ja.etat.lu/40001-45000/43453.pdf</a>
Key facts of the case (max. 500 chars)	The plaintiffs are a married couple, parents of two children. They approached by a letter the mayor of the municipality of Sandweiler in order to request permission for their two children to continue their education until the 4th class of the elementary school in Sandweiler despite the fact that the family was moving to another city where they have already bought a house. They argued in their request that one of their children shows development delay associated with a certain condition (the anonymised judgment did not reveal the actual condition of the child). In respect of such condition, a change of school could lead to significant negative effects. The mayor of Sandweiler refused their request arguing that the applicable laws clearly define the preconditions of admitting a child from a municipality other than that of his/her residence and the plaintiffs' request did not meet any of these conditions.
Main reasoning/argumentation (max. 500 chars)	The parents filed a request for preliminary injunction with the Court to be allowed, notwithstanding the refusal, to continue the education of their children during the school year 2019/2020 in Sandweiler. They argued that the decision of the mayor had been in violation of Article 7, paragraph (2) of the Convention on the Rights of Persons with Disabilities, as this provision provides that the best interests of the child should be a primary consideration in all decisions. They emphasized the specific needs of their child and that she had succeeded in integrating into the school of Sandweiler, thanks to the outstanding work of teachers and educators around her. They submitted expert opinion saying that a change of school would have significant negative effects on the child's development and that the presence of her sibling would be necessary as a stabilizing element.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Court itself did not rely on the Convention on the Rights of Persons with Disabilities in its reasoning, however, closely examined the circumstances of the child. It noted that the child had gone through certain changes in the past already, namely, when switching from francophone kindergarten to Luxembourgish elementary school or when she had to repeat the first year at school. The Court held that even for a child with a developmental delay associated with her condition, the change of school between two school years was neither a serious nor a definitive prejudice, especially since the integration measures must be ensured in the same way by each school.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The plaintiffs request for preliminary injunction was dismissed.
Key quotation in original language and translated into English with reference details (max. 500 chars)	« Ils concluent encore à l'annulation des décisions déferées pour violation [...] de l'article 7, paragraphe (2) de la Convention relative aux droits des personnes handicapées adoptée par l'assemblée générale des Nations Unies le 13 décembre 2006, [cet article] d'effet direct imposant que l'intérêt supérieur de l'enfant soit une considération primordiale dans toutes les décisions le concernant. Or, la commune de Sandweiler aurait

	<p>contrevenu à ce principe en refusant la scolarisation des enfants ... et ... au sein de leur commune pour l'année scolaire 2019/2020, au regard de l'effet négatif de ces décisions sur le développement de ...»</p> <p>“They further conclude that the decisions referred to be annulled for violation of [...] Article 7, paragraph (2) of the Convention on the Rights of Persons with Disabilities, adopted by the United Nations General Assembly on 13 December 2006, [this article being] of direct effect that the best interests of the child should be a primary consideration in all decisions concerning him. However, the municipality of Sandweiler have violated this principle by refusing the schooling of children ... and ... within their commune for the school year 2019/2020, in view of the negative effect of these decisions on the development of ....” (page 3, paragraph 5)</p>
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