

---

NGO Report on the implementation of the Optional Protocol to  
the Convention on the Rights of the Child on the sale of  
children, child prostitution, and child pornography in  
Luxembourg

---

Report prepared by ECPAT Luxembourg

Member of the National Coalition for the Rights of the Child

July 2015. Submitted to the United Nations Committee on the Rights of the Child the 10<sup>th</sup> August 2015.

## TABLE OF CONTENTS

---

---

Introduction .....	3
Substantive analysis.....	3
General measures of implementation .....	3
Prevention.....	7
Prohibition and related matters.....	9
Sale of children.....	9
Prostitution .....	11
Pornography .....	12
Other forms of sexual exploitation of children.....	14
Jurisdiction .....	15
Sanctions and liability .....	16
Protection of the rights and wellbeing of victims .....	18
International assistance and cooperation .....	23
Case studies .....	25
Conclusions and recommendations .....	28

## INTRODUCTION

---

1. The present NGO report follows the Luxembourg government's report on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (hereinafter the OPSC or the Protocol), which was submitted to the UN Committee on the Rights of the Child in May 2014.
2. This report was prepared by ECPAT Luxembourg. The content of the report is based on ECPAT Luxembourg's own work experience and legal analysis, as well as on information provided by a number of other civil society organisations and child protection services in the country. These organisations all provided information directly related to their practical experience in working for the protection of children from sexual abuse and exploitation.

The full list of the organisations that provided information can be found at the end of this report.

## SUBSTANTIVE ANALYSIS

---

### GENERAL MEASURES OF IMPLEMENTATION

---

#### Legal status of the OPSC in national law

3. The 1989 UN Convention on the Rights of the Child (CRC) was ratified by Luxembourg on 7 March 1994 following the adoption of the law of 20 December 1993, which formally approved the Convention and amended certain provisions of the Luxembourg Civil Code.
4. The OPSC was signed by Luxembourg on 8 September 2000 and ratified on 2 September 2011 following the adoption of the law of 16 July 2011, which formally approved the OPSC as well as the Council of Europe Convention on the protection of children from sexual abuse and sexual exploitation and which amended certain provisions of the Luxembourg Criminal Code and the Code of Criminal Procedure.
5. It is noteworthy that Luxembourg's parliament (*Chambre des Députés*) has recently voted in favour of the ratification of the third Optional Protocol to the CRC on a Communications Procedure.
6. For a detailed list of the general legal framework relative to the rights of the child please refer to the Initial Report of Luxembourg.

#### Reservations

7. Luxembourg has made reservations to Articles 2, 6, 7 and 15 of the CRC.<sup>1</sup> The reservations concern (i) a new spouse's consent for a child that is not his/hers to be raised in the conjugal home (ii) the legal status of children born to parents between whom marriage is prohibited (marriage between close relatives) (iii) sex information and voluntary pregnancy termination (iv) anonymous birth and (v) the capacity of children to exercise their right to association. Despite the recommendation of the CRC Committee to revoke such reservations, as well as an

---

<sup>1</sup> See [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&lang=en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en#EndDec)

oral statement by the Luxembourg delegation during the 64<sup>th</sup> Session (2013) that reservations were expected to be lifted,<sup>2</sup> the Initial Report of Luxembourg on the OPSC states that the government does not intend to lift the existing reservations.<sup>3</sup>

#### Coordination amongst governmental bodies and national strategies on the rights of the child

8. In 1996, at the First World Congress against the commercial sexual exploitation of children, the Luxembourg government adopted a National Action Plan (NAP) to combat the sexual exploitation of children.<sup>4</sup> The NAP contains provisions for a certain amount of preventive action, but it has now been out of date for several years. No information is available on the implementation of the NAP, and no evaluation of its impact has been carried out either by the Ministry of Family (previously responsible for matters related to the rights of the child) or by the Ministry of National Education, Childhood and Youth, the government body currently responsible for ensuring the implementation of children's rights.<sup>5</sup>
9. General coordination amongst governmental bodies relative to the rights of the child appears to exist, although in a partial manner. Indeed, six ministries participated in the preparation of the Initial Report of Luxembourg.<sup>6</sup> Moreover, with the law of 4 July 2008 relative to youth, Luxembourg established an interministerial committee responsible for developing youth policy through an interdisciplinary approach.<sup>7</sup>
10. The abovementioned law sets forth that a "National Plan of Action for Youth" shall be established by the Minister of National Education, Childhood and Youth, who shall also submit a report to parliament every five years on the situation of youth in Luxembourg.<sup>8</sup>
11. Despite the progress made in this area, it must still be noted that the National Plan of Action should include all children (which is not clear from the current reference to *youth*) and should be developed transversally across the government. More importantly, despite its inclusion in the law of 2008, no actual plan of action has yet been adopted by the government. In addition, an Integrated Child Protection System in Luxembourg is still lacking.<sup>9</sup>
12. The 2008 law on youth<sup>10</sup> created a National Children's Bureau (*Office National de l'Enfance, ONE*) under the Ministry of National Education, Childhood and Youth. ONE informs families and children in difficulty, through a single window approach, on available child protection measures and possible solutions. While the assistance proposed (e.g. psychological support, residential care) is financed by ONE, a financial contribution can also be requested from the parents.
13. The Ministry of National Education, Childhood and Youth thus remains the main body responsible for ensuring children's rights are respected in the country. However, child

---

<sup>2</sup> Child Rights Connect, *State Party examination of Luxembourg's 3rd and 4th Periodic Report*, 64th Session of the

<sup>3</sup> Initial Report of Luxembourg, paragraph 5.

<sup>4</sup> Committee on the Rights of the Child, Consideration of reports submitted by State Parties under Article 44 of the Convention – Concluding observations: Luxembourg, 31<sup>st</sup> May 2005.

<http://www.unhcr.org/refworld/publisher.CRC.CONCOBSERVATIONS.LUX.43f305330,0.html>

<sup>5</sup> ECPAT Luxembourg, Government Progress Report by country: Luxembourg, 2010.

<sup>6</sup> Initial Report of Luxembourg, paragraph 1.

<sup>7</sup> Mémorial, Journal Officiel du Grand-Duché de Luxembourg, Recueil de Législation, A – No 109, 25 juillet 2008, Loi du 4 juillet 2008 sur la jeunesse, article 5.

<sup>8</sup> Ibid., article 15.

<sup>9</sup> European Union Agency for Fundamental Rights (FRA), *Mapping Child Protection Systems in the EU*, 2015: Luxembourg.

<sup>10</sup> Mémorial, Journal Officiel du Grand-Duché de Luxembourg, Recueil de Législation, A – No 109, 25 juillet 2008, Loi du 4 juillet 2008 sur la jeunesse

protection in Luxembourg would benefit from a more integral approach and more concerted efforts to involve and engage other Ministries as well as civil society actors.

14. It is noteworthy that the drafting of a bill that would amend the current law on child protection (*loi relative à la protection de la jeunesse*) from 1992, and which is supposed to improve the protection of children in a considerable manner and in a number of aspects, has been ongoing for years and has been suspended on several occasions (e.g. last suspension between 2011 and 2014). No recent official information on the progress of the bill is available.<sup>11</sup>

#### Role of independent national human rights institutions in monitoring the OPSC

15. Luxembourg's National Human Rights Commission (*Commission consultative des Droits de l'Homme du Grand-Duché de Luxembourg*) has been designated the role of National Rapporteur for human trafficking, including child sex trafficking.<sup>12</sup>
16. The Ombudsperson for the Rights of the Child (Ombuds-Comité fir d'Rechter vum Kand, ORK) is responsible for ensuring the implementation of the UN Convention concerning the Rights of the Child, including its Optional Protocols.<sup>13</sup> While it is the role of the Ombudsperson for the Rights of the Child to monitor the national child protection system, the mandate of the Ombudsperson's office continues to be vague and its independence questionable. Indeed, the Ombudsperson's office is still attached to the Ministry of National Education, Childhood and Youth, and its budget depends on the budget allocation made within the Ministry (and thus varies according to political will).<sup>14</sup> The current budget is limited and the Ombudsperson has only one jurist and a secretary, both working part time, to assist him in fulfilling his tasks. The capacity of the Ombudsperson to fulfil his mandate satisfactorily is thus limited. An ongoing drafting process of a bill that would amend Luxembourg's law on child protection<sup>15</sup> contains a proposal to reorganise the office and place it under the parliament, but there are currently no guarantees that the bill will pass. In addition, the procedure to appoint the Ombudsperson lacks transparency and is not based on any official criteria.

#### Dissemination of the OPSC

17. Little information was found on initiatives to disseminate information on the CRC and the OPSC. There are sporadic initiatives to provide information on these instruments by the Ombudsperson's office and by schools, but no concerted efforts have been made.

#### Training of relevant professional groups

18. Luxembourg requires accreditation in social work in order to work in the child protection system, and also has a vetting procedure. Nevertheless, it does not require specific training, nor does it foresee a procedure to assess or evaluate child protection professionals.<sup>16</sup> It

---

<sup>11</sup> For information regarding the bill, see:

<http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public/Recherche/AucunResultat&id=5351>

<sup>12</sup> Mémorial, Journal Officiel du Grand-Duché de Luxembourg, Recueil de Législation, A – No 63, 14 avril 2014, Loi du 9 avril 2014 renforçant le droit des victimes de la traite des êtres humains, article 1<sup>er</sup>.

