

UN Working Group on Business and Human Rights
Country Visit to Luxembourg, 1 to 9 December 2022

End of Mission Statement

Luxembourg, 9 December 2022

Introduction

Today the United Nations Working Group on Business and Human Rights concluded the Working Group's visit to the Grand Duchy of Luxembourg. This is the first visit of any United Nations Human Rights Council's Special Procedures mandate-holder to the country. We would like to express our sincere appreciation to the Government for its invitation to visit the country and for its excellent cooperation and efforts, both in country and from the Permanent Mission in Geneva, to enable us to make the most of our time in the country. We are very grateful for the frank and constructive discussions we had with officials of the Government, and with the many businesses, civil society organisations (CSOs), associations and others we met.

The purpose of the visit was to assess how the Government and the business sector discharge their respective duties and responsibilities under the [UN Guiding Principles on Business and Human Rights](#) (UNGPs). These include the duties and responsibilities to prevent, respect and remedy adverse human rights impacts of business activities. We appreciate their willingness to engage in an open and frank dialogue on current initiatives, opportunities and challenges concerning the implementation of the UNGPs in Luxembourg.

During the visit, we met with a number of high-level representatives from different parts of the Government. We met with the Minister for Foreign and European Affairs, Minister of Finance and Minister of Justice. We also met with representatives of the following Government Ministries, agencies and government-created independent bodies: Ambassador at Large for Human Rights; Ministry of the Economy; Directorate for Small and Medium-Sized Enterprises; Directorate for Development Cooperation and Humanitarian Affairs; Ministry of the Environment, Climate and Sustainable Development; Luxembourg Institute of Science and Technology; Ministry of Labour, Employment and the Social and Solidarity Economy; Ministry of Social Security; Luxembourg Development Agency (LuxDev); High Council for Sustainable Development; Consultative Commission for Human Rights (CCDH); Centre for Equal Treatment (CET); Ombudsperson for Children (Okaju); and Ombudsperson's office. We also met with representatives of local governments through the Union of Luxembourg Towns and Municipalities (SYVICOL). In addition, we held meetings with some members of the Chamber of Deputies, including the Presidents of the following Parliamentary Committees: Foreign and European Affairs, Cooperation, Immigration and Asylum; Finances and Budget; Justice; Economy, Consumer Protection and Space; and Labour, Employment and Social Security.

We met with the following businesses and private sector associations: ArcelorMittal; Association for Insurance Companies (ACA); Association of the Luxembourg Fund Industry (ALFI); BGL-BNP Paribas; Chamber of Commerce; Chamber of Employees; Deloitte; Horesca; KPMG; Luxembourg Bar Association; Luxembourg Employers Association (UEL);

Luxembourg for Finance; Luxembourg Private Equity and Venture Capital Association (LPEA); Luxembourg Stock Exchange; Luxembourg Sustainable Finance Initiative (LSFI); Luxembourg's Bankers Association (ABBL); LuxFlag; National Institute for Sustainable Development and Corporate Social Responsibility (INDR); NSO Group Technologies; and PWC. We also met with representatives of civil society organizations, journalists, academics, workers, and trade unions.

In this final phase of the visit, we are pleased to share preliminary observations. The Working Group will submit a full report on its Country Visit to Luxembourg to the UN Human Rights Council in June 2023.

National Action Plan on Business and Human Rights

We welcome the Government's efforts in having developed two National Action Plans on Business and Human Rights (NAP). We also commend the Government for ensuring that the development of the NAP followed a multi-stakeholder process. There was also an excellent mapping and report provided to the Luxembourg Government by Dr. Basak Baglayan. However, we are concerned that the current draft expires in December 2022 and hope that a public announcement on the next NAP is made soon. We urge the Government to provide clear and accessible information on the implementation of the indicators and objectives set out in the NAP.

We remain concerned that the NAP does not sufficiently address Pillar III of the UNGPs, in particular regarding access to effective remedies for human rights abuses by businesses domiciled in Luxembourg that occur abroad. The revised NAP should pay special attention to the financial sector, investment, and pension funds, as well as the climate crisis, with a strong emphasis on corporate accountability.

