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## **First Evaluation Round**

### **Evaluation Report on Luxembourg**

Adopted by the GRECO  
at its 5<sup>th</sup> Plenary Meeting  
(Strasbourg, 11-15 June 2001)

## **I INTRODUCTION**

1. Luxembourg was the seventh GRECO member to be examined in the First Evaluation Round. The GRECO Evaluation Team (hereafter "the GET") was composed of Mr Juha Keränen, Detective Chief Superintendent, National Bureau of Investigation (Finland, law-enforcement expert), Mr Victor Ponta, prosecutor at the General Prosecutor's Office (Romania, criminal-justice expert), Mr Jean-Pierre Bueb, adviser at the Central Service for the Prevention of Corruption (France, general-policy expert). This GET, accompanied by two members of the Council of Europe Secretariat, visited Luxembourg from 7 to 9 November 2000. Prior to the visit, the GET experts were provided with a comprehensive reply to the Evaluation Questionnaire (document GRECO Eval I (2000) 17) as well as with copies of the relevant legislation.
2. The GET met with officials from the following public authorities: the judiciary, the General State Prosecutor's Office, the Office of the State Prosecutor of the Court of the City of Luxembourg, the Office of the State Prosecutor of the Court of Diekirch, the Police of the Grand Duchy, the General Inspectorate of the Police, the Parliament, the Court of Auditors, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry for the Civil Service and Administrative Reform, the Ministry of Public Works and the Ministry of the Interior.
3. Moreover, the GET met with members of the following non-governmental institutions: the Chamber of Commerce, the Order of Chartered Accountants, the Institute of Company Auditors and various journalists' associations<sup>1</sup>.
4. It is recalled that GRECO agreed, at its 2<sup>nd</sup> Plenary meeting (December 1999) that the First Evaluation Round would run from 1 January 2000 to 31 December 2001, and that, in accordance with Article 10.3 of its Statute, the evaluation procedure would be based on the following provisions:
  - Guiding Principle 3 (hereafter "GPC 3": authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy);
  - Guiding Principle 7 (hereafter "GPC 7": specialised persons or bodies dealing with corruption, means at their disposal);
  - Guiding Principle 6 (hereafter, "GPC 6": immunities from investigation, prosecution or adjudication of corruption).
5. Following the meetings indicated in paragraph 2 above, the GET experts submitted to the Secretariat their individual observations concerning each sector concerned and proposals for recommendations, on the basis of which the present report has been prepared. The principal objective of this report is to evaluate the measures adopted by the authorities of Luxembourg, and wherever possible their effectiveness, in order to comply with the requirements deriving from GPCs 3, 6 and 7. The report will first describe the situation of corruption in Luxembourg, the general anti-corruption policy, the institutions and authorities in charge of combating it - their functioning, structures, powers, expertise, means and specialisation - and the system of immunities preventing the prosecution of certain persons for acts of corruption. The second part contains a critical analysis of the situation described previously, assessing, in particular, whether

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<sup>1</sup> The programme of the visit figures in Appendix I.

the system in place in Luxembourg is fully compatible with the undertakings resulting from GPCs 3, 6 and 7. Finally, the report includes a list of recommendations made by GRECO to Luxembourg in order for this country to improve its level of compliance with the GPCs under consideration.

## **II GENERAL DESCRIPTION OF THE SITUATION**

### **a. The phenomenon of corruption and its perception in Luxembourg**

6. Luxembourg is one of the smallest countries in Europe (424,000 inhabitants in 1997). Its borders with all the neighbouring countries (France, Belgium and Germany) are completely open, the only supervised "frontier" being that at Luxembourg international airport. However, Luxembourg is also the OECD country with the highest GDP per capita in purchasing parity terms (nearly \$40,000 in 1999). The wealth of the country is related to a very developed largely foreign-owned<sup>2</sup> financial sector, which accounts for more than 20% of its GDP and is the undisputed growth engine of the economy with important linkages to other service sectors.
7. All the representatives of the public authorities and of the "civil society" whom the GET interviewed during the evaluation visit affirmed that Luxembourg was virtually corruption-free. This was mainly attributed to the high standards of probity in the public sector, which some linked to the very satisfactory levels of remuneration of civil servants. However, the size of the country was also considered to be a contributing factor. "In a society where everybody knows everybody corruption would have been difficult to hide" was the argument advanced by most interviewees.
8. Despite perceiving Luxembourg as corruption-free, the authorities considered that some new general measures were necessary to counter the risk of the country's becoming contaminated by corrupt practices abroad. As a result, they had decided to make the strengthening of the anti-corruption legislative armoury one of their priorities, drawing inspiration from the work of various international organisations competent in the field, among which the Council of Europe.
9. At the time of the evaluation visit, only the following acts were punishable under Luxembourg's criminal law: the passive corruption of civil servants, "public officials", other persons entrusted with public functions including elected representatives, judges and arbiters (according to the law in force, proof of a pre-existing agreement was required to ensure a conviction under this heading); the active corruption of civil servants, "public officials", other persons entrusted with public functions and arbiters and the attempt to corrupt them; subjecting or attempting to subject the same persons to coercion; and the pursuing by civil servants, "public officials" and other persons entrusted with public functions of their private interest in the execution of their duties ("illegal taking of interest")<sup>3</sup>. The relevant provisions were very rarely applied in practice. Although the GET was not furnished with any official statistics, the prosecuting authorities assured it that there had been few prosecutions for corruption in the past ten years; there had just been 50 prosecutions for "related offences".
10. Corruption was nevertheless a predicate offence for the purposes of Luxembourg's anti-money-laundering criminal legislation. Moreover, although legal persons could not be held criminally responsible, they could be required to pay civil damages for an offence committed on their behalf and commercial companies engaging in illegal activities could be dissolved.

