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## الجمعية العامة



### مجلس حقوق الإنسان

#### الدورة الثالثة والخمسون

19 حزيران/يونيه - 14 تموز/يوليه 2023

البند 3 من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

### زيارة إلى لكسمبرغ

#### تقرير الفريق العامل المعني بمسألة حقوق الإنسان والشركات عبر الوطنية وغيرها من مؤسسات الأعمال\*

موجز

أجرى الفريق العامل المعني بمسألة حقوق الإنسان والشركات عبر الوطنية وغيرها من مؤسسات الأعمال زيارة إلى لكسمبرغ في الفترة من 1 إلى 9 كانون الأول/ديسمبر 2022.

ووجد الفريق العامل ما يشجعه في الجهود الجارية للنهوض بالسلوك التجاري المسؤول، وأشار إلى العديد من الممارسات الجيدة، بما في ذلك الممارسات المتبعة في مجال التنمية وتمويل القضايا الجنسانية. ورحب الفريق العامل أيضاً باعتماد خطتي عمل وطنيتين بشأن الأعمال التجارية وحقوق الإنسان. ومع ذلك، لا تزال هناك تحديات تطرح، لا سيما فيما يتعلق بضرورة كفالة إمكانية الوصول الفعال إلى سبل الانتصاف فيما يخص ضحايا انتهاكات حقوق الإنسان التي ترتكب في بلدان أخرى والتي ترتكبها مؤسسات تجارية تتخذ من لكسمبرغ مقراً لها.

وأشار الفريق العامل إلى الجهود التي تبذلها الحكومة للعمل من أجل جعل بذل العناية الواجبة في مجال حقوق الإنسان أمراً إلزامياً في سياق توجيه الاتحاد الأوروبي المقترح بشأن هذه المسألة. ويوصي الفريق العامل لكسمبرغ باتخاذ موقف أقوى لدعم تغطية القطاع المالي تغطية كاملة، بما في ذلك صناديق الاستثمار، في إطار التوجيه المقترح، وتشريعاتها الخاصة.

\* يعمم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق هذا الموجز، فيعمم باللغة التي قُدم بها وبالفرنسية فقط.



الرجاء إعادة الاستعمال

## Annex

# Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its visit to Luxembourg

## I. Introduction

1. Pursuant to Human Rights Council resolutions 17/4, 26/22, 35/7 and 44/15, the Working Group on the issue of human rights and transnational corporations and other business enterprises, represented by Working Group member Robert McCorquodale, visited Luxembourg, at the invitation of the Government, from 1 to 9 December 2022. During the visit, the Working Group assessed the efforts made by the Government and business enterprises, in line with the Guiding Principles on Business and Human Rights, to identify, prevent, mitigate and account for the adverse impacts of business-related activities on human rights.

2. During the visit, the Working Group met with the Minister for Foreign and European Affairs, the Minister of Finance, the Minister of Justice and the Ambassador at Large for Human Rights. It also met with representatives of the following entities: the Ministry of the Economy, the Directorate for Small and Medium-Sized Enterprises, the Directorate for Development Cooperation and Humanitarian Affairs, the Ministry of the Environment, Climate and Sustainable Development, the Luxembourg Institute of Science and Technology, the Ministry of Labour, Employment and the Social and Solidarity Economy, the Ministry of Social Security, the Financial Supervisory Authority, the Luxembourg Pension Fund, the Luxembourg Export Credit Agency, the National Credit and Investment Society, the Tax Authority, the Luxembourg Development Agency (LuxDev), the High Council for Sustainable Development, the Consultative Commission for Human Rights, the Centre for Equal Treatment, the Ombudsperson for Children and Young People (Okaju) and the Office of the Ombudsperson. It also had meetings with representatives of the Union of Luxembourg Towns and Municipalities (SYVICOL), and with members of the Chamber of Deputies.

3. Meetings were held with representatives of civil society (including journalists, academics, trade union representatives and workers) and with representatives of business enterprises, including ArcelorMittal, the Association of Insurance and Reinsurance Companies, the Association of the Luxembourg Fund Industry, BGL BNP Paribas, the Chamber of Commerce, the Chamber of Employees, Deloitte, Horesca, KPMG, the Luxembourg Bar Association, the Luxembourg Employers Association, Luxembourg for Finance, the Luxembourg Private Equity and Venture Capital Association, the Luxembourg Stock Exchange, the Luxembourg Sustainable Finance Initiative, the Luxembourg Bankers Association, LuxFLAG, the National Institute for Sustainable Development and Corporate Social Responsibility, NSO Group Technologies and PwC.

4. The Working Group extends its gratitude to the Government of Luxembourg for the support it provided during the visit as well as for its willingness to engage in a constructive discussion on the challenges faced and lessons learned in promoting respect for human rights in business conduct. The Working Group also thanks the representatives of the organizations, businesses and communities and the individuals with whom it met for their openness and willingness to engage in a constructive and solution-oriented dialogue.

## II. General context

5. The visit was the first ever paid to Luxembourg by any special procedure mandate holder.

6. Luxembourg is a high-income country, with a population of 645,397,<sup>1</sup> 92 per cent of which is urban.<sup>2</sup> Its citizens enjoy the highest per capita gross domestic product (GDP) in the world.<sup>3</sup> As of November 2022, unemployment in Luxembourg stood at 4.9 per cent,<sup>4</sup> compared with the European average of 6 per cent for the same month.<sup>5</sup>

7. The financial and steel sectors are critical to the economy, followed by the industrial sector. The steel industry has been an important part of the Luxembourg economy since the nineteenth century. After the first steel crisis of the 1970s, the Government sought to diversify the economy, which led to the financial services industry quickly surpassing the steel industry as the country's most important sector. Today, the financial sector accounts for 25 per cent of the country's GDP.<sup>6</sup>

8. According to the Luxembourg Business Registers, as of December 2022, 158,023 businesses were registered in Luxembourg. Many of them are related to financial services, including holding and investment companies, some of which are also known as "letterbox companies". Despite the high number of registered businesses in Luxembourg, only 23.7 per cent of them have more than five employees, according to 2019 data.<sup>7</sup>

### III. National action plan on business and human rights

9. The Working Group welcomes the Government's efforts in having developed two national action plans on business and human rights. The first national action plan covered the period 2018–2019. The second national action plan, which complemented and further developed the first one, covered the period 2020–2022. The Working Group commends the Government for ensuring that the development of the national action plans followed a multi-stakeholder process. Furthermore, under the national action plan for the period 2018–2019, an excellent mapping and report were provided to the Government of Luxembourg by Basak Baglayan. The Working Group understands that, while the second national action plan expired in December 2022, it will be extended to enable the continuation of ongoing initiatives and the completion of outstanding actions. In that regard, the Working Group hopes that a public announcement on the next national action plan is made soon.

10. The Working Group remains concerned that the current national action plan does not sufficiently address pillar III of the Guiding Principles, in particular with regard to access to effective remedies for human rights abuses by businesses domiciled in Luxembourg that occur in countries outside the European Union.

