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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

**LUXEMBOURG: FOLLOW-UP TO PHASE 3 REPORT AND RECOMMENDATIONS**

**IMPLEMENTATION OF THE CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS AND THE RECOMMENDATION FOR FURTHER COMBATING BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

*The Working Group adopted this document through the written procedure on 30th August 2013.*

For further information, please contact Sandrine Hannedouch-Leric (Tel: +33145248078,  
E-mail: Sandrine.hannedouche-Leric@oecd.org).

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## SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

### Summary of Findings

1. In June 2013, Luxembourg presented its Written Follow-Up Report, outlining its responses to the recommendations adopted by the Working Group on Bribery at the time of Luxembourg's Phase 3 evaluation in June 2011. Since Phase 3, Luxembourg has opened a judicial investigation and preliminary investigation in two cases of foreign bribery. Another case that might involve foreign bribery was on trial at the time of the written follow-up evaluation.
2. The Working Group favourably welcomed the responses provided by Luxembourg in the context of this written follow-up exercise, as well as the efforts made by the authorities of Luxembourg in the fight against foreign bribery, in particular through the creation of a criminal record for legal persons. However, the Group is disappointed that the majority of recommendations on the offence, liability of legal persons and accounting and audit remain unimplemented. Out of 24 recommendations, the Group considered that 7 were fully implemented; 9 were partially implemented; and 8 remained unimplemented.
3. Luxembourg has made important awareness-raising efforts, both in relation to the offence of bribery of foreign public officials and in relation to the 2010 law that introduced liability of legal persons in Luxembourg along with the OECD Good Practice Guidance and the 2011 law on whistle-blower protection (recommendations 5(a), 5(d) et 6(d)). Luxembourg has also undertaken initiatives to raise awareness of professionals subject to money laundering reporting obligations, of the predicate offence of bribery of a foreign public official (recommendation 5(c)). Luxembourg has implemented the Working Group's recommendation to create a criminal record for legal persons which, according to Luxembourg, will have the effect of *de facto* debaring convicted companies from public advantages (recommendation 3). In addition, since Phase 3, agencies competent in the area of public advantages take into account the existence of internal control measures within companies benefiting from such advantages in the context of their evaluation of the probity of those companies (recommendation 9(c)).
4. In relation to international cooperation, Luxembourg held a meeting of its Corruption Prevention Committee (COPRECO) to re-examine its approach to opening prosecutions in Luxembourg in relation to foreign bribery allegations that are brought to the attention of the authorities of Luxembourg through mutual legal assistance requests, when Luxembourg also has jurisdiction over the alleged acts (recommendation 8). This re-examination resulted in a decision not to modify the current approach.
5. On the other hand, not a single measure has been taken to modify the legal or criminal policy framework in order to rectify the gaps identified in the foreign bribery offence and the corporate liability regime in Luxembourg (recommendations 1 and 2(a)). In particular, no measures have been taken to ensure that the corporate liability regime set out in the law of 3 March 2010 adopts one of the two approaches described in Annex 1 B) of the 2009 Recommendation in relation to the hierarchical level of the natural person involved and the type of act necessary to attribute liability. However, Luxembourg noted some old case law clarifying the principle of 'duress' (a factor that can exempt the perpetrator of the offence) as being synonymous with *force majeure*, therefore partially implementing recommendation 2(b)(ii).
6. In relation to investigations and prosecutions, Luxembourg has not taken any measures to facilitate access to bank and tax information by law enforcement authorities, including by clarifying the criteria of 'exceptionally', which is a condition for authorising access to this information by the investigating judge (recommendation 4(a)). The authorities of Luxembourg have not taken any other measures, such as updating a criminal circular examined in Phase 3 which prioritises investigations and prosecutions of the offence of bribery of foreign public officials. Neither has Luxembourg taken any

measures concerning the appreciation of the level of proof required to open a prosecution for bribery of a foreign public official (recommendation 4(d)). On the other hand, a working group was established within the Ministry of Justice to examine the investigative powers of the police at the preliminary investigation stage (recommendation 4b) and the police services received a general increase in budget and staff, thereby partially implementing recommendation 4(c).

7. In the area of accounting and auditing, the efforts undertaken by the Government of Luxembourg focused first and foremost on anti-money laundering, foreign bribery was only covered in the context of it being a predicate offence to money laundering. The evaluation of these recommendations (unimplemented or only partially implemented) reflects the need to focus awareness raising efforts on foreign bribery in and of itself (recommendation 5(b) and 6(a)). With regard to the possible introduction of obligations to report to corporate management (recommendation 6(b)) or to law enforcement authorities (recommendation 6(c)), the authorities of Luxembourg have not undertaken any reflection since Phase 3.

8. In relation to tax measures, the follow-up report indicates an increase in the number of controls carried out by the tax offices and the Anti-Fraud Service; however this increase remains limited and none of these controls resulted in reports of suspected foreign bribery to the prosecutorial authorities (recommendation 7(a)). Luxembourg undertook to integrate paragraph 12.3 of the Commentaries on Article 26 of the OECD Model Tax Convention in some of its bilateral conventions, however this integration did not form part of a systematic approach (recommendation 7(b)). With the exception of a training held by members of the Prosecutor's Office, the tax authorities have done nothing since Phase 3 to inform their agents of the need to detect and report illicit operations linked to bribery of foreign public officials, nor to the application of administrative sanctions that are available to discourage tax deductibility of expenses liable to constitute bribes (recommendations 7(c) and 7(d)).

9. An anti-corruption engagement in the framework of public advantages dated 18 July 2011 demonstrates that efforts have been made by the authorities of Luxembourg in this area although measures are required to clarify the internal procedures to put it into practice, and efforts to raise awareness of their existence among agents of the Luxembourg Agency for Development Cooperation and the Office du Ducroître (recommendations 9(a) and 9(b)).

## **Conclusions**

10. Based on the findings of the Working Group on Bribery with respect to Luxembourg's implementation of its Phase 3 recommendations, the Working Group concluded that Luxembourg has satisfactorily implemented recommendations 3, 5(a), 5(c), 5(d), 6(d), 8 and 9(c); that Luxembourg has partially implemented recommendations 2(b), 4(b), 4(c), 5(b), 7(a), 7(b), 7(c), 9(a) and 9(b); and that recommendations 1, 2(a), 4(a), 4(d), 6(a), 6(b), 6(c) and 7(d) are not implemented.

11. In the absence of case law in the area of bribery of foreign public officials, the follow-up issues remain relevant. The Group invites Luxembourg to provide an oral report in one year (i.e. in June 2014) on progress achieved concerning the recommendations that remain unimplemented, along with progress in the cases of bribery of foreign public officials that are ongoing at the time of this follow-up report.

**PHASE 3 EVALUATION OF LUXEMBOURG: WRITTEN FOLLOW-UP REPORT**

***Instructions***

*This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 3 evaluation report. Luxembourg is asked to answer all recommendations as completely as possible. Further details concerning the written follow-up process are provided in the Phase 3 Evaluation Procedure [[DAF/INV/BR\(2008\)25/FINAL](#), part C(2)].*

*Responses to questions should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, a separate space has been allocated for describing future situations or policy intentions.*

*As you know, Phase 3 evaluations focus primarily on implementation (prosecutions and penalties). Consequently, you are also requested to furnish any relevant information concerning any new cases involving the bribery of foreign public officials, completed or in progress. Any information about cases for which Luxembourg has provided judicial mutual assistance to a country investigating bribery of a foreign public official would also be welcome.*

*Please submit completed answers to the Secretariat on or before **29 April 2013**.*

<b>Name of country:</b>	<b>LUXEMBOURG</b>
<b>Date of approval of Phase 3 evaluation report:</b>	<b>23 June 2011</b>
<b>Date of information:</b>	<b>16 May 2013</b>

**PART I: RECOMMENDATIONS FOR ACTION**

**Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery**

***Text of recommendation 1:***

1. With regard to the transnational bribery offence, the Working Group recommends that Luxembourg use any appropriate means to clarify that no element of proof, beyond those stipulated in Article 1 of the Convention, is required to enforce Articles 247ff of the Penal Code, and in particular that (i) the notion of “without right” that is found, *inter alia*, in Article 247 of the Penal Code, should not be interpreted more restrictively than the notion of “improper advantage” contained in the Convention, and therefore that there is no need to prove that any provision in force in the bribe recipient’s country prohibits that recipient from receiving a bribe; and that (ii) the notion of “corruption pact” that was deleted from Article 247 in 2001 does not, in practice, constitute an additional element of proof which prosecuting

authorities must seek out in order to prove the offence [Convention, Article 1; 2009 Recommendation, III. ii) and V.].

***Action taken as of the date of the follow-up report to implement this recommendation:***

(i) The articles in the Penal Code that relate to bribery do not use the term “improper advantage”. As a result, small “facilitation” payments are sanctioned under Luxembourg law. Such facilitation payments would in fact be permitted if the word “improper” were included in the domestic legislation. In contrast, Articles 246, 247, 249 par. 1 – and 250 par.1 of the Penal Code relating to the bribery of judges – use the expression “without right”. This excludes any lawfully due, and thus formally stipulated, wages, salary, remuneration, allowance or benefits from the scope of application of the relevant provisions. Notwithstanding, this exclusion could not apply to any benefits that did not fulfil this criterion, even if such benefits were tolerated, or even approved, by a hierarchical superior.

