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Contribution prepared by:



Luxembourg

ECPAT Luxembourg (End Child Prostitution, Child Pornography and Trafficking of Children for sexual purposes) represents ECPAT International in Luxembourg. ECPAT Luxembourg's mission is to prevent and combat the sexual exploitation of children in Europe as well as in developing countries (South Asia, West Africa).

Website: www.eapat.lu



ECPAT International (End Child Prostitution, Child Pornography and Trafficking of Children for sexual purposes) is a leading global network working to end the commercial sexual exploitation of children (child prostitution, child pornography, child trafficking and child sex tourism). It represents 82 member organisations from 75 countries. ECPAT International holds Consultative status with ECOSOC.

Website: www.eapat.net

Executive summary

This contribution aims to provide a review of the status of implementation of international obligations and commitments regarding the commercial sexual exploitation of children (CSEC) in Luxembourg during the four year period between 2008 and 2012.

Internationally, the country has ratified the core international and regional legal standards addressing CSEC. At a regional level, Luxembourg still has to ratify the Council of Europe's Convention on Cybercrime. It is highly recommended that the country ratifies these international legal treaties. At the national level, Luxembourgish legislation addressing CSEC is relatively comprehensive and covers many forms of violence of children. However, several gaps in the legislation can be identified, leaving children (partly) unprotected. Definitions of child prostitution and child pornography need to be better clarified and brought into line with international legal standards. The 2009 law concerning the assistance, protection and security of victims of trafficking should be implemented. Furthermore, the government of Luxembourg should update its National Plan of Action to combat the sexual exploitation of children and ensure its implementation, monitoring and evaluation. Awareness-raising campaigns should be implemented, in cooperation with other relevant stakeholders, to address a broad range of CSEC issues in Luxembourg.

The following findings are drawn from relevant literature by international experts including the Committee on the Rights of the Child and key players in the field of children's rights, including ECPAT International and ECPAT Luxembourg.

I. Current normative and institutional framework for the promotion and protection of human rights

1.1 Legal Framework

1.1.1 International Legal Standards

Luxembourg ratified the *Convention on the Rights of the Child* (CRC 1989) in 1994, the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* (OPSC, 2000) in 2011, the *UN Convention against Transnational organised Crime* in 2008, the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (2000) in 2009, the *ILO Convention on the Worst Forms of Child Labour* (No. 182, 1999) in 2001 and the *ILO Minimum Age Convention* (1973) in 1977.

Luxembourg has signed but not yet ratified the *Optional Protocol on a Communications Procedure* (OP3 CRC, 2011).

Recommendations:

- To sign and ratify the *Optional Protocol on the Convention on the Rights of the Child on a Communications Procedure*
- To submit the initial report under the *Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography*.

1.1.2 Regional Legal Standards

Luxembourg ratified the Council of Europe's *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (CETS 201, 2007) in 2011 as well as the Council of Europe *Convention on Action against Trafficking in Human Beings* (CETS No. 197).

Luxembourg has signed, but not yet ratified, the Council of Europe's *Convention on Cybercrime* (CETS 185).

Recommendations:

- **To ratify the Council of Europe's *Convention on Cybercrime*.**

1.1.3 Domestic Legal Framework

Provisions contained in Luxembourg's *Penal Code* and other laws relating to children are relatively comprehensive and cover many forms of violence against children, including CSEC. Several amendments have been made to the existing laws to bring them into conformity with the principles and provisions of the *Convention on the Rights of the Child* (CRC) and its *Optional protocol on the sale of children, child prostitution and child pornography* (OPSC), the *UN trafficking protocol* and the Council of Europe's *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*. However, there are several gaps in the national legislation addressing the sexual exploitation of children that should be addressed.

1.1.4 Laws regarding Child Pornography

Luxembourg's national legislation addressing child pornography is not consistent with relevant international and regional standards. An important gap that can be identified, and which leaves children unprotected, is the lack of a clear definition of "child pornography" in Luxembourgish legislation.