11. The Working Group commends the Government's efforts to establish the voluntary National Pact on Business and Human Rights. It notes that businesses of many sizes have signed the Pact – a confirmation that it applies to all businesses – but is concerned by the low participation rate, particularly of State-owned and financial sector businesses. The Working Group notes the Government's ongoing efforts to engage with the businesses concerned. It

<sup>1</sup> See <https://statistiques.public.lu/fr/actualites/population/population/2022/04/20220411.html>.

<sup>2</sup> See <https://data.worldbank.org/indicator/SP.RUR.TOTL.ZS?locations=LU>.

<sup>3</sup> See <https://www.imf.org/en/Publications/WEO/weo-database/2022/October/weo-report?c=512,914,612,171,614,311,213,911,314,193,122,912,313,419,513,316,913,124,339,638,514,218,963,616,223,516,918,748,618,624,522,622,156,626,628,228,924,233,632,636,634,238,662,960,423,935,128,611,321,243,248,469,253,642,643,939,734,644,819,172,132,646,648,915,134,652,174,328,258,656,654,336,263,268,532,944,176,534,536,429,433,178,436,136,343,158,439,916,664,826,542,967,443,917,544,941,446,666,668,672,946,137,546,674,676,548,556,678,181,867,682,684,273,868,921,948,943,686,688,518,728,836,558,138,196,278,692,694,962,142,449,564,565,283,853,288,293,566,964,182,359,453,968,922,714,862,135,716,456,722,942,718,724,576,936,961,813,726,199,733,184,524,361,362,364,732,366,144,146,463,528,923,738,578,537,742,866,369,744,186,925,869,746,926,466,112,111,298,927,846,299,582,487,474,754,698,&s=PPPPC,&sy=2020&ey=2027&ssm=0&scsm=1&sc=0&ssd=1&ssc=0&sic=0&sort=country&ds=&br=1>.

<sup>4</sup> See <https://adem.public.lu/fr/actualites/adem/2022/12/chiffres-cles-2022-11.html>.

<sup>5</sup> See [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Unemployment\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Unemployment_statistics).

<sup>6</sup> See <https://luxembourg.public.lu/fr/investir/competitivite/portrait-luxembourg-economie.html>.

<sup>7</sup> See <https://statistiques.public.lu/fr/publications/series/luxembourg-en-chiffres/2022/luxembourg-en-chiffres-2022.html>.

takes note of the evaluation, to be conducted yearly starting in 2023, of the businesses that have joined the National Pact and looks forward to the publication of the results of the first evaluation.

12. It would be important to include a provision in the next national action plan for carrying out a national risk assessment on business and human rights, similar to the steps that Luxembourg has already taken to combat money-laundering. Such an assessment would help the Government to understand which businesses in Luxembourg carry higher risks of human rights abuses and what actions could be taken to prevent and mitigate such risks.

## **IV. European Union corporate sustainability due diligence directive**

### **A. Background**

13. A major topic of discussion during the Working Group's visit was the latest developments on the draft text of the European Union corporate sustainability due diligence directive, which sets out mandatory due diligence requirements on certain types of businesses as well as civil liability and supervisory mechanisms. The latest draft was released by the European Council on 1 December 2022, during the country visit. It was indicated to the Working Group that, once the directive was adopted at the European Union level, it would be incorporated into national legislation in Luxembourg within two years. The Working Group has previously stated that such legislation is part of a "smart mix" of measures to ensure corporate accountability for adverse human rights impacts for which businesses might be responsible.

14. It is important to note that a major question to be resolved regarding the corporate sustainability due diligence directive concerns the determination of an authority to oversee the monitoring and implementation of the new legislation. In this regard, a new supervisory authority may need to be created. The supervisory authority should administer such control mechanisms as reports and have opportunities for engagement with civil society.

### **B. Response of Luxembourg**

15. During the visit, a key issue that emerged in relation to the corporate sustainability due diligence directive was whether the financial sector in Luxembourg would be included within its scope. The latest draft text of the directive, which was published during the Working Group's visit, indicates that it would not automatically apply to all financial-sector activities of all Member States of the European Union. It also excludes all investment fund products from the scope of the directive. Since the release of the draft, some European Union parliamentary committees have voted in favour of mandatory due diligence rules for the financial sector, but additional negotiation with Member States would be required to include the sector in the directive.

16. Many of the civil society organizations and several businesses with which the Working Group consulted indicated very strongly that the financial sector should be included. Indeed, the National Action Plan of Luxembourg specifically states that the financial sector, as well as some other sectors, was particularly at risk for human rights violations.<sup>8</sup>

17. The Working Group notes with concern that there have been discussions among Member States of the European Union at the Council level to exclude all or part of the financial sector and investment funds from the corporate sustainability due diligence directive. Some Luxembourg associations indicated to the Working Group that they favoured the exclusion of the latter sector because it provided a complex product and therefore could not directly affect human rights. The Working Group also heard some actors express the view that the National Pact would serve a similar function to that of the directive. In response, the

<sup>8</sup> See [https://www.ohchr.org/sites/default/files/Documents/Issues/Business/NationalPlans/LuxembourgNP2020-2022\\_FR.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Business/NationalPlans/LuxembourgNP2020-2022_FR.pdf).

Working Group would like to state clearly that relying on voluntary measures and excluding sectors from the directive is not sufficient to comply with the Guiding Principles. It is also not consistent with efforts in other sectors, such as development cooperation, in which Luxembourg is trying not only to comply with but to exceed human rights standards. The Working Group would like to underline that human rights issues present a material risk and that mandatory human rights due diligence can create stability. Excluding sectors could create confusion and negatively affect transparency.

18. Furthermore, the Guiding Principles make clear that all sectors can have adverse human rights impacts. There have been many examples around the world where the financial sector has been found to have either contributed to or been directly linked by a business relationship to adverse human rights impacts. The exclusion of investment funds on the basis that they are products does not prevent them from being directly linked by a business relationship with an adverse human rights impact. Such examples have been demonstrated in the case law of the National Contact Points of the Organisation for Economic Co-operation and Development (OECD) Guidelines.

19. The financial sector and the investment fund industry, as well as other sectors in Luxembourg, are already required to undertake various forms of due diligence under existing laws, such as anti-money-laundering, counter-terrorism and sanctions legislation, as well as in reporting regulations, which provide some transparency but no remediation for victims. Such existing legislation shows clearly that the financial sector and the investment fund industry are able to be regulated in relation to human rights due diligence. Indeed, the Working Group was told that many of the elements that would be required under mandatory human rights due diligence are already undertaken by the financial sector under current regulations.