Magistrates who deal with bribery cases are instructed to check whether the investigation has ascertained an absence of any legal grounds for gratification, and in the event of prosecution before a court, to ensure that the element constituting bribery “without right” is established as long as no lawful provision permits the incriminated payment. It is inconceivable to instruct judges how to interpret a legal concept; any interpretation inconsistent with that corresponding to “improper advantage” would prompt the appeals provided for by law.

(ii) Any element of proof of an offence must derive from the text of the relevant statute, and insofar as the former provision referring to a corruption pact has been deleted, it cannot be revived in practice as an additional element of proof. To do so would be to add a condition for the existence of the offence that the law no longer requires.

***If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

***Text of recommendation 2a:***

2. Regarding the liability of legal persons, the Working Group recommends that Luxembourg:
  - a. Ensure by all means that the liability system instituted by the Act of 3 March 2010 adopts one of the two approaches described in Annex 1 B) of the 2009 Recommendation concerning the level of managerial authority and the type of act that may cause that liability to be incurred [Convention, Article 2; 2009 Recommendation, Annex 1 B)];

***Action taken as of the date of the follow-up report to implement this recommendation:***

Article 34 of the Penal Code stipulates that “When a felony or misdemeanour is committed in the name of and in the interest of a legal person by one of its legal bodies or by one or more of its de jure or de facto managers, that legal person may be held criminally liable and may incur the penalties provided for by Articles 35 to 38.

“The criminal liability of legal persons does not exclude that of natural persons who are perpetrators or accomplices of the same offence.”

This liability system takes the approach a) described in Annex 1B) of the 2009 recommendation by creating the highly flexible concept of “de facto manager”. This ensures application of the requirement of approach a), which stipulates that “the level of authority of the person as a result of whose conduct the legal person incurs liability will be interpreted flexibly enough and will reflect the wide variety of decision-taking systems in effect within legal persons.”

It emerges from parliamentary documents, on which judges rely when enforcing laws, that Parliament clearly took account of the OECD recommendations on the liability of legal persons when formulating this provision. Indeed, at the time the bill was drafted, Parliament’s Legal Committee proposed to “cover de jure or de facto managers. The *ratio personae* scope of application thus defined is consistent with the OECD’s concern that de facto managers be cited explicitly in the new law.”

***If no action has been taken to implement recommendation 2a, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

***Text of recommendation 2b:***

2. Regarding the liability of legal persons, the Working Group recommends that Luxembourg:
  - b. Take all necessary steps to ensure that (i) the system for the liability of legal persons does not limit that liability to cases in which the natural person or persons who committed the offence are prosecuted and found guilty; (ii) the fact that the immediate perpetrator was “coerced” by a foreign public official to pay a bribe in order to win or keep a contract does not cover cases where a bribe is sought and cannot be considered a ground for the non-liability of the legal person; and (iii) the criterion of the “interest” of the legal person does not exclude certain cases of bribery of foreign public officials where a bribe is paid to a foreign public official by a de jure or de facto manager of an enterprise only in the partial interest of the enterprise or in the interest of another legal person, possibly linked to the first [Convention, Articles 1 and 2; 2009 Recommendation, Annex 1 B)]b.

***Action taken as of the date of the follow-up report to implement this recommendation:***

(i) The law’s authors explicitly ruled out restricting the liability of legal persons to cases in which the natural persons committing the offence have been prosecuted and found guilty, explaining in the parliamentary documents on which judges rely when enforcing the law that “While it is not necessary for the immediate perpetrator of the offence to be actually tried and convicted, his guilt must be established by a court, which must find that the alleged offence was effectively committed in all its material and intellectual elements by the legal body or by one of its members.”

(ii) Article 71-2 of the Luxembourg Penal Code, which stipulates that “A person who has acted under duress or coercion which he was not able to resist shall not incur criminal liability”, traces its origin to the Napoleonic Code of 1810. Today it constitutes Article 122-2 of the French Penal Code. Being coerced by a foreign public official to pay a bribe in order to obtain or maintain a contract does not fall within the scope of the coercion defined in the Penal Code. Moreover, the case law on this point is clear: Coercion is to be construed as “*force majeure* that can result only from an event independent of human will and that human will could neither foresee nor avert” [Crim. 29 January 1921: S. 1922. 1. 185, note Roux • 20 May 1949: Bull. crim. No. 184; D.1949.333 (esp. 1st.)]. It can be invoked successfully “only to

the extent that it is based on thoroughly established facts and circumstances, as a result of which it was impossible to escape from the imminent peril arising from those facts and circumstances, without committing an offence” (Crim. 29 December 1949: Bull. crim. No. 360; D. 1950. 419; JCP 1950. II. 5614; Gaz. Pal. 1950. 1. 295).

(iii) The criterion of the legal person’s “interest” is interpreted very broadly.  
The following case law reflects such a broad interpretation:

“It follows that in order to be applicable, Article 34 of the Penal Code therefore requires that the offence was committed in the interest of the legal person, which is contested by company C. [...]

“Information in the case file would indicate that at the time of his accident L. W. was performing his duties for his employer (company C.). He was in fact putting scraps into a crusher in order to grind them, doing so in his employer’s interest.

“L. W. was therefore working on the day of the accident, carrying out his routine workload and thus acting on behalf of and in the interest of company C., which placed the means needed to do so at his disposal.”

(Judgement No. 1069/2013 of 21 March 2013, Luxembourg district court)

***If no action has been taken to implement recommendation 2b, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

***Text of recommendation 3:***

3. Regarding sanctions in cases of transnational bribery, the Working Group recommends that Luxembourg re-assess whether to take the opportunity to (i) amend the law on the liability of legal persons to include exclusion from entitlement to public benefits or aid as a supplementary penalty; and (ii) introduce criminal records for legal persons [Convention, Articles 2 and 3; 2009 Recommendation, III. vii) and XI. i)].

***Action taken as of the date of the follow-up report to implement this recommendation:***

(i) The initial bill on the liability of legal persons provided for exclusion from entitlement to public benefits or aid as a supplementary penalty. At the time, however, the Council of State had criticised that provision as too vague for criminal law, which entails strict interpretation. However, the competent authorities perform a prior check on the honourability of any company applying for public aid, which will be further facilitated by the establishment of criminal records for legal persons. As a result, legal persons with a conviction, e.g. for bribery, on its record would therefore in practice be excluded from entitlement to public benefits or aid.

(ii) Criminal records for legal persons were introduced by the Act of 29 March 2013 on the organisation of criminal records and exchange of information taken from criminal records amongst Member States of the European Union.

***If no action has been taken to implement recommendation 4a, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

***Text of recommendation 4a:***

4. Regarding investigations and prosecutions in cases of transnational bribery, the Working Group recommends that Luxembourg:

- a. Pursue the efforts made in obtaining information from banks and financial institutions (Act of 27 October 2010) and from tax authorities (Act of 19 December 2008) so that such information can be obtained even in the absence of a formal referral to an investigating magistrate [2009 Recommendation, III. ii), iii) and iv); VIII. and Annex 1, D and Phase 2bis Recommendation 3 (b).].

***Action taken as of the date of the follow-up report to implement this recommendation:***

With regard to the Act of 19 December 2008, it should be noted that action by an investigating magistrate is not required; Article 16, paragraph (1) of the Act stipulates that tax authorities shall forward information of relevance to a criminal prosecution “to judicial authorities, at their request”, which would cover requests for information from either a prosecutor’s office or an investigating magistrate; paragraph (2) requires employees of tax administrations to alert the prosecutor to any infractions of which they become aware in the course of performing their duties.

The tax authorities, pursuant to Article 23 (2) of the Code of Criminal Procedure and in application of Article 16 (2) of the Act of 19 December 2008 relating to inter-agency and judicial co-operation, and in accordance with the corresponding directorial instruction of 10 December 2010 (see recommendation 7c), shall report any facts constituting a criminal offence to the prosecution service.

In addition, pursuant to Article 23 (3) of the Code of Criminal Procedure, they shall report suspicious transactions to the Financial Intelligence Unit of the Luxembourg District Court prosecution service if they know, suspect or have good reason to suspect that money laundering or terrorist financing, of which bribery is one of the predicate offences, is taking place, has taken place or has been attempted, in particular on account of the person concerned, his history, the origin of his assets or the nature, purpose or methods of the transaction. They shall promptly provide the prosecutor with all information, records and deeds relating thereto, notwithstanding any rule of confidentiality or professional secrecy that may be applicable to them.

It should be noted the law transposing Council Directive 2011/16/EU of 15 February 2011 on administrative co-operation in the field of taxation and repealing Directive 77/799/EEC and 1. amending the General Tax Act and 2. repealing the Act of 15 March 1979, as amended, on international administrative assistance in respect of direct taxes entered into force on 29 March 2013.

This law, like the Act of 21 July 2012 transposing Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, institutes a procedure whereby tax authorities may obtain information from banks and other financial institutions.

The applicable procedure instituted by the Act of 31 March 2010 approving tax conventions and providing for the procedure applicable to the exchange of information on request gives Luxembourg tax authorities direct access to the information held by banks. This act incorporates Article 26.5 of the OECD Model Tax Convention on Income and on Capital into Luxembourg’s conventions against double taxation.