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<sup>2</sup> According to the 1999 figures, 87% of the banks fell within this category.

<sup>3</sup> The text of the provisions figures in Appendix II.

11. To remedy the apparently narrow statute-book definition of corruption, the authorities of Luxembourg had decided to take a two-stage approach. A bill was already pending in parliament at the time of the evaluation visit. If it became law<sup>4</sup>, it would remove the requirement of showing a pre-existing agreement. It would extend to other categories of persons the provisions on passive and active corruption, coercion and the illegal taking of interest. It would also render trading in influence a criminal offence. Moreover, by adopting the same bill, the parliament of Luxembourg would give its approval for the ratification of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. A second legislative initiative was envisaged in 2001 for the ratification of the Council of Europe Criminal and Civil Law Conventions on Corruption. A provision on private corruption would be included in the relevant bill.
12. These legislative initiatives aside, the authorities of Luxembourg, because of their perception of their country as corruption-free, did not consider it necessary to develop a comprehensive anti-corruption strategy. As a result, they had not elaborated any programmes aimed at awareness-raising. Nor had they created any specialised body in the field of corruption.

## **b. Bodies and institutions in charge of the fight against corruption**

13. In Luxembourg the fight against corruption is in principle entrusted to the general law-enforcement mechanism and the judiciary.

### **b1. The Police**

14. The prevention, detection and repression of crime in Luxembourg fall within the province of the Police of the Grand Duchy. This is a new body resulting from the merger on 1 January 2000 of the gendarmerie and the old police. It is under the authority of the Minister of the Interior, who is responsible for the organisation, administration (including budgetary questions), training and discipline of the force.
15. The police force is headed by a Director General and two Deputies who are appointed, from among police officers with a certain grade and experience, by the Grand Duke on the proposal of the Minister of the Interior. There are 1,170 police officers in the force belonging to three career streams, the higher grades (*cadre supérieur*), the inspectors (*carrière des inspecteurs*) and the constables (*carrière des brigadiers*). Appointments are made, according to conditions laid down in the law, by the Grand Duke or the Minister of the Interior, depending on the grade.
16. The police force has central and regional operational services. The central services include the judicial-police department, which has eight sections including a general-crime, an organised-crime and an economic-and-financial-crime section. In addition, each of Luxembourg's six police districts ("the regional services") has its own crime-investigation department, the staff of which in principle discharges judicial-police tasks. There are 101 police officers serving in the judicial-police department and 63 in the district crime-investigation departments.
17. All police officers receive training specific to their career path. However, the corruption phenomenon is only dealt with in the context of the continuous education received by the officers of the organised-crime section.
18. The police have the power to conduct on their own initiative an inquiry into any suspected offence ("police inquiry"). However, at that stage they do not have any powers of coercion. They can only

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<sup>4</sup> The law in question entered into force on 11 February 2001. The relevant provisions figure in Appendix III.

engage in surveillance. They can also rely on anonymous informers, whose statements cannot, however, be used to ensure somebody's conviction (unless, of course, their identity is disclosed and they are examined as witnesses by the court). If the police find that an offence has been committed they must report it to the prosecutor.

19. Once a criminal case is under the consideration of a prosecutor, the police can only act under his/her instructions. By the same token, if the prosecutor sends a case to the investigating judge for a judicial inquiry (*instruction/information*), the police can only act on the instructions of the investigating judge. When entrusted with an inquiry by the prosecutor or the investigating judge, a police agent cannot take orders from his/her hierarchical superiors in connection with the inquiry of the case.
20. Moreover, the General State Prosecutor exercises general supervision over the police whenever they inquire into a criminal case. The police officers interviewed assured the evaluators that the Ministry of the Interior has no involvement in the criminal cases that are dealt with by the police.
21. In cases of corruption, the prosecutors or the investigating judges would rely on either the central or the regional operational services of the police, depending on the functions of the suspect.
22. The police are, in general, satisfied with their co-operation with the prosecutors. They define their role as presenting the prosecutors with elements that would allow them to decide on the future course of the inquiry. Moreover, the police are aware that the general anti-crime policy is defined by prosecutors. However, there are certain inquiries initiated by the police, including some involving suspicions of corruption, in which its operational services felt uneasy with the lack of concrete results. The police authorities wonder whether the absence of results in question should not be attributed to lack of diligence and means. This had to do, in particular, with a complex case involving a prominent person in public life. On the contrary, the judicial authorities consider that the absence of results is to be explained by the nature of the suspicions and available indications, which were often vague, the complexity of some inquiries and the difficulties resulting from the legislation that was in the process of being changed at the time of the visit. Some journalists interviewed by the GET also considered that, in some corruption-related cases, the pre-trial phase had been unduly prolonged.
23. The lack of a specialised central unit to deal with corruption cases, which because of the size of the country easily acquired a national dimension, was also regretted by the operational services of the police. Corruption offences would normally be dealt with by the general-crime section. However, it appeared that rumours concerning corruption were actively pursued only when they were linked to organised crime by the relevant section. The latter claimed that they had difficulty inquiring into corruption cases because they lacked powers of coercion at the police-inquiry stage. In any case, they did not favour the elaboration of over-detailed rules for some special investigative techniques, such as the use of undercover agents, that remained unregulated in Luxembourg. They considered, however, that the principle must be established by law. They also felt that the principle of the "opportunity of prosecution" allowed them sufficient leeway in this connection.
24. International cases of corruption affecting the financial sector in Luxembourg would fall within the competence of the economic-and-financial-crime section, which is also responsible for requests for international judicial assistance. The GET received information from journalists that this section lacks adequate human resources. Where necessary the police of Luxembourg work in collaboration with the police of neighbouring countries in the context of specific cases. However, there are no joint police teams.