<sup>13</sup> Mémorial, Journal Officiel du Grand-Duché de Luxembourg, Recueil de Législation, A – No 129, 9 juin 2009, Loi du 8 mai 2009 sur l'assistance, la protection et la sécurité des victimes de la traite des êtres humains.

<sup>14</sup> This has previously been the object of criticism by the CRC Committee.

<sup>15</sup> Mémorial, Journal Officiel du Grand-Duché de Luxembourg, Recueil de Législation, A – No 70, 25 septembre 1992, Loi du 10 août 1992 relative à la protection de la jeunesse.

<sup>16</sup> European Union Agency for Fundamental Rights (FRA), *Mapping Child Protection Systems in the EU*, 2015: Luxembourg.

became clear from interviews with child protection professionals in Luxembourg that the level of training is generally felt to be insufficient with respect to the topics addressed by the OPSC. There is a need for at least a general knowledge of human rights and children's rights among a broader range of professionals, including social workers and law enforcement, but also administrative workers who receive and assess the case files of children that may be victims of sale, trafficking and/or exploitation in order to provide them with official documents. Furthermore, there is a need for specialised training for those likely to take responsibility or provide care for victims of sale and exploitation, in order to ensure the right approach and treatment of these victims.

19. It was observed that even when opportunities for training on how to handle cases of trafficking and exploitation exist they are not always considered to be a priority as the number of such cases remains low in Luxembourg. The training is therefore sometimes seen as superfluous or as something that takes time away from other, more pressing concerns.
20. With regard to children who are victims of trafficking and who may be particularly vulnerable to sexual exploitation such as prostitution, the abovementioned National Rapporteur for human trafficking has noted that there is an enormous need for complementary training for all professionals likely to come into contact with victims of trafficking. Certain professionals do not know how to detect a victim of trafficking and/or do not know whom to contact in a situation where a person is suspected to be a victim of trafficking.

#### Reporting obligations

21. Child protection professionals are under a general obligation to report cases of child abuse and mistreatment in accordance with the law relating to “non assistance of a person in danger (*“non-assistance à personne en danger”*)”.<sup>17</sup> However, this law is limited in its scope and can be interpreted narrowly as to include only such cases where there is an imminent danger to the child. Furthermore, there is no legal obligation for civilians in general to report cases of child abuse / neglect / exploitation.<sup>18</sup>
22. ECPAT Luxembourg, in collaboration with the Public Prosecutor's Office and the Criminal Investigation Police (*Police judiciaire*), has created a website enabling the general public to report cases of child sexual exploitation to the police through completing an online form: [www.childprotection.lu](http://www.childprotection.lu). ECPAT Luxembourg has also run an awareness-raising campaign promoting the website and encouraging the general public to report suspected cases of child sexual exploitation to the police. Due to the legal system in Luxembourg and the reluctance of the judicial system to create a situation where the online reporting mechanism could be used to make slanderous or false accusations, it is not possible to report anonymously. Since there is no legal obligation to report, the lack of an anonymous reporting mechanism may represent an inhibiting factor.

#### Data collection and monitoring

23. As already noted in the Complementary Report to the 3<sup>rd</sup> and 4<sup>th</sup> national report (2001-2009) on the rights of the child,<sup>19</sup> an increasing number of accounts of child sexual exploitation in Luxembourg are emerging. However, this information is often anecdotal and there is no

---

<sup>17</sup> Grand-Duché de Luxembourg, Code Pénal, article 410-1.

<sup>18</sup> European Union Agency for Fundamental Rights (FRA), *Mapping Child Protection Systems in the EU*, 2015: Luxembourg.

<sup>19</sup> Rapport Supplémentaire au 3e et 4e rapport national (2001-2009) sur les droits de l'enfant à Luxembourg, Rédigé par le Groupe RADELUX, 2011, p.37.

accurate or scientific data. The lack of adequate data collection mechanisms constitutes a serious obstacle to child protection and to the prevention of child sexual exploitation. Without this fundamental data it is not only impossible to estimate the scale of the problem, but it is also difficult to engage in a serious and in-depth debate as well as to draw public interest to the issue of child sexual exploitation. This has resulted in inadequate resources for research and project work on the issue.

24. The lack of data also makes it impossible to assess the impact of prevention and protection efforts and has made it easier for the government to ignore the need for national strategies and plans of action, both on children's rights in general and on sexual exploitation in particular.
25. With regard to children who are victims of trafficking and who may be particularly vulnerable to sexual exploitation such as prostitution, the abovementioned National Rapporteur for human trafficking notes that the collection of statistical data seems to represent a general problem in the country, and that existing data is not systematically centralised by the Ministry of Justice as planned. Data requested by the European Coordinator on human trafficking is incomplete or inexistent and the data that the Ministry of Justice has collected is not consistent with the numbers provided by the police or by the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA). As a consequence, the National Rapporteur does not consider it possible to provide an overview of the situation in Luxembourg.
26. The need for a serious and systematic data collection system was widely recognised by all child protection professionals that ECPAT Luxembourg met with during the preparation of the present report and a unanimous recommendation to the CRC Committee to grant priority to this matter was made.

## PREVENTION

---

### Awareness raising, education, and training for the general public, including children

27. A number of organisations in Luxembourg work on the prevention of sexual exploitation of children, in particular on issues related to child pornography and new technologies (e.g. grooming, sexting). Their activities are described in the following paragraphs.
28. ECPAT Luxembourg organises occasional workshops with adolescents to raise awareness and discuss the risks of all forms of child sexual exploitation. However, this activity is not systematic.
29. The Kanner-jugendtelefon (KJT) operates the national helpline for children 116 111 and offers online counselling via its website [www.kjt.lu](http://www.kjt.lu) for children and adolescents. The KJT also operates the Elterentelefon 26 64 05 55 (Ecoute parents), the national helpline for parents.
30. The Online Help supporting parents and the Online Help supporting children and youth are new services that were launched in 2015. They offer online counselling specially addressing English speaking parents and children/youth living in Luxembourg.
31. BEE SECURE conducts regular training in schools on Internet safety, including the risks of grooming, sexting, and online sexual exploitation. BEE SECURE training is mandatory for all 7th grade classes in secondary schools, making Luxembourg the only country in Europe which has established mandatory training on safer Internet use within the education system. Training sessions are also offered for other secondary and primary school classes as well as

for teachers and parents. BEE SECURE also receives requests from youth clubs, seniors' clubs or local initiatives. The financing for the training is provided by the Ministry of Education, Children and Youth. All BEE SECURE trainers work under a label, which guarantees a minimum level of competence, and defines standards and approaches. The label was developed in 2012 and helps to ensure and to monitor the quality and quantity of training.

32. From January to October 2014 BEE SECURE carried out 627 training sessions in total (249 in primary schools and 371 in secondary schools), including the totality of 7th graders in Luxembourg. It also carried out 36 information evenings for parents, 12 training-for-trainers, 23 training sessions in youth clubs, and 17 sessions for senior citizens and others.
33. The content of BEE SECURE's training includes technical aspects of Internet security and protection (passwords etc.) as well as behavioural aspects of Internet safety, such as potential harmful content, risks of posting content online, sexting, contact with strangers, grooming, privacy settings, spam, cyberbullying and excessive use of new technologies.
34. The BEE SECURE Helpline, operated by Kanner-Jugendtelefon, is open during office hours and offers advice and counselling on Internet related questions such as parental control software, technical settings, online fraud, privacy settings in social networking sites, cyberbullying, sextortion etc.
35. The BEE SECURE Stopline, operated by Kanner-Jugendtelefon and member of the INHOPE (International Association of Internet Hotlines) network is the national hotline for reporting potential illegal content encountered online. It provides the general public with the opportunity to report content anonymously via its website [stopline.bee-secure.lu](http://stopline.bee-secure.lu). The BEE SECURE Stopline deals with child sexual abuse material, referred to as child pornography under article 384 of the Luxembourg Criminal Code.
36. In 2014, the BEE SECURE Stopline received a total of 1159 reports of potential child sexual abuse material. 683 reports were classified as illegal by the BEE SECURE Stopline operators (59%) and a total of 561 reports were forwarded to law enforcement authorities and/or a partner hotline from the INHOPE network (48%). 13% of the child sexual abuse material identified was hosted in Luxembourg. A good collaboration between hotline, law enforcement authorities and domestic Internet service providers results in very fast notice and takedown times of child sexual abuse material hosted in Luxembourg. In general, child sexual abuse material is removed in less than 48 hours.
37. 199 reports (29%) of the reports classified as child sexual abuse material by the BEE SECURE Stopline operators could be considered as self-generated content (sexting). There is no knowledge of the potential underlying reasons (blackmailing, grooming, proving a relationship, exploring sexuality etc).
38. Planning Familial is a non profit organisation promoting sexual and emotional health as a fundamental human right. The organisation provides regular training in sexual and emotional health for all 6<sup>th</sup> to 8<sup>th</sup> graders, but it is not obligatory and must be requested by each school. Moreover, training is provided to teachers and social workers, and issues related to sexual abuse are always raised during such training. Planning Familial also has a health centre in Luxembourg where people can receive free information, contraception and assistance in pregnancy questions. Special attention is granted to young persons.
39. ErwuesseBildung is a Christian non profit organisation that provides training for adults, including media training. The organisation also organises awareness raising sessions for parents, especially related to the risks that new information and communication technologies

can pose to children. ErwuesseBildung collaborates with Planning Familial, BEE SECURE and ECPAT Luxembourg on the topic of media and sexuality.