Lastly, it should be noted that 592 requests for automatic and spontaneous exchange of information and notifications were processed in 2012.

***If no action has been taken to implement recommendation 2b, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

***Text of recommendation 4b:***

4. Regarding investigations and prosecutions in cases of transnational bribery, the Working Group recommends that Luxembourg:

- b. Further evaluate police investigative powers at the preliminary enquiry stage with a view to extending such powers, as the Working Group had recommended in Phase 2 (Recommendation 12), tailoring the available means and methods of investigation to the need to gather sufficient evidence so that prosecution can be initiated in cases involving bribery of foreign public officials [2009 Recommendation, III. ii), V. and Annex 1, D and Phase 2 recommendation 12].

***Action taken as of the date of the follow-up report to implement this recommendation:***

***If no action has been taken to implement la première recommandation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

The Luxembourg authorities do not consider it appropriate to extend police investigative powers at the preliminary enquiry stage.

***Text of recommendation 4c:***

4. Regarding investigations and prosecutions in cases of transnational bribery, the Working Group recommends that Luxembourg:

- c. Ensure that the level of resources, training and specialisation provided to the police ensures the effective investigation and prosecution of bribery of foreign public officials [2009 Recommendation, Annex 1, D].

***Action taken as of the date of the follow-up report to implement this recommendation:***

In respect of resources, it should be noted that the budget for the Grand Ducal Police has increased steadily and substantially:

2000: €84 million

2005: €130 million

2010: €180 million

2012: €190 million

The same holds true for staffing levels:

2001: 1 450

2005: 1 664

2010: 1 910

2012: 2 110

In respect of training and specialisation for senior officers, interns recruited on the basis of university degrees receive a 18-month professional training course at the National Officers' School of the Belgian Federal Police in Brussels.

As at 31 December 2012, nine candidates, including one inspector authorised to make a career change, were undergoing the preparatory training and four candidates were in their second year of training at the police Officers' School in Brussels.

23 senior officers took ongoing training courses abroad or at the National Institute of Public Administration (INAP), of which:

13 took part in 30 different public management courses arranged by the INAP.

1 took two training courses at the ERA (Europäische Rechtsakademie).

7 attended seminars at the Deutsche Polizeihochschule in Münster.

2 took the "Gold & Silver Commander" training course.

1 took two courses at the École Catholique in Trèves.

2 attended "International Pearl Fishers" seminars.

In respect of inspectors (mid-level officers), in 2012 the Police School arranged for the following courses:  
basic training: 81 trainers dispensed 2 505 hours of courses.

ongoing and special training: 71 trainers dispensed 533 hours of courses.

"General" ongoing training is provided for police officers ranking as inspectors (except those classified P7 or P7 bis) or constables, assigned to the General Directorate, the Police School, the Central Unit of the Motorway Police, the Guards and Mobile Reserve Unit, Intervention Centres or local commissariats.

#### Ongoing judicial training

In 2012, the Police School arranged for 11 ongoing training cycles, comprising two day-long sessions and an additional shooting exercise. Each cycle was attended by 14 officers.

The ongoing "Judicial" training course is aimed at police officers ranking as inspectors (except those classified P7 or P7 bis) assigned to the Search or Criminal Investigation sections of the criminal police or to the regional specialised police units.

#### Ongoing training for civilian staff

In 2012, civilian staff attended training courses offered by the INAP.

Promotion training seeks to bolster the general knowledge of police officers with a view to moving upward in the hierarchy.

23 senior officers were enrolled in public management courses arranged for by the INAP.

81 police and civilian employees were enrolled in INAP courses in computer technology and familiarity with new legislation.

In 2012, 87 inspectors took preparatory courses with a view to promotion to the rank of Criminal Police Officer (OPJ). 71 candidates took the promotion examination; 48 passed the examination and 8 were deferred.

In addition, 19 constables took preparatory courses with a view to promotion. 11 candidates took the promotion examination and 8 passed it.

The goal of special training is to initiate members of the Corps, or to perfect their knowledge, in the exercise of special attributions within the police. Special training courses are as a rule dispensed at the Police School.

Special "Judicial" training

The special "Judicial" training course is:

- compulsory for police officers assigned to the Criminal Police or to a Search and Criminal Investigation Department (SREC);

- open to police officers with an interest in the subject, whose applications have been accepted.

Special "Ecofin" training for local officers

In 2012 the Police School arranged for two one-day "ECOFIN" ongoing training sessions for 34 police officers.

In 2012 the Police School arranged for:

- 2 two-day "Hearing techniques" conferences for 24 officers;

- 2 five-day "Unit Head" seminars for 39 officers;

- "Initiation to self-defence" workshops in conjunction with partnerships with a variety of schools and clubs for seniors;

- participation in the *Selbstbehauptungskurs für Frauen und Männer* in collaboration with the DRL Prevention Department;

- services during open house sessions.

Landespolizeischule, Fachhochschule für öffentliche Verwaltung – Fachbereich Polizei Rheinland-Pfalz, Hahn-Flughafen (LPS Hahn)

In partnership with LPS Hahn, 6 German police trainees took five-day internships with territorial units of the Luxembourg, Diekirch and Grevenmacher districts.

2 permanent Police School officials accompanied by 4 students took part in the *Internationale Projektwoche* held by LPS Hahn, from 23 to 27 January 2012.

211 police officers took 104 different special training courses abroad:

The Criminal Police Department (SPJ) took part in specialisation courses at such police schools as the Akademie der Polizei Baden-Württemberg and the BKA Wiesbaden in the realms of policing techniques, drugs, protecting minors, economic and financial crime, sexual offences, terrorism, illegal immigration, Internet crime, fires, *Leichensachbearbeitung / Todesfallermittlungen*;

The Search and Criminal Investigation Departments (SRECs) of regional districts took part in 10 courses at foreign police schools.

The canine section of the Guards and Mobile Reserve Unit (UGRM) attended special training sessions in Germany on guarding and protecting and detecting explosives and drugs.

Staff of the Special Police Unit (USP) took courses abroad to perfect their skills in the following areas: scaling, tactical training and operational techniques, handling explosives, marksmanship, negotiating, VIP protection, parachute jumping and combat sports.

Lastly, it should be noted that a bill to reform the criminal police is being prepared. Amongst the bill's provisions are to:

- Raise the level of training at recruitment;
- Create a Directorate-General for the Criminal Police, with the central director assisted by a support committee which would include people from the prosecution service; and,
- Improve career prospects.

***If no action has been taken to implement recommendation 4c, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

***Text of recommendation 4d:***

4. Regarding investigations and prosecutions in cases of transnational bribery, the Working Group recommends that Luxembourg:

- d. Take the necessary steps to ensure that Luxembourg's criminal policy (i) clearly identifies the investigation and prosecution of bribery of foreign public officials as a priority; and (ii) emphasises the need to ensure that the appreciation of the level of proof necessary for initiating criminal investigations is not so stringent that it constitutes an obstacle to the investigation of bribery of foreign public officials [Convention, Article V; 2009 Recommendation, Annex 1, D].

***Action taken as of the date of the follow-up report to implement this recommendation:***

(i) Insofar as the law classifies bribery offences as crimes, corresponding to highly serious actions which are punished accordingly, they are subject to investigation and prosecution, and the relevant procedures must be given priority and reported to hierarchical superiors.

(ii) Classified as crimes, bribery offences are subject to compulsory preliminary investigation; it is difficult, however, to ascertain in practice the minimum amount of proof that is necessary to warrant launching a criminal investigation in the realm of bribery, as in others.

***If no action has been taken to implement recommendation 4d, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

***Recommendations to ensure effective prevention and detection of transnational bribery***

***Text of recommendation 5a:***

5. Regarding raising public awareness and reporting transnational bribery, the Working Group recommends that Luxembourg:

- a. Take the necessary steps to raise employee awareness, in the private and public sectors alike, of the importance of reporting suspicions of bribery of foreign public officials, as well as of new

provisions for the protection of whistleblowers [2009 Recommendation, IX. and III. i)].

***Action taken as of the date of the follow-up report to implement this recommendation:***

With regard to raising awareness:

- A major conference was hosted jointly on 24 May 2012 by the Ministry of Justice (COPRECO), and the Chamber of Commerce, together with the Competition Council, Transparency International Luxembourg, Siemens Luxembourg, Arcelor Mittal Luxembourg and PWC Luxembourg. The title of this event would translate roughly as “How Luxembourg Industry Can Protect Itself Against the Risks of Bribery and Collusion”, and it was to focus awareness-raising efforts on bribery in general, and more specifically on the Act of 13 February 2011 on whistleblowers, which bolstered the means to combat bribery. There were various workshops on whistleblower protection, Luxembourg and Community legislation on cartels, the institution of corporate compliance programmes and lectures on bribery and compliance. The seminar was a great success with large Luxembourg corporations, and the Minister of Justice himself spoke personally to conclude the event and reiterate Luxembourg’s international commitments in this area.
- On 5 June 2013 there will be a major high-level symposium on bribery on the sidelines of the summit meeting for European Union Ministers of Justice and Home Affairs in Luxembourg (JHA Council). The symposium is being hosted jointly by the Ministry of Justice, the Luxembourg Chamber of Commerce and the International Anti-Corruption Academy (IACA). Its topic is “Public-Private Co-operation in the Fight against Corruption”. The speakers are eminent specialists from the private and public sectors, and the aim is clearly to enhance awareness in both sectors and to take advantage of the presence in Luxembourg at that time of the Ministers of Justice and their advisers.
- With more particular regard to the reporting of bribery offences, the Government funds the anti-bribery hotline of Transparency International Luxembourg. Working closely with the Corruption Prevention Committee (COPRECO), TI offers an anonymous hotline for people who believe they have witnessed an act of corruption and are thus able to report it.
- Prosecution service staff dispense courses on bribery to future magistrates, tax officials, police officers, etc.