We commend the Government's efforts to establish the voluntary National Pact on Business and Human Rights. We note that businesses of many sizes have signed the National Pact - thus confirming that it applies to all businesses - but we are concerned by the low participation of businesses, particularly state-owned and financial sector companies in the National Pact. We recommend that the Government encourage all state-owned enterprises to join the National Pact, as they have an opportunity to be progressive leaders, and increase general awareness of the Pact. We would further recommend that the National Pact be used actively to prepare businesses for mandatory human rights due diligence (mHRDD) legislation and that the Government invest in training and capacity building for businesses, of all sizes, on their human rights responsibilities under the UNGPs.

EU Corporate Sustainability Due Diligence

A major discussion issue during our visit has been the latest developments in the European Union's (EU) draft Corporate Sustainability Due Diligence Directive (CSDDD). The latest draft of this Directive was released on 1 December 2022. It was indicated to us that, once passed at the EU level, this Directive, which contains both mandatory due diligence requirements on some businesses, civil liability, and supervisory mechanisms, would become national legislation in Luxembourg. The Working Group has previously stated that such legislation is part of the 'smart mix' of measures to ensure corporate accountability for their adverse human right impacts.

A key issue with the CSDDD for many of those consulted is about whether the financial sector in Luxembourg would be included within its scope. The financial sector is a major sector of the Luxembourgish economy. The latest draft of the CSDDD indicates that the inclusion of the financial sector is to be optional for EU Member States and that the investment funds sector is to be excluded.

Many of the CSOs, and a number of the businesses with whom we consulted, indicated very strongly that the financial sector should be included in the CSDDD. Indeed, Luxembourg's NAP specifically stated that the financial sector was "particularly at risk of human rights violations".

We note with concern that there have been discussions at the EU level to exclude both the financial sector and the investment fund sector from the CSDDD. Some Luxembourg associations indicated to us that they favoured exclusion of the latter sector because they provide a complex product and so cannot directly affect human rights.

The UNGPs are clear that all sectors can have adverse human rights impacts and there are 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. Further, 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, as has been shown, for example, in the case law of the National Contact Points of the OECD Guidelines. We note that the Luxembourg Government is advocating for a full value chain approach in the CSDDD and urge that this is included in national legislation.

The financial sector and funds industry (as well as other sectors in Luxembourg) are already required to undertake various forms of due diligence under laws such as anti-money laundering, anti-terrorist and sanctions legislation, as well as in reporting regulations (which provide some transparency but no remediation for victims), so they are clearly able to be regulated in relation to human rights due diligence. Indeed, we were told that the current regulation of the financial sector is such that many of the elements required under mHRDD are already undertaken by this sector. We conclude from this that the financial sector already has the resources and ability to be included within the CSDDD.

Therefore, we recommend that the Luxembourg Government should include all elements of the financial sector which fall within the scope of the CSDDD within their national legislation implementing the CSDDD. The Working Group sees the CSDDD as a means for Luxembourg to position itself as a leader in the region, particularly in terms of sustainable finance, which includes human rights, environmental and climate change matters. We also urge the Luxembourg Government to reconsider their position of excluding investment funds from the scope of the CSDDD. There would also be value in the Financial Sector Supervisory Commission (CSSF) providing a series of examples of best practices and benchmarks in the financial sector (based on global practices) to assist businesses in preventing and addressing business-related human rights abuses.

We reiterate the October 2022 recommendations of the Committee on Economic, Social and Cultural rights that Luxembourg strengthen its policy and strategic framework on business and human rights with the introduction of a "smart mix" of measures. This should include legislation to implement the EU Conflict Minerals Regulation, strong public procurement

regulations which include human rights requirements, and much greater training about, and implementation of, the UNGPs.

Human Rights and Economic Activities

The financial sector is a vital sector of the Luxembourgish economy. A concern was the large number of holding companies and ‘letterbox’ companies which are registered in Luxembourg, which represent a threat to human rights as they can facilitate the potential for tax avoidance and reduced revenue, as was noted by the Committee on the Elimination of All Forms of Discrimination Against Women¹.

The Government has acted to reduce this number, and aims for transparency, such as through the Ultimate Beneficial Ownership register, which has currently been restricted by the decision of EU courts.² We understand that the Government is actively trying to grant access to journalists and CSOs within the legal framework that exists and in accordance with the decision of the EU courts. We urge the Government to continue this work.

