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## I. Historical background

1. The Grand Duchy is a State with more than 1,000 years of history located in the heart of Europe between France, Belgium and Germany.

2. Although the passage of the Celts and the presence of the Romans left lasting marks on its present territory, the history of the Grand Duchy as it is today began in the year 963. It was then that Siegfried, Count of Ardennes and founder of the House of Luxembourg, built a castle where the country's present capital city stands. A town and later a famous fortress, coveted for its strategic position, grew up around this castle, which was situated at the junction of two major Roman roads.

3. The House of Luxembourg was destined for greatness. By the end of the Middle Ages, it had produced four emperors of Germany, four kings of Bohemia, one king of Hungary and a number of prince-electors. This great period, which came to an end in the fifteenth century, is evoked by the names of Henry VII, John the Blind, Wenceslas, Charles IV and Sigismund. A long period of foreign domination which ended only in the nineteenth century then began for Luxembourg. The fortress of Luxembourg became an unending source of bloody struggles for its possession waged by the Burgundians, Spanish, French, Austrians and Prussians. It was besieged and sacked more than 20 times in the course of four centuries.

4. The year 1815 finally ushered in a period of national independence for Luxembourg. It was at the Congress of Vienna that the country's future was decided, when the former Duchy of Luxembourg was raised to a Grand Duchy and given to the King of the Netherlands. The Grand Duchy was thus joined in personal union with the Netherlands, under the same sovereign (King and Grand Duke), until 1890. This period marked the beginning of a new era during which Luxembourg's political independence vis-à-vis other countries was strengthened, a national identity was created and a democratic regime was developed in the country.

5. One of the most important dates in the history of Luxembourg was 11 May 1867, when the Treaty of London was signed. The Treaty confirmed the territorial integrity and political independence of the Grand Duchy, both of which had already been guaranteed by the Treaty of London of 1839, but it also declared Luxembourg to be permanently neutral and placed its neutrality under the aegis of the great Powers.

6. On the death of William III, King of the Netherlands and Grand Duke of Luxembourg, in 1890, the crown of the Grand Duchy passed to the senior branch of the House of Nassau (Nassau-Weilburg): since then, Luxembourg has had its own dynasty. The present sovereign, the Grand Duke Henri, succeeded his father, the Grand Duke Jean, in 2000, when the latter abdicated in his favour after a 36-year reign.

7. Economic progress went hand in hand with political evolution, but was interrupted by the Second World War, when, despite its neutral status, the Grand Duchy was occupied, as it had been in 1914, by German troops. The country was liberated by the Allied forces in 1944/45.

8. In 1948, Luxembourg abandoned its neutral status and resolutely adopted an active policy of cooperation and integration at the European and international levels by joining various regional and international economic, political and military organizations. Luxembourg is a founder member of the United Nations, the European Union, the North Atlantic Treaty Organization (NATO) and the Organization for Security and Co-operation in Europe (OSCE), to name but a few.

## II. Land and people

9. Since the signing of the Treaty of London of 19 April 1839, the surface area of the Grand Duchy of Luxembourg has stood at 2,586 km<sup>2</sup>. Bordered by Germany to the east, Belgium to the west and France to the south, the national territory is administratively divided into 106 communes spread across 3 districts and 12 cantons.

10. As at 1 January 2012, the total population of the Grand Duchy is estimated at about 524,900, of whom 229,900, or 43.8 per cent, are foreign nationals. There are people of more than 170 different nationalities living in Luxembourg. In the past few decades, the country has become a multicultural State where peoples from all over the world interact with each other on a daily basis. Displays of intolerance and racism are rare.

11. The national language is Luxemburgish, and the administrative languages are French, German and Luxemburgish.

12. Until 2009, Luxembourg nationality was acquired either by birth, in application of the theory of *jus sanguinis*, by choice when a person not from Luxembourg had family ties with the Grand Duchy, or by naturalization, provided that a number of conditions had been met.

13. Since 1 January 2009, the new Luxembourg Nationality Act has made it possible for persons wishing to express their attachment to Luxembourg and their willingness to integrate to obtain Luxembourg nationality, while maintaining a link with the homeland and culture of their ancestors through their nationality of origin.

14. The new Act introduces the principle of dual nationality. Persons wishing to acquire Luxembourg nationality no longer need to renounce their nationality of origin, provided that the laws of their country of origin do not require them to do so.

15. There is no longer any distinction between nationality acquired by naturalization and nationality acquired by choice. The new Act sets out only one procedure, that of acquiring nationality by naturalization. The procedure is an administrative one and can be appealed before an administrative court.

16. Lawmakers have introduced an element of *jus soli*, whereby a child born in Luxembourg to a parent who was also born in Luxembourg, regardless of their nationality, shall automatically be considered a national of Luxembourg.

17. Adopted children will now be automatically eligible for Luxembourg nationality.

18. The new Act allows persons who previously held Luxembourg nationality but were forced to renounce it because of the ban on dual nationality to recover their Luxembourg nationality.

## III. General political structure

### A. The State

19. The Constitution that governs the political structure of the country today is the culmination of a process that began on 12 October 1841 with the entry into force of the first Constitution. That Constitution was superseded in 1848, 1856 and 1868. The Constitution of 1868 remained unchanged until the end of the First World War. After the first and second world wars, regular revisions to address social and economic changes gave Luxembourg a constitution that laid the foundations for a modern State. The independence

of the legislative, executive and judicial powers is exercised within the framework of a representative democracy in the form of a constitutional monarchy.

## 1. The executive power

### (a) *The Grand Duke*

20. The Grand Duke is the Head of State. Together with the Government, he forms the constitutional body that holds executive power. The specific features of his legal status include the constitutionality of his authority, the inviolability of his person, his immunity from responsibility and special provisions relating to property rights and the civil list. The Grand Duke represents the country in the exercise of many of the functions of sovereignty. He has no authority other than that formally vested in him by the Constitution and the specific legislation adopted in accordance with the Constitution. The Constitution places the Head of State above and beyond political concerns and thereby guarantees his impartiality.

21. The inviolability of the Grand Duke means that he may neither be accused nor be brought to court by anyone, that he is not subject to the jurisdiction of any court and that he cannot be called to account for his actions. The Grand Duke's inviolability implies complete immunity from responsibility; this immunity is general and absolute, from both the criminal and political points of view. The Grand Duke's political immunity has as its counterpart ministerial responsibility: any measure taken by the Grand Duke in the exercise of his political authority must be countersigned by a member of the Government, who assumes full responsibility for the measure. The Constitution sets out the prerogatives of the Grand Duke in the provisions relating to, inter alia, the exercise of executive power, royal prerogatives, international functions and participation in the legislative power.

22. The exercise of executive power per se includes implementing laws and judicial decisions, overseeing the civil service and serving as Supreme Commander of the Armed Forces. The legislature may not entrust implementation of the law to the Government Council, to a minister or to other authorities. This does not change the fact that all governmental prerogatives of the Grand Duke must be countersigned by the minister responsible. The Grand Duke issues the regulations and decrees required to implement legislation but may never suspend legislation or leave it in abeyance. The courts monitor the legality of regulations and decrees and apply general and local decrees and regulations insofar as they comply with the law. In addition to the functions of the executive power, the Grand Duke also has the power to organize the Government and to appoint individuals to civilian and military posts. To enable the Grand Duke to maintain law and order and safeguard national security, the Constitution entrusts him with command of the Armed Forces. Luxembourg's security forces comprise the army and the Grand Ducal police force.

23. The Constitution also confers upon the Grand Duke the right to grant pardon, meaning the right to remit or reduce the sentences handed down by judges; the right to mint coins in conformity with the law; the right to confer titles of nobility, although no privilege may ever be conferred along with them; and the right to grant civilian and military honours. The Grand Duke is responsible for representing the country abroad and for safeguarding the rights and interests of the State as well as protecting nationals vis-à-vis foreign States. To that end, he exercises the right to send and receive diplomatic missions by accrediting diplomatic representatives to Heads of State of foreign countries as well as the diplomatic representatives sent to Luxembourg by foreign States. The Constitution confers on him the right to conclude treaties with foreign States, although no treaty may enter into effect unless it has been approved by the Chamber of Deputies.

24. The Chamber's sessions are opened and closed by the Grand Duke in person or on his behalf by an authorized representative whom he appoints for that purpose. Finally, the

Grand Duke may dissolve the Chamber, although the Constitution makes his right to do so subject to the express condition that new elections must take place not later than three months after the date of dissolution. The Grand Duke may, for example, use the right of dissolution to consult the country when the political situation precludes the formation of a majority government. The Grand Duke may send government bills to the Chamber for adoption, and thus has the right to propose legislation.

25. Justice is administered on behalf of the Grand Duke by the courts and tribunals. Their decisions and judgements are implemented on his behalf.

26. The Grand Duke enacts laws within three months of their adoption by the Chamber of Deputies. Enactment is the act by which the Grand Duke attests to the content of the law and orders its publication and implementation.

(b) *The Government*

27. The Constitution gives the Grand Duke complete freedom to choose the ministers who will exercise executive power with him. In practice, however, his choice is constrained considerably by the democratic principle whereby members of the Government must enjoy not only the confidence of the Grand Duke but also that of a parliamentary majority. In fact, and in accordance with tradition, the Grand Duke selects only the Prime Minister, either after first appointing an *informateur* to look into the possibilities of forming a Government or by directly asking a *formateur* to form one. The Prime Minister then chooses the other ministers, seeking to form a Government that will gain the support of most representatives to the Chamber.

28. Ministers must be nationals of Luxembourg. Their functions are incompatible with those of a judge, a member of the Court of Auditors, a member of the Council of State, a deputy or a communal representative. A minister's term of office is not fixed. The reasons for resignation may be either personal, as when a minister is in disagreement with the Head of Government, or general, as when new elections lead to a change in the political majority in the Chamber of Deputies.

29. If none of the political groups represented in the Chamber holds an absolute majority, a coalition government is formed. The political parties represented within the Government agree on a common programme of government and on the distribution of ministerial posts. Given the diversity and number of ministries, and the limited number of members of government available to oversee them, it is necessary to assign several departments to each minister.

30. The Prime Minister submits the results of these negotiations to the Grand Duke. The Grand Duke approves the names of the individuals submitted by the Prime Minister and proceeds to appoint the ministers. The Prime Minister then presents the programme of government in a solemn declaration before the Chamber of Deputies.

31. The Government comprises a president who holds the title of prime minister and several members holding the title of minister. It may also include junior ministers (*ministres délégués* or *secrétaires d'État*).

32. As senior minister, the Prime Minister is mandated by the Grand Duke to organize and preside over the Government, coordinate general policy and ensure coordination between ministries.

33. Each minister is in charge of at least one department. A minister may, with the approval of the Grand Duke, delegate full or partial responsibility for one or more departments to a junior minister.