Legislative and regulatory measures taken:

- The Act of 10 July 2011 making obstruction of justice a crime stipulates that the “failure of anyone having knowledge of a crime which it is still possible to prevent, or to limit the effects thereof, or the perpetrators of which are likely to commit new crimes that could be prevented, to so inform the judicial or administrative authorities shall be punishable by imprisonment for between one and three years and a fine of between 251 and 45 000 euros.”
- The Act of 2 November 2012 ratifying the Convention on the IACA’s status as an international organisation was signed in Vienna on 2 September 2010.
- The draft Grand Ducal regulation of 21 October 2011 instituting a code of conduct for the civil service.
- Two other draft codes of conducts have been prepared – one for members of the Government and another for members of Parliament.

***If no action has been taken to implement recommendation 5a, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

***Text of recommendation 5b:***

5. Regarding raising public awareness and reporting transnational bribery, the Working Group recommends that Luxembourg:

- b. Intensify efforts to enhance awareness in the accounting and auditing professions of the importance of detecting and reporting transactions likely to constitute bribery of foreign public officials and related offences, such as accounting offences [2009 Recommendation, III. i), X. A. and X. B.];

***Action taken as of the date of the follow-up report to implement this recommendation:***

Company auditors are being made aware of the provisions of the Act of 12 November 2004, as amended, on the fight against money laundering and terrorist financing (FML / TF), which includes acts of bribery within the meaning of Articles 246 to 253, 310 and 310-1 of the Penal Code.

The IRE Internet site includes not only a section on preventing money laundering and terrorist financing, but a section on the prevention of bribery as well.

Pursuant to the Grand Ducal regulation of 15 February 2010 instituting ongoing training for company auditors and licensed company auditors, the latter are required to take part in suitable ongoing training programmes to maintain their theoretical knowledge and professional skills and values at a sufficiently high level.

Company auditors and licensed company auditors are required to take at least 120 hours of ongoing training per three-year reference period, including a minimum of 12 hours' training in FML /TF (including predicate bribery offences).

Each year the IRE organises an ongoing training programme to enable company auditors, licensed or unlicensed, to meet their ongoing training requirements. The programme is also open to certified accountants and other professionals with an interest in the subject matter covered.

The annual ongoing training programme includes a segment on FML /TF. Each year the course assortment includes a four-hour session to familiarise participants with the professional obligations resulting from the Act of 12 November 2004, as amended, on FML /TF and to discuss professional practice in this context. Courses also cover fraud, bribery and so on. Attached is the 2013 training programme for further information.

IRE, on its own or in partnership with other professional associations, holds conferences dealing with FML /TF.

Each year, at its general meeting, the IRE board informs the profession of the findings of its FML / TF quality audit and also makes a presentation of the most commonly encountered weaknesses in order to inspire company auditors to review their own measures and procedures. This same information is also set forth in the annual report, which is distributed to the entire profession, the authorities and interested third parties.

In addition, because of the respective requirements of the Financial Sector Supervisory Commission (CSSF) and the Insurance Board, and the role of company auditors in connection with audits of entities supervised by the CSSF or the Insurance Board, the audit firms working in these markets have built up substantial expertise in the realm of FML / TF.

For company auditors belonging to an international network, the rules of such networks very often include very strict standards aimed at combating all forms of corruption.

In addition, many large US and British companies require their European service providers to comply with the US Foreign Corrupt Practices Act or the UK Bribery Act, respectively.

In addition, pursuant to Article 4, paragraph (2) of the Act of 12 November 2004, as amended, on FML / TF, most adequately sized professional auditing firms have instituted in-house awareness-raising programmes to train concerned staff in the legislative and regulatory provisions to help them be able to recognise transactions that might be connected with money laundering or terrorist financing and to instruct them in how to proceed in such cases. For small auditing firms, the IRE dispenses instruction through its annual ongoing training programme.

In performing their missions, company auditors have access to an entire set of information provided by, *inter alia*, the FIU, the Financial Sector Supervisory Commission, the Insurance Board, the European Commission (including the “Consolidated list of persons, groups and entities subject to EU financial sanctions”), the OECD and Transparency International. All this information is accessible via the Internet, and references are also posted on the IRE Internet site.

The IRE would further like to highlight the joint efforts of government authorities (Ministries, the prosecution service) and supervisory and self-regulating authorities (IRE, OEC, etc.) in raising awareness, training and briefing professionals with regard to FML / TF, including the fight against bribery as well.

Concerning the Association of Certified Accountants, and similarly to what had been documented at the time of the OECD evaluation (in the “OECD WGB: Phase 3 Evaluation of Luxembourg - Accounting and Auditing” questionnaire in particular) and the panel on 2 February 2011, we confirm to you that the OEC provides its members with regular training, briefing and control measures, as part of its attributions to oversee compliance by certified accountants with their obligations under the legislation on the fight against money laundering and terrorist financing (FML / TF).

In this sense, the OEC helps boost the profession’s awareness of the fight against the bribery of foreign public officials, insofar as the FML / TF legislation includes special vigilance measures in respect of politically exposed persons and covers money laundering consecutive to any predicate offence whatsoever.

Regulatory provisions in the realm of ethics for certified accountants are stipulated in the OEC Code, which is itself based on the code of ethics of the International Federation of Accountants (IFAC), to which a number of particularities specific to the profession as exercised in Luxembourg were added. It should also be noted that the ethical training dispensed at the University of Luxembourg to prospective certified accountants is the same as that for prospective company auditors, both professions having based their regulations on the code of ethics of the IFAC (<http://www.ifac.org/>).

***If no action has been taken to implement recommendation 5b, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

***Text of recommendation 5c:***

5. Regarding raising public awareness and reporting transnational bribery, the Working Group recommends that Luxembourg:

- c. Further heighten the awareness of professionals required to report money-laundering suspicions of the predicate offence of bribing foreign public officials [Convention, Article 7; 2009 Recommendation, IX. and III. i)];

***Action taken as of the date of the follow-up report to implement this recommendation:***

The awareness of professionals required to report money-laundering suspicions of the predicate offence of bribing foreign public officials was heightened on 6 June 2012, for example, during a presentation about corruption issues to the Money Laundering Prevention Committee (COPREBLA). In particular, the Co-Chair presented WGB recommendations and FATF communications.

The COPREBLA Co-Chair also made two presentations about FATF's bribery-related work at her Committee meetings.

***If no action has been taken to implement recommendation 5c, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

***Text of recommendation 5d:***

5. Regarding raising public awareness and reporting transnational bribery, the Working Group recommends that Luxembourg:

- d. Raise awareness of employees of the Luxembourg development co-operation agency and the Office du Ducroire of the new law on the protection of whistleblowers and, as regards the development co-operation agency, the new reporting requirements to which its staff are subject under Article 23 (1) of the Code of Criminal Procedure [2009 Recommendation IX. iii)].

***Action taken as of the date of the follow-up report to implement this recommendation:***

The WGB recommendations contained in the June 2011 Phase 3 evaluation report were circulated widely amongst all parties involved in the evaluation process, including the Office du Ducroire and the Luxembourg development co-operation agency.

To reiterate these recommendations yet again in a solemn manner, the Corruption Prevention Committee (COPRECO) sent the two above-mentioned agencies an official letter elaborating on the legal provisions, along with copies of the laws in question.

Since 2011, Lux-Development s.a. has expanded its fraud prevention procedure (see sub. 9.). Reminders about risk management, designed *inter alia* to heighten awareness in the realm of fraud prevention, are

sent regularly to all members of staff. In particular, all Lux-Development s.a. employees in the field receive training in “Risk Auditing and Management” while they are present at the Agency’s headquarters.

***If no action has been taken to implement recommendation 5d, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

***Text of recommendation 6a:***

6. Regarding accounting standards, external audit and corporate compliance and ethics programmes, the Working Group recommends that Luxembourg:

- a. Take measures, jointly with the Association of Certified Accountants and the Institute of Company Auditors, to ensure that full use be made of the provisions of Luxembourg legislation implementing Article 8 of the Convention so as to prevent and detect accounting offences relating to the bribery of foreign public officials [Convention, Article 8; 2009 Recommendation, IX., X. and X. A];

***Action taken as of the date of the follow-up report to implement this recommendation:***

Company auditors constitute a regulated profession subject to government supervision by the Financial Sector Supervisory Commission (CSSF), as well as to supervision by the Institute of Company Auditors (IRE). The powers of both authorities are stipulated, respectively, by Articles 31 and 57 of the Act of 18 December on the auditing profession (hereinafter, the “Auditing Act”).