25. Although the police are not governed by a special code of conduct, they are subject to the law on military discipline. In addition, according to Article 15 § 2 of the Code of Criminal Procedure, the agents of the judicial police are subject to the General State Prosecutor's supervision. They are also subject to the disciplinary rules applicable to all civil servants, on which they receive special training. The police have their own internal controls. However, they are also supervised by an outside service, the General Inspectorate of the Police, which is placed under the direct authority of the Minister of the Interior. The inspectorate, which is composed of eight former police officers, can take the initiative to inquire into cases of police misconduct. If they find a criminal offence they have to inform the prosecutor and may also inform the Minister of the Interior. If they are ordered by the prosecutor, they conduct a criminal inquiry. The Ministry of the Interior may order an administrative inquiry.

## **b2. The Prosecutors**

26. Except for certain categories of offences (e.g. breaches of customs legislation), it is the prosecutors who are competent for the institution of criminal proceedings in Luxembourg. However, in cases of indirect-taxation offences they need a request from the tax authorities.

27. There are two prosecutors' offices headed by a State Prosecutor, one attached to the court of Luxembourg with 18 prosecutors (8 of them dealing with economic and financial crime) and one attached to the court of Diekirch with 4 prosecutors. There also exists the General State Prosecutor's office with 8 prosecutors, which is attached to the Supreme Court of Justice. The General State Prosecutor supervises all other prosecutors.

28. The prosecutors are appointed by the Grand Duke on the proposal of the Minister of Justice and enjoy similar guarantees of independence to those of the judges. In principle, they are under the authority of the Minister of Justice. Although the Minister of Justice cannot order prosecutors not to institute criminal proceedings, s/he can in theory order them to do so. However, no minister has ever exercised this power. In general, prosecutors feel that they can exercise their functions independently without any political interference.

29. Every civil servant who becomes aware of a criminal offence in the exercise of his/her duties must report it to the State Prosecutor. However, special rules apply to the tax authorities which, according to the information received by the evaluators during the visit, usually only report cases of aggravated tax fraud (*escroquerie fiscale*)<sup>5</sup>. However, prosecutors are not under an obligation to prosecute all criminal offences that come to their attention (*opportunité des poursuites* - opportunity of prosecution principle). If they decide not to prosecute, they must provide reasons. Moreover, the decision not to prosecute is not final in the sense that the case can be reopened as long as the offence has not become statute-barred. The victim of the offence may also complain to the hierarchical superior of the prosecutor or have direct recourse to the court (*citation directe*) or to the investigating judge.

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<sup>5</sup> Article 396 of the Tax Code provides: "A person, who for his own or another person's interest, obtains or helps another person to obtain unjustified tax advantages, resulting in the reduction of tax receipts, will be punished with a fine for tax fraud. The amount of the fine is four times the amount of tax evaded. ... If the fraud concerns a significant amount of tax, either in absolute terms or in comparison with the amount of tax due that year, and was committed by using systematically fraudulent tactics aiming at hiding from the authorities relevant facts or convincing them about inexact facts, it will be punished as aggravated tax fraud with imprisonment of between a month and five years and a fine ranging from 50,000 francs to an amount equivalent to ten times the amount of tax evaded."

30. The prosecutor who has a case under consideration may proceed in two ways, depending of the gravity of the offence. S/he may conduct an inquiry with the assistance of the police (*enquête préliminaire*) and send the case to the court directly (*citation directe*). However, in the case of serious offences and where measures such as arrests, searches and seizures are needed, the prosecutor will send the file to an investigating judge. This would be the normal course of action for corruption offences. Once the case is referred to the investigating judge the prosecutor cannot proceed to any acts of inquiry. S/he may, however, extend the scope of the judicial inquiry by referring to the investigating judge additional criminal files.
31. It is the prosecutor or the investigating judge who may authorise the use of undercover agents in Luxembourg. Although no special rules have been established in this connection, certain limits are fixed by the case-law concerning provocation by the police, which, if established, renders the procedure null and void. As this investigative technique can only be of limited use in a country the size of Luxembourg, the prosecutors and the police sometimes use foreign undercover agents.
32. The prosecutors may also have recourse to the services of experts. However, tax officers are only heard as witnesses. They cannot assist the prosecutors as agents of the judicial police. However, the evidence collected in the course of an inquiry conducted by the tax authorities can form part of the case-file in a criminal case. In general the prosecutors felt that the cooperation between the judicial and tax authorities was not developed. However, the few criminal cases that had been reported by the tax authorities had been very well prepared.
33. The prosecutors interviewed by the GET expressed some concern about the adequacy of the human resources placed at the disposal of their offices. Dealing with requests for international judicial assistance occupied a lot of their time already. New legislation that was about to enter into force at the time of the evaluation visit sought to make the relevant procedure shorter by restricting the possibilities of appeal. However, Luxembourg would no longer be able to refuse assistance in cases of aggravated tax fraud. According to indications given by the prosecutors themselves, it was anticipated that, after the entry into force for Luxembourg of the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters on 31 December 2000, dealing with international requests would take up a substantial part of their time, something which would have a considerable impact on their domestic work. The journalists interviewed by the GET confirmed that the prosecutor's offices were already understaffed.
34. As concerns the fight against money-laundering, the State Prosecutor attached to the court of Luxembourg acts as the Financial Intelligence Unit. In this capacity, s/he is competent to receive suspicious transactions reports from professionals who are under a reporting obligation<sup>6</sup>, to conduct the necessary inquiries and to co-operate with the corresponding authorities of other States.