#### Support for vulnerable groups

40. Fondation Jugend an drogen hëllef provides support to people with a drug dependency as well as their families. They run a special programme that supports pregnant women and women with young children to take care of their children and safeguard the child's health and well-being.
41. Children who are seeking asylum, are unaccompanied, are refugees or do not have the legal documents required, are especially vulnerable to sexual exploitation.<sup>20</sup> The case of a young Ecuadorean referred to in the 2009 report of the Ombudsperson for the Rights of the Child (*Ombuds-Comité fir d'Rechter vum Kand*) presented to the Luxembourg government and parliament shows that it is not certain whether minors in such situations receive adequate protection.<sup>21</sup>

#### Sale of children

42. Little or no efforts are made in Luxembourg to prevent the sale of children, as this is not considered an issue of concern (indeed there have been no officially registered cases of the sale of children in the country).

### PROHIBITION AND RELATED MATTERS

---

43. A number of new laws have been adopted and the Luxembourg Criminal Code has been amended to ensure the criminalisation of all acts covered by the OPSC.

#### SALE OF CHILDREN

---

44. The Initial Report of Luxembourg, submitted to the CRC Committee in May 2014, indicated that the sale of children was not directly governed by the Luxembourg Criminal Code. While this information was correct until early 2014, it changed with the adoption of the law of 9 April 2014 relative to strengthening the rights of victims of human trafficking.<sup>22</sup> The said law amended the Criminal Code and the law of 8 May 2009 relative to the assistance, the protection and the security of victims of human trafficking, and introduced the following definition of 'sale of children':

*Constitue l'infraction de vente d'enfants tout acte ou toute transaction en vertu desquels un enfant est remis par toute personne ou tout groupe de personnes à une autre personne ou groupe des personnes contre rémunération ou tout autre avantage.*<sup>23</sup>

---

<sup>20</sup> Children's Rights Information Network, Child Rights references in universal periodic review, 2009. Available at: <http://www.crin.org/resources/infodetail.asp?ID=19641>

<sup>21</sup> Ombuds-Comité fir d'Rechter vum Kand, 2009 Report to the government and parliament.

<sup>22</sup> Mémorial, Journal Officiel du Grand-Duché de Luxembourg, Recueil de Législation, A – No 63, 14 avril 2014, Loi du 9 avril 2014 renforçant le droit des victimes de la traite des êtres humains.

<sup>23</sup> Idem, Article 2, portant modification à l'article 382-1(4).

This definition, which has been included in article 382-1(4) of the Luxembourg Criminal Code, provides the same definition for the sale of children as set forth in article 2(a) of the OPSC.

45. The provision on the sale of children does not provide specific details as to the purpose of such acts (e.g. sexual exploitation, forced labour, transfer of organs or adoption). Such details are, however, expressly covered by the Criminal Code under article 382-1(1) relative to trafficking of human beings (as amended by the abovementioned law of 9 April 2014), which covers trafficking for the purposes of: sexual exploitation, forced labour, coerced begging, transfer of organs, and coerced criminality.
46. The lack of a clear definition regarding the purpose of the sale of children, for instance for illegal adoption, represents a potential weakness in the existing legal framework, and does not appear to be in strict conformity with the requirements of article 3(1) OPSC.<sup>24</sup>

#### Data on the sale of children

47. Although there has been no official case of a child being sold in Luxembourg, unofficial information provided by national child protection professionals indicate that there may have been at least one such case.
48. A person of non-Luxembourgish nationality who was not a legal resident in the country came to inform the Office of the Ombudsperson that he was the father of a child living in Luxembourg. According to the man, the child had been procreated with his sperm via a surrogate mother. Due to the imprecise information provided by the man and the suspicion it raised, the Ombudsperson informed the Public Prosecutor's Office. No direct action was taken until weeks later when police intervened in a separate case of domestic violence in Luxembourg and discovered a 15-month-old baby with no official documents. The adult couple, both of non-Luxembourgish identity, claimed that they were adopting the baby and that the procedure was ongoing. Nevertheless, in accordance with national law, an adopted child can only reside with his/her adoptive parents once the adoption procedure is finalised. Despite this, it took the authorities several weeks before the child was taken from the couple and placed in a residential care facility. No further security measures, such as ensuring that the child's new address was protected, were initially taken.<sup>25</sup>
49. Another potential case was that of a girl from a non-EU country living in Luxembourg under a false name. It has not been established whether this case initially concerned the sale or trafficking of the child. The girl was living with a couple who were not her parents and was obliged to work in their restaurant. She was often missing from school and when she was present she was so tired that she would fall asleep. Her behaviour in school raised suspicion and she was placed in a residential care institution for girls. The situation was difficult because the girl claimed not to be a minor and wished to leave the residence where she had

---

<sup>24</sup> OPSC, Article 3(1): Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether these offences are committed domestically or transnationally or on an individual or organized basis:

(a) In the context of sale of children as defined in Article 2: (i) The offering, delivering or accepting, by whatever means, a child for the purpose of: a. Sexual exploitation of the child; b. Transfer of organs of the child for profit; c. Engagement of the child in forced labour; (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in Article 2;

(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in Article 2.

<sup>25</sup> Ombuds-Comité fir d'Rechter vum Kand, 2013 Report to the government and parliament, p.55.

been placed. It took a long time before the girl's identity and age could be established and she could be issued with new identity papers and finally move on with her life.

50. On a positive note, it should be noted that a presumed victim is entitled to treatment reserved for minors when there is doubt regarding his/her age. The person is, thus, entitled to protection rather than accused of living and working in the country illegally.

---

## PROSTITUTION

---

51. Although pimping is illegal in Luxembourg, prostitution is legal as long as no third party profits from the transaction. There is a general acceptance of prostitution in the country, and soliciting sex is allowed for adults in certain streets of the city during night time. A reform of the legal framework regarding prostitution is currently foreseen by the government.
52. Articles 379 et seq. of the Luxembourg Criminal Code refer to the exploitation of children under the age of 18 through prostitution and the procurement of children for prostitution.<sup>26</sup> The Criminal Code clearly sets forth that anyone who shall have encouraged, facilitated or favoured the debauchery, the corruption or the prostitution of a minor under the age of 18 ; anyone who shall have recruited, exploited, coerced, forced, threatened or had recourse to a minor under the age of 18 for the purposes of prostitution, or who shall have favoured or benefitted from such an action ; anyone who shall have been present at pornographic performances involving a minor under the age of 18 ; anyone who shall have threatened, coerced or forced a minor under the age of 18 to deliver him/herself to sexual activities with a third person, shall be punished by the law.
53. Nevertheless, no clear definition of the term « child prostitution », as can be found in the OPSC article 2b), is provided by the Luxembourg Criminal Code.
54. The sanctions for the abovementioned offences increase if the child is under 16 years of age or under 11 years of age.<sup>27</sup> Moreover, the sanctions can be doubled if the person committing the offence has abused his/her position of authority over the child (e.g. he/she is the child's parent or legal guardian).<sup>28</sup>

### Sexual exploitation of children in travel and tourism

55. The recourse by Luxembourgish nationals or residents to child prostitution abroad, also known as the sexual exploitation of children in travel and tourism, or “child sex tourism”, is covered by the Luxembourg law relative to extraterritorial jurisdiction, set forth in article 5-1 of the Code of Criminal Procedure.<sup>29</sup>
56. ECPAT Luxembourg is the Local Code Representative (LCR) for the Code of Conduct to protect children from sexual exploitation in travel and tourism,<sup>30</sup> a joint initiative between NGOs and the tourism industry which aims to raise awareness and provide tools and support to the tourism industry in order to prevent the sexual exploitation of children. In its capacity as LCR, ECPAT Luxembourg provides training on child protection to tourism professionals as well as advice on how to set in place a child protection policy within companies working in the travel and tourism sector.

---

<sup>26</sup> Grand-Duché de Luxembourg, Code Pénal, Titre VII, Chapitre IV, articles 379-381.

<sup>27</sup> Ibid., articles 379 and 379bis.

<sup>28</sup> Ibid., article 380.

<sup>29</sup> Grand-Duché de Luxembourg, Code d'Instruction Criminelle, article 5-1.

<sup>30</sup> See [www.thecode.org](http://www.thecode.org)

57. ECPAT Luxembourg has also, in partnership with the Public Prosecutor's Office and the criminal investigation police, set up an online reporting mechanism through the website [www.childprotection.lu](http://www.childprotection.lu), where anyone can report suspected cases of sexual exploitation of children in travel and tourism.