34. Ministerial responsibility is inseparable from the Grand Duke's immunity from responsibility. In order for any measure taken by the Grand Duke to become effective, it must be countersigned by a minister, who assumes full responsibility for it. The Constitution provides generally for the responsibility of members of government. That responsibility is general, in respect of acts that have a direct or indirect relation to their ministerial duties. It may also extend to criminal or civil legal matters as well as political ones. Ministers are responsible for the measures they themselves take, either individually or collectively. Responsibility for any measure taken by the Government Council is shared by all members of government who were involved in the adoption of the measure. However, ministers who cast a dissenting vote as recorded in the minutes of the meeting of the Government Council are exempt from responsibility.

35. The Government as a whole and ministers individually are politically accountable for their acts to the Chamber of Deputies. If the Chamber disapproves of the policy of one or more ministers or of the Government as a whole, it expresses its disagreement either by voting against a particular agenda item proposed by the Government, or by rejecting a government bill submitted by ministers. By voting down the annual budget, the Chamber can make it effectively impossible for a Government with which it disagrees to administer public affairs. The obligation of ministers to relinquish their duties when the Chamber brings in a vote of no confidence is implicit in their political responsibility. Normally, ministers resign after the first vote of no confidence by the Chamber.

36. Under no circumstances may a verbal or written order from the Grand Duke exempt a minister from his or her responsibility. Indeed, the responsibility of ministers would be illusory and unenforceable if the Grand Duke could extend to them his own inviolability.

37. Pursuant to the Constitution, only the Chamber has the right to bring charges against ministers. This is so that inopportune or vexatious proceedings instituted by ordinary citizens do not impede the conduct of public affairs. Accusations brought against ministers for acts committed in the performance of their duties are considered by the Supreme Court of Justice in plenary. To ensure that the criminal responsibility of ministers is not illusory, the Constitution establishes an exception to the Grand Duke's right to grant pardon by stipulating that a minister who is convicted can be pardoned only at the Chamber's request.

## **2. The legislative power**

38. The Chamber of Deputies represents the country. It shares the exercise of legislative power with the Grand Duke. The Constitution also reserves certain powers for the Chamber in financial matters and confers on it a right to oversee the acts of the Government. The consent of the Chamber is necessary for an international treaty to take effect within the territory of the Grand Duchy.

39. Deputies are elected by the nation. The electoral system is determined in broad outline by the Constitution and in detail by the electoral law enacted in accordance with the Constitution. The number of deputies is set by the Constitution at 60. They are elected for five years.

40. The frequency of elections helps ensure the exchange of ideas and views between voters and the nation's representatives. Regular elections are held by law every five years. Specific provisions stipulate that, if elections to the European Parliament fall around the same time as regular elections, both elections may be held on the same date. If the Chamber is dissolved, new elections are held within three months of the date of dissolution.

41. Elections are by secret ballot and are "direct", in the sense that voters directly elect individuals to fill the vacant seats and do not vote simply for intermediaries. Voting is compulsory. Exceptions to this principle are provided for, however, and the exercise of the right to vote is facilitated by the use of postal votes. Deputies are elected on the basis of

straightforward universal suffrage. The system of universal suffrage allows all citizens of Luxembourg, both men and women, who satisfy the conditions laid down by the law to participate in the election of deputies. Straightforward universal suffrage, that is, without distinction as to financial situation, status or rank, guarantees all electors strict equality in respect of the exercise of their right to vote. Voting is by the list system. In each constituency, the political groups that stand for election must draw up lists of candidates, whose number may not exceed the total number of deputies to be elected in that constituency. An independent candidacy is considered as constituting a list by itself. The seats are distributed according to the rules of proportional representation and in conformity with the principle of the smallest electoral quotient.

42. To qualify as a voter in national parliamentary elections, a person must be a citizen (male or female) of Luxembourg, be over 18 years of age, enjoy their civil and political rights and be domiciled in the Grand Duchy. Entitlement to vote is established by registration on the electoral register. To be eligible for election, a person must be a citizen (male or female) of Luxembourg, enjoy their civil and political rights, be over 18 years of age on the day of the election and be domiciled in the Grand Duchy. The conditions which disqualify a person from voting are the same as those which disqualify a person from standing for election.

43. Each voter may cast a number of votes equal to the number of deputies to be elected in his or her constituency. Votes may be cast either for a party list or for an individual candidate. Voters who vote for a party list may not cast any other vote; if they do so, their ballots are declared null and void, unless the number of candidates on their chosen list is fewer than the number of deputies to be elected in their constituency. Persons who cast individual votes may choose their candidates from a single list or from different lists; they must be careful, however, not to cast more votes than the number of seats available.

44. Elections are conducted under the supervision of election offices, but the Chamber of Deputies holds the exclusive authority to declare elections valid. All documents relating to elections are sent to the Chamber for this purpose.

45. The State gives each political party or group a grant to partially cover the campaign costs for parliamentary elections, provided they submit complete lists of candidates for all constituencies and win at least one seat in the Chamber of Deputies. The same holds true for elections to the European Parliament, provided the political party or group submits a complete list of candidates for the single constituency and wins at least 5 per cent of the votes cast.

46. Political parties or political groups as defined in election law are understood to comprise associations of natural persons, whether or not the association is recognized as having legal personality, that participate, in accordance with the fundamental principles of democracy, in the expression of universal suffrage and the popular will in the manner set out in their statutes or programme.

47. Under the Constitution, a deputy's mandate is incompatible with the duties of, *inter alia*, a member of the Government, a member of the Council of State, a judicial officer, a member of the Audit Office, a district commissioner, a government accountant or tax collector, or a serving career soldier. Acceptance of the mandate is signified by taking the oath of office. The law provides that a deputy's mandate is also incompatible with the duties of a civil servant, employee or worker employed by the State, by a public establishment subject to government monitoring, or by a commune, an association of communes or a public establishment under the supervision of a commune, such as someone employed by Luxembourg National Railways.

48. While all such persons may stand for election, if they are elected and accept the mandate of a deputy, they must immediately resign from their office, post or duties.



Acceptance of the mandate is signified by taking the oath of office. Conversely, any member of the Chamber who accepts an office, post or position that is incompatible with the mandate of a deputy is automatically divested of his or her mandate by reason of that appointment.

49. Deputies must not be related to another deputy by blood or marriage to the second degree or be married to another deputy. If persons with such a relationship are elected at the same time, lots are drawn.

50. The personal status of deputies and the mechanism whereby the Chamber exercises its powers are the subject of constitutional provisions designed to preserve the freedom of expression and the independence of the deputies elected by the nation and to ensure the Chamber's effectiveness.

51. The Constitution guarantees parliamentary immunity to deputies. No deputy may be prosecuted or arrested for any statement made within the Chamber even if such statements might constitute violations of criminal law, such as insults, slander or incitement to riot. This immunity is permanent. It protects deputies during and outside sessions. It also covers former deputies in respect of any opinions expressed during the exercise of their mandate. No deputy who is guilty of a crime, offence or misdemeanour may be arrested or subjected to criminal prosecution for the duration of the session without the authorization of the Chamber, except in cases of *flagrante delicto*. If the Chamber so demands, the arrest or prosecution of a deputy will be suspended for the entire session. This form of immunity is not valid when the Chamber is not in session.

52. The functioning of the Chamber is regulated by certain provisions of the Constitution and by the rules of procedure drafted by the Chamber itself. Its meetings are public. It may not adopt a resolution unless a majority of the members are present (that is, at least 31 deputies). All resolutions must be adopted by an absolute majority of votes. In the case of a tied vote, the proposal submitted for consideration is rejected. Every year, the Chamber meets in a regular session.

53. Under the Chamber's rules of procedure, deputies have the right to form political groups. To be recognized as such, a political group must be composed of at least five deputies. Deputies who do not belong to any political group may affiliate themselves with a group of their choice, provided that the group's elected officers agree.

54. Deputies who are not members of or affiliated to any political group may form a "technical group", which must also be composed of at least five deputies in order to be recognized. These deputies designate a coordinator who acts as their spokesperson on all administrative matters and represents them on the Work Committee. To ensure the smooth functioning of the political and technical groups, the Chamber provides them with premises and facilities, as well as funding, and partially reimburses their staffing costs.

55. The Chamber's rules of procedure provide for the establishment of the Work Committee and of standing committees and ad hoc committees in order to facilitate and streamline its work. The committees examine not just government bills but also amendments and motions referred to them by the President of the Chamber. They have the right to submit proposals and amendments themselves.

56. Any deputy may observe the meetings of any committee of which they are not a member, but they cannot participate in the discussion or cast votes.

57. The Conference of Presidents comprises the President of the Chamber and one delegate from each political or technical group. The number of votes each delegate holds is equal to the number of members of the group they represent within the Conference. The Conference of Presidents could also be described as a cross section of the Chamber whose job is to assist the President in managing the business of the Chamber and, more

specifically, achieving consensus among the political groups on the best way to conduct the work of the Chamber. It gives its opinion on the Chamber's order of business and, where necessary, determines the amount of time to be allotted to a discussion and sets voting deadlines. Its duties also include approving draft Grand Ducal regulations if formally required by law.

58. The standing committees have a general remit to deal with specific issues. The Chamber establishes these committees at the beginning of each legislative term, that is to say, after a general election, not at the beginning of each annual session. It determines the number of committees, their names and their responsibilities. The standing committees are composed of not less than 5 and not more than 13 members, who are appointed by the Chamber at the beginning of each session. Proportional representation of political groups is taken into account when determining the membership of each commission. Each committee appoints from among its members a chair and two vice-chairs by an absolute majority of votes and for the duration of the session. The standing committees include the Petitions Committee, the Committee on the Monitoring of Budgetary Implementation (chaired by a member of the parliamentary opposition), the Committee on Foreign and European Affairs, Defence, Aid and Immigration, the Finance and Budget Committee, the Committee on the Family, Equality of Opportunity and Young People, the Committee on Institutions and Constitutional Review, and the Legal Committee.

59. Ad hoc committees can be set up by the Chamber, or by the President of the Chamber at the Chamber's request; the rules on membership are the same as those for standing committees. Ad hoc committees are responsible for examining specific bills or proposals. Their mandate normally comes to an end with the submission of their report on the bills or proposals referred to them.

60. The standing committees and ad hoc committees may establish subcommittees and decide on their membership and remit. They may also consult individuals or bodies outside the Chamber and gather information from them. For each issue submitted to them, they appoint one or more rapporteurs to act as their spokesperson in the Chamber.

61. The personal status of deputies and the mechanism whereby the Chamber exercises its powers are the subject of constitutional provisions designed to preserve the freedom of expression and the independence of the country's elected representatives and to ensure the Chamber's effectiveness.

62. Like the Grand Duke, the Chamber has the right to introduce legislation. A legislative proposal (*proposition de loi*) is introduced at the initiative of the Chamber, or parliament; a bill (*projet de loi*) is introduced at the initiative of the Grand Duke or Government. The preliminary procedure varies depending on whether it is a bill or a legislative proposal that is being considered. The Chamber examines and discusses the bills and legislative proposals brought before it. It adopts or rejects them by means of a vote.

63. Bills introduced by the Government are drafted by the central administration and, once approved by the Government Council, submitted to the Council of State for its opinion. The bill is usually accompanied by an explanatory introduction, in which the relevant minister explains the reasoning behind the bill, and a commentary on its articles. The opinion of the Council of State is sent to the Government in the form of a reasoned report containing conclusions and, if appropriate, an alternative draft statement. The Government submits the final bill to the Grand Duke and requests his authorization to submit it in his name to the Chamber of Deputies.