### **b3. The Judges**

35. As already observed, in a corruption case there would normally be an investigation by a judge. There are eight investigating judges in the court of Luxembourg and one in the court of Diekirch. The above courts would also be competent to try corruption offences at first instance. In the court of Luxembourg such offences would in general be allocated to the judges who specialise in economic and financial crime. According to the Luxembourg criminal-justice system, a criminal

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<sup>6</sup> E.g. banks, investment companies and other financial-sector professionals, life-insurance companies, notaries, auditors, chartered accountants and those in the business of games of chance and bookmakers.

case can be further examined by the Court of Appeal and the Court of Cassation, both parts of the Supreme Court of Justice.

36. Judges in Luxembourg are appointed by the Grand Duke on the proposal of the Minister of Justice. A special procedure, involving a further proposal by the Supreme Court, exists for certain high posts. Judges enjoy full security of tenure (Article 91 of the Constitution).
37. Investigating judges have extensive powers in Luxembourg, in the sense that they can order on their own initiative arrests, searches and seizures. Banking secrecy does not constitute an obstacle in this connection. However, the journalists interviewed by the GET invoked a case of international judicial assistance where the investigating judge, instead of carrying out a search at a bank, gave its director a deadline for producing the documents him/herself. The police confirmed that this was the normal way of proceeding. Investigating judges can also order the surveillance of communications, although this measure may only be used in the more serious cases of corruption and when the ordinary investigative measures have failed.
38. The investigating judge decides when the inquiry should be closed. If in the course of his/her inquiry s/he discovers new offences, s/he will notify the prosecutor who will decide whether or not to institute a new set of criminal proceedings. The acts and decisions of the investigating judge can be challenged. When the investigating judge closes the investigation, s/he returns the file to the prosecutor who must transmit to the pre-trial chamber of the first instance court his/her conclusions to the effect that the case should be either put to trial, if there are enough indications of guilt, or dropped. The same requests can be addressed to the pre-trial chamber by the civil party. Investigating judges tend to give priority to cases involving pre-trial detention and requests for international judicial assistance, the latter occupying 20-30% of their time. Other domestic cases follow.
39. As in most continental jurisdictions, the criminal courts in Luxembourg adhere to the system of the free appreciation of evidence. However, the statements of unidentified persons cannot be used. Moreover, some judges reported to the GET that, in their view, the absence of proper rules on undercover agents limits the impact that the use of this special investigative technique may have on the outcome of the trial.
40. Although there is no system of plea-bargaining in Luxembourg, the prosecution can envisage not prosecuting persons who collaborate with the police. Alternatively, such persons may find themselves exempt of punishment or have their sentence reduced under very specific provisions of the Criminal Code. In addition, the criminal courts would take into account the degree of a person's collaboration with the police when imposing a sentence. However, there is no system for the protection of witnesses in Luxembourg. The only relevant provisions are contained in the Criminal Code, which notably provides for the punishment of those who try to suborn witnesses or use violence or threats against others.
41. In principle the proceeding before the courts in Luxembourg are public and the parties have access to the case-file. However, the pre-trial phase is secret and special rules exist preventing anyone involved (except for the parties and witnesses) from divulging information concerning a criminal inquiry. As a result, the public cannot have access to the parts of the file that were not produced in court. The same holds true for the files in cases that never reached the trial stage.

#### **b4. The Court of Auditors (*Cour des Comptes*)**



42. Another authority that has an important role to play in the prevention and disclosure of corruption in Luxembourg is the Court of Auditors. This is a new institution created in 1999 to replace what was described as a rather timid Chamber of Auditors, which exercised the control of public expenditure until then. It still has staffing problems. There are nine university-degree holders and 30 assistants, dealing with 200,000 payment orders per year.
43. Under the new system of control, no expenditure can be incurred and no payment can be made by the State without the prior authorisation of an internal financial controller, independent of the Court of Auditors who comes under the authority of the minister responsible for the budget. The same holds true in respect of the non-tax-related receipts of the State. Moreover, the Court of Auditors exercises control *a posteriori* over all the receipts and expenditure of the State. This covers the legality and propriety of the receipts and expenditure and compliance with the principles of good financial management. However, the Court has very limited powers of control over bodies governed by public law other than the State and physical and legal persons governed by civil law that have received public aid for a specific objective since it can only check whether this aid was used as it had been intended.
44. If the Court becomes aware of a fact or situation that might give rise to criminal proceedings, it informs the Parliament. However, this information is not public.

#### **b5. The Commission of Control of the Financial Sector**

45. The control of the banks, investment companies and other financial-sector professionals is ensured by an official State organ, the Commission of Control of the Financial Sector, which follows the respect of the obligations imposed by law (notably the obligation to identify the client, the keeping of documents concerning the establishment of the relationship and the operations and the obligation to have an internal organisation). The Commission has the power to issue circulars concerning the application of the law, to make checks either on the basis of the file or by a search on the spot, to claim all relevant documents, to impose pecuniary sanctions and, if necessary, to recommend to the competent Minister the revocation of the operating licence. The Commission must refer to the public prosecutor any criminal cases it comes across in the discharge of its functions.