#### Data on child prostitution

58. It is impossible to provide any official or reliable data on the number of children involved in prostitution in Luxembourg. This is due to the lack of data collection mechanisms, but also to the apparent presumption by authorities that child prostitution does not exist in the country. Several child protection professionals in Luxembourg are not of the same opinion and suspect that at least sporadic or limited forms of child prostitution occur, although little precise information could be gathered.

59. During the interviews that ECPAT Luxembourg conducted with child protection professionals a few anecdotal stories of child prostitution were recounted. For instance, one case involved a teenage girl who was placed in a residential care facility in Luxembourg. The girl had fallen into bad company, was abusing drugs and had at one point been found to engage in prostitution. The girl was subsequently transferred to a child psychiatry unit and later to another residential care institution outside of the country. The case was never officially registered by Luxembourg authorities as a case of child prostitution.

60. Another case concerned two or three girls who had performed oral sex on some of the boys in the same school in return for money. The case came to the knowledge of the school medical service of the city of Luxembourg and was handled at that level.

#### Data on the sexual exploitation of children in travel and tourism

61. There has been one official case of sexual exploitation of children in travel and tourism committed by a Luxembourg national. It was the case of a man who sexually exploited children and photographed the abuse during his travels to South Asia. Upon his return to Luxembourg, he developed the pictures in a photo shop and a staff member reported him to the police. The man was convicted in 2007 to 7 years of prison, of which 5 years were suspended.

62. A recent survey conducted by the research institute ILRES for ECPAT Luxembourg showed that 5% of the respondents had seen or may have seen a case of "child sex tourism" while travelling.<sup>31</sup>

#### Other forms of child prostitution

63. Anecdotal information exists on teenage girls receiving concert tickets or prepaid mobile phone cards in exchange for nude photos or for posing nude in front of a webcam,<sup>32</sup> as well as teenage girls negotiating entrance to nightclubs in exchange for sexual relations with a member of staff/the management.<sup>33</sup>

---

## PORNOGRAPHY

---

<sup>31</sup> Survey conducted in June 2015, official results are forthcoming.

<sup>32</sup> Ombuds-Comité fir d'Rechter vum Kand, 2009 Report to the government and parliament.

<sup>33</sup> Rapport Supplémentaire au 3e et 4e rapport national (2001-2009) sur les droits de l'enfant à Luxembourg, Rédigé par le Groupe RADELUX, 2011, p.37.

64. Articles 383 et seq. of the Criminal Code criminalises the production, transportation, and dissemination by any means and in any format, as well as the commerce of pornographic messages harmful to human dignity when such messages are likely to be seen by a minor. When such messages represent a minor or a vulnerable person the sanctions are higher.<sup>34</sup>
65. The Criminal Code further criminalises saving, transmitting, offering, making available, importing or exporting such material for the purposes of dissemination.<sup>35</sup>
66. Furthermore, the Criminal Code criminalises the deliberate acquisition, detention or consultation of written texts, prints, images, photographs, films or other objects of a pornographic character that involve or depict children.<sup>36</sup>
67. The act of selling or distributing to children under the age of 16 “indecent objects” likely to trouble a child’s imagination is prohibited under the Criminal code.
68. Nevertheless, no clear definition is provided by the Criminal Code for “child pornography”, as can be found in article 2c) OPSC.

#### Other issues related to child pornography

69. The abovementioned lack of a clear definition of child pornography has opened a gap in the legal framework, by which highly sexualised pictures of children are sometimes considered perfectly legal and are hosted and freely accessible on Luxembourgish servers.<sup>37</sup>
70. In 2014, a parliamentary question was raised and sent to the Minister of Justice regarding this issue. The Minister replied that, in its case law, Luxembourgish courts refer either to the definition of child pornography in article 2c) OPSC or to the notion of “*représentations choquant la pudeur de par leur présentation et leur étalement notamment d’une relation sexuelle sinon de parties intimes d’une personne*”, and that the possible pornographic nature of the relevant pictures would have to be determined by judicial interpretation based on these concepts.<sup>38</sup>
71. In its 2013 Report to the government and parliament, the Ombudsperson for the Rights of the Child recommended that a solution to this situation be sought, and that such pictures be considered child sexual abuse material.<sup>39</sup>
72. In terms of regulations regarding dissemination and the obligations of internet service providers, credit card companies, financial institutions etc., Luxembourg’s national law complies with article 25 of the EU Directive 2011/93/EU regarding measures against websites containing or disseminating child pornography as it provides for the competent authorities to remove offending websites hosted on Luxembourg’s territory. The strong collaboration between BEE SECURE Stoptline, the Luxembourg Police, ISPs (Internet Service Providers) and the INHOPE network ensures, for the most part, swift takedown of sites hosting child sex abuse material.<sup>40</sup>

---

<sup>34</sup> Grand-Duché de Luxembourg, Code Pénal, articles 383 et 383bis.

<sup>35</sup> Ibid., article 383ter.

<sup>36</sup> Ibid., article 384.

<sup>37</sup> Ombuds-Comité fir d’Rechter vum Kand, 2013 Report to the government and parliament.

<sup>38</sup> Ministère de la Justice, Réponse à la question parlementaire n° 654 du 27 octobre 2014 de Madame la Députée Françoise Hetto-Gaasch.

<sup>39</sup> Ombuds-Comité fir d’Rechter vum Kand, 2013 Report to the government and parliament, p.6.

<sup>40</sup> ELSA (European Law Students Association) report on the transposition of the EU Directive 2011/93/EU into Luxembourg’s national legislation.

73. The abovementioned Directive also provides for additional blocking measures, but these are optional and Luxembourg does not currently foresee such measures. However, blocking would allow the Luxembourg government to block access to images in cases where international cooperation through the take down service does not succeed. This would prevent “users” on Luxembourg’s territory from accessing images hosted in other countries where takedown has not been possible.
74. Recent statistics on the use of pornographic websites show that “teen” was the most frequently used search term in Luxembourg.<sup>41</sup>

---

## OTHER FORMS OF SEXUAL EXPLOITATION OF CHILDREN

---

### Grooming

75. Article 385-2 of Luxembourg’s Penal Code criminalises sexual propositions made to children using information and communication technology (ICT), often known as “grooming”. However, no provision in Luxembourgish legislation currently exists to criminalise “off-line” grooming.<sup>42</sup>
76. It is noteworthy that article 385-2 of the Criminal Code does not require “material acts leading to a meeting” to have taken place in order for the sexual propositions to be deemed criminal. However, article 385-2 requires the propositions to be of a sexual nature in order for the contact with the child to be incriminating and does not include contact of a non-sexual nature which may, nevertheless, be motivated by an intention to exploit the child sexually. For example, discussions of an “innocent” nature in chat rooms or online games could be used to groom a child and lead to the child being exploited, whether “online” or “offline”. Furthermore, the possibility of the child sending sexually compromising photos of him/herself (without being pressed by the perpetrator, for example) is not necessarily explicit in the term “sexual proposition”.<sup>43</sup>
77. Another potential limit to child protection concerns the legal definition of grooming which limits the offence to an act committed against children under the age of sexual consent (16 years). This means that children between 16 and 17, who can consent to a sexual relationship but not to their own exploitation, may fall victim to grooming without there being an adequate system in place to protect them.

### Sexual exploitation between minors

78. There is an increasing concern in Luxembourg with regard to sexual exploitation occurring between minors. As already mentioned with regard to data collection, there is no official data regarding such cases and information is often anecdotal. These accounts include, for instance, situations of sexual violence between young people filmed by mobile phone and then posted on the Internet,<sup>44</sup> children accessing child pornography online and children expressing sexually aggressive behaviour among their peers.
79. Very little attention appears to have been paid to this phenomenon previously, and there is a fear among child protection professionals that children with sexually aggressive behaviour are

---

<sup>41</sup> <http://www.pornhub.com/insights/pornhub-luxembourg/>

<sup>42</sup> ELSA (European Law Students Association) report on the transposition of the EU Directive 2011/93/EU into Luxembourg’s national legislation.

<sup>43</sup> Ibid.

<sup>44</sup> Ombuds-Comité fir d’Rechter vum Kand, 2009 Report to the government and parliament.

not treated in line with their own – and other children’s – best interest. There is a lack of expertise and of specialised care institutions to support such children. Often, when a child in residential care has aggressed another child sexually, he/she is either left in the same facility as the victim of the aggression, or transferred to a penitentiary residence. No means to provide group therapy or to place such children in specialised care institutions currently exist.<sup>45</sup>

80. Several cases have occurred where children have been found to access child pornographic material, sometimes of a violent nature (e.g. very young children depicted). There is very little expertise in the country on how to handle this type of situation.