20. The Working Group, therefore, sees the corporate sustainability due diligence directive as a means for Luxembourg to position itself as a leader in the region, particularly in terms of sustainable finance, which takes into account human rights, the environment and climate change, and urges the Government to include all activities of the financial sector in its legislation to implement the directive. As one of the main sectors of the economy of Luxembourg, the financial sector cannot risk falling behind and increasing the risk of adverse human rights impacts from its activities. The Working Group echoes the sentiment it heard during meetings that a having a good reputation and being well-regulated constitute the essence of a leading financial centre that takes its responsibilities seriously. The Working Group also urges the Government to reconsider its position of excluding investment funds from the scope of the directive. Finally, there may be value in the provision, by the Financial Supervisory Authority or a similar body, of examples of best practices and benchmarks in the financial sector, based on global practices, to assist businesses in that sector to prevent and address business-related human rights abuses. The Working Group notes that the Government of Luxembourg states that it is advocating for a full value-chain approach in the directive. The Working Group urges that such an approach be included in national legislation.

## **V. Human rights and economic activities**

### **A. Holding and investment companies**

21. A concern for the Working Group, which emerged during the visit, was the number of holding and investment companies – sometimes called “letterbox” companies – that are registered in Luxembourg. Such companies could represent a threat to human rights by facilitating the potential for tax avoidance and reduced revenue, as noted by the Committee on the Elimination of Discrimination against Women.<sup>9</sup>

22. The Working Group applauds the efforts of Luxembourg to transpose 14 of the 15 OECD actions to prevent base erosion and profit shifting.<sup>10</sup> The remaining action (action 1) is currently undergoing revision by OECD with the aim of developing specific solutions,

<sup>9</sup> See [CEDAW/C/LUX/CO/6-7](#).

<sup>10</sup> See <https://www.oecd.org/tax/beps/beps-actions>.

standards, conventions or other output. However, it must be noted that, according to some reports, Luxembourg derives more than half<sup>11</sup> of its corporate tax revenues from taxes collected on shifted profits.<sup>12</sup> Developing countries are disproportionately affected by such practices, but tax evasion affects all Governments by shrinking corporate income tax payments globally.

23. The Government of Luxembourg has, in recent years, acted to increase transparency regarding investment and holding companies, including through the Ultimate Beneficial Ownership Register, which was temporarily suspended by a decision of European Union courts.<sup>13</sup> The Working Group understands that the Government has taken steps to begin restoring access to the Register for journalists and civil society organizations under the existing legal framework and in accordance with the decision of the European Union courts, and congratulates it for its swift action.<sup>14</sup> The Government should continue to work to ensure that access is restored as quickly as possible for all individuals with a legitimate interest.

24. To further avoid the devastating effects of tax avoidance, it is important for the Government to require transparency, which has been shown to curb the most aggressive tax abuses. Such transparency can be achieved by requiring multinational corporations to publish annually their country-by-country reporting, showing the location of their employment, sales, declared profits and tax paid. The Working Group understands that European Council directive 2016/881 of 25 May 2016 amending directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation does not provide for an obligation to make country-by-country reports public. Council directive 2021/2101 of 24 November 2021 introduces such a requirement through the amendment of directive 2013/34 of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings. That directive, which requires Member States to have such legislation in place by 22 June 2023, is in the process of being implemented in Luxembourg.

25. Furthermore, the Government should engage actively in European Council discussions to bring forward and ensure the full implementation of the third anti-tax avoidance directive which is aimed at preventing shell companies from misusing their structure for tax avoidance purposes.<sup>15</sup>

## B. Luxembourg Pension Fund

26. The Working Group notes the improved practices of the Luxembourg Pension Fund in relation to its policy of undertaking human rights due diligence of its investments, but highlights the need for effective monitoring and evaluation. The Working Group learned that a commercial provider now conducts screenings for the Pension Fund on the basis of the 10 principles of the United Nations Global Compact and also applies the Guiding Principles. The Working Group encourages the Luxembourg Pension Fund to go one step further and base screenings on the Guiding Principles. The Working Group praises the Pension Fund for making the reasoning behind its exclusions publicly available<sup>16</sup> and encourages it to take such engagement one step further by ensuring that the screening company engages with rights holders to determine exclusions. The Pension Fund could also look into good practices of other countries, for example, those of the Norwegian Pension Fund, including the role of its Council on Ethics.<sup>17</sup>

<sup>11</sup> See <https://gabriel-zucman.eu/files/TWZ2022Restud.pdf>.

<sup>12</sup> Profit shifting is a technique used by some businesses to pay less tax, which involves moving the profit it makes in the country in which it manufactures products or sells goods and services into a tax haven.

<sup>13</sup> See Court of Justice of the European Union cases C-37/20 and C-601/20. Available at <https://curia.europa.eu/juris/liste.jsf?lgrec=fr&td=%3BALL&language=en&num=C-37/20&jur=C>.

<sup>14</sup> See [https://mj.gouvernement.lu/fr/actualites.gouvernement%2Bfr%2Bactualites%2Btoutes\\_actualites%2Bcommuniqu%C3%A9s%2B2022%2B12-decembre%2B06-justice-rbe.html](https://mj.gouvernement.lu/fr/actualites.gouvernement%2Bfr%2Bactualites%2Btoutes_actualites%2Bcommuniqu%C3%A9s%2B2022%2B12-decembre%2B06-justice-rbe.html).

<sup>15</sup> See [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2022\)733648](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2022)733648).

<sup>16</sup> See <https://fdc.public.lu/en/investissement-responsable/fdc-exclusion-list.html>.

<sup>17</sup> See <https://etikkradet.no/en>.

27. Similarly, the Luxembourg Export Credit Agency has an opportunity to require human rights due diligence for all businesses seeking its financial support. The Working Group highlights its own guidance<sup>18</sup> and that of OHCHR<sup>19</sup> on the financial sector and human rights for use by the Credit Agency.

### C. Sustainable finance

28. The Government has focused recently on sustainable finance, for example, through the creation of the Luxembourg Sustainable Finance Initiative, which is a promising practice. However, in some ministries and sectors, there appears to be a misconception that sustainability relates solely to environmental issues. A contributing factor may be that the national implementation of the Sustainable Development Goals in Luxembourg is overseen by the Ministry of Environment, Climate and Sustainable Development.<sup>20</sup> A good practice that the Working Group has observed in other countries is for the implementation of the Goals to be under the authority of the Prime Minister, allowing for a more global overview of national implementation. The High Council for Sustainable Development could work directly with the Government to assist in this work and ensure clarity on the inclusion of human rights matters in sustainability.<sup>21</sup> However, for such initiatives to succeed, the Government needs to ensure substantive engagement with the High Council, whose members would need a higher profile and secure tenure. The Working Group strongly encourages the High Council to create a working group on human rights issues. The Working Group notes that it has observed the good practice in some countries of having two high councils: a technical board of scientists and an advisory board.