#### **c. Immunities from investigation, prosecution and adjudication for corruption offences**

46. The following categories of persons benefit, under the laws of Luxembourg, from immunities: the Grand Duke and the members of parliament (*Chambre des Députés*).
47. The immunity of the Grand Duke is absolute and cannot be lifted.
48. Members of parliament enjoy two kinds of immunity. First, they cannot be investigated or prosecuted in respect of opinions expressed and votes cast in the exercise of their functions. This immunity is absolute. Secondly, they cannot be prosecuted or arrested in respect of any criminal offence during the parliamentary session without the express authorisation of parliament, unless they are caught *in flagrante delicto*.
49. Until now there have been few requests for parliamentary immunity to be lifted for corruption offences or illegal taking of interest. The parliament did authorise the prosecution of one of its members for illegal taking of interest. The member in question had asked for his immunity to be lifted and was eventually acquitted.

50. At the time of the evaluation visit there was a proposal pending before parliament for the amendment of the constitutional provisions on parliamentary immunity. According to the proposal, it would be possible to prosecute members of parliament during the session. However, parliament would still have to authorise the arrest of one of its members, except in cases of *flagrante delicto*.
51. Moreover, under the laws of Luxembourg there are three categories of persons who can only be tried according to special procedures: members of government, magistrates and judicial-police officers. The authorities did not consider that this raised any issues in connection with the fight against corruption.
52. Finally, although the diplomats of Luxembourg who serve abroad enjoy immunity, the authorities of their country expect them to respect the laws of the country to which they have been accredited. There have not been any allegations of involvement of diplomats of Luxembourg in cases of corruption. If that were the case the Ministry of Foreign Affairs would examine a request coming from a foreign Government asking for the lifting of their immunity. However, at the time of the visit it did not appear that Luxembourg could institute criminal proceedings itself against one of its diplomats for corruption vis-à-vis a foreign official. The situation would, of course, change if the bill that was pending before the parliament of Luxembourg at the time of the visit became law<sup>7</sup>.

### III ANALYSIS

#### a. **General policy for the fight against corruption**

53. Although the authorities of Luxembourg display an attitude of self-confidence that is shared by most of the least-affected-by-corruption GRECO members, the GET considers that it would be unfair to describe their approach as complacent. Thus, it is certainly to the authorities' credit that, despite perceiving their country as corruption-free, they have embarked upon an ambitious programme of legislative reform that would close most of the gaps in the part of the Criminal Code that deals with corruption offences.
54. The evaluators fully support this exercise and hope that, by the time the report on Luxembourg is discussed by the Plenary, the bill that was pending before parliament during the visit will have become law. The evaluators also expect Luxembourg to proceed to the second phase of its legislative reform and render private corruption a criminal offence by the end of 2001, as it was envisaged at the time of the visit. Moreover, although the evaluators are fully aware that the question of the criminal responsibility of legal persons raises more general and perhaps complex issues, they consider that this is an effective weapon against corruption and hope that the authorities of Luxembourg will actively pursue their thinking in this connection. In any event, the evaluators consider that the final judgment on the effectiveness of the new legislation should be reserved for after it has started being applied to concrete cases.
55. The evaluators understand that the legislative reforms under way in Luxembourg have been largely prompted by the country's wish to ratify a number of international agreements in the field and they have noted with satisfaction that Luxembourg envisages ratifying both Council of Europe anti-corruption conventions in 2001. However, they also want to believe that the legislative reforms in question reflect a general political will to take a staunch stance vis-à-vis the phenomenon of corruption in all its manifestations.

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<sup>7</sup> See footnote no 4.

56. The evaluators have no reason to doubt the sincerity of the belief expressed by all interviewees that the society of Luxembourg is affected by corruption to a much lesser extent than the societies of other comparable countries. However, it was clear from the discussions that the authorities' perception of their country as corruption-free was to a large degree influenced by the limited number of convictions under the Criminal-Code provisions on corruption-proper. This is unquestionably something that Luxembourg can legitimately take pride in. Nevertheless, the interviewees accepted that there existed a number – albeit small - of cases of corruption-related offences. Moreover, there were occasional references to “sensitive sectors” such as those of public works and construction and to cases – again limited in number - of corruption in the private sector. Finally, during the visit the GET received some indications that certain suspicions of corruption could not always be properly investigated.
57. As in every other country, the extent to which corruption is detected in Luxembourg cannot but depend to one degree or the other on the awareness of the risk and the means made available for the fight against it. It cannot, therefore, be excluded that the self-confident attitude of the authorities and the society in Luxembourg may have had as an unintended result that some cases of corruption have gone undetected. However, the role of the GET is not to second-guess the local authorities' estimates of the extent of the corruption phenomenon but to determine how vulnerable Luxembourg is to being affected by corruption and what measures it could take to reduce this vulnerability.
58. It must be immediately pointed out that Luxembourg does not consider itself completely immune, although its authorities perceive the risk as mainly coming from abroad. In the view of the GET, this is not an altogether unrealistic approach as Luxembourg is a country fully integrated in the international economy with a strong largely foreign-owned financial sector. It would, therefore, be illusory to believe that the proceeds of corruption would not try to find their way there. In this respect the GET stressed that Luxembourg has a very important role to play in the international fight against corruption by rendering full judicial assistance to other countries. The evaluators noted in this connection that, at the time of the visit, Luxembourg had not completed the process for the ratification of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime<sup>8</sup>.
59. However, the GET also considered that it would be dangerous to ignore the possibility of Luxembourg's being affected by corruption in a more direct manner. There are indeed some aspects of the organisation of public life that appear to render Luxembourg vulnerable to a certain degree to corrupt practices developing in the future. First, there exists no limit on the amount of money a private company can donate to a political party and there is no mechanism of control over the financing of political parties. Secondly, although the law on civil servants prohibits the exercise of certain activities that are considered incompatible with their status, these prohibitions can be easily overcome because of the many loopholes in the rules that try to limit the extent to which civil servants can exercise effective control over legal persons. Thirdly, the press, which has strong political affiliations, does not seem to exercise its role of public watchdog with the same vigour as in other countries. This could be related to the size of the market (population and degree of interest in domestic affairs). However, it could be also related to the public authorities' traditional lack of openness vis-à-vis the press, the lack of protection of journalistic sources and the manner in which the authorities have occasionally reacted to press allegations of corruption<sup>9</sup>. Fourthly, although