The profession of company auditor is also subject to the Act of 12 November 2004, as amended, on the fight against money laundering and terrorist financing (“FML / TF”). This obligation is stipulated in Article 24 of the Auditing Act, as well as in Article 2 point (8) of the aforementioned Act of 12 November 2004 on FML / TF. Under these provisions, company auditors who detect or suspect that an operation is connected with bribery are required by law to take the initiative of promptly informing the FIU of any fact of which they or their clients are aware and that might constitute evidence of an act of corruption within the meaning Articles 246 to 253, 310 and 310-1 of the Penal Code.

Adding to these provisions is Article 140 of the Penal Code, which reads as follows:

*Art. 140. (Act of 10 July 2011) 1. The failure of anyone having knowledge of a crime which it is still possible to prevent, or to limit the effects thereof, or the perpetrators of which are likely to commit new crimes that could be prevented, to so inform the judicial or administrative authorities shall be punishable by imprisonment for between one and three years and a fine of between 251 and 45 000 euros.*

Article 9 of the Auditing Act also institutes an ongoing training obligation for company auditors, who are required to take part in suitable ongoing training programmes to maintain their theoretical knowledge, professional skills and values at a sufficiently high level.

The Grand Ducal regulation of 15 February 2010 on the organisation of ongoing training for company auditors and licensed company auditors stipulates the criteria to be met by such programmes in order to qualify under the Auditing Act. Non-compliance with ongoing training requirements constitutes a disciplinary offence punishable under the aforementioned Articles 47 and 67 of the said Auditing Act. Ongoing training requirements are enforced by the CSSF (in respect of licensed company auditors) and the

IRE (in respect of company auditors).

Under the aforementioned Grand Ducal regulation, training activities must include a minimum of 12 hours' instruction in FML / TF by three-year reference period. It should be reiterated that the act of bribery, within the meaning of Articles 246 to 253, 310 and 310-1 of the Penal Code, is a predicate offence within the meaning of the Act of 12 November 2004, as amended, on FML / TF.

In addition, pursuant to Article 4, paragraph (2) of the Act of 12 November 2004, as amended, on FML / TF, professionals are required to take sufficient and appropriate measures to train and raise the awareness of their employees about the provisions of the Act, in order to help them recognise operations that might be connected with money laundering or terrorist financing, and to instruct them in how to proceed in such cases. Those measures include participation by the employees concerned in special ongoing training programmes.

The Act of 5 April 1993, as amended, on the financial sector and the Act of 6 December 1991, as amended, on the insurance sector stipulate that company auditors are required to advise the supervisory authority promptly of any fact or decision of which they have become aware in the course of auditing the annual accounting documents of entities subject to the prudential supervision of the supervisory authority or while performing another legal mission if that fact or decision:

- Constitutes a serious breach (financial sector) or a substantive breach (insurance sector) of laws in force in Luxembourg;
- Impairs the continuity of operations of the regulated sector professional; or,
- Results in refusal to certify the accounts or the issuance of reservations about them.

Company auditors are also required to inform the supervisory authority promptly, in performing the missions cited in the preceding paragraph on behalf of a professional in the regulated sector, of any fact or decision concerning that regulated-sector professional and meeting the criteria enumerated in the preceding paragraph, of which they have become aware in the course of auditing the annual accounting documents or performing any other legal mission on behalf of another company connected to this regulated-sector professional through an auditing link.

It should also be noted that IRE units take part in the work of the advisory committees instituted by the Ministry of Justice, the CSSF and the Insurance Commission for the purpose of discussing various aspects of the legislation on preventing money laundering and terrorist financing (including predicate bribery offences).

Licensed company auditors perform statutory or contractual audits of annual accounts in accordance with International Standards of Auditing (ISA) as adopted for Luxembourg by the Financial Sector Supervisory Commission. These standards require practitioners to conform to ethical rules and to plan and conduct audits in order to obtain reasonable assurance that financial statements are free of any significant anomalies. Here, the following ISAs are of particular relevance to the subject dealt with in this questionnaire:

- ISA 240 (“The Auditor’s Responsibility to Consider Fraud in an Audit of Financial Statements”);
- ISA 250 (“Consideration of Laws and Regulations in an Audit of Financial Statements”);
- ISA 200 (“Objective and General Principles Governing an Audit of Financial Statements”);
- ISA 706 (“Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor’s Report”).

These standards require licensed company auditors to think critically and be aware of the fact that an audit may uncover conditions or events that raise questions as to the audited entity's compliance with legislative or regulatory provisions.

When auditors become aware of information about any non-compliance situation, they must analyse the nature of the act and the circumstances in which it happened and gather enough other information to assess the potential impact on the financial statements. If auditors deem that there may have been non-compliance, they must note it in their records and discuss it with management.

However, whenever professionals know, suspect or have good reason to suspect that money laundering or terrorist financing, in particular in respect of a predicate bribery offence, is taking place, has taken place or has been attempted, in particular on account of the person concerned, his history, the origin of his assets or the nature, purpose or methods of the transaction, they shall promptly take the initiative of so informing the financial intelligence unit (FIU) of the Luxembourg District Tribunal prosecution service (Article 5 of the Act of 12 November 2004, as amended, on the fight against money laundering and terrorist financing).

In addition, ISA 706 allows licensed company auditors to insert a paragraph into their audit reports mentioning any irregularities they may have noted which they feel would be useful to point out in order to enhance the understanding of the parties to whom their reports are sent.

Furthermore, the ISA, and ISQC 1 (on an auditing firm's internal quality control arrangements) in particular, require:

- Implementation of internal quality control arrangements, including an independent review of the auditing mandates of public service entities;
- Continuous monitoring and assessment of the auditing firm's quality control system;
- That this assessment process be entrusted to one or more partners or to other persons having sufficient and appropriate experience, as well as the authority within the firm, to take on this responsibility.

The internal organisation of the auditing firm's quality control forms an integral part of the scope of the quality assurance system instituted by the government supervisory authority for the auditing profession (CSSF) and discussed in the following paragraph.

As mentioned in the Auditing Act, company auditors are subject to a quality assurance system for the missions they conduct in the areas covered by Article 1 item (29) sections a) and b) of the Auditing Act (legal auditing of accounts and any other missions entrusted to them exclusively by law). Responsibility for instituting the quality assurance system lies with the Financial Sector Supervisory Commission.

The scope of quality assurance reviews depends on proper checks of the files selected for auditing, including assessment of compliance with ISA standards and rules of ethics, and independence in particular.

In addition, when conducting legal auditing missions on the accounts of financial sector professionals, licensed company auditors must check whether financial or insurance/reinsurance professionals have complied with their respective industry responsibilities with regard to FML / TF. This work is set forth in reports to company management but to the Financial Sector Supervisory Commission or the Insurance Board as well.

As part of their mission of conducting legally required audits of the accounts of other professionals but

covered by Article 2 of the Act of 12 November 2004, as amended, on FML / TF, company auditors check compliance with provisions of the said Act of 12 November 2004 and with the Grand Ducal regulation of 1 February 2010 providing certain clarifications of that Act. Their mission also extends to any and all of the professional's foreign subsidiaries or branch offices.

International auditing standards, the IRE professional standard on FML / TF and the legislative framework presented in the "General remarks" section provide company auditors with the tools needed to ensure that:

- Their clients are in compliance with the Act of 12 November 2004, as amended, on the fight against money laundering and terrorist financing;
- They are not being used unwittingly to facilitate money laundering and/or terrorist financing (including bribery-related predicate offences).

With regard to legislation concerning accounting standards, adoption of a standardised chart of accounts applicable outside the financial and insurance sector is also important insofar as by helping to standardise accounting information it makes falsification more delicate and technically complex.

The IRE sees no direct repercussions from optional extension of IFRS standards to companies, as provided for in the Act of 10 December 2010 on the introduction of international accounting standards for companies.

The standard-setting and legislative environments discussed up to this point, as well as the joint efforts of all financial market players, are enabling company auditors to develop their "professional scepticism", thereby contributing to the detection of offences, and of those relating to bribery in particular.

Concerning the Association of Certified Accountants, and similarly to what had been documented at the time of the OECD evaluation (in the "OECD WGB: Phase 3 Evaluation of Luxembourg - Accounting and Auditing" questionnaire in particular) and the panel on 2 February 2011, we confirm to you that the OEC provides its members with regular training, briefing and control measures, as part of its attributions to oversee compliance by certified accountants with their obligations under the legislation on the fight against money laundering and terrorist financing (FML / TF).

In this sense, the OEC helps boost the profession's awareness of the fight against the bribery of foreign public officials, insofar as the FML / TF legislation includes special vigilance measures in respect of politically exposed persons and covers money laundering consecutive to any predicate offence whatsoever.

Regulatory provisions in the realm of ethics for certified accountants are stipulated in the OEC Code, which is itself based on the code of ethics of the International Federation of Accountants (IFAC), to which a number of particularities specific to the profession as exercised in Luxembourg were added. It should also be noted that the ethical training dispensed at the University of Luxembourg to prospective certified accountants is the same as that for prospective company auditors, both professions having based their regulations on the code of ethics of the IFAC (<http://www.ifac.org/>).