29. Furthermore, there is a greater need for all aspects of environmental, social and governance approaches to be considered, with the express inclusion of human rights. For example, the Ministry of the Economy currently conducts a sustainability and compatibility check for businesses, which focuses on the environmental component. However, the check should also explicitly include human rights impacts. The Working Group heard of a positive initiative of the Ministry of the Environment, Climate and Sustainable Development and the Ministry of Finance on sustainable finance concerning a European Union ecolabel for retail financial products, based on Regulation (EC) No. 66/2010, which includes human rights language. The Working Group encourages the ministries to continue such engagement and to apply human rights considerations in a cross-cutting way in their work.

30. There is also evidence of good practice by the Government through LuxDev<sup>22</sup> in its inclusion of human rights requirements, including human rights due diligence, in development contracts with business partners. The Working Group heard about the Business Partnership Facility, established in 2016, which is financed by the Directorate for Development Cooperation and Humanitarian Affairs and implemented by LuxDev. The initiative is aimed at encouraging the private sector of Luxembourg to establish partnerships in the global South, while promoting the Guiding Principles along the value chain. The Working Group was pleased to hear that funding for the initiative has been conditional on respect for the Guiding Principles for the past few years. However, the initiative will be effective only if accompanied by very good monitoring, evaluation and termination guidance as well as relevant training for diplomats and development officials. In that regard, the Working Group highlights its guidance on human rights-compatible international investment

<sup>18</sup> See <https://www.ohchr.org/en/special-procedures/wg-business/financial-sector-and-human-rights>.

<sup>19</sup> See <https://www.ohchr.org/en/business-and-human-rights/financial-sector>.

<sup>20</sup> The international implementation of the Sustainable Development Goals is overseen by the Ministry of Foreign and European Affairs - Directorate for Development Cooperation and Humanitarian Affairs. Both ministries head coordinating bodies that meet for joint working sessions on, for example, policy coherence.

<sup>21</sup> See [https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Session18/InfoNoteWGBHR\\_SDGRecommendations.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Session18/InfoNoteWGBHR_SDGRecommendations.pdf).

<sup>22</sup> LuxDev is the aid and development agency of the Government of Luxembourg.



agreements,<sup>23</sup> on heightened human rights due diligence in conflict-affected areas<sup>24</sup> and on achieving the Sustainable Development Goals.<sup>25</sup> By means of policy coherence, in general, and development policy, in particular, implemented by LuxDev, the Government can ensure coherence between its discourse at the international and national levels and its actions, both nationally and in other countries. It is important for the Directorate for Development Cooperation and Humanitarian Affairs, under whose mandate LuxDev operates, to continue to prioritize the work of LuxDev on monitoring, evaluation and termination tools. LuxDev will need to ensure that safeguards are in place for both the Business Partnership Facility and the many other LuxDev projects and programmes to ensure that public money is not used in a way that results in an adverse impact on human rights and the environment. LuxDev should also continue its work to establish a grievance mechanism for stakeholders, including those in other countries, and to facilitate effective access to remedies.

31. The Working Group notes that good practices have also been developed around gender finance. In its Road to 2030 general strategy of 2018, the Directorate for Development Cooperation and Humanitarian Affairs stipulated that gender, environment and human rights were to be treated as cross-cutting issues to be mainstreamed throughout all its projects and that these projects should take a participatory approach towards gender mainstreaming. The Working Group saw how, as a consequence, LuxDev underlined that gender and environment are treated as cross-cutting issues that are mainstreamed throughout all its projects and that it has also brought a participatory approach to its work towards gender mainstreaming. Furthermore, in its discussions with the Luxembourg Stock Exchange, the Working Group learned that gender finance was one of its key initiatives, both internally and externally. For example, following the financing by the Directorate for Development Cooperation and Humanitarian Affairs of the Sustainable Finance Programme of the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), the Stock Exchange and UN-Women signed a memorandum of understanding to strengthen their cooperation and promote joint initiatives to advance financing for gender equality and women's empowerment. One joint project is an online course on gender finance and a gender-focused "flag" for assessing, on the basis of key performance indicators, whether bonds are intended to contribute to the achievement of Sustainable Development Goal 5 and whether such contribution is effective. In addition, the Working Group learned of the implementation by BGL BNP Paribas of internal diversity requirements, for example, for 40 per cent of executive committee members to be women, and other measures to encourage systemic changes, including participating only in conference panels that have at least one female speaker, to help change stereotypes around women in the workforce. The Working Group applauds such efforts and encourages all financial institutions to continue this important internal and external work.

32. The Working Group was pleased to find other good practices in the financial sector, including the global agreement of BGL BNP Paribas with trade unions, which applies the same labour rules irrespective of national laws, although the agreement does not extend to a minimum salary. The Working Group also applauds the fact that BGL BNP Paribas screened its portfolio in Luxembourg after the adoption of the Corporate Duty of Vigilance Law of France, and that it continues to screen its portfolio every six months. This is a commendable initiative and is evidence of how such action is possible for all financial institutions. However, all financial institutions could take their human rights responsibilities one step further by ensuring that their business clients and subsidiaries are also carrying out human rights due diligence. This would contribute to avoiding potential human rights abuses such as those highlighted by the case against J.C. Bamford Excavators Limited.<sup>26</sup> A human rights due diligence approach would help financial institutions to avoid considering human rights to be material risks only when confronted by such risks. The Working Group encourages

<sup>23</sup> See [A/76/238](#).

<sup>24</sup> See <https://www.ohchr.org/en/business-and-human-rights/business-human-rights-and-conflict-affected-regions-project>.

<sup>25</sup> See [https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Session18/InfoNoteWGBHR\\_SDGRecommendations.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Session18/InfoNoteWGBHR_SDGRecommendations.pdf).

<sup>26</sup> See <https://www.gov.uk/government/publications/lawyers-for-palestinian-human-rights-complaint-to-uk-ncp-about-jcb>.



BGL BNP Paribas to continue its work on human rights due diligence and to share its experiences with the financial sector in Luxembourg so that the sector can take steps to prepare for the European Union corporate sustainability due diligence directive.

33. The Working Group heard that the national procurement law had been changed so that the most inexpensive tender was not always selected, but rather other criteria, such as social repercussions, could be taken into consideration. The Government should continue that work and include human rights due diligence requirements in all public procurement processes. In this regard, the Working Group highlights its guidance on the State as an economic actor and human rights,<sup>27</sup> particularly its guidance on promoting respect for human rights in the context of public procurement.<sup>28</sup>

#### **D. Follow-up meetings with businesses**

34. Not all the businesses with which the Working Group requested meetings during the visit responded to its requests to meet. The Working Group would like to thank ArcelorMittal and NSO Group Technologies in particular for their availability and willingness to meet. It is always commendable when a business with which the Working Group has previously engaged on communications or reports agrees to a follow-up meeting.