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<sup>8</sup> The Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters entered into force for Luxembourg at the end of 2000.

<sup>9</sup> The press mentioned a case in which a journalist who had reported possible corruption by forest guards was faced with 63 lawsuits, lodged by all the civil servants from the Water and Forestry Commission, for which public funds had been used. Public funds had been made available under section 32 § 4 of the law of 16 April 1979 on the general rights and duties of

Luxembourg is a small country where “everybody knows everybody”, it also appears to be a country where almost absolute respect for privacy is one of the most prized values. This was indeed the reason advanced by the interviewees for the lack of a system (other than the tax returns) for the monitoring of the property and income of civil servants and elected officials and the fact that criminal-inquiry files remain inaccessible even after the conclusion of the proceedings or a final decision to abandon the case. The evaluators recognise that different societies tend to take different approaches to issues such as privacy. However, they also note that the culture of complete transparency that exists in other GRECO members has had an important role in the development of a corruption-prevention strategy.

60. In the light of all the above, the GET considered that, even if the society of Luxembourg appears to be largely spared of the phenomenon of corruption nowadays, vigilance is necessary to prevent it from developing in the future especially since there exist a number of factors that could render it to vulnerable a certain degree (special exposure because of its developed financial sector, political-party-financing system, lack of an investigative press, lack of a local culture of transparency). In the view of the GET, Luxembourg, in order to arm itself adequately against the threat of corruption, needs more than simply a modernised criminal legislation.
61. The GET recommended, therefore, a campaign for the raising of awareness of the threat and cost of corruption. Civil servants, especially those most likely to come into contact with corrupt practices, should be informed about the need to remain vigilant, report serious suspicions in accordance with agreed procedures and contribute to the efforts of law-enforcement authorities to detect corruption offences. A particular effort should be made to convince tax authorities that they have a very important role to play in this connection and encourage them to cooperate in full with the prosecutors’ offices. A parallel campaign should target the public at large. In this connection the authorities could act in partnership with the press.

## **b. Bodies and institutions in charge of the fight against corruption**

### **b1. The police, prosecutors and judges**

62. Any attempt to evaluate the effectiveness of the response of the law-enforcement and criminal-justice mechanism to the threat of corruption presupposes the existence of detailed statistics concerning crime detection, prosecution and punishment. The GET noted with regret the lack of any such statistics in Luxembourg. It, therefore, recommended the compilation of detailed statistics on crime detection, prosecution and punishment, which will assist in a proper evaluation of the response of the law-enforcement and criminal-justice mechanism to the threat of corruption.
63. Be that as it may, the evaluators did not come across any indications that the police, prosecutors and judges in Luxembourg lack the necessary independence and/or autonomy to deal with corruption-related offences or that they could be subject to improper influence. On the contrary, the evaluators formed a globally positive view in this connection. The GET noted that the Minister of Justice can only give prosecutors instructions to prosecute. The GET considered that it would be preferable if these instructions were always given in writing.
64. As regards the question of the investigative means put at the disposal of the authorities entrusted with the pre-trial inquiry in corruption cases, the evaluators note that only very limited pro-activity is

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civil servants, which provides: “The State protects the civil servants and the former civil servants against insults, attacks, threats, abuse, defamation and sexual harassment of which themselves or the members of their families who live with them may become the object as a result of their capacity or their functions. To the extent that it may consider it necessary, the State can assist the interested person in actions that s/he may have to institute against those responsible for such acts.”

allowed in practice in Luxembourg. However, the GET was of the opinion that a certain amount of pro-activity is absolutely essential for the detection of a well-hidden offence such as corruption.