64. A bill considered urgent by the Government can be examined by the Chamber before it has been submitted to the Council of State for its opinion. If the Chamber agrees with the Government about the urgency of the matter, the debate may even be opened without the Council of State giving a prior opinion; however, the Chamber of Deputies

cannot proceed to the final vote until it has heard the opinion of the Council of State. Nowadays, the Government usually submits a bill to the Chamber of Deputies at the same time that it refers the bill to the Council of State, or at least before the Council has given its opinion. One advantage of this way of working is that the discussion is opened up to the public, and interested groups have time to take a position on the bill, which is published as a parliamentary document, before the Council of State issues its opinion and the Chamber examines the bill.

65. Once the Grand Duke has granted the authorization requested by the Government, the bill is usually issued by the relevant minister at a public meeting. The bill and its annexes are distributed to the deputies, and the President of the Chamber refers it to one or more committees.

66. Every deputy has the right to submit legislative proposals. A deputy who wishes to submit one signs it and files it with the Chamber's elected officers. The Chamber decides on the admissibility of the proposal on a motion of the Conference of Presidents. The proposal is sent to the Government, which may issue an opinion, and referred to a committee by the Conference of Presidents. The proposal is placed on the agenda of a committee meeting and then of a public meeting within six months of submission. It is presented at a public meeting, where a discussion is held on whether or not to continue the legislative process. Following the discussion, the Chamber votes on whether or not to continue the process.

67. If the Chamber votes to continue the legislative process, the Conference of Presidents refers the legislative proposal to a committee for examination. The proposal is also sent to the Council of State and the relevant trade associations for their opinion. If the Chamber votes not to continue the legislative process, the proposal is shelved. Proposals that the Chamber has shelved or has not adopted cannot be reintroduced at the same session.

68. Any report on a legislative proposal that would directly or indirectly increase public spending or decrease revenues must, if the report is in favour of the proposal, indicate the resources or reductions in expenditure that would cover the spending or loss of revenue resulting from adoption of the proposal.

69. All deputies have the right to withdraw their legislative proposals before the vote on whether or not to continue the legislative process. The Chamber is informed of the withdrawal.

70. The decision to withdraw a legislative proposal after the vote has been held on whether to continue the legislative process is taken by the Chamber on a motion of the Conference of Presidents.

71. A legislative proposal cannot be removed from the register after the first constitutional vote.

72. The President of the Chamber refers bills and legislative proposals either to one of the standing committees, or an ad hoc committee set up for that purpose, or to two or more standing committees, which will hold joint meetings. After referral to the committees, the procedure is the same for bills and legislative proposals.

73. The committee to which a bill is referred deliberates and promptly issues its report if it decides not to submit any amendments to the Council of State for a (supplementary) opinion. The report is distributed to deputies. The rapporteur of the committee presents the report in a public meeting of the Chamber. After the presentation, the Chamber proceeds with the public debate on the principle at issue, the bill as a whole, the various articles contained therein and any amendments.

74. The author of the bill and the committee rapporteur each defend their points of view. Any deputy may speak during the debate. Deputies may also submit amendments during the debate. These must be drafted in writing and submitted to the President of the Chamber. They must be seconded by at least five deputies. If the Chamber decides that the amendments should be referred to the Council of State or to a parliamentary committee, the discussion may be suspended until the Council has formulated its opinion and the committee has drafted a supplementary report. The votes are cast either by roll call, using an electronic voting system, or by a show of hands. However, the vote on the bill as a whole is always taken by roll call. If any doubt is expressed about the validity of the votes cast using the electronic system, the President may take an oral roll-call vote. At the request of at least five deputies, the vote on the bill as a whole may be preceded by a vote on one or more articles of the bill.

75. If a bill or legislative proposal is discussed before the opinion of the Council of State is available, that opinion must be communicated to the Chamber before the vote on the bill or proposal as a whole. If the Chamber of Deputies has voted on one or more articles in accordance with article 65 of the Constitution but cannot proceed with a vote on the bill or proposal as a whole because the Council of State has not expressed an opinion on the amendments made or articles deleted, the Council must issue its opinion on the provisions adopted by the Chamber within three months of the date when the provisions were sent to the Council. If no opinion is issued within this time frame, the Chamber may proceed with the vote on the bill or proposal as a whole.

76. Immediately after the vote on the bill as a whole, the Chamber decides whether or not to waive the second constitutional vote. This process, which also involves the subsequent intervention of the Council of State, is a special feature of the legislative process in Luxembourg. In countries with a bicameral system, the vote on the bill as a whole is the final step in the decision-making by each of the two chambers and marks the end of their involvement in the legislative process. This is not the case in the Grand Duchy, where national representation is in the hands of a single chamber, the Chamber of Deputies, and where the moderating element provided by a second chamber, which is sometimes elected indirectly, is therefore lacking. The authors of the Constitution sought to compensate for this shortcoming by establishing the procedure of the second constitutional vote.

77. After voting on a bill as a whole, the Chamber is, at least in theory, required to take a second decision on the same bill after a period of reflection. However, the Constitution allows the Chamber to dispense with this second vote, provided that the Council of State indicates its approval. In practice, therefore, after the vote on the bill as whole, the Chamber usually decides that there is no need for a second vote, and the bill is referred to the Council of State, which then announces in a public meeting its decision on whether to waive the second vote.

78. If the Council of State endorses the Chamber's decision, the second vote on the bill is waived once and for all. On the other hand, if the Council of State decides not to waive the second vote — for example, to draw attention to the incompatibility of the bill as adopted with general principles of law, the constitutional order or international standards — the Chamber must proceed with the second constitutional vote after a waiting period of at least three months from the date of the first vote on the bill as a whole. The legislative duties of the Chamber are thereby fulfilled either by waiving the second vote or, after a waiting period of three months, by taking a second constitutional vote. This is not the end of the legislative process, however. The bill can enter into force only after it has been enacted and published in the Official Gazette. The application of the law through enactment and publication forms an essential part of the exercise of executive power. The Grand Duke enacts the law by adding his signature to the text of the law and the standard enactment

wording. It should be remembered that the law must be countersigned by a member of the Government, who assumes full responsibility for it.

79. The Constitution gives the Chamber, as the body holding legislative power, various means to influence the Government, as the body holding executive power. The Chamber exercises control in financial matters as well as in political and administrative matters. In respect of financial matters, the Chamber exercises control over the Government through the annual vote on the budget and taxes, the right to draw up the State's accounts every year and some degree of supervision over the administration of public property of the State. The Constitution vests the legislative authority with the power to grant or refuse the Government the authorization to collect revenue and to incur expenditure. This authorization is usually expressed through the annual vote on the budget. The budget is prepared in the form of a law and according to the rules laid down for the legislative process in the case of a bill introduced by the Government.

80. The right of the Chamber to draw up the State's accounts is the corollary to its right to vote on the budget. Apart from the annual control of the current financial administration of the State, the Constitution reserves for the legislative power a number of decisions which go beyond the framework of the normal administration of State assets. Taxes may only be introduced by means of a law. The Appropriation Act contains an authorization to levy regular taxes. Extraordinary taxes must be authorized by a special law.

81. Without the authorization of a special law, the Government may not borrow money, make any significant financial commitment on behalf of the State, dispose of State property, acquire significant property for the State's benefit or carry out any major infrastructure or building project for the State's benefit. However, a general law sets a threshold below which no special authorization from the Chamber is required. A cost to be borne by the State budget for more than one fiscal year can be introduced only by a special law.

82. The Court of Auditors plays an advisory role at the request of the Chamber of Deputies. At the Chamber's request, the Court issues an opinion on the provisions of the Appropriation Act and on the bills or legislative proposals relating to the accounts of the State and public-law entities. The Chamber may consult the Court of Auditors about bills or legislative proposals that would have a significant impact on Treasury finances. The Chamber may at any time ask the Court to submit special reports on specific areas of financial management, extending its powers of supervision over several fiscal years.

83. The Chamber's control over government business is not limited to financial matters but also takes the form of powers of supervision granted to it under its rules of procedure, the Constitution and certain special laws on political and administrative matters.

84. According to the Chamber's rules of procedure, every deputy has the right to submit questions to the Government. The wording of the questions should be limited to what is strictly necessary to express the object of the question concisely and without commentary. Whether the questions are admissible depends on their general interest, importance or topicality. A question to which the relevant minister has replied cannot be resubmitted in the same terms at the same session. Deputies who wish to ask the Government a question submit their questions in writing to the President of the Chamber, who alone decides on their admissibility. The relevant minister's written reply is in principle sent to the President of the Chamber within one month. Deputies wishing to ask a minister an urgent question must submit it in writing to the President of the Chamber, who decides on its admissibility. If the President deems the question urgent, it may, with the minister's consent, be asked at a time set by the President, or, if there is no meeting scheduled, the minister must provide a written reply within one week.

85. The Chamber reserves part of its public session for “questions and debate”. The President of the Chamber forwards the questions to the Government at least two weeks in advance. In addition, a “question hour” is scheduled every Tuesday, at the beginning of the meeting, when the Chamber is in session. The Government is questioned by deputies about subjects of general interest contained in the statement on the government programme, the declaration on the state of the nation or the statement on foreign policy, to which the deputies must refer. The questions must be submitted in writing to the President of the Chamber at least three hours before question hour. In addition, a “news hour” is held every Tuesday at the beginning of the meeting during the weeks when the Chamber is in session.

86. All deputies have the right to put formal questions to the Government in a written statement which they submit to the President. The formal questions should in principle be answered within six months of the date of submission.

87. The Chamber may also hold “consultative debates” at the initiative of either the Government or at least five deputies, and “policy debates” on subjects of general interest; it also holds an annual debate on the Government’s foreign policy.

88. All deputies have the right to table “motions” addressed to the Government and “resolutions” addressed to the Chamber. Motions and resolutions are submitted to the Chamber for discussion and a vote if they are supported by at least five deputies. The reasoning behind them must be stated at the time of submission; they may address more than one issue. They may call on the Chamber to give its views on a given government action, urge the Government to take certain steps, censure, indicate approval, express confidence in or withdraw confidence from the Government, etc.

89. The Chamber may withdraw its confidence from the Government, either by a vote of no confidence or by a negative vote on any provision under discussion on which the Government has asked for a vote of confidence. The decision by the Chamber to oppose the expressly formulated wish of the Government puts the latter in a minority position and obliges it to resign.

90. The Chamber is entitled to conduct investigations. It may hear witnesses and appoint experts to give an opinion on certain doubtful cases submitted for its consideration. The Chamber exercises this right itself or through a committee formed by members. The authority attributed to the Chamber or committee is akin to that of the investigating judge in criminal cases. The parliamentary inquiry is conducted in the presence of all parties. Any person who may be adversely affected by the inquiry has the right to be heard and the right to call for an investigation.

91. Petitions addressed to the Chamber are examined by the Petitions Committee. Members of the Government are required to provide explanations regarding the content of these petitions when so requested by the Chamber.