35. Regarding the meeting with NSO Group Technologies, the Working Group was impressed by the company's willingness to engage openly with the Working Group and other stakeholders. The Working Group learned that NSO Group Technologies had implemented a human rights policy to prevent, detect and address human rights impacts; implemented human rights due diligence; and established a product misuse investigations procedure through which it can terminate surveillance services. The company showed that it was aware of the many potential human rights implications in the surveillance sector in which it operates and that it had taken specific actions to address some of its past shortcomings in relation to potential human rights impacts. To further that work, the Working Group recommends that the business consider incorporating heightened human rights due diligence<sup>29</sup> throughout its activities. The Working Group looks forward to continued engagement with NSO Group Technologies and awaits with interest the results of its current efforts to conduct a focused impact assessment regarding the potential misuse of its products in connection with the media and journalists; to devise additional measures to protect vulnerable populations from the misuse of its products; to evaluate ways to facilitate remedies for affected individuals; and to identify additional means of monitoring the use of its products beyond what is available today, including by obtaining independent perspectives. The Working Group urges NSO Group Technologies to continue its work and to share its policies and reports publicly.

36. The Working Group also met with ArcelorMittal, with which it had also engaged in its country visits to Italy and Liberia. The Working Group was pleased to hear that the company's Chief Executive Officer had announced that the business would aim to be a leader in human rights and that it had been revising its policies and procedures and considering areas for improvements in relation to human rights. The Working Group urges the company to continue its work and to make public any new policies and procedures. Specifically, the Working Group recommends that ArcelorMittal include express reference to the Guiding Principles in its policies and procedures and that it ensure that risks to rights holders are the key focus of any human rights due diligence it carries out. The Working Group followed up with ArcelorMittal on the Working Group's report on its 2021 country visit to Italy<sup>30</sup> as well as on its recommendations regarding the Ilva Taranto plant, namely: (a) to take urgent measures to safeguard the health and the right to education of children living in Taranto, including the immediate closure of the "hot working area"; (b) to require the allocation of financial resources by the business to comply with the principle of "best available

<sup>27</sup> See <https://www.ohchr.org/en/special-procedures/wg-business/state-economic-actor-and-human-rights>.

<sup>28</sup> See, for example, [https://empresasyderechoshumanos.org/wp-content/uploads/2022/04/INFORMATION-NOTE-on-PP\\_LAC\\_EN.pdf](https://empresasyderechoshumanos.org/wp-content/uploads/2022/04/INFORMATION-NOTE-on-PP_LAC_EN.pdf).

<sup>29</sup> See [A/75/212](#).

<sup>30</sup> [A/HRC/50/40/Add.2](#).

technology” to avoid further pollution from production and the provision of effective remedies, including monetary compensation, for the affected population; and (c) to establish a multi-stakeholder mechanism, inclusive of relevant actors, with a mandate to discuss, plan and implement a human rights-based and environmentally friendly economic system for Taranto that is capable of achieving inclusive environmental transition, in line with the 2030 Agenda for Sustainable Development and other relevant State international climate targets. While ArcelorMittal is no longer operating the factory, it is still a shareholder and thus still has responsibility under the Guiding Principles. Therefore, the Working Group urges ArcelorMittal to exercise its influence as a shareholder to ensure that the recommendations are implemented as quickly as possible. The Working Group also followed up on the Luxembourg National Contact Point case against ArcelorMittal for its operations in Liberia.<sup>31</sup> The Working Group urges ArcelorMittal to implement fully the actions outlined in the National Contact Point final agreement, particularly the creation and implementation of a grievance board. Finally, the Working Group encourages ArcelorMittal to share publicly its procedures and good practices when it comes to terminating operations in conflict-affected areas.

## VI. Access to justice and effective remedies

37. The justice system in Luxembourg comprises two separate types of courts: ordinary courts, with jurisdiction in civil and criminal matters, and administrative courts, which hear administrative cases. There are also two independent bar associations that represent lawyers established in Luxembourg.

38. The Working Group noted some good practices, such as the joint initiative by the Ministry of Justice and the Luxembourg Bar Association to develop legislation on making legal aid more accessible (Project No. 7959). The proposal expands the scope of application of legal aid to persons who do not hold Luxembourg citizenship but reside in the country and allows for partial legal aid.

39. However, the Working Group noted challenges in access to justice and effective remedies in relation to corporate accountability for human rights abuses. It is of particular concern that practically no legal cases have been brought in Luxembourg regarding human rights abuses outside the country,<sup>32</sup> despite the potential involvement in such alleged human rights abuses of businesses domiciled in Luxembourg.<sup>33</sup> This signals that it may be difficult, once the corporate sustainability due diligence directive is implemented, to provide access to remedies to victims through the Luxembourg courts, because the courts will have had no experience in such matters. An option that Luxembourg might consider to expand access to justice and effective remedies, as some countries, including France and the Netherlands, have recently adopted, would be to allow for court cases to be presented in English.

### A. State-based judicial mechanisms

40. Luxembourg has a strong legal system. However, the Working Group highlights the need for human rights training, particularly on business and human rights, for judges and public defenders. During the visit, the Working Group heard that the Ministry of Justice was working to amend a draft law that would create a National Justice Council in charge of the nomination and disciplinary sanction of judges and include the training of judges. This amendment of the law presents an excellent opportunity for Luxembourg to integrate a requirement for human rights training, including on the Guiding Principles, for judges, as well as periodic updates on human rights training throughout judges’ careers. Such training

<sup>31</sup> See <https://cdc.gouvernement.lu/dam-assets/service/attributions/point-contact-national-luxembourgeois/original.pdf>.

<sup>32</sup> See Jean-Luc Putz, "La responsabilité pénale des personnes morales", *Revue Pénale Luxembourgeoise* (May 2020).

<sup>33</sup> See, for example, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24811> and <https://www.nytimes.com/2019/04/29/business/syrian-refugees-turkey-hazelnut-farms.html>.

should also be required for prosecutors and other legal professionals. The Working Group notes that there may be value in enabling all or some of the national human rights institutions, such as the Office of the Ombudsperson, Okaju, the Centre for Equal Treatment and the Consultative Commission for Human Rights, to act as *amici curiae* to support those bringing cases of human rights abuses before the courts.

41. The Brussels I Regulation makes it mandatory for the national courts of Member States of the European Union to accept jurisdiction in civil liability cases filed against defendants domiciled in the forum State, whatever the nationality of the defendant or the plaintiff. However, the Working Group learned that access to justice in Luxembourg is slow and can be prohibitively expensive, especially for victims of human rights abuses committed abroad. It is paramount to ensure that there are adequate resources to prevent delays in prosecuting cases involving alleged human rights abuses. Furthermore, there is no legislation in Luxembourg preventing strategic lawsuits against public participation. In its 2021 guidance on ensuring respect for human rights defenders,<sup>34</sup> the Working Group outlined steps that States could take to address such lawsuits, including by introducing laws against them as well as legal reforms to prevent cases of criminal libel being pursued against human rights defenders. The steps outlined also included giving courts the power to dismiss or decline to accept a case if it considered that the intention of the claim or prosecution was to distort facts concerning the work of a human rights defender or to harass or take advantage of the defendant. Another major limitation is that only individuals can bring cases to the courts; collective recourse lawsuits are currently not allowed and civil society organizations cannot bring lawsuits to the courts on behalf of individuals.