***If no action has been taken to implement recommendation 6a, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

***Text of recommendation 6b:***

6. Regarding accounting standards, external audit and corporate compliance and ethics programmes, the Working Group recommends that Luxembourg:

- b. Clarify the obligations of external auditors who discover evidence of bribery of foreign public officials so that they inform the company's managers and, where relevant, supervisory bodies [2009 Recommendation, III. i); X. B iii)];

***Action taken as of the date of the follow-up report to implement this recommendation:***

When licensed company auditors know, suspect or have good reason to suspect that money laundering or terrorist financing, in particular in respect of a predicate bribery offence, is taking place, has taken place or has been attempted, in particular on account of the person concerned, his history, the origin of his assets or the nature, purpose or methods of the transaction, they shall promptly take the initiative of so informing the financial intelligence unit (FIU) of the Luxembourg District Tribunal prosecution service (Article 5 of the Act of 12 November 2004, as amended, on the fight against money laundering and terrorist financing).

Indeed, the aforementioned Act stipulates that “professionals as well as their managers and employees may not reveal to the client concerned, nor to any third parties, that information is being disclosed or furnished to the authorities pursuant to paragraphs (1), (1bis), (2) and (3) or that a money laundering or terrorist financing investigation by the financial intelligence unit is in progress or may be initiated”.

***If no action has been taken to implement recommendation 6b, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

***Text of recommendation 6c:***

6. Regarding accounting standards, external audit and corporate compliance and ethics programmes, the Working Group recommends that Luxembourg:

- c. Consider requiring external auditors to report their suspicions of bribery of foreign public officials to the law enforcement authorities and ensure that auditors making such reports reasonably and in good faith are protected from legal action [2009 Recommendation X. B. (v)];

***Action taken as of the date of the follow-up report to implement this recommendation:***

When licensed company auditors know, suspect or have good reason to suspect that money laundering or terrorist financing, in particular in respect of a predicate bribery offence, is taking place, has taken place or has been attempted, in particular on account of the person concerned, his history, the origin of his assets or the nature, purpose or methods of the transaction, they shall promptly take the initiative of so informing the financial intelligence unit (FIU) of the Luxembourg District Tribunal prosecution service (Article 5 of the Act of 12 November 2004, as amended, on the fight against money laundering and terrorist financing).

Indeed, the aforementioned Act stipulates that “professionals as well as their managers and employees

may not reveal to the client concerned, nor to any third parties, that information is being disclosed or furnished to the authorities pursuant to paragraphs (1), (1bis), (2) and (3) or that a money laundering or terrorist financing investigation by the financial intelligence unit is in progress or may be initiated”.

***If no action has been taken to implement recommendation 6c, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

***Text of recommendation 6d:***

6. Regarding accounting standards, external audit and corporate compliance and ethics programmes, the Working Group recommends that Luxembourg:

- d. Promote, jointly with the relevant professional associations, internal control, ethics and compliance programmes or measures in the financial sector and businesses involved in commercial transactions abroad, including distribution of Annex 2 of the 2009 Recommendation, *Good Practice Guide on Internal Controls, Ethics and Compliance* [2009 Recommendation, X. C. i); Annex II].

***Action taken as of the date of the follow-up report to implement this recommendation:***

The Corruption Prevention Committee distributed the *Good Practice Guide on Internal Controls, Ethics and Compliance* to professional associations, who were, however, already very much aware of its contents. Moreover, the Chamber of Commerce held a seminar on the topic of internal controls, ethics and compliance on 24 May 2012.

***If no action has been taken to implement recommendation 6d, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

***Text of recommendation 7a:***

7. Regarding tax measures to combat bribery, the Working Group recommends that Luxembourg:

- a. Take appropriate steps to increase the intensity and frequency of on-site inspections by the tax authorities [2009 Recommendation, III. iii); 2009 Recommendation on Tax Measures, I. ii) and II.];

***Action taken as of the date of the follow-up report to implement this recommendation:***

With regard to indirect taxes, the Registration and Properties Administration (AED) makes ongoing efforts to continuously increase the intensity and frequency of its on-site inspections. As reiterated in its annual reports (2010, 2011, 2012), AED’s objective is to maintain a high frequency of inspections.

In respect of VAT, since 2010 the number and frequency of inspections have been steadily on the rise (2010: 366 inspections carried out by tax offices and 94 inspections carried out by the Anti-Fraud Unit; 2011: 1 118 inspections carried out by tax offices and 161 inspections carried out by the Anti-Fraud Unit; 2012: 1 464 inspections carried out by tax offices and 69 inspections carried out by the Anti-Fraud Unit). Pursuant to the Act of 28 January 1948 intended to ensure the fair collection of registration and succession

duties, the Administration carried out 177 inspections in 2011 and 147 inspections in 2012. Inspections were also conducted with regard to capital duty.

Moreover, with regard to the fight against money laundering, the Act of 27 October 2010 designated AED as the supervisory and regulatory authority for certain categories of professionals subject to the special obligations stipulated in the Act of 12 November 2004, as amended, on the fight against money laundering and terrorist financing. This new mission means that not only have steps been taken to heighten these professionals' awareness, but that inspections have also been carried out by the anti-money laundering unit. In this connection, in order to enforce compliance with these professional obligations, Registration and Properties Administration officials have the same investigatory powers as those conferred by Article 70 §1 paragraphs 2 and 3 and §3 paragraph 2 and Article 71 paragraph 1 of the Act of 12 February 1979 on value added tax.

The Income Tax Administration is also pursuing its efforts to intensify routine inspections. Accordingly, in 2012, 49 audits and 34 on-site inspections were conducted, yielding roughly ten million euros in additional taxes.

***If no action has been taken to implement recommendation 7a, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

***Text of recommendation 7b:***

7. Regarding tax measures to combat bribery, the Working Group recommends that Luxembourg:
  - b. Facilitate international exchanges of information in accordance with the 2009 Recommendation of the Council on Tax Measures notably by considering including the option provided for in paragraph 12.3 of the Commentary on Article 26 of the OECD Model Tax Convention in their bilateral tax conventions [2009 Recommendation on Tax Measures, I. iii)];

***Action taken as of the date of the follow-up report to implement this recommendation:***

Luxembourg is continuing its efforts to include the provisions of Article 26.5 of the OECD Model Tax Convention in its conventions against double taxation.

Currently, out of 64 conventions, 26 bilateral conventions against double taxation meet OECD standards. Seventeen conventions have been signed or are pending ratification and 13 have been initialled.

With regard to including the option provided for in paragraph 12.3 of the Commentary on Article 26 of the OECD Model Tax Convention in bilateral tax conventions, the Income Tax Administration has no objection if a contracting State uses information likely to constitute money laundering or bribery offences, or offences whose proceeds are destined for terrorist financing, for purposes of criminal prosecution.

***If no action has been taken to implement recommendation 7b, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

***Text of recommendation 7c:***

7. Regarding tax measures to combat bribery, the Working Group recommends that Luxembourg:
- c. Do more to raise awareness among its tax authorities of the need to make full use of the new measures made available to them in the 2008 law on inter-agency and judicial co-operation in order to detect illegal transactions linked to bribery of foreign public officials, and to encourage the reporting of such transactions [2009 Recommendation on Tax Measures, I. iii)].

***Action taken as of the date of the follow-up report to implement this recommendation:***

With regard to the Registration and Properties Administration, a directorial instruction was issued on 10 December 2010 concerning the procedure to follow in the event of investigations for criminal tax offences and criminal accusations to the State prosecutor.

That instruction reminded AED officials of Article 16 (2) of the Act of 19 December 2008 relating to inter-agency and judicial co-operation, as well as the procedure to follow at the administrative level to report either a tax fraud or swindle or a breach of law to the State prosecutor.

In conjunction with this, the Director of the Registration and Properties Administration also issued three circulars.

The first is dated 8 April 2009 and deals with instruments instituted by the Act of 19 December 2008 on tax auditing and recovery.

The second is dated 1 June 2009 and concerns the Grand Ducal regulation of 22 January 2009 on inter-agency co-operation between the Income Tax Administration and the Registration and Properties Administration, including exchange of information upon request and simultaneous and joint inspections.

In this connection, a plan for simultaneous and joint inspections was formulated by the two aforementioned agencies.

A third circular was issued jointly with the Customs and Excise Administration on 10 February 2010, dealing with co-operation between the two said agencies.

In addition, the tax authorities are pursuing their efforts and training their officials in order to heighten their awareness of the bribery issue. These courses are dispensed by members of the prosecution service.

***If no action has been taken to implement recommendation 7c, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

***Text of recommendation 7d:***

7. Regarding tax measures to combat bribery, the Working Group recommends that Luxembourg:
- d. Raise awareness among the tax authorities of the importance of making more stringent use of the administrative sanctions available to them to discourage tax deductibility of expenses likely to

constitute bribes [2009 Recommendation on Tax Measures, I. ii); Phase 2 Recommendation 16].

***Action taken as of the date of the follow-up report to implement this recommendation:***

The Income Tax Administration has a legal basis and a special circular on this subject.