We notice the improved practice of the Luxembourg Pension Fund in relation to human rights due diligence of their investments, but note the need for effective monitoring and evaluation. Similarly, the Luxembourg Export Credit Agency (ODL) could have clearer human rights due diligence requirements of those businesses who apply to them and undertake detailed evaluations. We recommend both the Working Group’s guidance³ and OHCHR’s guidance on the financial sector and human rights⁴ to the Government.

A recent initiative of the Government has been on sustainable finance. This is a good practice. However, in other Ministries and some sectors, there appears to be a confusion that sustainability equates solely to environmental issues. We recommend that it is made much clearer to businesses, officials, and individuals that sustainable development initiatives expressly include human rights measures. The High Council for Sustainable Development could work directly with the Government to assist in these initiatives. Further, there is a greater need for all aspects of the environmental, social and governance (ESG) approaches to be considered with an express inclusion of human rights.

There is evidence of good practice by the Luxembourg Government, for example, LuxDev in their inclusion of human rights requirements, including human rights due diligence, in development contracts with business partners. This will only be effective if there is very good monitoring, evaluation, and termination guidance, as well as training of diplomats and development officials in this area. In this sense, we highlight the Working Group’s guidance on heightened human rights due diligence in conflict-affected areas.⁵

¹ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CEDAW/C/LUX/6-7&Lang=en

² C-37/20 and C-601/20 here:

https://curia.europa.eu/juris/document/document_print.jsf?mode=req&pageIndex=0&docid=268842&part=1&doclang=EN&text=&dir=&occ=first&cid=1627342

³ <https://www.ohchr.org/en/special-procedures/wg-business/financial-sector-and-human-rights>

⁴ <https://www.ohchr.org/en/business-and-human-rights/financial-sector>

⁵ <https://www.ohchr.org/en/business-and-human-rights/business-human-rights-and-conflict-affected-regions-project>

Engagement with Stakeholders

We commend the Government for its positive engagement and support to civil society organisations. Civil society is key to educating civil servants, businesses (including the Big Four accounting firms and law firms), and other stakeholders to ensure that corporate structures are created that facilitate the protection and promotion of human rights. They are also key to ensuring that human rights due diligence is central to how businesses are structured in Luxembourg. Moreover, we observed that transparency and access to information remains critical to ensuring that corporate structures are created with the aim of ensuring that businesses protect against potential human rights abuses, and respect human rights including the right to a clean, healthy, and sustainable environment.

We note that there are good structures in place in Luxembourg for engagement by Government with civil society organisations and public/private organisations, such as working groups and inter-ministerial committees. However, sometimes these structures have not been consistently and regularly used, and some have not shown evidence by the Government of effective dialogue and feedback.

We congratulate Luxembourg for having the lowest gender pay gap in the EU (based on 2020 data), and 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. We also note the good practices that have been developed on gender finance.

Access to Justice and Effective Remedies

We found that challenges exist in relation to access to justice and effective remedies in relation to corporate accountability for human rights abuses. In this context, we urge the Government to carry out the mapping of access to justice and effective remedies for human rights abuses in Luxembourg which is foreseen under the current NAP.

State-based Judicial mechanisms

Luxembourg has a strong legal system. However, we highlight the need for human rights training, particularly business and human rights training, for judges and public defenders. We note that there may be value in enabling all or some of the national human rights institutions, such as the Ombudsperson, Okaju, Centre for Equal Treatment and Consultative Commission for Human Rights to act as amicus curie to support those bringing cases of human rights abuses before the courts.

The Brussels I Regulation makes it mandatory for the national courts of the EU Member States 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, we learned that access to justice in Luxembourg is slow and can be prohibitively expensive, especially for victims of human rights abuses committed abroad. Further, there is no legislation in Luxembourg currently preventing Strategic Lawsuits Against Public Participation (SLAPPs). In its 2021 guidance on ensuring respect for human rights defenders, the Working Group outlined steps that States could take to address SLAPPs, including introducing law reforms to

prevent cases of criminal libel being pursued against human rights defenders, introducing anti-SLAPP laws, and giving a court powers to dismiss or decline to accept a case if the court considers that the intention of the claim/prosecution is to distort facts concerning the work of a human rights defender, or harass or take advantage of the defendant.⁶ Another major limitation is that only individuals can bring cases to the courts; collective recourse lawsuits are not currently allowed, and civil society organisations cannot bring lawsuits to the courts on behalf of individuals.