92. The Grand Duke makes certain appointments on the basis of a proposal from the Chamber. Thus, the President, the Vice-President and the three members of the Court of Auditors are chosen by the Grand Duke from a list of three qualified candidates proposed by the Chamber for each vacant post. The persons so appointed may be dismissed only on the basis of a proposal from the Chamber; an opinion is also requested from the Court. When it comes to filling a vacancy on the Council of State, every third seat is filled by the appointment of one of the three candidates proposed by the Chamber of Deputies. The Chamber has the right to bring charges against members of the Government for acts relating to the exercise of their duties. Charges against ministers which are admitted by the Chamber are brought before the Supreme Court of Justice, in plenary.

### 3. The Judiciary

93. The Constitution vests the exercise of judicial power in the courts and tribunals and entrusts them with implementing general and local decrees and regulations, provided that they are in keeping with the law. The Constitutional Court has the authority to give preliminary rulings on the constitutionality of laws. The Constitution applies the principle of the separation of powers by enabling the courts and tribunals to operate independently, restricting their scope, determining their jurisdiction and laying down a range of procedural guarantees.

94. The organs of judicial power comprise the ordinary courts, the administrative courts and the Constitutional Court. They are responsible for ruling on disputes concerning individuals, property and civil liberties. The highest possible degree of independence is essential if they are to demonstrate the impartiality needed to carry out this particularly important task. For this reason, the Constitution and special laws provide for a number of measures to protect judges from interference by the executive or the legislature and to make them independent of those under their jurisdiction.

95. The personal status of judges is determined by constitutional rules on their appointment, security of tenure and incompatibilities with their office. All judges, irrespective of their standing within the judicial hierarchy, are appointed by Grand Ducal decree. Magistrates and judges are appointed directly by the Grand Duke. Judges of the High Court of Justice and the Administrative Court, as well as the president and vice-presidents of district and administrative courts, are appointed by the Grand Duke at the recommendation of the relevant court.

96. When a vacancy arises for president of the High Court of Justice, judge of the Court of Cassation, president of a division, senior judge or associate judge of the Court of Appeal, or president, first vice-president or vice-president of a district court, the High Court of Justice convenes a general assembly, at the request of the Attorney-General, and nominates by secret ballot three candidates for each vacancy. In addition, the Attorney-General makes a recommendation. Lists of three candidates are also drawn up for each vacant post in the Constitutional Court and are submitted jointly by the High Court of Justice and the Administrative Court. The titular and substitute members of the Administrative Court, as well as the president and vice-president of the Administrative Tribunal, are appointed by the Grand Duke on simple recommendation of the Administrative Court.

97. Magistrates and judges in ordinary and higher courts cannot be removed from office; they can only be suspended or dismissed by decision of their respective courts. A judge may only be transferred with his or her consent. A new appointment process is necessary for the transfer to take place. By establishing that judges' salaries must be fixed by law, the Constitution protects judges from the potential influence of the executive branch in the form of threats of wage cuts or promises of higher wages. The age limit for members of ordinary and higher courts is 68 years. The decision to retire judges is taken by their respective courts.

98. Those holding judicial office cannot work concurrently as deputies, salaried public or private sector workers, solicitors, bailiffs, members of the military or an ecclesiastical order or lawyers, except as lawyers serving as substitute judges or judicial assistants.

99. Members of higher courts, district courts and magistrates' courts, as well as public prosecutors, cannot be mayors (*bourgmestres*), aldermen or municipal councillors.

100. Administrative court judges cannot be members of the Council of State.

101. Judges (except substitute magistrates) are prohibited from conducting any commercial activity, even under their spouse's name or through another intermediary, from being a business agent and from heading, managing or auditing a company, industrial

establishment or financial institution. Judges may not have private meetings with litigants or their counsel regarding disputes currently before them. Moreover, litigants may not ask serving judges, public prosecutors or registrars to represent them, or even to advise them, even in courts other than the ones in which they work.

### **Magistrates' courts**

102. The magistrates' courts are the first tier of the judicial hierarchy. There is one in Luxembourg City, one in Esch-sur-Alzette and one in Diekirch.

103. Each magistrates' court includes a labour tribunal made up of one presiding magistrate and two assistant magistrates; the presiding magistrate selects the assistants, one from the employers and one from the workers. The magistrates' courts are run by chief magistrates, who distribute cases among the judges and ensure the courts run smoothly.

104. The jurisdiction of magistrates' courts extends to such lesser matters as are specified by civil, commercial and criminal law, provided that any amount disputed in a civil or commercial suit does not exceed €10,000. Their decisions are subject to appeal, except in disputes where the amount concerned is under €1,250, for which they serve as courts of last instance. Their role in civil and commercial suits is mainly conciliatory. They strive above all to find amicable solutions to the disputes brought before them. In criminal cases, they function as simple police courts, hearing cases of minor offences punishable by fines of up to €250 and contraventions (which are considered offences under the law) referred to them by the court in chambers.

105. The labour tribunals within the magistrates' courts have jurisdiction over disputes relating to employment or apprenticeship contracts.

### **District courts**

106. The country is divided into two judicial districts: Luxembourg and Diekirch.

107. The two district courts are divided into sections of three judges; each district court has a prosecution team composed of a public prosecutor and a number of substitute prosecutors. Investigating judges attached to each district court investigate criminal cases and, if necessary, correctional ones.

108. The district courts hear civil, commercial and, as the criminal or corrections division, criminal cases.

109. The district courts have jurisdiction over all civil and commercial matters that have not been explicitly assigned by law to other courts. As a rule, judgements can only be handed down by a full complement of three judges, including the president. However, a single judge can hear criminal cases relating to traffic violations and urgent applications.

110. In criminal matters, the corrections division adjudicates on misdemeanours, i.e. offences which under the Criminal Code or special laws carry a penalty of eight days' to five years' imprisonment and a fine of more than €251, whether these are imposed separately or cumulatively. The division also hears cases of acts defined by law as crimes which, owing to mitigating circumstances, are referred to it by the court in chambers. Crimes, i.e. offences for which the Criminal Code or special laws prescribe a prison term, up to and including life imprisonment, or remand, come under the jurisdiction of the criminal division of the district courts.

111. Matters covered in youth protection legislation, or in legal provisions dealing with statutory administration, guardianship and other measures for the protection of incapacitated individuals, are under the sole jurisdiction of the youth and guardianship



division. The district court hears appeals against first-instance decisions by the magistrates' courts located in the district.

112. The Constitution also vests in the district courts jurisdiction in disputes involving political rights, i.e. the rights which citizens enjoy in their relations with the State. In the narrow sense, these rights include the right to take part in affairs of State, such as the right to vote, the right to stand for election and the right to be appointed to public office. In a broader sense, disputes involving political rights are those which oppose individuals and the administration or those that oppose different government departments.

### **High Court of Justice**

113. The High Court of Justice sits in Luxembourg City. It is composed of the Court of Cassation, the Court of Appeal and the Chief Public Prosecutor's Office, which comprises the chief public prosecutor and the advocates-general.

114. The Court of Appeal consists of nine divisions, each with three judges, except for the criminal division, which has five. It rules on first-instance decisions of the district courts and hears civil, commercial, criminal and correctional matters as well as cases tried by the labour tribunals.

115. The Court of Cassation consists of one division and mainly rules on decisions of the Court of Appeal and the Military Court and on last-instance judgements of the district or magistrates' courts. Decisions and judgements may only be submitted to the Court of Cassation if they constitute a breach of the law, an abuse of authority or an error of form constituting either an infringement of an essential procedural requirement or grounds for nullity.

116. The High Court of Justice meets in general assembly to address relevant internal matters, such as the presentation of candidates. The General Assembly of the High Court also rules on accusations levelled by the Chamber of Deputies against members of the Government, disputes over jurisdiction and disciplinary measures against judges.

### **Administrative courts**

117. Pursuant to the Constitution, administrative disputes are under the jurisdiction of the Administrative Tribunal and the Administrative Court, which sit in Luxembourg City.

118. The Administrative Tribunal comprises two divisions. It rules on cases of incompetence, abuse or misuse of authority; legal or procedural violations for the purpose of protecting personal interests; appeals against administrative decisions for which no other remedy is stipulated by the law or regulations; and appeals against administrative acts of a regulatory nature, irrespective of the issuing authority. In theory, it also hears disputes regarding direct taxes and communal taxes.

119. Decisions of the Administrative Tribunal can be appealed to the Administrative Court.

120. In its capacity as a trial court, the Administrative Tribunal hears appeals against decisions of the Direct Taxation Service, in situations where the relevant laws provide for such appeals.

121. The Administrative Court is the highest court in the administrative system.

122. Unless otherwise stipulated by law, the Administrative Court may hear appeals against decisions taken by the Administrative Tribunal to set aside an administrative decision and against decisions on administrative acts of a regulatory nature. In its capacity as a trial and appeals court, the Administrative Court hears appeals against the decisions of other administrative courts regarding appeals for correction over which they have statutory

authority. Lastly, the Administrative Court hears disputes between the Government and the Court of Auditors.

### **Constitutional Court**

123. The Constitutional Court has nine members, namely, a president, a vice-president and seven associate judges. The president of the High Court of Justice, the president of the Administrative Court and both associate judges of the Court of Cassation are ex officio members of the Constitutional Court. The other five members are appointed on the joint recommendation of the High Court of Justice and the Administrative Court, made at a joint general assembly. The presidents of the High Court of Justice and the Administrative Court serve as president and vice-president of the Constitutional Court, respectively. The members of the Constitutional Court continue to perform their duties in their home court. Rulings of the Constitutional Court, which sits in Luxembourg City, are deliberated and issued by a five-member panel.

124. The Constitutional Court adjudicates on the constitutionality of laws, except those regarding the adoption of treaties. If a court deems that the constitutionality of a law is in question and that a decision on this point is necessary for it to issue a judgement, it must ex officio raise the question after inviting the litigants to present their comments. When a litigant raises the constitutionality question before an ordinary or administrative court, the court must bring it before the Constitutional Court, unless it deems that a decision on the matter is not necessary for it to hand down judgement, that the constitutionality claim is unfounded or that the Constitutional Court has already ruled on a case with the same subject matter. If it has, the courts must comply with the prior ruling.

125. No appeal is possible against the decisions of the Constitutional Court.

126. Court hearings must be public, unless a public hearing might pose a threat to public order. In such cases, the court may, exceptionally, exclude the public, in a substantiated judgement handed down in the usual form. All judgements must be delivered in a public hearing, even if the trial itself has been held in camera. All courts are required to substantiate their judgements. The institution of judicial remedies, whereby an appeal may be lodged against a decision of a lower court before a higher court, provides citizens with additional safeguards of equity.

127. Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms establishes the right to a fair trial within a reasonable time by an independent and impartial tribunal.

## **B. The communes**

128. The representation of political parties in the Chamber of Deputies is not necessarily reflected in the communes. In Luxembourg, where there are neither provinces nor departments, the commune is the only expression of the principle of territorial decentralization. From the administrative angle, the commune is an autonomous community on a particular territory having legal personality. It manages its assets and interests through local representatives, under the supervision of the central authorities. The communes can comprise several electoral divisions.