42. The Working Group believes that Bill 7650, submitted in August 2020 to the Luxembourg Parliament and aimed at bringing collective recourse procedures to consumer law, marks a significant step towards the adoption of a legal framework for collective recourse in Luxembourg. Permitting collective recourse lawsuits and the representation of individuals by civil society organizations and enacting legislation to counter strategic lawsuits against public participation would facilitate access to remedy. It is important for the Government to continue this work, particularly ahead of the upcoming corporate sustainability due diligence directive.

43. The Working Group commends the Government for its favourable position on the principle of reversing the burden of proof, including in the draft Bill 7945 on whistle-blowers. The Government could incorporate that principle into legislation to implement the corporate sustainability due diligence directive. The Working Group hopes that the whistle-blower bill, which is based on a European Union directive, will promptly become law.

## **B. State-based non-judicial grievance mechanisms**

44. During the visit, the Working Group noted several concerns about the OECD National Contact Point in Luxembourg, which holds the explicit mandate to handle disputes relating to business and human rights and, more generally, the mandate on responsible business conduct. The primary concern relates to the lack of collaboration between the National Contact Point and civil society. Additionally, several actors reiterated that the National Contact Point lacked visibility. The Working Group notes a recent increase in staff appointed to the National Contact Point and commends recent initiatives to engage with stakeholders across the board and to raise the visibility and awareness of the National Contact Point, particularly outside of Luxembourg. The Working Group notes that OECD conducted a review of the Luxembourg National Contact Point in September 2022, with a report to be made publicly available within the coming months. In the meantime, the National Contact Point should continue its work to make multi-stakeholder consultations standard practice, including consideration of the creation of an advisory group.

45. In addition, various bodies can issue administrative sanctions in Luxembourg, including the Financial Supervisory Authority and the Insurance Commission. The National Commission for Data Protection also has various investigative, corrective and advisory

<sup>34</sup> [A/HRC/47/39/Add.2](#).

powers, including to issue penalties for infringement as set out in the General Data Protection Regulation and imposing financial penalties for delays in complying with a Commission order to provide information or with a corrective measure issued by the Commission.

### C. Non-State-based grievance mechanisms

46. Most of the businesses with which the Working Group spoke had operational grievance mechanisms. The Working Group would like to reiterate that all businesses need to provide effective grievance mechanisms for rights holders and communities, in accordance with the Guiding Principles (principle 31). The Working Group applauds the recent work of the National Contact Point to deliver training to better align its operational grievance mechanisms with the Guiding Principles. The Working Group understands that similar efforts will also be undertaken as part of the National Pact.

47. In Luxembourg, businesses with more than 15 employees have staff delegations, often operating in collaboration with trade unions,<sup>35</sup> to which workers can bring complaints. The overarching role of the staff delegation is to safeguard and defend employees' interests with regard to working conditions, job security and employment status. The staff delegation is called upon to prevent and settle, in a spirit of cooperation, individual or collective disputes that may arise between the employer and the salaried personnel; to present to the employer any individual or collective complaint; and to refer to the Labour and Mines Inspectorate, in the absence of a settlement of the above-mentioned disputes, any complaint or observation relating to the application of the legal, regulatory, administrative and contractual provisions concerning working conditions, rights and protection of employees in the exercise of their profession. The Working Group would like to underline the important role that staff delegations can play in access to remedies and transparency and urges businesses to work with them effectively.

48. If disputes cannot be resolved through the staff delegation, the cases can be referred to the Labour and Mines Inspectorate, which also has competency to investigate complaints and allegations of human rights abuses. During the visit, the Working Group heard that more human resources were needed for the Inspectorate.

49. The mechanisms noted above can all be important for corporate accountability. However, if no remediation is provided directly to the victims, then such mechanisms do not provide effective access to remedies under the Guiding Principles.

## VII. Stakeholder engagement

50. The Working Group commends the Government for its positive engagement and support to civil society organizations. Civil society is key to educating civil servants, businesses, including the Big Four accounting firms and law firms, as well as other stakeholders to ensure the establishment of corporate structures that facilitate the protection and promotion of human rights. Such corporate structures are also key to ensuring that human rights due diligence is central to the way that businesses are structured in Luxembourg.

51. The Working Group notes that good structures are in place in Luxembourg for engagement by Government with civil society organizations and public-private organizations, such as working groups and interministerial committees. However, at times, it appears that such structures have not been used consistently, and some have not shown evidence of effective dialogue with or feedback from the Government. The Working Group urges the Government to ensure transparency around discussions and decisions taken in working groups and interministerial committees.

<sup>35</sup> Any business, whatever the nature of its activities, its legal form and its sector of activity, is obliged to appoint staff delegates if it employs at least 15 employees bound by an employment contract during the 12 months preceding the first day of the month in which the elections are posted.

52. The Working Group congratulates Luxembourg for having the lowest gender pay gap in the European Union (based on 2020 data<sup>36</sup>) and for its efforts to narrow the existing wage gap between women and men, act against discrimination and ensure equal parental leave. The Government also appears to have an effective labour supervisory system.

53. The Working Group notes that a draft constitutional revision has been presented aimed at introducing a measure to allow citizens to propose legislative initiatives. The Working Group notes that the 2022 Rule of Law Report by the European Commission highlights concerns regarding the overall inclusiveness of the legislative process.<sup>37</sup> The Working Group therefore hopes that the draft constitutional revision will be passed. To expand the initiative towards increased stakeholder engagement, Luxembourg could introduce the right to an own-initiative opinion, so that such entities as the Office of the Ombudsperson could participate in legislative and non-legislative (e.g. ordinances) measures.

## VIII. Access to information and transparency

54. The Working Group observes that transparency and access to information remain critical to ensuring that government and corporate structures are created with the aim of ensuring that businesses protect against actual and potential human rights impacts and respect the environment, including the right to a clean, healthy and sustainable environment.

55. While Luxembourg passed a law in 2018 on transparent and open administration to allow for civil society, including the media, to request access to documents and information from the Government, the Working Group heard repeatedly during its visit that those processes were not always dynamic. In particular, the law does not guarantee fast-track access to information for the media, which has been repeatedly requested by journalists and the Consultative Commission for Human Rights. The Working Group, therefore, echoes the concerns set out in the 2021 report by the European Commission regarding the lengthy procedures for access to official documents in Luxembourg, despite the 2018 law.<sup>38</sup> The law has been undergoing a process of detailed evaluation, the results of which were expected to be published in 2022. The Working Group understands that the evaluation is still ongoing and that its results will be presented to the Government in the first quarter of 2023. The Working Group looks forward to those results and notes the importance of multi-stakeholder engagement in the process.

56. Furthermore, the law includes restrictions that hinder access to documents. For example, if documents are not officially marked as government documents, the law excludes them from being shared. The Working Group recalls that better access to information was part of the Government's coalition programme for the period 2018–2023 and encourages the Government to continue that work.