Bill 76507 submitted in August 2020 to the Luxembourg Parliament, which intends to introduce collective recourse procedures in consumer law, marks, we believe, a significant step towards the adoption of a legal framework for collective recourse in Luxembourg. Permitting collective recourse lawsuits, representation of individuals by civil society organisations, and enacting legislation against SLAPPs would facilitate access to remedy. We urge the Government to continue this work, particularly ahead of the upcoming CSDDD.

In relation to the CSDDD, we commend the Government for its favourable position on reversing the burden of proof. In that sense, we hope that Luxembourg's legislation to implement the CSDDD incorporates this principle. We hope that the Whistleblower Bill 7945 - based on an EU Directive – comes into law as soon as possible.

State-based non-judicial grievance mechanisms

During our visit, we noted several concerns about the OECD National Contact Point (“NCP”), which has an explicit mandate to handle disputes related to business and human rights, and more generally on responsible business conduct. The primary concern relates to the lack of collaboration between the NCP and civil society. Additionally, several actors reiterated that the NCP lacks visibility. We note that there has recently been an increase in staff appointed to the NCP. We commend the recent initiatives to engage with stakeholders across the board, and to raise visibility and awareness about the NCP, particularly outside of Luxembourg. We note that the OECD conducted a review of Luxembourg's NCP in September 2022, which will be publicly available within the coming months. We look forward to reading the recommendations on this topic.

These can be important mechanisms for corporate accountability, however, if there is no remediation provided to the victims directly, then it is not an effective access to a remedy under the UNGPs.

Non-State-based grievance mechanisms

Most of the businesses that we spoke with had operational grievance mechanisms. We would like to reiterate that businesses need to continue to provide effective grievance mechanisms for rights holders and communities, in accordance with the UNGPs (Principle 31).

There are also staff delegations, often in collaboration with trade unions, for businesses with over 15 employees, to whom workers can bring complaints. The overarching role of the staff delegation is to safeguard and defend employees' interests with regard to working conditions,

⁶ A/HRC/47/39/Add.2, paragraph 84. See: <https://www.ohchr.org/en/documents/thematic-reports/ahrc4739add2-guiding-principles-business-and-human-rights-guidance>

job security and employment status. It acts as a mediator between the employees and employer. We would like to underline the important role that these delegations can play in access to remedy and transparency, and we urge businesses to work with them effectively.

Lastly, if disputes cannot be resolved through the staff delegation, the cases can be referred to the Labour and Mines Inspectorate (ITM), who also has competency to investigate complaints and allegations of human rights abuses. During our visit, we heard the need for more human resources to be assigned to the ITM.

Groups in vulnerable situations

The Working Group was informed that 222,000 individuals per day cross the Luxembourg national border for employment purposes. Luxembourg works in close collaboration with European labour inspectorates from neighbouring countries, which is commendable. However, we also heard that problems still remain with individuals not feeling safe from reprisals related to the reporting of human rights abuses.

The Working Group congratulates the Government for its substantive and wide-ranging support provided to refugees, migrants, and survivors of human trafficking. However, through the Working Group's consultations with various stakeholders it was informed that more training was needed to sensitize law enforcement personnel to the challenges these vulnerable populations face. The Working Group was also concerned by reports of the small fines imposed on businesses who are found guilty of having exploited irregular migrants and human trafficking survivors. High sanctions are needed to deter these practices.

The Working Group applauds the Government for ratifying the International Labour Organization Convention on Indigenous and Tribal Peoples and urges the Government to implement the Convention into national law. This should be undertaken with a particular focus on providing guidance to financial institutions, state-owned enterprises and businesses that engage internationally with affected communities covered by the Convention.

Conclusions

The Working Group has found a number of good practices by the Government and businesses within Luxembourg. It is a small country, with a good rule of law and a strong legal system.

However, there is still much to be done to implement the UNGPs across the country. This includes a proactive response to the CSDDD which incorporates the financial and investment funds sector and changes to the burden of proof, as well as the passing of related national legislation. This can be accomplished with continued political and corporate will, training, and capacity building.

We welcome the Government's willingness to both share its challenges and hear recommendations as to how to improve. The recommendations set out above will be included in our report to the United Nations Human Rights Council in June 2023. We encourage the Government and businesses not to delay in taking the steps necessary to address some of the concerns raised.

Finally, we would like to reiterate our warm thanks to Luxembourg for its invitation to visit the country.