129. Each commune has a communal council directly elected by residents who qualify as voters. Communal councillors are elected for a six-year term, beginning on 1 January following their election. There is always an odd number of councillors; the precise number varies according to the population of the commune.

130. Each commune constitutes an electoral district. In general, elections are based on the relative-majority principle. However, in communes with at least 3,000 inhabitants, or whose sole division or one of whose divisions has at least 3,000 inhabitants, elections are based on lists and proportional representation, as in legislative elections. Communes in which elections are conducted according to the proportional representation method constitute a single electoral division, even if they consist of several distinct localities.

131. To be eligible to vote, a person must meet the criteria for legislative elections and be domiciled in the commune. Domicile is confirmed by registration on the electoral roll. Other European Union nationals may vote in communal elections, provided they are domiciled in the Grand Duchy, have lived there for at least five years and have not forfeited their right to vote as a result of living outside their country of origin. Other foreign nationals must be domiciled in the Grand Duchy and must have lived there for at least five years at the time of their request for registration on the electoral roll. Moreover, they must, for the entire period, have had a residence permit, the requisite legitimization papers and a visa, if required. However, a list cannot consist chiefly of candidates without Luxembourg nationality.

132. In order to run for office, candidates must be citizens of Luxembourg or nationals of another member State of the European Union — if the latter, they must have lived in the Grand Duchy for five years at the time their candidacy is announced — and they must enjoy their civil and political rights, be at least 18 years old on the date of the election and have regularly resided in the commune or division for over six months.

133. The Grand Duke may dissolve the communal council. When he does so, an election is held no later than three months after the dissolution.

134. Communal authority is exercised by the communal council or by the board of mayors and aldermen, or the mayor alone. The relationship between these two bodies is comparable to that between the legislative and executive branches at the national level. Communal councils represent the communes and are, relatively speaking, what the Chamber of Deputies is to the State. They have jurisdiction over all matters of interest to the commune, including the commune's internal administration, communal property, income, expenditures, public works, public establishments and the appointment of the commune secretary, tax collector and employees. The law determines the commune's participation in education. The Constitution also vests in the communal council responsibility for issuing communal regulations and by-laws, which are enforced by means of penalties. These regulations may under no circumstances contravene general administrative laws and regulations.

135. The mayor chairs the meetings of the communal council and steers its discussions. If unable to do so, the mayor appoints an alderman to replace him or her. Failing this, the mayor is replaced by one of the aldermen, and then by one of the councillors, in order of seniority. The council may take decisions only if a majority of its members are present. Communal council meetings are public. However, two-thirds of members in attendance may, on grounds of public order or potentially serious objections, decide to hold the meeting behind closed doors, provided they give the reasons for their decision in the minutes of the meeting.

136. The board of mayors and aldermen is made up of members of the communal council. Mayors are appointed and removed by the Grand Duke. City aldermen are appointed by the Grand Duke and those of other communes by the Minister of the Interior.

137. The board is responsible for the day-to-day operations and management of the commune, including publishing and enforcing the decisions of the communal council, administering communal property, managing income, authorizing expenditure, overseeing communal funds and accounts, administering communal bodies, running rural police

services, managing communal works, organizing minor road maintenance, taking any judicial steps on behalf of the commune, overseeing communal employees, running the fire department and keeping archives. Civil status documents and the civil registry are the sole responsibility of the communal authorities. The mayor, or an alderman appointed by the mayor, acts as registrar.

138. In emergency situations, the board of aldermen can issue by-laws without prior consultation with the communal council, provided that they are promptly ratified and that a copy is immediately sent to the Minister of the Interior and the district commissioner. The board, in its capacity as an organ of the central Government, is responsible for enforcing national laws and decisions on the territory of the commune. The mayor is responsible for the enforcement of public order statutes and regulations under the supervision of the district commissioner. Responsibility for the judicial police is specifically vested in the mayor, who may delegate the authority for this to a member of the board of aldermen, subject to the approval of the State prosecutor.

139. The meetings of the board of mayors and aldermen are not held in public.

140. To meet their expenditure, communes receive income from their property as well as revenue from communal taxes. They also receive non-earmarked funds and specific subsidies from the State. When faced with heavy extraordinary expenditure, they may also contract loans. No communal tax may be introduced without the consent of the communal council. Nor may any communal tax be introduced without the approval of the Grand Duke.

141. In the first half of September each year, the communal council establishes its revenue and expenditure budget for the following year. Every year, by mid-April at the latest, the communal council must draw up a statement of accounts for the previous fiscal year. Communal budgets and accounts must itemize all the revenue and expenditure in a given year. These are filed at the communal hall, where taxpayers are free to consult them. The constitutional right of communal representative bodies to manage their own exclusively local interests results in a high degree of autonomy in terms of communal authority, local representation and legal personality. Communes are public-law entities which possess and manage their own assets, and which can acquire rights, enter into obligations and take part in court proceedings. However, in order to ensure that the autonomy of communes does not prejudice national interests, the Constitution entrusts the legislative branch with defining the composition, organization and competence of the communal councils and gives the executive the right to continuously monitor them, either through special institutions such as the district commissioners or communal auditors, or through a system of authorizations and approvals known as administrative supervision.

142. Each administrative district has a district commissioner, appointed by the Grand Duke. Commissioners are State officials under the direct authority of the Minister of the Interior in particular and of the Government in general. Their function is to act as official intermediaries between the central Government and the communal authorities. All communal authorities, with the exception of the City of Luxembourg, come under their immediate authority and may only communicate with the higher authority through them, except in serious and exceptional circumstances. The supervision of communal management is regulated by statute, and certain acts of communal bodies may be submitted for approval to the supervisory authority and even annulled or suspended if they are unlawful or incompatible with the public interest, without prejudice to the responsibilities of the judicial or administrative courts. If an act by a communal authority is annulled or rejected by the Grand Duke, the Minister of the Interior or any other competent authority, the commune may appeal to the Administrative Court to have the measure quashed.

## IV. Current political structure

143. The Grand Duchy of Luxembourg is a constitutional monarchy and a parliamentary democracy, with Grand Duke Henri of Luxembourg as its Head of State.

144. Under the Luxembourg Constitution, the heir apparent is the legal successor to the crown when the throne falls vacant as a result of the death or abdication of the sovereign.

145. On 24 December 1999, Grand Duke Jean announced his intention to abdicate in favour of his eldest son, Henri.

146. The latter acceded to the throne on 7 October 2000.

147. Strictly speaking, the Government is the executive organ composed of the Grand Duke and serving ministers. In common parlance, the Government denotes all ministers and junior ministers who assist the Grand Duke in the discharge of his constitutional powers.

148. Since the parliamentary elections of 7 June 2009, the Government, led by Prime Minister Jean-Claude Juncker, has consisted of a coalition of the Christian Social People's Party and the Luxembourg Socialist Worker's Party.

149. The Government is composed of 15 ministers.

150. The coalition's current policy is based on the 2009–2014 government programme.

## V. Economic, social and cultural features

### A. Economic features

151. The economic and social policies applied by nearly all Governments since the Second World War have aimed at blending political and economic ideologies judiciously, with a view to enabling the nation's productive sector to develop while ensuring that the national product is distributed equitably among all sectors of the population.

152. According to the 2010 economic survey of the Organisation for Economic Co-operation and Development (OECD), Luxembourg "has experienced a severe recession, as it was heavily exposed to the fall in world trade and the international financial crisis. Unemployment has risen and the fiscal position has deteriorated. This follows a long period of continuous and rapid economic expansion during which living standards rose impressively and the economy was transformed by the growing financial centre and large flows of cross-border and migrant workers. While there are encouraging signs of recovery, the future growth path is likely to be weaker than in the recent past reflecting the sluggish international recovery, structural factors and a loss of competitiveness."

153. In 2010, according to figures of the National Institute of Statistics and Economic Research (Statec), gross domestic product (GDP) per capita was €82,100. A Eurostat study published on 20 June 2012 states that GDP per capita in purchasing power standards is 274, placing the country first, ahead of Norway (189) and Switzerland (151). Thus, the per capita GDP of Luxembourg is more than 2.5 times higher than the average of the 27 member States of the European Union (EU). During the first quarter of 2012, GDP dropped by 1.5 per cent as compared with the fourth quarter of 2011, primarily because of problems in the financial sector.

154. Nevertheless, by this indicator Luxembourg remains at the top of the richest countries in the world, although the indicator is skewed because it does not take into account the large number of cross-border workers which, by definition, is not factored into the rate. According to World Bank estimates, gross national income per capita at

purchasing power parity — a more reliable indicator than per capita GDP — was \$61,790, still the world's highest ahead of Norway (\$56,830), Singapore (\$55,790), Switzerland (\$50,170), Hong Kong (\$47,480) and the United States (\$47,360). Its estimates for 2010 put gross national income per capita at purchasing power parity at 63,850 international dollars, once again the highest in the world and ahead of Norway (Int\$ 57,130), Singapore (Int\$ 54,700), Switzerland (Int\$ 49,180), Hong Kong (Int\$ 47,300) and the United States (Int\$ 47,020). According to preliminary Statec figures, the surplus on the current account balance was a significant 8.08 per cent of GDP in 2010. The country's favourable standing stems from high surpluses on the balance of services, resulting largely from financial service exports. The surplus on the current account balance was €2.6 billion in 2009 and reached €3.3 billion in 2010, or 7.8 per cent of GDP.

155. Regarding purchasing power, household disposable income per capita, in nominal terms, rose from €26,700 to €30,000 between 2006 and 2009, a 12 per cent increase.

156. Total public sector debt, as defined in Council Regulation (EC) No. 3605/93, was 19.1 per cent of GDP in 2010, one of the lowest rates among the 27 EU member States. The European average was 80 per cent in 2010. Public sector debt decreased by 1.04 per cent in 2011, positioning Luxembourg second only to Estonia.

157. Between 2004 and 2010, the average growth rate of GDP was 2.08 per cent, one of the best medium-term results among the 27 EU member States. This remarkable rate mostly stems from the performance of the financial institutions during this period. Following a growth rate of -5.3 per cent in 2009, caused by the global crisis, growth picked up again in 2010, when it rose at a rate of 2.7 per cent. According to the latest Statec figures, 2011 also saw positive, though rather weak, growth of approximately 1.6 per cent, owing to the sovereign debt crisis affecting eurozone countries. The situation is expected to further worsen in 2012, with a forecast GDP growth rate of merely 0.1 per cent.

158. The unemployment rate was 6.5 per cent in December 2010, one of the lowest among EU member States, despite a marked increase since the start of the 2008/09 economic crisis. However, these positive figures mask the fact that unemployment in the Grand Duchy has doubled since the beginning of the decade, despite a vibrant labour market. This "Luxembourg paradox" is due in part to the fact that labour supply and demand are mismatched and that the education and training system does not adequately meet the needs of the economy. The present figures are rather worrying: the labour market is deteriorating because of setbacks in the international environment since the spring of 2012. This period is the logical extension of the economic and political crisis, the lack of a sustainable solution to the debt crisis, growing disparities among EU member States and the global slowdown. Nevertheless, with a harmonized unemployment rate of 5.2 per cent in April 2012, Luxembourg finds itself among those countries of the eurozone enjoying relatively low unemployment.