57. The Working Group notes recent initiatives relating to transparency for government officials, such as Parliament's amendment in September 2021 of its Code of Conduct to strengthen rules on the declaration of assets and extra-parliamentary work and activities (e.g. participation on the boards or committees of businesses).<sup>39</sup> While the amendment is an important step, the Working Group urges the Government to adopt the recommendation of the Group of States against Corruption to expand its scope to include the assets of family members and spouses.<sup>40</sup> The Working Group also echoes the recommendation of the Group of States to introduce an effective system of monitoring and sanctions concerning breaches of the Code of Conduct for members of Parliament.

58. In addition, in December 2021, a new transparency register was created, which requires that members of Parliament declare all contacts with registered lobbyists and reject

<sup>36</sup> See <https://ec.europa.eu/eurostat/en/web/products-statistical-working-papers/-/ks-tc-22-002>.

<sup>37</sup> See [https://commission.europa.eu/publications/2022-rule-law-report-communication-and-country-chapters\\_en](https://commission.europa.eu/publications/2022-rule-law-report-communication-and-country-chapters_en).

<sup>38</sup> See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0700&rid=9>.

<sup>39</sup> See <https://www.chd.lu/en/dossier/7824>.

<sup>40</sup> See <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a0424d>.

requests for meetings with unregistered persons seeking to influence the legislative work of members or Parliament's decision-making process.<sup>41</sup> It is crucial to note that, as the Working Group stated in its 2022 report on corporate influence in the political and regulatory sphere,<sup>42</sup> when businesses participate in and attempt to influence policymaking, they have a responsibility to conduct such participation transparently, responsibly and in a rights-respecting manner. Likewise, where States permit corporate political engagement, they have an obligation to ensure that such engagement is adequately regulated to avoid impairing the State's ability to safeguard against any resulting human rights harms. Therefore, the Working Group looks forward to learning how the transparency register will be evaluated after having been operational for over a year.

## IX. Groups in vulnerable situations

59. The Working Group was informed that approximately 222,000 individuals per day cross the national border of Luxembourg for employment purposes. Luxembourg works in close collaboration with European labour inspectorates from neighbouring countries, which is commendable. However, the Working Group also heard during its visit that individuals did not feel safe from reprisals relating to the reporting of human rights abuses.

60. The Working Group congratulates the Government for the substantive and wide-ranging support it has provided to refugees, migrants and survivors of human trafficking. For example, the Working Group learned that Luxembourg has a very comprehensive and favourable social security system, which includes migrant workers. However, through its consultations with various stakeholders, the Working Group was informed that more training was needed to sensitize law enforcement personnel to the challenges faced by such vulnerable populations. The Working Group was also concerned about reports of the small fines imposed on businesses and individuals found guilty of having exploited irregular migrants and human trafficking survivors. High sanctions are needed to deter such practices. Furthermore, the Working Group learned that judicial proceedings in such cases can take a very long time. While victims benefit from support, such as lodging, financial aid, access to education and residency titles during that time, the prolonged procedures can cause psychological distress for the victims.

61. The Working Group applauds the Government for ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization and urges the Government to incorporate the Convention into national law, with a specific focus on the transnational obligations of businesses domiciled in Luxembourg.

62. The Working Group also heard that there was a need for the Government to introduce legislation to give powers to the communes to protect migrant workers. It would also be important to implement mandatory training for mayors and local associations, such as the Association of Luxembourg Cities and Municipalities (SYVICOL), in human rights matters.

## X. Conclusions and recommendations

63. **The Working Group welcomes the Government's willingness both to share its challenges and to listen to recommendations as to how to address them.**

64. **The Working Group has found a number of good practices by the Government and businesses. Luxembourg has a solid legal and institutional framework for protecting and promoting human rights, with a good rule of law and legal system.**

65. **However, there is still more to be done to implement the Guiding Principles on Business and Human Rights across the country. This includes a proactive response to the corporate sustainability due diligence directive, which incorporates the entirety of the financial and investment funds sector and changes the burden of proof, as well as**

<sup>41</sup> See <https://www.chd.lu/de/dossier/7499>.

<sup>42</sup> See [A/77/201](#).



the passing of related national legislation. This can be accomplished by means of continued political and corporate will, training and capacity-building.

66. The Working Group found that many of the elements required under mandatory human rights due diligence are already required to be undertaken by the financial sector. The Working Group concludes from this that the financial sector already has the resources and ability to be included within the corporate sustainability due diligence directive. In response to some of the discussions held during the Working Group's visit, it is also important to note that there is no proof that, if a State or sector tackles human rights issues, it will lose competitiveness. There is undeniably a cost to undertaking mandatory human rights due diligence, but the Working Group highlights that the cost and risk of not implementing it are greater. A lack of action by a Government in implementing effective mandatory human rights due diligence could imply that a State prioritizes business activity, irrespective of its impacts, over any human rights and environmental consequences of that business activity. Furthermore, as one of the priorities of Luxembourg as member of the Human Rights Council for the 2022–2024 term is support for the rule of law, civic space and human rights defenders and the fight against impunity,<sup>43</sup> the inclusion of mandatory human rights due diligence requirements would serve as a useful tool in the context of the country's economic activities.

67. The Working Group considers that Luxembourg should move forward with national legislation on business and human rights, including mandatory human rights due diligence. By encompassing the entire finance sector, including investment and pension funds, in that legislation, and through the express inclusion of human rights issues in sustainability, Luxembourg can show greater evidence of its focus on sustainable finance initiatives. Luxembourg has the opportunity to be a leader and role model in this field, especially considering its current status on the Human Rights Council.

68. In terms of the National Contact Point of Luxembourg, the Working Group is hopeful that recent changes will lead to increased visibility and stakeholder engagement. This will empower the National Contact Point to become an implementation structure for international policy, standards and norms, acting both nationally and internationally to further the implementation of those policies, standards and norms.

69. During its visit, the Working Group heard repeatedly that the basis for many interactions with the business sector in Luxembourg was trust, due to the small size of the country. While trust in public institutions is crucial for democracy and trust in business can be a lever for growth, the Working Group would like to stress that trust alone should not be a basis for policy and legislation, especially where human rights and environmental matters are at stake. Instead, clear guidelines, monitoring and evaluation processes are needed to hold business accountable. Transparency is also key. The Working Group would like to refer once more to its recent report,<sup>44</sup> which includes recommendations on the ways in which States can ensure business practices in line with the Guiding Principles.

70. In terms of access to justice, there is more work to be done. Additional reforms may be needed, in particular after the implementation of the corporate sustainability due diligence directive, as it will be crucial to ensure that the system is victim-focused rather than business-focused.

71. Finally, the Working Group would like to reiterate its warm thanks to Luxembourg for its invitation to visit the country and its cooperation throughout the visit.

72. The Working Group recommends that the Government:

<sup>43</sup> See <https://maee.gouvernement.lu/dam-assets/directions/d1/candidature-cdh/EN-Brochure-candidature-CDH.pdf>.