---

## JURISDICTION

---

### Extraterritorial jurisdiction

81. As mentioned in paragraph 52 above, Luxembourg nationals or residents, as well as foreigners in Luxembourg, who have committed offences of a sexual nature abroad can, in accordance with article 5-1 of the Code of Criminal Procedure, be prosecuted in Luxembourg. Offences related to trafficking and sale of children are also covered by the scope of this article.<sup>46</sup>
82. Nevertheless, it must be noted that article 385-2 of the Criminal Code (relative to grooming) is not covered by article 5-1, and thus falls outside the scope of extraterritorial jurisdiction. Although grooming is not covered by the OPSC, it constitutes a sexual offence against children under the age of 16 in Luxembourg and, as such, it should arguably also be included in the scope of article 5-1.
83. Moreover, article 7-3 of the Code of Criminal Procedure, which sets forth that any foreigner who commits an offence against a Luxembourg national or resident abroad can be prosecuted in Luxembourg is of a limited scope and covers only the offences foreseen by articles 260-1 – 260-4 of the Criminal Code (relative to torture), thus leaving uncovered offences of a sexual nature. Although article 4.2.b) OPSC leaves the state parties the choice in this matter, it would be beneficial to the protection of children to broaden the scope of article 7-3 to include Articles 372, 375, 377, 383bis, 383ter, 384 and 385-256.<sup>47</sup>

### Child-friendly justice procedures

84. All children in contact with the justice system can have their hearings audio/video recorded. Children (or, if considered too young, their legal representative) must consent to this procedure unless they are victims of certain offences, including sexual offences, when this procedure becomes obligatory. The recorded hearing is recognised as an element of evidence during the criminal procedure.<sup>48</sup> All children have the right to choose a person who may accompany them to the hearing, but the accompanying person may not be present during the hearing.
85. Although no provision in Luxembourg legislation establishes the obligation to operate hearings with children separately and in premises designed or adapted for this purpose, in

---

<sup>45</sup> Information retrieved from interviews with child protection professionals conducted by ECPAT Luxembourg.

<sup>46</sup> Grand-Duché de Luxembourg, Code d’Instruction Criminelle, article 5-1. The article covers the relevant offences foreseen by articles 368-384 of the Criminal Code.

<sup>47</sup> This is also the view of the European Law Students Association: ELSA report on the transposition of the EU Directive 2011/93/EU into Luxembourg’s national legislation.

<sup>48</sup> Grand-Duché de Luxembourg, Code d’Instruction Criminelle, article 48-1.

practice, the youth protection unit within the criminal investigation police has a specific room adapted for interviews with children.<sup>49</sup>

86. Nevertheless, the resources available to the child protection unit are very limited and currently only one “child-friendly” interview room exists in the whole country. In practice, this means that the police must often drive long distances to fetch and return children from and to their domicile. This is both a waste of time for the police officers who are already under pressure and represents a potential risk of traumatising or re-victimising the child.
87. The child protection unit does not have its own budget for training but must rely on the general budget of the criminal investigation police for such purposes. Currently, 5 of the 8 police officers working in the unit have had some form of training in child-friendly interview techniques. Often, such training takes place only after the officer has taken up service within the unit and is thus not ensured prior to the first interview carried out by the officer with a child.
88. The law of 8 May 2009 (modified by the law of the 9 April 2014) regarding the assistance, protection and security of trafficking victims sets forth concrete measures of assistance and protection of victims.<sup>50</sup> However, the law applies only to victims of human trafficking (articles 382-1 and 382-2 of the Criminal Code). As such, there is no guarantee that these measures of assistance and protection would be afforded to children who are victims of prostitution or pornography.

#### Double criminality

89. This is not an issue in Luxembourg.

---

#### SANCTIONS AND LIABILITY

---

90. The sentences for the offences relevant to the OPSC have been increased following legislative amendments between 2011 and 2013<sup>51</sup> and the Criminal Code also foresees sanctions for the attempt to commit such offences. Sentences are more severe for offences committed against children under the age of 16 and more so when they are committed against children under the age of 11.
91. Sentences may be doubled in the case of aggravating circumstances, including the abuse of a position of authority.
92. In accordance with article 7 of the OPSC, the Luxembourg Criminal Code foresees the possibility to take measures aimed at closing, on a temporary basis, premises used to commit such offences.
93. Importantly, since 2013, some of the offences relevant to the OPSC, such as the sale of children and the prostitution of children, may lead to prohibiting the perpetrator from working

---

<sup>49</sup> Information retrieved during visit to, and interview with, the Criminal Investigation Police.

<sup>50</sup> Mémorial, Journal Officiel du Grand-Duché de Luxembourg, Recueil de Législation, A – No 129, 9 juin 2009, Loi du 8 mai 2009 sur l’assistance, la protection et la sécurité des victimes de la traite des êtres humains et modifiant le Nouveau Code de procédure civile.

<sup>51</sup> Mémorial, Journal Officiel du Grand-Duché de Luxembourg, Recueil de Législation, A – No 152, 25 juillet 2011, Loi sur la protection des enfants contre l’exploitation et les abus sexuels ; Mémorial, Journal Officiel du Grand-Duché de Luxembourg, Recueil de Législation, A – No 35, 1 mars 2013, Loi du 21 février relative à la lutte contre les abus sexuels et l’exploitation sexuelle des enfants.

in any capacity (including as a volunteer) that implies regular contact with children for up to 10 years or, in exceptional cases, for life.

#### Information regarding elements that may impede investigation of crimes or weaken the enforcement of legislation

94. In general, there appears to be a strong social condemnation of child sexual abuse in the country. Nevertheless, there is little debate with regard to sexual exploitation and the general approach is often to presume that it does not happen in Luxembourg.
95. The same is true regarding the sale of children and trafficking of children. Despite the fact that there are associations working with cases of child trafficking, there is little knowledge about this phenomenon in Luxembourg and of the risks that exist for children who are victims of such practices.
96. With regard to the sexual exploitation of children in travel and tourism, there have been no reports of such cases so far to the online reporting mechanism that was launched by ECPAT Luxembourg and the police in May 2014. This is true despite a national campaign promoting its existence and the fact that 5% of people questioned in a recent survey conducted by the research institute ILRES for ECPAT Luxembourg responded that they had seen or may have seen a case of “child sex tourism” while travelling.<sup>52</sup> There appears to be a general reluctance to “meddle in other people’s business” and this feeling prevails over the belief that children have the right to protection, whether they are in or outside Luxembourg.
97. With regard to child pornography, the survey mentioned in paragraph 72 showed that the most frequent search category on pornographic websites in Luxembourg was the term “teen”.
98. The abovementioned point, in relation with the weak definition of pornography mentioned in paragraph 64 et seq., is a source of concern for child protection agencies in Luxembourg. The Ombudsperson’s Office, BEE SECURE and ECPAT Luxembourg have tried to push for a debate on the issue, and the 2014 parliamentary question to the Minister of Justice showed a (partial) political interest in the matter. However, the reply by the Ministry made it clear that no legislative amendments will be proposed and that it is a matter for judicial interpretation.

#### Statute of limitations

99. Luxembourg amended its laws relative to the statute of limitations in 2009. The current statute of limitations is 10 years for crimes and 5 years for offences. With regard to children who are victims of the offences set forth by articles 372-377 (indecent acts and rape against children) and by articles 379 and 379bis (child prostitution and child pornography), the prescription time starts to count only when the victim reaches the age of 18.<sup>53</sup>
100. In 2014, a member of Luxembourg parliament raised a question to the Minister of Justice regarding the statute of limitations for offences involving sexual violence against children. It was pointed out that France and Switzerland have longer periods or no prescription at all for such offences and it was asked whether, considering the gravity of such acts and the difficulty for the victims to disclose information, Luxembourg should not consider extending the statute of limitations further.<sup>54</sup> The response from the Minister of Justice was that the 2009

---

<sup>52</sup> Survey conducted in June 2015, official results are forthcoming.

<sup>53</sup> Grand-Duché de Luxembourg, Ministère de la Justice, Note d’information à l’attention des personnes victimes d’une infraction, 2010.

<sup>54</sup> Question Parlementaire No 598 du 7 octobre 2014 de Madame la Députée Nancy Arendt, et la réponse du Ministre du 30 octobre 2014.

amendment of the law on this matter was the result of an in depth discussion by the legal commission of parliament, and that it provides victims with ample possibilities to defend themselves. In the view of the Minister of Justice, a new reform of this law could be considered only if the current law proves insufficient in practice.<sup>55</sup>

#### Liability of legal persons

101. As mentioned in paragraph 72 above, existing regulations regarding dissemination and the obligations of Internet service providers (ISPs), credit card companies, financial institutions etc. comply with article 25 of the EU Directive 2011/93/EU regarding measures against websites containing or disseminating child pornography, as it provides for the competent authorities to remove offending websites hosted on Luxembourg's territory.<sup>56</sup> ISPs are obliged to report and remove any child pornographic content of which they have knowledge from their servers. While ISPs in Luxembourg are under no general obligation to control the content hosted on its servers,<sup>57</sup> the law obliges them to carry out "specific controls" to detect potential violations of article 383 of the Criminal Code, which refers to child pornographic content.<sup>58</sup> Nevertheless, the exact meaning of "specific controls" can be questioned, and it appears to be a general perception that this obligation is limited to situations in which there is already a suspicion or knowledge of illegal content.
102. The 2010 law on the responsibility of legal persons introduces a new chapter in the Criminal Code related to sanctions for legal persons, and establishes that the sanctions incurred by legal persons can be increased five-fold when criminal responsibility of a legal person is engaged on the basis of trafficking of human beings or procurement.<sup>59</sup>
103. There seems to be no ongoing political debate in Luxembourg regarding the potential need to reinforce the law and impose a more proactive role on legal persons to detect and report child pornographic material, or to increase their liability in cases where they do not do so. With regard to financial institutions, no specific information could be found during the preparation of the present report.