The Act of 4 December 1967, as amended, on income tax stipulates in Article 12, paragraph 5 that no bribes paid to foreign public officials are tax-deductible and that it is prohibited to deduct the value of any sort of benefits or gifts from taxable income. The scope of application of the said Article 12, paragraph 5 expressly prohibits deductibility of benefits of any sort, or of expenses pertaining thereto, that are granted with a view to obtaining a monetary or other benefit from:

- Persons holding or representing authority or public force, or invested with an elective government mandate or entrusted with a public service mission either in Luxembourg or in another State;
- Persons sitting on a judicial body of another State, even as a non-professional member of a collegiate body responsible for ruling on the outcome of a dispute or exercising the functions of an arbitrator subject to the regulations governing arbitration of another State or a public international organisation;
- Community officials and members of the Commission of the European Communities, the European Parliament, the Court of Justice and the Court of Auditors of the European Communities, in full respect of the relevant provisions of the treaties instituting the European Communities, the Protocol on the Privileges and Immunities of the European Communities, the Statutes of the Court of Justice, and the implementing regulations thereof, with regard to the withdrawal of immunities;
- Civil servants, officials of another public international organisation, persons belonging to a parliamentary assembly of a public international organisation and persons exercising judicial or court registry functions within another international jurisdiction whose authority is recognised by the Grand Duchy of Luxembourg, in full compliance with the relevant statutory provisions of those public international organisations, parliamentary assemblies of public international organisations or international jurisdictions, as well as the instruments taken for their enforcement, in respect of the lifting of immunity;
- Persons ranking as directors or managers of a legal person, authorised representative or agent of a legal or natural person, under the hypothetical situations described in Articles 310 and 310-1 of the Penal Code.

In the event that facts likely to constitute a crime or misdemeanor are discovered, the ACD shall so inform the prosecution service, pursuant to Article 16 § 2 of the Act of 19 December 2008 on inter-agency and judicial co-operation.

The 2005 circular stipulates that: “Article 12, paragraph 5 of the Income Tax Act prohibits deductibility of bribes paid to national, European or foreign public officials, as well as of those paid to persons holding elective office.

“Attached please find the *Bribery Awareness Handbook* prepared by the OECD Committee on Fiscal Affairs and adapted for the needs of officials of the Income Tax Administration.

“Independently of the contents of this handbook, provisions of the Tax Adaptation Act and the General Tax Act are to be complied with strictly.”

With regard to indirect taxes, in the event that the Registration and Properties Administration suspects that a taxpayer’s personal expenditures have been reported as business expenses, Article 54 of the Act allows denial of VAT on the expenses in question, reclassifying them as sumptuary, entertainment or reception expenses.

In the event such an expenditure is made and reported, tax deductibility will be denied but sanctions can be imposed only at the criminal level.

In the event of suspicions, the Registration and Properties Administration will so advise the prosecution service pursuant to Article 29, paragraph 1 of the Act of 28 January 1948 intended to ensure the fair collection of registration and succession duties and Article 16 § 2 of the Act of 19 December 2008 relating to inter-agency and judicial co-operation.

***If no action has been taken to implement recommendation 7d, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

***Text of recommendation 8:***

8. Regarding international judicial co-operation, the Working Group recommends that Luxembourg reconsider its approach to the possibility of initiating prosecution in Luxembourg of transnational bribery offences brought to the attention of the Luxembourg authorities through mutual legal assistance requests, where Luxembourg also has jurisdiction over the offences committed [Convention, Articles 5 and 7; 2009 Recommendation, XIII. i)].

***Action taken as of the date of the follow-up report to implement this recommendation:***

Luxembourg residents implicated in acts of transnational bribery as bribers of foreign public officials or perpetrators of acts of laundering the proceeds of such bribery shall be prosecuted.

The principle of the advisability of prosecution and the *non bis in idem* principle, as well as the interests of proper administration of justice, would nonetheless militate for a reserved approach regarding parallel prosecution of persons already being prosecuted in another country, and such prosecution in Luxembourg would be considered only if it would involve genuine value added.

***If no action has been taken to implement recommendation 8, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

***Text of recommendation 9a:***

9. Regarding public benefits, the Working Group recommends that Luxembourg:

- a. Make sure that the integrity code of the Luxembourg development co-operation agency be updated to include an explicit reference to the bribery of foreign public officials, and to the requirement that its staff report any suspicions of such bribery to the prosecuting authorities under Article 23.1 of the Code of Criminal Procedure and the protection of whistleblowers instituted by the new law [2009 Recommendation, IX.];

***Action taken as of the date of the follow-up report to implement this recommendation:***

The new Act of 13 February 2011 bolstering means to fight bribery, which amends Article 23 of the Code of Criminal Procedure, clearly applies to employees of Lux-Development and the Office du Dueroire:

“Art. 23 (2) Any constituted authority, any public officer or official and any employee charged with a public service mission, whether engaged or appointed pursuant to provisions of public law or private law, who, in the performance of his duties, becomes aware of facts that may constitute a felony or

misdemeanor, is required to promptly inform the State Prosecutor and transmit to him all information, records and deeds relating thereto, notwithstanding any rule of confidentiality or professional secrecy that may be applicable to him.

“(3) Any constituted authority, any public officer or official and any employee charged with a public service mission, whether engaged or appointed pursuant to provisions of public law or private law, who, in the performance of his duties, becomes aware of facts that may constitute a felony or misdemeanor, is required to promptly inform the State Prosecutor and transmit to him all information, records and deeds relating thereto, notwithstanding any rule of confidentiality or professional secrecy that may be applicable to him.”

In order to comply with recommendation 9a, Lux-Development supplemented its fraud prevention procedure, under Article 2, as follows:

“For whatever purpose they deem fit, any employee or any third party may at any time report knowledge of an act of fraud to the following e-mail address: [Integrity@luxdev.lu](mailto:Integrity@luxdev.lu). Any information thus conveyed to Lux-Development shall be accessible only to general management and to the Chair of the Audit Committee.”

In respect of internal mechanisms of the Office du Ducroire, in-house procedure was revised in July 2011, and the Committee’s and the Secretariat’s pledge was published on our Internet site: <http://odl.lu/sites/default/files/Engagement%20lutte%20contre%20la%20corruption.pdf>

Forms for requesting export insurance and financial aid inform the insured or the requesting party of the legislation in force and require a declaration of non-involvement in bribery as defined by the OECD Convention.

Moreover, COPRECO has formally reminded Lux-Development and the Office du Ducroire of the Working Group’s recommendations in official letters.

***If no action has been taken to implement recommendation 9a, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

***Text of recommendation 9b***

9. Regarding public benefits, the Working Group recommends that Luxembourg:
- b. Take the steps necessary to ensure that public procurement authorities impose stricter enforcement of existing provisions to bolster the integrity of public procurement, and especially of those excluding bids (i) submitted by economic operators that have been convicted of bribery or (ii) appearing on the development banks’ exclusion lists [2009 Recommendation, IX. and XI.];

***Action taken as of the date of the follow-up report to implement this recommendation:***

Article 13 of the Public Procurement Act of 25 June 2009 provides for the administrative sanction of exclusion from participation in government contracts for a lack of commercial probity. One conviction for corruption is sufficient to trigger an exclusion decision for up to two years. It should be noted that the exclusion penalty may be imposed either in the wake of a criminal conviction or on the basis of facts that

the adjudicating authority deems sufficiently clear and obvious, with no need for an actual court ruling.

***If no action has been taken to implement recommendation 9b, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

***Text of recommendation 9c:***

9. Regarding public benefits, the Working Group recommends that Luxembourg:
- c. Explore the feasibility of taking measures so that, when deciding to grant contracts and other public benefits, the relevant agencies would use the existence of internal control, ethics and compliance measures as a criterion for those decisions [2009 Recommendation, X. C, vi) and XI. i); 2006 Recommendation on export credits, 1. (a)].

***Action taken as of the date of the follow-up report to implement this recommendation:***

After a thorough review of the recommendation, the competent authorities concluded that to use the existence of internal control, ethics and compliance measures as a criterion for each firm to which contracts or other public benefits are granted would be difficult to carry out insofar as many of the firms involved are SMEs or even family businesses that are unable to institute such in-house compliance measures.

In practice, however, the honourability criterion demanded of each firm receiving a contract or other public benefits makes it possible to achieve the same objective. One of the standard clauses in the contracts in question stipulates that bidders must provide “a copy of their criminal record or equivalent document providing information on the probity of the person who has signed the bidding package and issued within the past year by a judicial or administrative authority of the country of origin or provenance.”

It should be noted that the institution by the Act of 29 March 2013 of criminal records for legal persons in fact allows a double check by requiring the criminal records of both the person signing the contract and the legal person itself.

***If no action has been taken to implement recommendation 9c, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:***

## PART II: ISSUES FOR FOLLOW-UP BY THE WORKING GROUP

***Text of issue for follow-up:***

10. The Working Group will monitor the following aspects, depending on developments in case law and practice, in order to check:

- a. The scope of the exemption from liability in the event of “constraint”, so as to ensure that the exemption does not include the fact that in the event of coercion the immediate perpetrator may

have been “coerced” by a foreign public official to pay a bribe in order to obtain or retain a contract.