Article 383bis and 383ter criminalise the import, export, transport, dissemination, trade, sale, and distribution, of pornographic materials which depict children, including through the use of information and communications technologies. Article 384 of the *Penal Code* criminalises the mere possession as well as the intentional viewing of documents, printed matter, pictures, movie or any other object with pornographic content involving or representing a minor below 18. It seems that this provision would include the intentional access to child pornography through the use of information and communications technologies, in line with Art. 20. Of the Council of Europe's *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*.

Moreover, Article 385-2 punishes the solicitation of children under the age of 16 for sexual purposes through the use of information and communication technologies (grooming), which is in line with Art. 23 of the Council of Europe's *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*.

Recommendations:

- **Provide a clear definition of child pornography in the national legislation, in line with the definition provided in the CoE *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*.**

1.1.5 Laws regarding Child Trafficking for sexual purposes

Luxembourg is a destination country for human trafficking. A certain number of children in Luxembourg are unaccompanied asylum seekers, refugees or without appropriate legal documentation; they are particularly vulnerable to sexual exploitation or at risk of not benefitting from adequate protection or care.¹

In order to harmonise domestic law with the provisions and obligations of the UN trafficking protocol, the *Law concerning human trafficking* and the *law concerning the assistance, protection and security of victims of trafficking* entered into force in 2009. However, the government has not yet approved implementing regulation for this 2009 *Law concerning the assistance, protection and security of victims of trafficking*.² Therefore, the provisions of this law, aiming to protect and provide assistance to trafficking victims, are not yet implemented. In order to fully protect trafficking victims and provide sufficient services and assistance, the government should ensure that an implementing regulation is enacted. Amendments to the *Penal Code* have provided for a more protective legal framework against child trafficking for sexual purposes, reflecting international standards.

The Luxemburgish national legislation addresses all victims of trafficking, regardless of their age or gender. According to article 382-1 of the *Penal Code*, recruiting, transferring, harbouring or receiving a person for the purpose of exploitation constitutes the offence of trafficking in persons, regardless of the means used or the consent of the person. This definition is in line with the definition of trafficking provided by the UN trafficking protocol. Article 382-2 qualifies the age of the victim as an aggravating factor; if the victim is a minor, the offender is sentenced to 10 to 15 years' imprisonment. The government has a stated policy of ensuring that victims of trafficking in human beings are not punished for unlawful acts committed as a direct result of being trafficked.³

The Luxemburgish national legislation addressing child trafficking is in line with international and regional standards.

Recommendations:

- **Ensure that the 2009 *Law concerning the assistance, protection and security of victims of trafficking* is effectively implemented.**

¹ Children's Rights Information Network, Child rights references in universal periodic review. 2009

² U.S. Department of State (2012). Trafficking in Persons Report 2012: Luxembourg. Accessed on 3rd July 2012, from: <http://www.state.gov/j/tip/rls/tiprpt/2012/>

³ U.S. Department of State (2012). Trafficking in Persons Report 2012: Luxembourg. Accessed on 3rd July 2012, from: <http://www.state.gov/j/tip/rls/tiprpt/2012/>

1.1.6 Laws regarding Child Prostitution

Luxembourg's *Penal Code* contains several provisions addressing child prostitution. An important gap in Luxembourg's legislation is the lack of a clear definition of "child prostitution".

The provisions criminalising conduct related to child prostitution (e.g. procuring children for prostitution) are relatively comprehensive, and are in line with the international conventions and treaties to which Luxembourg is a State Party.⁴ Article 379 of the *Penal Code* prohibits the exploitation of a minor under 18 years of age for the purpose of prostitution, as well as inciting, encouraging, obtaining, offering, procuring and facilitating the prostitution of a minor under 18 years. Offenders are sentenced to 1 to 5 years of imprisonment. The age of the victim is an aggravating factor: if the victim is a minor under 16 years of age, the offences are punishable by two to five years' imprisonment. If the victim is a minor under 11 years of age, the offences are punishable by five to ten years' imprisonment.