65. Thus, in Luxembourg the surveillance of communications is reserved for the most serious offences when ordinary investigating methods have failed. The evaluators recommended that it should be allowed in all cases raising suspicions of corruption.
66. Moreover, in Luxembourg the use of undercover agents remains largely unregulated. Although there appears to exist a divergence of views among the national authorities as to whether any rules other than the existing prohibition of provocation are necessary, the evaluators note that Luxembourg, because of the small size of its police force, has to rely heavily on international co-operation in this field. However, the police forces of other countries might not want or be able to authorise the involvement of their agents in operations for which there exist no clear rules. The GET, therefore, recommended that such rules should be established.
67. Another factor that could, in the view of the GET, limit the effectiveness of Luxembourg's response to the threat of corruption is the lack of any attempt by the legislator to protect persons who report it to the police and who co-operate with the judicial authorities. While the assistance of such persons is often instrumental for the detection and successful prosecution of corruption cases, whistle-blowing is not in any manner encouraged in Luxembourg. The police of Luxembourg can, of course, rely on anonymous informants. However, their statements cannot be used subsequently in the proceedings. Nor can there appear before the investigating judge or the trial court any witnesses whose identity is not disclosed. Although the evaluators understand that the aim of these restrictions is to protect the rights of the defence, they note that the practice in Luxembourg is more restrictive in this respect than international human-rights norms. They, therefore, recommended that these restrictions be relaxed. Moreover, the evaluators recommended that Luxembourg develops a witness-protection programme and pursues its thinking on how to create further incentives for persons involved in criminal offences who wish to collaborate with justice.
68. Finally, the discussion of the adequacy of the investigative means would be incomplete if the evaluators did not address the issue of the cooperation between the prosecution and the tax authorities. Any problems in this field can have a serious impact on the fight against corruption given the unique ability of the tax authorities to recognise suspicious declarations of expenses and, more generally, the information that tax authorities come across in the course of their own inquiries. The evaluators have already recommended that a special effort be undertaken to make tax officials aware of the importance of their role in the fight against corruption. In addition, they recommended that the law should be amended to allow tax officials to assist prosecutors more actively in the case of corruption offences.
69. The GET was made aware of existing concern about certain corruption-related cases in which the pre-trial inquiry was being unduly prolonged or which had never reached the trial hearing. The GET noted that in Luxembourg the pre-trial phase remains effectively shielded from outside scrutiny because of the combined operation of the principle of opportunity of prosecution and the fact that the inquiry files remain inaccessible to the public even after the conclusion or abandonment of the case. The evaluators recognise that there exist valid reasons for the existence of the opportunity-of-prosecution principle in the legal system of Luxembourg. Among other things, this is how the position of undercover agents or persons who collaborate with justice is protected. They also note that in Luxembourg the opportunity-of-prosecution principle does not unduly prejudice the interests of the victim, which can always lodge a private criminal complaint. However, the problem of the absence of any possibility of scrutinising criminal inquiries that have been terminated remains. The evaluators, therefore, recommended to Luxembourg to study whether

there exist any options for reconciling the protection of private life with the need for some public scrutiny over the manner in which closed corruption cases have been dealt with. They also recommended the adoption of guidelines for the application of the opportunity-of-prosecution principle in corruption-related cases.

## **b2. The General Inspectorate of the Police and the Court of Auditors**

70. Two of the bodies reviewed in the present report, the General Inspectorate of the Police and the Court of Auditors, had barely started functioning at the time of the evaluation visit. Their creation is especially commended by the GET, since they both have a very important role to play in the prevention and detection of corruption. Moreover, there appeared to be no reason to doubt the independence of these bodies. On the contrary, the GET was impressed by the determination of the new Court of Auditors to exercise real control over public finance. However, the GET considered that it was not possible to assess the actual performance of the General Inspectorate of the Police and the Court of Auditors. This is why it considered that it would be useful to conduct such an evaluation at national level in the near future to assess whether these bodies function in practice as intended when they were created and whether they have a valid contribution to make to the prevention and detection of corruption. It also considered that it would be desirable to extend the mandate of the Court of Auditors to cover operations effected by private persons who have had the benefit of public aid. Finally, it recommended that measures be taken to resolve the problem of understaffing of the Court of Auditors, the persistence of which could render this body unable to fulfil its anti-corruption role.

## **b3. A specialised law-enforcement organ**

71. Having concluded the review of the organs that already exist, the GET cannot but point out the absence in Luxembourg of any kind of specialised body for dealing with corruption. The evaluators recall that this was attributed to the size of the country and the minimal extent of the corruption phenomenon. However, they also recall that the operational services of the police felt that the lack of specialisation had a negative impact on the effectiveness with which suspicions of corruption were investigated. The evaluators recognise that the balance between effectiveness (doing one specific thing in the best possible manner) and efficiency (globally putting one's resources to the best possible use) is not always easy to strike. Given, however, the exceptionally serious danger that corruption poses for democracy, the rule of law, social justice and the market economy, the GET recommended the creation of a specialised law-enforcement organ that would centralise and treat in a systematic manner information coming from different sources and would ensure in general that a sufficiently proactive approach is taken towards the detection of corruption.

## **b4. Striking a balance between providing international assistance and taking domestic action in the field of corruption**

72. Finally, the GET considered it necessary to address the question of the staffing of the State Prosecutors' offices, the investigating judges' offices and certain judicial-police sections, which could potentially have a negative impact on the fight against corruption in Luxembourg. The evaluators recognise that the demands made on the Luxembourg authorities by international-judicial-assistance arrangements are heavier than on the authorities of other countries. As already observed, international co-operation is essential for tackling corruption effectively and the assistance of Luxembourg can prove of utmost importance for the prosecution of certain corruption cases abroad. Whilst recognising that all criminal-prosecution systems face conflicting demands on their resources, the GET underlined that corruption offences are by definition difficult to detect. The GET considered that, as a result, the understaffing of the prosecutor's office and of the judicial

police can have serious consequences for the effectiveness of their anti-corruption action. In its view, the situation risks deteriorating after the entry into force of the protocol on international judicial assistance in cases of serious tax fraud. Pending the creation of a specialised law-enforcement organ for dealing with corruption, the evaluators, therefore, recommended that the State Prosecutors' offices, the investigating judges' offices and the judicial-police section should be adequately staffed (in determining what constitutes adequate staffing the expected demands of the entry into force of the protocol on international assistance should be taken into account).