159. Regarding industrial output, the world's leading steel producer, ArcelorMittal, is headquartered in Luxembourg. In 2011, it employed 261,000 people worldwide and produced 54.1 million metric tons of iron ore and 8.3 million metric tons of coal, generating revenues of €72.8 billion. According to the World Steel Association, Luxembourg produced 160,000 tons of steel in December 2011, placing it among the top 40 steel producers in the world, with 2.6 million metric tons in 2011. As at 31 December 2010, 6,070 people were working in the steel industry in Luxembourg. Although the industry's share of GDP is lower than in the past, it was nonetheless the engine of the Luxembourg economy for a long time until the steel crisis of the 1970s.

160. The history of Luxembourg will always be tied to the steel industry. The country is also home to the headquarters of Paul Wurth, a leading firm in the design and production of mechanical equipment and systems and processes for blast furnaces.

161. Research and development are behind the firm's expansion and position as a high value-added producer. Paul Wurth manages a portfolio of 600 patents worldwide. In 2008, it employed 1,450 workers around the world, including 560 in Luxembourg; today it has 1,600 employees around the world. In 2010, its turnover was €577.3 million; in 2011, it was €491 million, and its net profit was €18.2 million. The products of the country's steel industry have a high technological component and are a wonderful advert for Luxembourg know-how. For example, the foundations of the Freedom Tower in New York City, a 533-metre-high tower under construction on the site of the former World Trade Center, are buttressed by steel girders from the ArcelorMittal factory in Differdange. The Differdange factory was the only one in the world with the technical capacity to produce and roll this type of giant girder.

162. The labour market attracts thousands of cross-border workers to Luxembourg every day; in March 2011, 153,157 such workers were employed in Luxembourg. France accounts for the largest contingent (49 per cent), followed by Belgium (26 per cent) and Germany (25 per cent). According to the latest figures for 2011, 153,300 workers commute to and from the Grand Duchy, including 75,700 from France, 38,900 from Belgium and 38,700 from Germany.

163. Given the limited national labour pool and the vibrancy of the Luxembourg economy, the availability of foreign workers is indispensable to the country's economic growth. Forty-four per cent of salaried jobs in Luxembourg are held by cross-border workers. Residents with Luxembourg nationality constituted less than one third of workers in the Grand Duchy as at 31 March 2011.

164. The primary factor in maintaining a satisfactory economic situation has been the substantial adjustments and modifications made to cope with changes in the size and structure of domestic, and especially foreign, demand. The second factor has been the care taken to implement social measures in tandem with these changes: the equitable distribution of national income and correspondingly peaceful labour relations are vital drivers of productivity and are thus one of the key comparative advantages of the Luxembourg economy.

165. Luxembourg established itself on the international scene for its financial know-how thanks to the launch of the Eurobond market in the 1960s. Subsequent diversification, notably in the area of external securities, monetary reserves and deposits with the central banks of Germany and Switzerland, has proven key to realizing the country's ambitions.

166. As far as productivity is concerned, the 2011–2012 Global Competitiveness Index, which assesses the potential of the world's economies to reach sustained growth in the medium and long term, ranks Luxembourg 23rd out of the 142 countries examined.

## **B. Social features**

167. The political environment in Luxembourg is characterized by government stability. The Grand Duchy is a country in which a spirit of negotiation and dialogue are the cornerstone of social peace, which, in turn, promotes social progress, social justice and the work ethic.

168. Social progress depends on efficient public services in areas such as education, health and social welfare, as well as on the expansion and modernization of the infrastructure required for such services.

169. Total expenditure on social welfare, expressed as purchasing power parity (PPP) per capita, was €17,359 in 2009. However, it should be noted that Luxembourg is a special case since a significant proportion of benefits are paid to eligible non-residents (primarily in

expenditure on health, pensions and family benefits) who, by definition, are not recorded as residents. After subtracting expenditure attributable to non-residents, total welfare expenditure is nonetheless still high, at €13,248 (PPP) per capita.

170. Total expenditure on pensions (old-age, invalidity, widows' and orphans' pensions) in 2009 was €5,919 (PPP) per capita, or €4,516 per capita after subtracting expenditure attributable to non-residents.

171. Public expenditure on health per capita in Luxembourg in 2009 was €3,614 (PPP), or €2,758 (PPP) after deducting expenditure on cross-border workers.

172. Total expenditure on family benefits in Luxembourg in 2009 was €2,532 (PPP) per capita, or €1,932 after adjustment for transfers abroad.

173. Social peace is also, and perhaps primarily, assured by the creation of new jobs with decent pay. In this regard, it should be noted that the number of wage-earners rose from 244,400 in 2000 to 351,510 in 2012. Of these, about 37,000 were employed in the industrial sector, 185,000 in the services sector and 39,000 in construction. Between 1970 and 1995 the number of non-salaried workers declined slightly, although this downward trend has now ended. Over the last decade the number of non-salaried workers has remained relatively stable.

174. The State, with 24,662 employees, remains the biggest employer in Luxembourg, followed by the steel company ArcelorMittal, which currently has 5,960 employees. In January 2012, the total number of people in work stood at 373,050, of whom 351,510 were employees and 21,540 were self-employed.

175. The economic growth of recent years could not have been achieved without an increase in the number of wage-earners. Three phenomena contributed significantly to meeting the requirements of a steadily expanding job market. First, the number of cross-border workers rose from 87,700 in 2000 to some 153,300 in 2011. Secondly, the proportion of women gainfully employed increased from 23 per cent in 1970 to 37 per cent in 1994, and has increased steadily since then. According to OECD, the female employment rate rose from 50.8 per cent in 2001 to 56.9 per cent in 2011. Finally, it should be stressed that part-time employment has increased, with a concomitant rise in the number of jobs.

176. In 1993, the unemployment rate exceeded 2 per cent for the first time, and in 1994 it rose to 2.7 per cent. It is becoming increasingly apparent that the rise in unemployment is not a macroeconomic problem, since job opportunities are numerous and constantly increasing. Between 2000 and 2009 the unemployment rate almost doubled, from 2.5 to 5.8 per cent. According to the latest statistics (June 2012), the unemployment rate is 6.2 per cent.

177. In the early 1990s, wages increased rapidly on account of the institutionalized system of wage-indexing and the linkage of the minimum wage to the average rate of pay increase in the economy. This trend had repercussions on the competitiveness of the Luxembourg economy and, in 1994, the Government adopted measures to safeguard employment, price stability and the competitiveness of enterprises. In industry, for example, wages and salaries fell by 2 per cent between 1993 and 1994. Between 2010 and 2011, salaries increased by only 0.6 per cent.

178. One factor that contributes in no small measure to the maintenance of social peace in Luxembourg deserves to be mentioned here on account of its originality. The Tripartite Coordination Committee, or "the Tripartite" for short, is a forum for consultations among social partners that seeks to find negotiated solutions to social problems before there is a work stoppage. Established by the Act of 24 December 1977 and comprising four members of the Government (the Prime Minister and the ministers of the economy, finance and



labour) and eight representatives of professional organizations of employers and workers, the Committee is chaired by the Prime Minister. It issues an opinion in advance of the adoption of any measures triggered when any of the three levels identified in the Act of 1977 is reached (1,500 unemployed, 2,500 unemployed, acute crisis). The Act has since been amended several times, most recently on 29 December 2006.

179. The high union membership rate, which OECD estimates to be 42 per cent (2010), is a positive stabilizing factor that facilitates consensus-building. Luxembourg is thus one of the countries in which negotiation, consultation and dialogue between the Government and the social partners are the cornerstones of an enviable record of social peace and economic development.

180. Luxembourg boasts a well-developed system of social protection dating back to the beginning of the twentieth century. While it has changed substantially over the years, primarily through the extension of the range of benefits and the inclusion of all demographic sectors, it is well-structured, transparent and, although generous, for the most part affordable, at least over the medium term. It is largely based on the principle of solidarity between socio-economic groups and workers and the retired. Such solidarity is achieved through the “equalization” of many benefits, risk-pooling and the de facto indexation of benefits to changes in real wages and salaries.

181. The unique combination of a small population and a central location has allowed cross-border workers to play an especially important buffering role in the domestic labour market. This, along with a history of periodic episodes of substantial immigration, has meant that the number of contributors to the system is relatively independent of purely domestic demographic factors, and that, while a substantial portion of all pensions are paid to non-residents, there has been nonetheless a substantial transfer from non-residents to the Luxembourg treasury.

182. As far back as 1986, Luxembourg implemented an innovative guaranteed minimum income scheme consistent with an active strategy of inclusiveness based on three pillars: a guaranteed minimum income, personalized support to help individuals find a job and become integrated in society, and access to high-quality services.

183. In addition to the rights set out in the Guaranteed Minimum Income Act, social welfare in Luxembourg is regulated by the Social Welfare Act of 18 December 2009. The new legislation entered into force on 1 January 2011. The creation of 30 social welfare offices, which are public establishments under the supervision of the communes, has fostered a preventive approach designed to break the cycle of social exclusion.

184. As early as 1998, the legislation on care of the elderly authorized the National Solidarity Fund to contribute to the accommodation costs of elderly persons admitted to long-stay institutions (integrated centres for the elderly and nursing homes) whose personal income is insufficient to cover these costs.

185. Furthermore, in the area of family policy and the work/life balance, Luxembourg has introduced a range of benefits, including an education allowance, paid parental leave, and leave for family reasons.

186. In 2009, Luxembourg introduced an innovative child-care service voucher (*Chèque-Service Accueil*). This is an allowance provided by the State and the communes for children and their families to subsidize the cost of socio-educational facilities and the services of parental assistants.

187. Since 2003, persons with disabilities have received their own income. They may request the status of worker with a disability and benefit from a raft of measures designed to facilitate their integration into either the mainstream or the sheltered labour market. If

persons with disabilities are unable to gain access to a paid occupation, they are provided with an income for persons with severe disabilities.

188. One unusual feature has been the steady increase over the longer term in budgetary transfers in relation to both total social security funding and GDP. This increase has been made possible by the overall economic prosperity of Luxembourg and its history of prudent fiscal policy.

189. Another unusual feature of Luxembourg is its highly qualified and multilingual international workforce. People from more than 170 countries currently reside in the Grand Duchy, and over time the various cultures they represent have had a significant impact on the country. These influences are seen at all levels, and have made Luxembourg a fundamentally multicultural country. Moreover, the majority of Luxembourg citizens are proficient in at least three languages (generally Luxembourgish, French and German), which gives Luxembourg an obvious advantage over other countries.

190. All the above-mentioned features of the Grand Duchy have contributed to the country's high global ranking in terms of quality of life. According to a 2010 report by ECA International, the City of Luxembourg ranks seventh out of the 254 most attractive cities for expatriates to live in. According to International Living's 2010 Quality of Life Index, the Grand Duchy of Luxembourg ranks sixth out of 194 countries in terms of quality of life. Lastly, according to the national human development report of the United Nations Development Programme, the country ranks twenty-fifth out of 187 countries in terms of human development.