Recommendations:

- **Provide a clear definition of child prostitution in the Luxembourgish legislation, in line with the international obligations under the OPSC.**

1.1.7 Laws regarding Child Sex Tourism, including extraterritorial legislation

In 2011, there were no prosecutions related to child sex tourism reported in Luxembourg.⁵ Extraterritorial legislation can be used as a tool to combat child sex tourism, both in the sending and in the receiving country. In line with Article 4 of the Optional Protocol on the sale of children, child prostitution and child pornography, Luxembourg's criminal legislation establishes national jurisdiction over crimes related to the commercial sexual exploitation of children. Moreover, Luxembourgish citizens who sexually exploit children in a foreign country and who escape prosecution in the country where the alleged acts were committed can be prosecuted under Luxembourgish law. Provisions regarding extraterritorial jurisdiction in Luxembourg are contained in article 5-1 of the *Criminal Procedure Code*. This article stipulates that all Luxembourg nationals, permanent residents as well as foreigners that have committed one of the offences set out in article 368 to 384 of the *Penal Code* can be prosecuted in Luxembourg. The double criminality (an alleged crime should be considered an offence both in Luxembourg and in the foreign country) requirement is not applicable in Luxembourg.

2 Promotion and protection of Human Rights on the ground: implementation of international human rights standards

2.1 Key areas of concern with regard to the implementation of the children's right to protection against commercial sexual exploitation on the ground

2.1.1 Lack of implementation of the National Plan of Action to combat the sexual exploitation of children

⁴ ECPAT International (2006). Rapport Global de Suivi de la Mise en Œuvre des Actions de Lutte contre l'Exploitation Sexuelle des Enfants a des Fins Commerciales.

⁵ U.S. Department of State (2012). Trafficking in Persons Report 2012: Luxembourg. Accessed on 3rd July 2012, from: <http://www.state.gov/j/tip/rls/tiprpt/2012/>

Following the first world congress against the commercial sexual exploitation of children in 1996, the government of Luxembourg adopted a National Plan of Action (NPA) to combat the sexual exploitation of children in 1999. However, comprehensive and effective implementation of this NPA has not taken place thus far. This plan contained provisions for preventative actions to be undertaken by the governments, addressing the (commercial) sexual exploitation of children. No information is available regarding the implementation and impact of the NPA as it appears that no impact assessment has been conducted by the Ministry of Family, which is the governmental body responsible for monitoring the implementation of the NPA.⁶

As the NPA addressing the sexual exploitation of children is almost 15 years old, it can be assumed that the plan is outdated and should be updated. Moreover, the government of Luxembourg should ensure implementation, monitoring and evaluation of this updated NPA in order to ensure an effective approach of the sexual exploitation of children. There is a lack of coordination between key stakeholders (governmental and non-governmental) at national level which would enable an efficient implementation of the National Plan of Action to combat the sexual exploitation of children.

Recommendations:

- **Update the National Plan of Action to combat the sexual exploitation of children and ensure its implementation, monitoring and evaluation.**
- **Appoint a multidisciplinary working group responsible for supporting the implementation of the National Plan of Action to combat the sexual exploitation of children.**

2.1.2 Lack of awareness raising campaigns addressing a broad range of CSEC issues

Over the last decade, the government of Luxembourg has supported several awareness-raising campaigns addressing child sex tourism abroad. Significantly less awareness raising initiatives have been undertaken addressing the other forms of CSEC, such as child pornography, child trafficking for sexual purposes, the risks that children are exposed to when using the internet and awareness raising campaigns specifically addressing children who are particularly vulnerable to becoming victims of sexual exploitation (for example unaccompanied minors or trafficked children).⁷ The government of Luxembourg has not yet adopted any policy provisions to include awareness raising programmes on child trafficking or other forms of CSEC in the educational system.⁸

Recommendations:

- **Undertake awareness raising campaigns, in cooperation with other relevant stakeholders, addressing a broad range of CSEC issues.**

⁶ ECPAT International (2010). Country Progress Card: Luxembourg. Accessed 3rd July 2012, from: http://www.ecpat.net/TBS/PDF/2010_Luxembourg_Progress_Card.pdf

⁷ ECPAT International (2006). Rapport Global de Suivi de la Mise en Œuvre des Actions de Lutte contre l'Exploitation Sexuelle des Enfants a des Fins Commerciales.

⁸ ECPAT International (2010). Country Progress Card: Luxembourg. Accessed 3rd July 2012, from: http://www.ecpat.net/TBS/PDF/2010_Luxembourg_Progress_Card.pdf