***With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:***

Article 71-2 of the Luxembourg Penal Code, which stipulates that “A person who has acted under duress or coercion which he was not able to resist shall not incur criminal liability”, traces its origin to the Napoleonic Code of 1810. Today it constitutes Article 122-2 of the French Penal Code. Being coerced by a foreign public official to pay a bribe in order to obtain or maintain a contract does not fall within the scope of the coercion defined in the Penal Code. Moreover, the case law on this point is clear:

Coercion is to be construed as “*force majeure* that can result only from an event independent of human will and that human will could neither foresee nor avert” [Crim. 29 January 1921: S. 1922. 1. 185, note Roux • 20 May 1949: Bull. crim. No. 184; D.1949.333 (esp. 1st.)]. It can be invoked successfully “only to the extent that it is based on thoroughly established facts and circumstances, as a result of which it was impossible to escape from the imminent peril arising from those facts and circumstances, without committing an offence” (Crim. 29 December 1949: Bull. crim. No. 360; D. 1950. 419; JCP 1950. II. 5614; Gaz. Pal. 1950. 1. 295).

***Text of issue for follow-up:***

10. The Working Group will monitor the following aspects, depending on developments in case law and practice, in order to check:

- b. Employees of public enterprises are covered by Article 247 of the Penal Code;

***With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:***

The Luxembourg authorities reiterate their position that Article 247 of the Penal Code covers employees of public enterprises.

But even if acts of active corruption of an employee of a foreign public enterprise could not give rise to prosecution because that employee would not be deemed to be performing a public service function within the meaning of Article 247 of the Penal Code, those acts could give rise to prosecution for corruption in the private sector.

“Art. 310. (Act of 13 February 2011) Any person who is a director or manager of a legal person or the agent or proxy of a legal or natural person and who solicits or agrees to accept, directly or through others, an offer, promise or advantage of any kind, for himself or for a third party, or accepts the offer or promise thereof, in order to perform or not perform an act in accordance with his function or facilitated by his function, without the knowledge and authorisation, as appropriate, of the board of directors or general meeting of the principal or employer shall be liable to imprisonment for one month to five years and a fine of 251 euros to 30 000 euros.”

“Art. 310-1. (Act of 13 February 2011) Any person who proposes or gives, directly or through others, an offer, promise or advantage of any kind to a person who is a director or manager of a legal person or the agent or proxy of a legal or natural person, for himself or for a third party, or offers or promises to do so,

in order that such person perform or not perform an act of his function or facilitated by his function, without the knowledge and authorisation, as appropriate, of the board of directors or general meeting of the principal or employer shall be liable to the same penalties.”

Pursuant to Article 5.1 of the Code of Criminal Procedure:

“Any Luxembourg citizen, any person who has his habitual residence in the Grand Duchy of Luxembourg and any foreigner found in the Grand Duchy of Luxembourg who has committed one of the offences provided for at Articles 112.1, 135.1 to 135.6, 135.9 and 135.11 to 135.13, 163, 169, 170, 177, 178, 185, 187.1, 192.1, 192.2, 198, 199, 199bis, 245 to 252, 310, 310.1, and 368 to 384 of the Penal Code in another country may be prosecuted and tried in the Grand Duchy even if the offence is not punished by the laws of the country where it was committed and the Luxembourg authority has not received a complaint from the offended party or the authority of the country where the offence was committed has not laid an information.”

As a result, prosecution is assured.

***Text of issue for follow-up:***

10. The Working Group will monitor the following aspects, depending on developments in case law and practice, in order to check:

- c. The level of penalties applicable to natural persons, with a view to ensuring that they are sufficient to be effective, proportionate and dissuasive;

***With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:***

There were no convictions for bribery of a foreign public official, but one example that could be cited was a conviction on 13 December 2012 by the Luxembourg Criminal Court for active corruption vis-à-vis a police officer (to whom a bribe was offered to avoid being charged with an offence), resulting in a suspended nine-month prison sentence and a fine of EUR 1 000 (copy attached).

Comparing this case to the potential of a case of bribing a foreign public official, where the amounts of money at stake would be of a different order of magnitude, it could be concluded that the penalties meted out in Luxembourg are effective, proportionate and dissuasive.

***Text of issue for follow-up:***

10. The Working Group will monitor the following aspects, depending on developments in case law and practice, in order to check:

- d. The impact on the dissuasive effect of sanctions of the application of mitigating circumstances, notably in cases of reclassification of the offence of bribing a foreign public official;

***With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:***

The main effect of criminalisation is to set a maximum prison sentence of five years, which corresponds to the legal maximum for misdemeanours involving comparable fraudulent behaviours. This five-year maximum sentence is still comparable to the maximum sentences existing in other countries that have signed the Convention. Accordingly, there is no impact on the dissuasive effect of sanctions.

***Text of issue for follow-up:***

10. The Working Group will monitor the following aspects, depending on developments in case law and practice, in order to check:

- e. The progress of current discussions about the introduction of a plea bargaining procedure, especially as regards its impact on the level of sanctions imposed in practice in this context;

***With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:***

A bill to introduce a plea bargaining procedure was tabled in the Chamber of Deputies on 3 January 2013. It seeks to round out the arsenal of applicable criminal procedures by introducing a plea bargaining mechanism into Luxembourg law. The purpose of the new procedure is to allow the criminal justice system to respond quickly if an offence has been committed. It would provide a new alternative to conventional prosecution, alongside summary orders and mediation in criminal cases.

By embarking on this course of action, Luxembourg is following the example set by its European partners who for several years already have been familiar with this mechanism, which is also in force in three of Luxembourg's neighbouring countries. It should be emphasised that the proposed system is distinct from those of the Belgian, French and German legislation, none of which would seem suitable, as they stand, for transposition into Luxembourg law.

The proposed Luxembourg system seeks to ensure transparent and equitable justice while upholding the rights of all parties involved. Plea bargaining would be available with regard to all crimes and misdemeanours punishable by imprisonment for up to five years. It could be requested by either the perpetrator or the State prosecutor.

The proposed procedure institutes a system in which all parties involved, including any victims, are heard. In addition, the proposed plea bargain must be formalised by a criminal court conviction eligible for appeal by the defendant, the State prosecutor or the Prosecutor-General. The court delivering the judgement must check, *inter alia*, whether the agreed punishment seems appropriate. Plea bargaining may take place at any stage in the procedure until such time as the district criminal court makes its ruling.

The new procedure could provide a rapid response to an offence and significantly shorten the time frames involved. It spares witnesses and defendants from repeated hearings, saves time for police investigators

and streamlines court hearings while clearing investigative bottlenecks.  
As a result, the bill to introduce plea bargaining constitutes a genuine administrative simplification for defendants, jurisdictions, victims and witnesses alike.

***Text of issue for follow-up:***

10. The Working Group will monitor the following aspects, depending on developments in case law and practice, in order to check:

- f. The level of sanctions and the use of confiscation in cases of bribery of foreign public officials, and especially the criminal penalties imposed on legal persons to ensure that they are effective, proportionate and dissuasive;

***With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:***

No such cases.

***Text of issue for follow-up:***

10. The Working Group will monitor the following aspects, depending on developments in case law and practice, in order to check:

- g. Implementation of the new provisions contained in Articles 66.2 to 66.5 of the Code of Criminal Procedure, and in particular to the scope of the term “exceptionally” contained in the law in connection with obtaining information from banks and financial institutions;

***With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:***

Use of these discovery measures is authorised case-by-case by investigating magistrates on the basis of the actual circumstances of each case.

***Text of issue for follow-up:***

10. The Working Group will monitor the following aspects, depending on developments in case law and practice, in order to check:

- h. Efforts to detect and prosecute facts of transnational bribery related to money laundering;

***With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:***

The Luxembourg FIU co-operates actively in conveying information involving transnational bribery. This includes spontaneous communications by the Luxembourg FIU to foreign FIUs concerned by information

stemming from reported suspicions of possible acts of corruption: - 2011: 9 - 2012: 6 – 2013 (as at 18 April): 4 .

Similarly, information was provided to foreign FIUs on request in 2011 – 4 cases and 2012 – 3 cases.

***Text of issue for follow-up:***

10. The Working Group will monitor the following aspects, depending on developments in case law and practice, in order to check:

- i. Establishment of statistics on (i) the number of investigations, prosecutions and sentences imposed by jurisdictions in respect of the bribery of foreign public officials and related offences; and (ii) mutual legal assistance requests related to transnational bribery, including the number of requests received and executed.

***With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:***

In January 2012 a working group on judicial statistics was created at the Ministry of Justice with representatives of the prosecution services, the Prosecutor-General, the courts, the Ministry of Justice and the National Statistical Office.

It was decided to contract with a firm specialising in judicial statistics to ultimately institute a computerised system for compiling such statistics from the Luxembourg courts, drawing *inter alia* on the work of the Council of Europe's Commission for the Efficiency of Justice (CEPEJ).

One of the express requirements in the contract specifications was the need for statistics in such key areas as bribery, money laundering; human trafficking, etc., so as to be able provide them to international organisations such as the EU, the OECD, the UN, the Council of Europe and so on.

In June 2012 two persons started working full-time with the jurisdictions, and in January 2013 a roadmap was presented, identifying requirements and proposing feasible technical solutions.

A new contract was signed in February 2013 to launch a second phase, which will see implementation of the computer tool.

A third phase, to begin in February 2014, should then enable data to be collected and statistics compiled for the future.