<sup>44</sup> [A/77/201](#).



- (a) Provide clear and accessible information on the implementation of the indicators and objectives set out in the national action plan on business and human rights;
- (b) Pay special attention, in the next national action plan, to the financial sector, including investment and pension funds, as well as the climate crisis, with a strong emphasis on corporate accountability;
- (c) Better address pillar III of the Guiding Principles in the next national action plan, in particular regarding access to effective remedies for human rights abuses that occur in other countries by businesses domiciled in Luxembourg;
- (d) Carry out the mapping of access to justice and effective remedies for human rights abuses in Luxembourg, which was foreseen under the National Action Plan for the period 2020–2022;
- (e) Include a provision in the next national action plan to carry out a national risk assessment on business and human rights;
- (f) Encourage State-owned enterprises to join the voluntary National Pact on Business and Human Rights, using the opportunity to be progressive leaders and increase general awareness of the Pact and the Guiding Principles, and ensure that the National Pact is used proactively to prepare businesses for mandatory human rights due diligence legislation;
- (g) Invest in training and capacity-building for businesses of all sizes on their human rights responsibilities under the Guiding Principles;
- (h) Support the work of the National Contact Point to ensure multi-stakeholder consultations and consider the creation of an advisory group;
- (i) Work to ensure that access to the Ultimate Beneficial Ownership Register is restored as quickly as possible for all individuals with a legitimate interest;
- (j) Work with the European Council to ensure the success of the third anti-tax avoidance directive;
- (k) Increase transparency by, for example, requiring multinationals to publish annually their country-by-country reporting, showing the location of their employment, sales, declared profits and tax paid through the implementation of Directive 2021/2101 of the European Parliament and of the Council;
- (l) Include all elements of the financial sector and investment funds, including those that fall within the scope of the corporate sustainability due diligence directive, within the national legislation of Luxembourg implementing the directive, and in line with the Guiding Principles;
- (m) Continue advocating for a full value-chain approach in the corporate sustainability due diligence directive and include that in national legislation;
- (n) Create a new and well-resourced supervisory authority to monitor and evaluate the implementation of the corporate sustainability due diligence directive, including having powers to investigate, propose sanctions and provide good practices guidance;
- (o) Implement effective monitoring and evaluation in relation to human rights due diligence carried out by the Luxembourg Pension Fund;
- (p) Apply the Guiding Principles as the basis for all screening of Luxembourg Pension Fund investments and carry out stakeholder engagement when determining exclusions;
- (q) Establish clearer human rights due diligence requirements for the Export Credit Agency and undertake detailed evaluations for businesses that apply to the Export Credit Agency;
- (r) Make it clear to businesses, government officials and individuals that sustainable development initiatives expressly include human rights measures;

- (s) **Ensure that human rights considerations are applied in a cross-cutting way in the work of the Ministry of Environment, Climate and Sustainable Development, such as in their sustainability and compatibility checks;**
- (t) **Ensure substantive engagement with the High Council for Sustainable Development;**
- (u) **Include human rights criteria in all State public procurement practices;**
- (v) **Ensure that safeguards are in place so that public money is not used to adversely affect human rights and the environment;**
- (w) **Prioritize the work of LuxDev on monitoring, evaluation and termination tools and facilitate the work of LuxDev to establish a grievance mechanism for stakeholders, including those in other countries, and ensure effective access to remedies;**
- (x) **Integrate a requirement for human rights training, including training on the Guiding Principles, for judges, prosecutors, labour inspectors and relevant supervisory bodies, as well as periodic updates on human rights training throughout their careers;**
- (y) **Ensure that there are adequate resources to prevent delays in prosecuting cases involving alleged human rights abuses;**
- (z) **Permit collective recourse lawsuits and the representation of individuals by civil society organizations and enact legislation to counter strategic lawsuits against public participation to facilitate access to remedies;**
- (aa) **Strengthen the policy and strategic framework on business and human rights with the introduction of a “smart mix” of measures, as highlighted in the October 2022 recommendations of the Committee on Economic, Social and Cultural Rights. This should include strong public procurement regulations with human rights requirements, and much greater training on and implementation of the Guiding Principles;**
- (bb) **Enable the national human rights institutions, such as the Office of the Ombudsperson, Okaju, the Centre for Equal Treatment and the Consultative Human Rights Commission, to act as amici curiae in cases;**
- (cc) **Introduce legislation to give powers to the communes to protect migrant workers;**
- (dd) **Assign more human resources to the Labour and Mines Inspectorate to ensure that it can continue to investigate complaints and allegations of human rights abuses effectively;**
- (ee) **Impose higher sanctions on businesses and individuals to deter practices of trafficking in persons;**
- (ff) **Train mayors, local associations and law enforcement personnel on human rights;**
- (gg) **Implement the recommendations of the 2022 Rule of Law Report by the European Commission,<sup>45</sup> particularly the following recommendations:**
  - (i) **Reduce the time of processing of requests for disclosure of official documents, taking into account European standards on access to official documents;**
  - (ii) **Improve the legislative decision-making process by providing wider possibilities for stakeholders to participate in public consultations;**
  - (iii) **Continue with the process to adopt the reform on making legal aid more accessible;**

<sup>45</sup> See [https://commission.europa.eu/system/files/2022-07/4\\_1\\_194542\\_comm\\_recomm\\_en.pdf](https://commission.europa.eu/system/files/2022-07/4_1_194542_comm_recomm_en.pdf).

- (iv) **Continue to implement and evaluate the new legislation on lobbying the Parliament, including the transparency register;**
- (hh) **Ensure transparency around discussions and decisions taken in working groups and interministerial committees concerning human rights matters;**
- (ii) **Continue to work towards better access to information and implement the recommendations of the Group of States against Corruption to expand the amendment by Parliament of the Code of Conduct to cover the assets of family members and spouses under the declaration of assets and extra-parliamentary work and activities and to introduce an effective system of monitoring and sanctions concerning breaches of the Code of Conduct for members of Parliament;**
- (jj) **Implement the Indigenous and Tribal Peoples Convention into law, with a particular focus on providing guidance to financial institutions, State-owned enterprises and businesses that engage internationally with communities covered by the Convention.**

**73. In addition, the Working Group recommends that businesses, including financial institutions:**

- (a) **Undertake human rights due diligence in all their operations;**
- (b) **Ensure that their subsidiaries and business relationships, including their clients and customers, are carrying out human rights due diligence;**
- (c) **Ensure that human rights due diligence is undertaken and reported across the entire value chain;**
- (d) **Provide effective grievance mechanisms for rights holders and communities in line with the Guiding Principles, namely principle 31, including for stakeholders that may be affected in other countries;**
- (e) **Work with staff delegations effectively to facilitate access to remedy and transparency;**
- (f) **Provide effective remediation where human rights impacts are identified;**
- (g) **Create and implement a human rights policy and publish it in accessible locations.**

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