### **c. Immunities**

73. The evaluators do not consider that the immunities and special procedures for trying certain categories of officials that exist under Luxembourg law limit to an unacceptable degree the country's capacity to fight against corruption effectively.

## **IV CONCLUSIONS**

74. Corruption is perceived to be less of a threat in Luxembourg than in other GRECO members. Public authorities adhere to high standards of probity, the law-enforcement and criminal-justice systems function independently and a new Court of Auditors appears determined to exercise real control over public finance. However, the authorities are not complacent and have embarked upon a major legislative-reform project to bring the country's criminal code into line with the requirements of the major international conventions on corruption, which Luxembourg intends to ratify soon. In this manner they feel that their country will be armed against the risk of contamination from corrupt practices.
75. The GET commends Luxembourg's effort to bring up to date its criminal-code provisions on corruption. It also stresses that Luxembourg should play an active role in combating international corruption by rendering swift and effective judicial assistance to other countries trying to trace possible links in its financial sector. Moreover, the GET also considers that Luxembourg should not neglect the risk of being affected by corruption in a more direct manner. The authorities' and the society's confidence in the domestic system might weaken the country's awareness of the threat and there certainly exist factors that render Luxembourg vulnerable to some degree (special exposure because of its developed financial sector, political-party-financing system, lack of an investigative press, lack of a local culture of transparency). In the view of the GET, Luxembourg needs more than a comprehensive criminal-code definition of corruption. Aspects that have been, hitherto, neglected include awareness-raising among the public and the authorities, the compilation of statistics on crime detection, prosecution and punishment, pro-activity in criminal inquiries, the ability to use informants and the co-operation between the prosecuting and tax authorities. Moreover, Luxembourg does not have any specialised bodies in the field of corruption.
76. In view of the above, the GRECO addressed the following recommendations to Luxembourg:
- i. awareness-raising among public officials, especially those most likely to come into contact with corrupt practices, about the need to remain vigilant, report serious suspicions in accordance with agreed procedures and contribute to the efforts of law-enforcement authorities to detect corruption offences; a particular effort should be made to convince tax authorities that they have a very important role to play in this connection and encourage them to cooperate in full with the prosecutors' offices;

- ii. the compilation of detailed statistics on crime detection, prosecution and punishment, which will assist in a proper evaluation of the response of the law-enforcement and criminal-justice mechanism to the threat of corruption;
  - iii. allowing for the surveillance of communications in all inquiries into corruption offences;
  - iv. further regulating the use of undercover agents to facilitate co-operation with foreign police forces in the field;
  - v. relaxing the restrictions on the use of anonymous witnesses to the extent permitted by Luxembourg's international human-rights obligations;
  - vi. developing a witness-protection programme;
  - vii. creating further incentives for persons involved in criminal offences who wish to collaborate with justice;
  - viii. improving the co-operation between the tax and the prosecuting authorities by allowing tax officials to assist prosecutors in a more active manner in the case of corruption offences;
  - ix. studying ways of reconciling the protection of private life with the need for some public scrutiny over the manner in which closed corruption cases have been dealt with, adopting guidelines for the application of the opportunity-of-prosecution principle in corruption-related cases ;
  - x. giving the Court of Auditors adequate staff;
  - xi. creating a specialised anti-corruption law-enforcement organ that would centralise and treat in a systematic manner relevant information coming from different sources and would ensure in general that a sufficiently proactive approach is taken towards the detection of corruption;
  - xii. pending the creation of such an organ, ensuring that the State Prosecutors' offices, the investigating judges' offices and the judicial-police section have adequate staff (the expected demands of the entry into force of the additional protocol on international assistance need to be taken into account).
77. Moreover, the GRECO invites the authorities of Luxembourg to take account of the observations made by the experts in the analytical part of this report.
78. Finally, in conformity with article 30.2 of the Rules of Procedure, GRECO invites the authorities of Luxembourg to present a report on the implementation of the above-mentioned recommendations before 31 December 2002.



## Appendix I

### Programme of the visit

#### 7 November 2000

- 10h00 Introductory meeting with representatives of the Ministry for the Civil Service and Administrative Reform, the Ministry of Public Works, the Ministry of the Interior, the Ministry of Justice, the prosecuting authorities, the General Inspectorate of the Police and the Police of the Grand Duchy
- 14h00 Meeting with investigating judges of the Court of the City of Luxembourg concerning the judicial aspects of the fight against corruption
- 15h00 Meeting with representatives of the General State Prosecutor's Office, the Office of the State Prosecutor of the Court of the City of Luxembourg, the Office of the State Prosecutor of the Court of Diekirch concerning the judicial aspects of the fight against corruption
- 16h30 Meeting with a representative of the Ministry of Foreign Affairs regarding the lifting of the diplomatic immunity

#### 8 November 2000

- 09h30 Meeting with representatives of the Judicial-Police Department and the General Inspectorate of the Police regarding the law-enforcement aspects of the fight against corruption
- 15h00 Meeting with a delegation of Members of Parliament (*Chambre des Députés*) concerning the parliamentary immunity
- 17h00 Interview with journalists

#### 9 November 2000

- 09h30 Meeting with representatives of the Chamber of Commerce, the Order of Chartered Accountants, and the Institute of Company Auditors about the prevention of corruption in the private sector
- 15h00 Meeting with representatives of the Court of Auditors regarding the control exercised over public finance
- 16h30 Summing-up meeting

**Appendices II and III**

**Exist in French only**

(see document Greco Eval I Rep (2001) 2F Final)