### **C. Cultural life**

191. Cultural life in Luxembourg is characterized by the surprising quality and diversity of what is on offer, its multicultural nature and openness to the world, its multilingualism in every area of activity, its multitude of first-rate cultural facilities, and its festivals and traditions. The result is a cultural landscape of astounding literary, artistic, architectural and musical diversity which pervades everyday life and which also reflects the rapid and continuing development of the Luxembourg cultural scene. Accordingly, cultural policy is based on a broad definition of the concept of culture and is focused on safeguarding the democratic values of the country's multicultural society.

192. Situated as it is at the heart of Europe, and host to nationals of more than 170 nationalities, Luxembourg has established itself as a cultural crossroads. Respect, tolerance and openness are distinctive features of culture in Luxembourg, and its multicultural environment offers many opportunities for culture to flourish – and in several languages at that.

193. Given its history and geographical location, Luxembourg has been influenced since the Middle Ages by two great cultures — those of France and Germany. The indigenous cultural scene has nevertheless managed to preserve its special features and identity — a “personal touch” that weaves together past and present. Great importance is attached, for instance, to the Luxembourgish language and literature. However, performances such as plays are staged mainly in their original version, and films are systematically shown in their original version in cinemas.

194. Luxembourg culture gained considerable international recognition during the country's preparations for 1995, when the City of Luxembourg — listed as a UNESCO World Heritage site since 1994 — was first designated European Capital of Culture. As the only city so far to have had that title bestowed on it twice, Luxembourg made the innovative move of involving the border regions of neighbouring countries when it was named “Luxembourg and Greater Region, European Capital of Culture 2007”. In order to

ensure the continued cooperation of all concerned, the cultural authorities of the Grand Duchy of Luxembourg, Saarland, Rhineland-Palatinate, Lorraine and Wallonia (the French- and German-speaking communities of Belgium) created the Espace Culturel Grande Région association in Luxembourg in 2008. The aim of the association is not only to promote the richness, diversity and originality of the cultural and artistic scene in the Greater Region — the first cross-border region to define and present itself as a common cultural space — but also to increase the mobility of those involved in staging cultural events and audiences, as well as to increase the number of events.

195. Luxembourg also attaches importance to regional cultural development: while the capital plays a prominent role in cultural life, the regional cultural provision is equally comprehensive and enables people to participate both actively and passively. Despite its small size, Luxembourg has an impressive number of talented artists and modern cultural sites and facilities, and is home to many local and foreign organizers of cultural events.

196. Culture is an integral part of everyday life, enjoyed by consumers and participants alike. The Luxembourg cultural scene, like artistic and creative talent in general and talented youngsters in particular, enjoys strong public support and encouragement and certainly deserves wider recognition beyond the country's borders. The international recognition gained by many Luxembourg artists abroad, as reflected in international cooperation projects and partnerships with renowned cultural institutions, highlights the country's many and varied cultural activities.

## **VI. General legal framework within which human rights are protected**

197. Any dispute that originates in a human rights violation listed in national legislation or in one of the international covenants or conventions to which Luxembourg is a party may be brought before the national courts. The subject of the dispute determines the competent court. The formal context guaranteeing respect for human rights and fundamental freedoms, that is, the working of the judicial system of Luxembourg, has already been discussed in the section on national courts and tribunals. We shall therefore not deal with it again here.

### **A. Main constitutional guarantees of human rights and fundamental freedoms**

198. The Constitution of Luxembourg, which is a “rigid” written Constitution, guarantees the rights of citizens. The relatively large number of articles in the Constitution devoted to the rights and freedoms of citizens of Luxembourg highlights the importance attached, in the organization of the State, to the free development of individuals and their protection vis-à-vis those in authority. This is especially significant as in Luxembourg the Constitution prevails over any other national rule of law. In the event of conflict, therefore, the Constitution sets aside any incompatible national rule.

199. Specifically, the Constitution guarantees the following 15 public rights to all citizens and, in principle, to all aliens residing on the territory of the Grand Duchy:

1. Equality before the law;
2. Individual freedom;
3. Inviolability of the domicile;
4. Inviolability of property;

5. Freedom of opinion;
6. Freedom of the press;
7. Inviolability of correspondence;
8. Right of petition;
9. Freedom of worship;
10. Freedom of assembly;
11. Freedom of association;
12. Right to public education;
13. Right to institute proceedings against public officials;
14. Right to employment and social security;
15. Freedom of trade and industry.

200. Furthermore, all citizens are entitled to forbid anyone access to their residence. No residence may be searched except in the cases established by law and in the forms prescribed by it. Freedom of opinion and freedom of the press are guaranteed, except for abuses such as encouragement to commit crimes or offences or to attack a person's honour or the reputation of others.

201. The Constitution guarantees freedom of religion and worship, as well as the freedom to manifest one's religious opinions. It also guarantees freedom of conscience by stating that no one may be compelled to assist in any way in the acts and ceremonies of a religion, or to observe its days of rest.

202. Primary education is compulsory and free of charge. The Constitution makes it obligatory for the State to set up free secondary education establishments and the requisite higher education programmes.

203. Finally, the Constitution does not merely protect paid work and trade union freedoms, but generally safeguards all occupations, trade, industry, independent professions and agricultural work. It also compels the legislature to organize social security, health protection and workers' time off.

204. Since the Constitution may be revised only by a very strict procedure (dissolution and the convening of a new Chamber, vote by a two-thirds majority), the guarantees it confers in the field of human rights are sufficiently protected.

## **B. Scope of treaties, covenants and protocols**

205. International instruments are self-executing and do not require implementing regulations, unless their terms expressly state the contrary. Consequently, they directly confer rights and obligations on the subjects of national sovereignty and may, without any other action, be implemented by the country's administrative courts and courts of law. Disregard of them by a domestic court opens the way for an appeal.

206. With respect to the relationship between international law and national law, it is a generally established principle that international law has priority over national law; in other words, international treaties take precedence over laws and all other provisions of national law. However, prior to the conclusion of international treaties, every effort is made to ascertain whether their substance is in conformity with existing domestic law. If that is not the case, national legislation is adopted prior to ratification of the treaty. The provisions of the Constitution ensure that the internal implementation of treaties is equated with the

implementation of laws. Implementation measures are based on the provisions of the treaty. The treaty prevails over national law, even a subsequent law, because the treaty derives from a higher source than the will of an internal body. Specifically, therefore, the covenants of concern to us form part of the positive law of Luxembourg with effect from the time of their ratification.

### **C. Judicial penalties**

207. In Luxembourg, no one may be prosecuted save in the cases provided for by law and following the form prescribed by law. No one may be arrested or detained other than in cases provided for by law and following the form prescribed by it, and no one may be arrested, apart from in cases of flagrante delicto, other than on the basis of a reasoned court order, which must be served on the person concerned. Every person must be informed without delay of the legal remedies available to help them regain their freedom. The law determines in advance which court will be competent to hear civil or criminal cases, either by reason of the residence of the parties or by reason of the acts to be tried. No one may be taken, against their will, from the court which the law has thus assigned to them. No penalty may be handed down or applied except under the law.

### **D. Current situation<sup>1</sup>**

208. In addition to the international human rights treaties to which it is already a party, Luxembourg has signed the following instruments since 2003:

- The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, establishing a mechanism to follow up on complaints concerning the violation of the Covenant by a signatory State (signed on 24 September 2009);
- The Optional Protocol to the Convention on the Rights of the Child on a communications procedure (signed on 28 February 2012);
- The Amendments to the Rome Statute of the International Criminal Court.

Ratification procedures are under way.

209. Since 2003, Luxembourg has ratified the following instruments:

- The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (ratified on 1 July 2003);
- The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ratified on 19 May 2010);
- The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (ratified on 4 August 2004);
- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (ratified on 2 September 2011);
- The Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto (ratified on 26 September 2011).

210. It should also be noted that:

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<sup>1</sup> Situation as at 1 September 2012.

- By the Act of 30 June 2004, Luxembourg adopted the amendment to article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination, which was adopted at the fourteenth meeting of States parties to the Convention on 15 January 1992;
- On 21 March 2006, Luxembourg ratified Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

## **E. Independent institutions and bodies**

### **1. Office of the Ombudsman**

211. The Office of the Ombudsman was set up on 1 May 2004 pursuant to the Ombudsman Act of 22 August 2003.

212. The Office of the Ombudsman is an independent body that does not receive instructions from any authority. It is not answerable to either the authorities or the Government.

213. The establishment of the Office of the Ombudsman is part of an administrative reform aimed at bringing the authorities closer to the people and improving relations between citizens and the authorities.

214. The Ombudsman is appointed for a non-renewable eight-year term by a simple majority of the Chamber of Deputies. He or she must be a Luxembourg national, hold a university degree and be proficient in the country's three languages.

215. The Office of the Ombudsman receives complaints from natural and legal persons, on matters affecting them, in relation to the functioning of the State and communal authorities.

216. It balances the different viewpoints, questions the authorities concerned, consults the necessary documents and meets with the officials responsible. If appropriate, the Office may transmit its recommendations to the authorities concerned with a view to reaching an amicable solution to the dispute.

217. This free service is aimed at strengthening citizens' confidence in democracy and institutions. Citizens may submit their claims directly to the Office or indirectly, through a member of the Chamber of Deputies. The Ombudsman is regarded as the representative of citizens.

218. The Office of the Ombudsman is also designated as the national preventive mechanism referred to in article 3 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In this capacity, it is responsible for the external monitoring and assessment of places of deprivation of liberty in the national territory.

### **2. Ombuds Committee on the Rights of the Child**

219. A Luxembourg committee on the rights of the child known as the *Ombuds-Comité fir d'Rechter vum Kand* was established by the Act of 25 July 2002. The Ombuds Committee is an independent and neutral body responsible for implementing and promoting the Convention on the Rights of the Child, which was ratified by Luxembourg in 1993.

220. The duties of the Ombuds Committee are as follows:

- Examine the mechanisms established to protect and promote the rights of children, with a view to recommending to the competent authorities, where appropriate, necessary adjustments;

- Issue opinions on laws and regulations, and also on bills, concerning children's rights;
- Investigate the situation of children and ensure the implementation of the Convention on the Rights of the Child;
- Submit to the Government and the Chamber of Deputies an annual report on the situation of children's rights and on its own activities;
- Promote the development of children's freedom of expression and their active participation in matters that concern them;
- Examine situations in which the rights of children are not respected and make recommendations to remedy such situations;
- Receive information and complaints concerning violations of children's rights and, in accordance with procedures which it shall determine, hear any child who requests a hearing;
- Issue, on the basis of information or complaints or in connection with particular cases that it has investigated, recommendations or advice designed to better protect the rights and interests of children.

221. The Ombuds Committee is composed of six members appointed by the Grand Duke; gender parity is observed in the selection of the chairperson and vice-chairperson. They serve a five-year term, which may be extended once. The members of the Ombuds Committee are appointed on the basis of their expertise in the area of children's rights.