### PROTECTION OF THE RIGHTS AND WELLBEING OF VICTIMS

---

104. The best interest of the child is enshrined in Luxembourg's legal framework.<sup>60</sup> Nevertheless, certain practices in Luxembourg are in contradiction with the best interest of the child. These practices arise due to various reasons depending on the circumstance: custom, a lack of resources and sometimes a poor interpretation or understanding of the child's best interest.

#### Deprivation of liberty and alternative care

---

<sup>55</sup> Ibid.

<sup>56</sup> ELSA (European Law Students Association) report on the transposition of the EU Directive 2011/93/EU into Luxembourg's national legislation.

<sup>57</sup> Mémorial, Journal Officiel du Grand-Duché de Luxembourg, Recueil de Législation, A – No 96, 8 septembre 2000, Loi du 14 août 2000 relative au commerce électronique, article 62.

<sup>58</sup> Ibid., article 63.

<sup>59</sup> Mémorial, Journal Officiel du Grand-Duché de Luxembourg, Recueil de Législation, A – No 36, 11 mars 2010, Loi du 3 mars 2010 sur la responsabilité des personnes morales, article 37.

<sup>60</sup> This principle is included in several laws on child protection. For details, see the government initial report, paragraph 27.

105. In this regard, an issue of major concern to child protection services is the limited number of places in alternative care for children who are removed from their families (voluntarily or by the judge's order). Several different child protection services testified to the difficulty of finding adequate placements for children who are victims of abuse and how this sometimes results in the child being moved around between different temporary solutions or the child even being sent to penitentiary institutions for limited periods of time.
106. Luxembourg has an insufficient number of family-based alternative care solutions (i.e. foster families). Children who are victims or witnesses of violence or sexual offences are usually placed in residential care facilities. Such residences are sometimes, but not always, reserved exclusively for girls or for boys.
107. Significant concern was manifested by a number of child protection professionals that children are often placed too easily without a thorough examination of the situation or an attempt to seek alternative solutions (e.g. family support), thus increasing the risk that children are placed for the wrong reasons and/or against their own will. Statistics provided by the Office National de l'Enfance (ONE) a few years ago show that 82% of children placed in alternative care institutions were placed through the judge's order, compared to 33% in Germany, for instance. 52% of these cases were carried out without informing the child's parents prior to the placement.<sup>61</sup> There are indications that this percentage has risen to over 90% during the last few years. Since the number of foster families in Luxembourg is so low, most children are placed in residential care facilities. Nevertheless, these institutions do not necessarily have the expertise to care for children who are victims of sale, trafficking or sexual exploitation, and may not always, therefore, be adapted to the needs and best interests of such children.
108. Once a child has been placed in alternative care, the parental authority of the child is automatically transferred to the institution in charge of the child, thereby completely stripping the child's parents of any authority or power to take decisions. A proposed reform of the Luxembourg law on childhood is not a guarantee that this will change, as has been noted by the Luxembourg National Human Rights Commission.<sup>62</sup>
109. A child who wishes to return home is not allowed to do so without a decision by the institution responsible for his/her care and/or a judge. The process of returning home can also be lengthy due to administrative procedures and, according to some child protection professionals, due to a generalised approach that children must be protected from their parents. Furthermore, the placement is only required to be reviewed every three years by the judge if a revision has not been expressly requested by another party in the meantime.<sup>63</sup> A large number of child protection professionals manifested a wish to make judicial revision obligatory on a more regular basis, e.g. once a year.
110. Some child protection professionals also argue that it is not always in the child's best interest to report the case directly to the judge (for example, in the case of an isolated incident of neglect or mistreatment), who will often immediately place the child in alternative care. In some cases, it would be possible – and in the child's best interest – to work with and support the family through measures such as psychological assistance, parental coaching etc., in order

---

<sup>61</sup> Commission Consultative des Droits de l'Homme (CCDH), Avis 04/2011 sur le projet de loi 5351 portant modification de la loi modifiée du 10 août 1992 relative à la protection de la jeunesse, p.3.

<sup>62</sup> Ibid., p.6.

<sup>63</sup> Mémorial, Journal Officiel du Grand-Duché de Luxembourg, Recueil de Législation, A – No 70, 25 septembre 1992, Loi du 10 août 1992 sur la protection de la jeunesse, article 37.

to preserve the family unit, but those solutions are seldom given priority. It should be noted that prolonged estrangement from his/her family can, in some cases, add to the child's trauma. The Ombudsperson for the Rights of the Child is of the view that a return to the family, even if the situation is imperfect, is almost always preferable to long-term care in an institution.<sup>64</sup> One child protection professional interviewed during the preparation of this report noted with appreciation the system in Germany which mandates an expert to provide advice before a formal report is filed within the justice system. Indeed, the School Medical Service of the City of Luxembourg has established a focal point who may be contacted for advice in cases of suspected child abuse.<sup>65</sup>

111. The excessive judicial placement of children not only causes additional distress for children for whom a placement may not be in his/her best interest, but also causes additional stress on the child protection system resulting in less places available for those who are in real need of being taken into care.
112. In relation to the concerns surrounding alternative care and the lack of places in Luxembourg, it should be noted that residential care facilities are funded based on the number of children that they take. Empty rooms in a residence thus results in less financial resources for that institution. With such a system, the risk of conflicting interests appears inevitable. This system may also, at least partially, explain why some children are kept in care longer than necessary and against their best interests, while there is an apparent lack of places for children who need to be placed into alternative care urgently and at short notice.
113. In a few instances, children who are victims or witnesses of a crime (e.g. domestic violence) have been placed in detention facilities due to the lack of places available in residential care. In such cases, the need to separate the child immediately from his/her family environment has prevailed over other concerns, such as the fact that the child should be deprived of his/her liberty only as a measure of last resort, or the fact that a child who is deprived of his/her liberty risks suffering additional harm, stigma and re-victimisation.
114. The lack of a proper juvenile justice system in Luxembourg has also resulted in numerous children in conflict with the law, including for sexually aggressive behaviour, being sent to these penitentiary institutions, instead of providing them with the appropriate support measures. During detention, these children receive little or no therapeutic support.
115. Sexual violence between minors is an issue of concern. Indeed, an increase in sexually aggressive behaviour between minors has been observed by some child protection professionals, and this is especially the case within residential care or detention facilities. The youngest children encountered with sexual behaviour problems are between 8 and 10 years old, but the majority comprises 14-18 year olds. The insufficient number of places within the alternative care system has sometimes meant that the child with the sexual aggressive behaviour and the children who are victims of this behaviour are obliged to continue to reside in the same institution, thus making it more difficult to help both.
116. An institution or body that is specialised in juvenile sexual offending is currently missing in the country.

### Detecting and handling child victims

---

<sup>64</sup> Ombuds-Comité fir d'Rechter vum Kand, 2011 Report to the government and parliament.

<sup>65</sup> See *infra*, paragraph 118.

117. A child who is a victim of sale or trafficking can be detected by anyone, but the official identification of a person as a victim of such practices can only be carried out by the criminal investigation police. According to Luxembourg's National Human Rights Commission this can be particularly traumatising for victims (especially children) from countries with a repressive law enforcement or regime. The fear of reprisal that such victims may feel when required to meet with law enforcement may indeed contribute to the re-victimisation of the child. It may be better for the child if the identification could be carried out by the apposite child protection services specialised in the matter.
118. The City of Luxembourg has established a School Medical Service (*le Service Médical des Écoles de la Ville de Luxembourg*) which acts as a central body for the health of all school children in the capital. In 2011, an "advisory focal point for children in need" (*cellule de conseil pour enfants en détresse*) was created within the School Medical Service. Composed of two social workers, it is intended primarily for children aged 4 to 12 years but also to all classroom teachers in public primary schools and to day care educators of the City of Luxembourg. The focal point's mission is the counselling, orientation and guidance in situations of suspected physical, psychological or sexual abuse against children. Thanks to this service, a number of cases of abuse have been detected and addressed, and it would be beneficial to extend the initiative to the national territory.
119. A complex issue related to the identification of victims of sale, trafficking or sexual exploitation is the fact that, if such a case is detected in or by a residential care facility or an open child protection service (i.e. a day centre or a place where children themselves can come for protection), it can be difficult to ensure that the child is adequately protected. Indeed, these structures operate on an "open door" basis, and their address is available in the yellow pages and online. To keep a child who may be the victim of serious (and sometimes organised) criminal activity in such a structure may place both the victim and the other children or the staff in danger. Again, due to the lack of sufficient places in residential care – and in particular the lack of specialised and protected care facilities – child victims must sometimes remain in a place that cannot guarantee their security and protection for longer periods of time. At least two such cases have occurred, and in one case the child had to stay for more than a month in an open door structure, which is designed for stays of up to one week.
120. In Luxembourg, Refuge Péitrusshaus is a good example of such a place. It is an open door "emergency structure" expressly for children, and it receives children upon their own request. The structure is unique of its kind in Luxembourg, and aims to favour family mediation in order to avoid, unless it is in his/her best interest, the child being placed into alternative care.
121. Child protection services in Luxembourg were concerned with the fact that no institution is sufficiently specialised and protected for children who are victims of sale, trafficking or sexual exploitation, which means that children who are victims of these crimes may be placed in the same care facility as children placed for other reasons. It is clear that these children would require a very different kind of support. It was also noted that an available place in the eventuality of a boy victim of these crimes would be even less likely.
122. The services officially charged with the responsibility to handle cases of human trafficking currently have only 30 work hours per week for all cases, whether men, women or children, and independent of the purpose of the trafficking.<sup>66</sup> It should be noted that one service has