222. The members of the Ombuds Committee are completely neutral and independent in the discharge of their duties.

223. In the exercise of their duties and within the limits set by laws and regulations, Ombuds Committee members have free access to the facilities of all public and private organizations that offer residential or non-residential care for children, or that examine, assist, guide, train or work with them. They are entitled to request any information or document, except for those subject to medical confidentiality or any other form of professional confidentiality. However, they may not intervene in judicial proceedings.

### **3. Centre for Equal Treatment**

224. The Centre for Equal Treatment was set up under the Act of 28 November 2006. It operates independently with the aim of promoting, analysing and monitoring equal treatment for all persons without discrimination on grounds of race, ethnic origin, sex, religion or opinion, disability or age.

225. In fulfilling its mandate, the Centre may:

- Publish reports, issue opinions and recommendations and undertake studies on all matters related to discrimination;
- Collect and provide any information and documentation that serves the purpose of its mandate;
- Provide assistance to persons who consider themselves to be victims of discrimination by providing them with advice and guidance designed to inform them about their individual rights, legislation, jurisprudence and available remedies.

226. The Centre is composed of a collegiate body of five members, including the chairperson. The chairperson and members serve a five-year term. They are appointed by the Head of State at the recommendation of the Chamber of Deputies on the basis of their

expertise in the promotion of equal treatment. The Centre submits a comprehensive annual report on its activities to the Government and the Chamber of Deputies.

#### **4. Advisory Commission on Human Rights**

227. The Act of 21 November 2008 on the establishment of an Advisory Commission on Human Rights in the Grand Duchy of Luxembourg conferred legal status on the Commission, which has the same formal rank as the Office of the Ombudsman, the Ombuds Committee on the Rights of the Child and the Centre for Equal Treatment.

228. The duties of the Advisory Commission on Human Rights are set out in a new law, under which:

- The Government must seek the opinion of the Advisory Commission on all human rights projects;
- The Advisory Commission may, on its own initiative, examine any issues it deems appropriate;
- The Government must transmit the opinions of the Advisory Commission on draft legislation to the Chamber of Deputies and the Council of State; this gives the opinions the status of a parliamentary document. In its deliberations, the parliamentary committee examining a bill takes into account the proposals made by the Advisory Commission with regard to the bill.

### **F. Further information**

#### **1. Integration of foreign citizens in Luxembourg**

229. The Reception and Integration Act of 16 December 2008 entrusted a public authority for the first time with the task of coordinating and implementing reception and integration policy. The Act defines integration as “a two-way process whereby a foreigner shows their desire to participate sustainably in the life of the host society, which shall adopt in their respect every social, economic, political and cultural measure to encourage and facilitate such a step” (art. 2). To this end, the Act of 16 December 2008 established two tools: the reception and integration contract; and the national plan of action to achieve integration and combat discrimination.

230. The reception and integration contract covers a period of two years and sets out mutual commitments by the State and the foreign citizen with a view to arranging and facilitating the latter’s integration. The State provides language training, training in citizenship and a day of guidance during which applicants who have signed the contract are given practical information on life in Luxembourg society.

231. The national multi-year plan of action is the tool for strategic and operational coordination of cross-cutting integration policies. It pools the resources of 14 ministries and government departments in an effort to encourage harmonization between ministries of the activities that they undertake, for which they provide financial support and for which they take responsibility, with a view to integrating foreigners in Luxembourg and combating discrimination. It is a five-year plan based on the 11 guiding principles of European integration policy. The plan of action is monitored and evaluated by the Economic and Social Council. This will determine whether the activities undertaken are in line with the desired objectives and will identify the difficulties encountered and adjustments required. The evaluation will also provide the basis for recommendations on the follow-up to the plan of action. In order to promote dialogue with civil society, a public consultation is held annually to help define priorities.



232. The Act of 16 December 2008 also instituted mandatory advisory commissions on integration (with overall responsibility for ensuring the harmonious coexistence of all residents and, in particular, protecting the interests of foreign residents) in all communes. The related Grand-Ducal regulation of 15 November 2011 sets out their organization and functions. It provides that in communes where more than half the residents are foreign nationals, the communal council may decide that the number of Luxembourg and foreign members will be in proportion to the number of Luxembourg and foreign residents.

## 2. Nationalities of persons living in Luxembourg

**Table 1**

<i>Country of citizenship</i>	<i>Number of persons</i>	<i>Percentage of the total population</i>
<b>Total</b>	<b>512 353</b>	
Luxembourg	291 831	56.96%
Other member States of the European Union	191 685	37.41%
Portugal	82 363	16.08%
France	31 456	6.14%
Italy	18 059	3.52%
Belgium	16 926	3.30%
Germany	12 049	2.35%
United Kingdom	5 471	1.07%
Netherlands	3 891	0.76%
Spain	3 657	0.71%
Poland	2 709	0.53%
Other European countries	14 058	2.74%
Montenegro	3 814	0.74%
African countries	5 565	1.09%
Cape Verde	2 472	0.48%
Caribbean and South and Central American countries	2 146	0.42%
Brazil	1 203	0.23%
North American countries	1 671	0.33%
United States of America	1 295	0.25%
Asian countries	4 963	0.97%
China	1 610	0.31%
Pacific countries	187	0.04%
Stateless	197	0.04%
Not specified	50	0.01%

*Source:* National Institute of Statistics and Economic Studies – Population Census 2011. Situation as at 1 February 2011.

### 3. Migration flows

233. Net migration to Luxembourg has continued to increase in recent years. The number of arrivals peaked in 2011, with 20,268 immigrants settling in the Grand Duchy. As the number of departures remained stagnant, net migration reached the unprecedented level of +11,004.

234. The proportion of foreigners and foreign-born residents in the total population has reached new heights: as at 1 January 2011, foreigners represented 43 per cent and foreign-born residents 32 per cent of the population.

235. Overall, immigration (arrivals) has risen sharply since the early 2000s: the number of arrivals rose from 11,765 in 2000 to 20,268 in 2011.

236. A marked acceleration in immigration to Luxembourg has been observed, particularly since 2006. Nevertheless, there was a significant decline in 2009, at the height of the economic and financial crisis in Luxembourg, with the number of arrivals dropping from 17,758 in 2008 to 15,751 in 2009.

237. Since 2010, and particularly since 2011, immigration has risen again. The number of arrivals increased from 15,751 in 2009 to 16,962 in 2010 (+1,211), and to 20,268 in 2011 (+3,306).

238. With respect to departures (emigration), from 2003 to 2008 an upward trend was also observed, although the increase was considerably less marked than the increase in arrivals. There were 7,746 departures in 2003, and the number rose to 10,674 in 2007.

239. From 2007 to 2009, the number of departures fell (to 9,168 in 2009) and has since been static. The 9,264 departures recorded in 2011 were below the level for 2002, when 9,452 were recorded.

240. The large increase in the number of arrivals (except in 2009), combined with the slower rate of increase, subsequent fall and levelling off in the number of departures, resulted in a significant increase in net migration, from +3,431 in 2000 to +7,700 in 2008.

241. The fall in the number of arrivals in 2009, the year of the crisis, led to a parallel decline in net migration (+6,583 in 2009). Since then, the exceptional increase in arrivals and the steady level of departures explain why net migration to Luxembourg has reached unprecedented levels (+11,004 in 2011).

### 4. Asylum seekers and international protection

242. The Act of 5 May 2006 on the right of asylum and complementary forms of protection, as subsequently amended, has radically changed the way the right to asylum is applied in Luxembourg by, among other things, introducing the new status of “subsidiary protection”, taking into account the threat of persecution by non-State actors and allowing, on certain conditions, applicants for international protection to work.

243. The Act of 5 May 2006 also provides for the introduction of a list of safe countries of origin. The list was set out in Grand Ducal Regulation of 21 December 2007 and was amended for the first time by Grand Ducal Regulation of 1 April 2011 with the addition of Serbia.

244. Since 2011 a dramatic increase in the number of applicants for international protection has been observed as compared with previous years. The number of applications in 2011 was three times the number for 2010 and four times that for 2009.

245. In 2011, applicants from Serbia were the most numerous (43.76 per cent), followed by applicants from the former Yugoslav Republic of Macedonia (20.61 per cent), Kosovo

(7.02 per cent) and Montenegro (4.76 per cent). Nationals from countries in the Western Balkans represented 78 per cent of total applications.

Table 2

**Applications for international protection, 1 January–31 October 2012<sup>2</sup>**

	<i>Number of applicants</i>	<i>Main countries or territories of origin</i>
2008	463	1. Kosovo (201) 2. Bosnia and Herzegovina (31) 3. Iraq (29) 4. Islamic Republic of Iran (18) 5. Serbia (18)
2009	505	1. Kosovo (132) 2. Iraq (65) 3. Bosnia and Herzegovina (35) 4. Russian Federation (27) 5. Albania (26)
2010	791	1. Kosovo (162) 2. Serbia (148) 3. Iraq (95) 4. Algeria (44) 5. Islamic Republic of Iran (32)
2011	2 170	1. Serbia (947) 2. The former Yugoslav Republic of Macedonia (446) 3. Kosovo (152) 4. Montenegro (103) 5. Bosnia and Herzegovina (51)
2012	1 867	1. Serbia (353) 2. Albania (282) 3. Montenegro (275) 4. Bosnia and Herzegovina (239) 5. Kosovo (216)

246. With regard to decisions on international protection cases, there has been a clear downward trend in the number of decisions granting refugee status, along with an increase in the number of applicants. In 2011, only 41 applicants were recognized as refugees within the meaning of the Convention relating to the Status of Refugees, which represents a recognition rate of 3 per cent, whereas the recognition rate in 2009 was still 27 per cent. This decrease is attributable to the large number of applicants for international protection from Serbia and the former Yugoslav Republic of Macedonia invoking grounds such as economic, family or medical circumstances that do not justify international protection.

<sup>2</sup> Key statistics on asylum are available at: <http://www.mae.lu/Site-MAE/Bienvenue-au-Ministere-des-Affaires-etrangeres/Organisation/Direction-de-l-Immigration/Chiffres-cles-en-matiere-d-asile>.

**Table 3**

<i>Year</i>	<i>Refugee status granted</i>	<i>Subsidiary protection granted</i>	<i>Transfer decisions (Dublin)</i>	<i>Rejection decisions (normal procedure)</i>	<i>Rejection decisions (fast-track procedure)</i>	<i>Tolerance status granted</i>
2008	107	0	83	188	39	200
2009	141	11	122	169	16	30
2010	83	19	130	237	3	18
2011	41	6	219	494	207	15
2012 (to September)	42	5	158	684	755	n/a

n/a = not available

## VII. Information and publicity given to the covenants and reports

247. Article 112 of the Convention states that no statutory provision is binding unless it has been published in the form determined by law. This provision applies a fortiori to treaties which are promulgated by an enacting law. Laws are published in the *Mémorial* (Official Gazette). A law is binding four days after the date of its publication in the *Mémorial*, unless the law itself sets a different time-limit. Once the law has been published, all citizens are presumed to know about it, on the principle that “ignorance of the law is no excuse”.

248. The Government regularly informs the public of the submission of periodic reports, mainly through press releases issued to all the media.