---

<sup>66</sup> Fondation de la Maison de la Porte Ouverte has one person 10 hours a week and Femmes en Détresse has one person 20 hours a week.

seen the number of cases of human trafficking explode from 1 in 2010 to 11 in 2014.<sup>67</sup> The same service has dealt with five cases of children identified as victims of trafficking since 2010.<sup>68</sup>

123. It was mentioned by some child protection agencies that the language barrier presents a significant problem when it comes to providing adequate services for children coming from abroad. Although the child protection system can usually provide assistance in four or five languages (Luxembourgish, French, German, English, and sometimes Portuguese or Spanish), this is not sufficient when addressing case of children who might be victims of sale or trafficking, or of migrant children who have been separated from their families. This results in a different level and quality of services granted to children from certain countries.
124. Another issue that risks creating a different level of protection of the child is the fact that the statute that is accorded to a person affects his/her rights and treatment. For instance, an officially identified victim of trafficking has the right to a guardian, while a person identified as an asylum seeker *may* be entitled to a guardian. With regard to the protection of children this could pose problems when the statute is not certain.
125. While, until recently, it was not guaranteed within the legislative framework that victims would benefit from assistance, support and protection measures when uncertainty existed regarding their age, the legislative measures taken in 2014 have since ensured the insertion of such a clause in the Criminal Code.<sup>69</sup> In practice though, the victim was already previously presumed to be a minor when there was uncertainty regarding his/her age. Indeed, in one case of human trafficking, the age of the victim was unknown. Despite the fact that the victim herself claimed to be more than 18 years of age, she was treated as a minor throughout the process.

#### Protection at all stages of the criminal justice process

126. As mentioned in the chapter above on jurisdiction, certain safeguards are taken in order to guarantee the protection and wellbeing of victims and witnesses of crime during the justice process. Importantly, the criminal investigation police interview the child in a special room that enables the interview to be recorded, and such recordings are admitted as evidence in court.<sup>70</sup> The child will not be heard in court unless strictly necessary and he/she will be heard as few times as possible. The police officers of the child protection unit conduct the interviews and most of them have received some form of training to do so in a child-friendly manner. Nevertheless, resources to ensure that all relevant police officers are adequately trained before holding their first hearing with a child are not guaranteed.
127. Furthermore, the child protection unit of the criminal investigation police currently has only one room for interviewing children in a child-friendly manner. This causes a strain on many children, as they must sometimes be brought by police escort from a distance in order to be heard. In order to work in a more efficient and child-sensitive manner, the child protection unit would need at least one other child-friendly interview room in the North of the country and sufficient resources to ensure adequate training of its investigators. It must also be said that 8 police officers covering all cases of crimes against children, including the mass of child

---

<sup>67</sup> Femmes en Détresse, Annual Report, 2014

<sup>68</sup> Femmes en Détresse, Annual reports 2010-2014.

<sup>69</sup> Mémorial, Journal Officiel du Grand-Duché de Luxembourg, Recueil de Législation, A – No 63, 14 avril 2014, Loi du 9 avril 2014 renforçant le droit des victimes de la traite des êtres humains.

<sup>70</sup> Grand-Duché de Luxembourg, Code d'Instruction Criminelle, article 79-1.

pornographic material circulating on the internet and hosted on Luxembourg servers, is not enough to guarantee that each child can always be heard without stress at his/her own pace.

128. With regard to the privacy and protection of the identity of the child, it was difficult to find exhaustive information, but this appears to be adequately guaranteed.
129. Regarding the involvement of social services throughout the legal process, the Service Centrale d'Assistance Sociale (SCAS) works under the youth protection court (*parquet de la jeunesse*) of the Public Prosecutor's Office and is mandated to investigate situations of suspected sexual abuse against children. SCAS has an emergency procedure and attempts to treat urgent cases as swiftly as possible, but according to child protection professionals the high work load of SCAS has led to a situation where an emergency procedure (e.g. to decide upon the placement of a child victim) can take up to six weeks.
130. Despite the fact that unnecessary delays are to be avoided in accordance with the law, proceedings that involve children as victims or witnesses are often lengthy and cannot always be said to respect the best interest of the child. A lack of sufficient resources appears to be the main reason why children are subjected to undue delays, both in judicial and non-judicial proceedings.
131. Regarding the right of the child to have his/her views and concerns taken into account, the high percentage of placements ordered by the judge seems to indicate that this right is not sufficiently respected and guaranteed. A very positive example of children being listened to is the abovementioned Péitrusshaus, which operates under the principle that a child comes to the structure on a voluntary basis and can stay there for a few days, meet with a psychologist or a support person, and decide what he/she wishes to do. Péitrusshaus can also arrange a meeting with the parents to discuss the situation together and try to find a solution. If the child is in need of further help or is in danger (e.g. when it is detected that the child may be a victim of trafficking), Péitrusshaus can refer the case to the police and/or to another more permanent residential care facility. As indicated above, this is sometimes a complicated process due to the lack of sufficient places in residential care facilities.

## INTERNATIONAL ASSISTANCE AND COOPERATION

---

132. The criminal investigation police in Luxembourg collaborate increasingly with international networks through NGOs such as ECPAT Luxembourg and BEE SECURE. ECPAT Luxembourg is a member of the international ECPAT network and the Luxembourg police actively participated in a European ECPAT project to strengthen the fight against sexual exploitation of children in travel and tourism, which is also supported by Europol. Close collaboration between BEE SECURE and other members of the INHOPE network as well as the Luxembourg police ensures fast notice and takedown times of child sexual abuse material hosted in Luxembourg, generally within 48 hours.
133. At government level, there was some support from the Ministry of Justice for the abovementioned ECPAT project, but no real commitment has been made to engage in a deeper debate or to collaborate on the issue of sexual exploitation of children in travel and tourism. Other Ministries who could (and should) also have an interest to engage further in preventing child sexual exploitation, such as the Ministry of Interior Security, the Ministry of National Education, Childhood and Youth, or the Ministry of Tourism, have shown no real

commitment to the cause. As mentioned previously, the low number of cases (or lack of official cases) related to the issues addressed by the OPSC result in the government granting them little attention.

### **Case study 1 – Potential case of sale of children**

En 2013, l'ORK fut saisi d'une histoire « mystérieuse » via email, qui finalement s'est révélée être une possible affaire de trafic d'enfants [ou de vente d'enfants<sup>71</sup>]. Une personne de nationalité étrangère et non résidante au Luxembourg informe l'ORK d'être le père d'un enfant se trouvant au pays. L'enfant aurait été conçu avec son sperme via une mère porteuse. Les informations données ne furent pas complètes et cohérentes, mais on a préféré en informer le parquet. Lors d'une intervention de la police dans une histoire de violence domestique, la police avait repéré quelques semaines plus tôt dans un ménage au centre-ville, un enfant de 15 mois sans identité. Les adultes du ménage, de nationalité étrangère et d'un âge avancé, prétendaient que l'adoption de l'enfant était en cours de finalisation. Ni les policiers sur place, ni leur supérieur hiérarchique auquel rapport fut fait, ne réalisaient à ce moment précis qu'on leur présentait des mensonges. Un enfant adopté ne peut aller vivre auprès de ses parents adoptifs qu'après clôture définitive de la procédure d'adoption.

Le placement de l'enfant ne fut prononcé que plusieurs semaines plus tard. Entretemps l'enfant aurait pu disparaître à jamais. Afin d'assurer sa protection, son nouveau lieu de résidence aurait dû rester secret. Le foyer lui-même ne fut pas averti de la raison du placement et a uniquement pu prendre des mesures de sécurité longtemps après.

L'ORK estime que dans ce cas précis, l'Intérêt Supérieur de l'Enfant n'a pas été respecté. La mise en place de la procédure de protection a mis trop long-temps et était mal coordonnée. Le petit a 18 mois, ne comprend et ne parle aucune langue. Il n'a pas de nom et pas de parents connus. Il n'a pas d'identité. Quel est son avenir ? Celui qui va prendre finalement la décision a-t-il conscience de son «Intérêt Supérieur» ?

Aujourd'hui, des semaines plus tard, l'enfant attend toujours un rendez-vous auprès d'un pédopsychiatre. La liste d'attente est trop longue. Ne faut-il pas intervenir au plus vite dans une situation pareille ?

Suite à une des premières affaires de trafic d'enfants au Luxembourg, l'ORK recommande au Parquet et à la Police d'établir une procédure plus efficace pour la protection immédiate d'un tel enfant ou il y a très forte suspicion qu'il est victime d'agissements criminels.<sup>72</sup>

### **Case study 2 – Case of a 17-year-old girl from a non-EU country**

A young girl was found in the street by the Luxembourg police in early 2010. She appeared disorientated and seemed not to know in which country she found herself. She was then immediately placed in the care of a juvenile psychiatric unit. The girl told the police that she had been forced into prostitution in Paris and was therefore identified by the same as a victim of human trafficking.

---

<sup>71</sup> Comment by ECPAT Luxembourg.

<sup>72</sup> Ombuds-Comité fir d'Rechter vum Kand, 2013 Report to the government and parliament, p.55.

Some time later, the girl was transferred to a shelter for girls, and then readmitted to the juvenile psychiatric unit as she had been self-harming.

The girl was then placed in a government-run socio-educational centre. However, the staff at the centre considered that the girl was no longer manageable and posed a danger to both herself and the other residents of the centre, so she was placed one month later in the penitentiary centre in Schrassig, by decision of the judge responsible for legal guardianship. She was transferred to the penitentiary centre by police, where she stayed for almost 3 months.

After a 4-week stay in prison, the young girl had to appear at the Youth Court. She had to wear handcuffs for the whole journey, and they were only removed when the judge ordered this. The girl was accompanied by her lawyer and a translator. But the girl did not say a word during the hearing and did not respond to the judge's questions. She was then returned to the penitentiary centre, where she continued to self-harm throughout her incarceration. She was eventually transferred to another juvenile psychiatric unit.

Finally, the girl expressed her wish to return to her country of birth. With the help of the IOM<sup>73</sup>, she went to the embassy of her country of origin, but still refused to speak or provide any information about herself.

After 8 months of staying in different institutions in Luxembourg, she escaped after an unaccompanied outing. She was found in a country bordering Luxembourg. She was then taken to a centre for unaccompanied foreign minors. But soon afterwards, she escaped again.

The frequent changes of accommodation did nothing to stabilise this young girl, who had experienced many traumatic situations according to her own personal accounts.

Incarcerating a minor who had been identified as a victim of trafficking in an adult prison certainly does not promote this child's self-respect or dignity. Such an imprisonment cannot under any circumstances guarantee the child's psychiatric rehabilitation or her social reintegration.<sup>74</sup>

### **Case study 3:**

"Yolande, aged 15, was first bullied, inebriated by force and then raped by two adolescents in the school grounds after lessons; a third youth filmed the attack and the images were made public and visible".<sup>75</sup>

### **Case study 4:**

Véronique posted on the internet a photo of herself posing naked, not knowing that her picture risks being transferred to other sites and reused. Young prepubescent girls are regularly asked to show their chest using a webcam. They are either filmed close-up or have sent compromising photographs and are unaware of the danger to which they are exposed. In return, they are offered concert tickets, prepaid cards for mobile phones etc. The photos are often downloaded by adults and used as a means of blackmail

<sup>73</sup> International Organisation for Migration.

<sup>74</sup> Rapport Supplémentaire au 3e et 4e rapport national (2001-2009) sur les droits de l'enfant à Luxembourg, Rédigé par le Groupe RADELUX, 2011, p.40.

<sup>75</sup> Ombuds-Comité fir d'Rechter vum Kand, 2009 Report to the government and parliament.

(sometimes referred to as “sextortion”) after the event. The child has become involved in child pornography without realising it.<sup>76</sup>

**Case study 5:**

A young Ecuadorean was mistreated by his mother’s partner and left home. The youth’s family was living in Luxembourg illegally. He lived with friends but risked ending up living on the streets. The State Prosecutor’s Office was informed of the youth’s situation but the judge responsible for the case did not want to take any measures to protect the minor. He invoked his incompetence to act given the youth’s illegal situation leaving nothing but the government executive to protect him.<sup>77</sup>

---

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

## CONCLUSIONS AND RECOMMENDATIONS

---

The Luxembourg legal framework has been amended to conform to the OPSC, and there are a number of good practices in the country that favour the protection of children from the forms of exploitation set forth by the OPSC. Nevertheless, as this report has shown such practices are too often sporadic or limited to a part of the territory. To ensure the full implementation of the CRC and the OPSC in Luxembourg as well as the equal protection of all children in the country, the government needs to invest the necessary resources and show political will to work in a more integrated and transversal manner. Furthermore, there is a strong need to adapt the child protection system in accordance with new research and practices, and to guarantee that children who are vulnerable to or victims of exploitation are always treated in accordance with the best interest of the child. Given the strong economic situation of the country and its relatively small size and population, there appears to be no valid justification for not guaranteeing a first class child protection system.

Based on this report and on the interviews with relevant professionals in Luxembourg, the following recommendations should be made to the Government of Luxembourg.

The Government of Luxembourg should guarantee:

- ◆ An evaluation and update of the National Action Plan (NAP) against child sexual exploitation. The NAP could be incorporated into a global and transversal national plan for children (as recommended by the Committee on the Rights of the Child) or other relevant policies such as the National Plan for sexual and emotional health or the National Plan for Youth. However, it is important that the topic of child sexual exploitation is not lost or diluted and that it remains a distinct component of a more global strategy. It is also crucial that any actions taken are evaluated.
- ◆ The establishment of a centralised system for the collection, analysis and disaggregation of data on sale of children and all forms of sexual exploitation of children. Data should be systematically sent to and centralised by the Ministry of Justice as well as published and distributed transparently and regularly (for example, annually).
- ◆ The finalisation of the revision and amendment process of the national law on child protection (*loi relative à la protection de la jeunesse*), which has been ongoing for years and has been repeatedly suspended.
- ◆ The broadening of the scope of article 5-1 of the Code of Criminal Procedure to include article 385-2 of the Criminal Code.
- ◆ The broadening of the scope of article 7-3 of the Code of Criminal Procedure to include articles 372, 375, 377, 383bis, 383ter, 384 and 385-2 of the Criminal Code.
- ◆ The independence of the Ombudsperson's office and clear, transparent criteria for selection and for budget allocation.
- ◆ The allocation of sufficient resources for adequate training for all professional groups likely to come into touch with children who may be victims of sale, prostitution or pornography.
- ◆ The allocation of sufficient resources to the youth protection unit of the criminal investigation police (financial, human and legal) for combating online images of child sexual abuse and to ensure that all children are interviewed in a child friendly manner by a trained child protection police office without undue delay or long transportation distances.

- ◆ The creation of additional child-friendly interview rooms outside the capital.
- ◆ The allocation of sufficient resources to the SCAS for handling cases involving any form of sexual abuse and/or exploitation, sale or trafficking of a child without delay and in a child friendly manner.
- ◆ The empowerment of children and young people through education and awareness raising, making them less vulnerable to sexual exploitation and trafficking. There is a need for children's rights and sexual education to be integrated in all schools and not to rely only on teachers or social workers who are motivated to organise it.
- ◆ The obligation to review judicial placements every 12 months (instead of the current 3 years) including a thorough evaluation of the child's situation based on interviews with the care institution, the family and the child.
- ◆ The establishment of a resource person for the child outside the institution (e.g. in case of residential care).
- ◆ The definition of procedures for providing assistance to victims and of the role of non-governmental organisations.
- ◆ The establishment of adequate structures within the country with the capacity to accommodate victims with special psychological and psychiatric needs.
- ◆ The definition of formal procedures for the proactive identification of victims of sexual exploitation within vulnerable groups.
- ◆ The replication, at the national level, of the City of Luxembourg's School Medical Service contact point which provides advice and assistance for suspected cases of child abuse.

Organisations and individuals that provided information for the Report (in alphabetical order):

- ❖ ALUPSE
- ❖ BEE SECURE (an initiative by the Ministry of the Economy, the Ministry of Education, Children and Youth as well as the Ministry of Family Affairs and Integration, jointly coordinated and operated by Security made in Lëtzebuerg (SMILE g.i.e.), the National Youth Service (Service National de la Jeunesse) and KannerJugendTelefon)
- ❖ Commission Consultative des Droits de l'Homme
- ❖ ErwuesseBildung
- ❖ Erziehungs- a Familljeberodung
- ❖ Femmes en Détresse, Service d'Assistance aux Victimes de la Traite des Êtres Humains, Meederchershaus
- ❖ Fondation jugend an drogen hëllef
- ❖ Hartmann, Claudia
- ❖ Kanner-Jugend Telefon
- ❖ Maître Delhayé, Sabine
- ❖ Ombuds-Comité fir d'Rechter vum Kand (ORK)
- ❖ Planning Familial
- ❖ Police Grand-Ducalé
- ❖ Service Médical des Écoles de la Ville de Luxembourg
- ❖ Soisson, Robert
- ❖ Solidarité Jeunes, Péitrusshaus et Foyer Noemi

This report was prepared by Dr Susanna Greijer, Project Coordinator, and Hannah Bristow, Project Manager, ECPAT Luxembourg