



LUXEMBOURG

VICTIMS OF CORRUPTION: DAMAGE REPARATION AND LEGAL STANDING

INTERNATIONAL DATABASE 2022

SOURCE: SIMMONS & SIMMONS

VICTIMS OF CORRUPTION WORKING GROUP



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Scope

There are a number of different aspects of the legal framework in Luxembourg which may be engaged in answering these questions. Consequently, we have not sought to cover every possible offence or type of proceedings that could be relevant, but to answer the specific questions asked offering explanations and notable case examples.

This report covers the position in respect of the laws of Luxembourg. Please note that the below answers do not take into consideration the recently created European Public Prosecutor's Office (EPPO), with headquarter in Luxembourg. It started operating in June 2021 and has the power to investigate and prosecute corruption related cases against the EU's financial interests.

1. Legal Standing

1.1 Legal standing for civil society organisations and/or citizens in corruption-related cases

(A) Overview

In Luxembourg, proceedings are generally either criminal or civil in nature for corruption related cases.

Conduct in relation to corruption and bribery can trigger a number of criminal offences which would typically be prosecuted by criminal investigation. Corruption and bribery and related conduct may also form a basis for civil claims.

(B) Criminal proceedings

In accordance with articles 1, 3, 3-1 and 56 of the Procedural Criminal Code¹ citizens and civil society organisations are able to file a civil party petition (*constitution de partie civile*) to launch the public prosecution. The civil action can be carried out in parallel and contingent on a criminal action filed by the State Attorney.

¹ [Code de procédure pénale - Legilux \(public.lu\)](https://public.lu/legilux)

Nonetheless, these articles are of general application and are not specific to corruption.

Specifically, article 3-1 provides that any association of national importance with legal personality and approved by the Minister of Justice may exercise the rights granted to civil parties in respect of acts constituting an offence within the meaning of articles 245 to 252, 310, 310-1, 375, 382-1, 382-2, 401bis or 409 of the Luxembourg Criminal Code² or articles 442-1bis, 444(2), 453, 454, 455, 456, 457, 457-1, 457-2, 457-3 and 457-4 of the Luxembourg Criminal Code and directly or indirectly harming the collective interests which they are intended to defend, even if they do not justify a material or moral interest and even if the collective interest in which they are acting is entirely covered by the social interest whose defence is ensured by the State Attorney.

When it is an offence within the meaning of articles 444(2), 453, 454, 455, 456, 457, 457-1, 457-2, 457-3, and 457-4 of the Luxembourg Criminal Code committed against individual persons or an offence within the meaning of articles 245 to 252, 310, 310-1, 375, 382-1, 382-2, 401bis or 409 of the Luxembourg Criminal Code, the association may only exercise the rights granted to the civil party by way of a principal claim if these persons expressly declare in writing that they do not object.

The above offences include the one relevant to corruption as described below (i.e., articles 246 to 252 of the Luxembourg Criminal Code).

The Luxembourg Criminal Code implemented a strong framework on combatting various offences qualifying as ‘corruption’: offenses involving public officials and corporate bribery.

Offenses involving public officials as summarized below (articles 246-250 of the Luxembourg Criminal Code)

- (1) active bribery: requesting, receiving or accepting a bribe by a person (directly or indirectly for himself/herself or another person) who is a depositary or agent of public authority or force, or who is entrusted with a public service mission, or who holds

² [Code pénal - Legilux \(public.lu\)](#)

a public elective office in order to carry out or not carry out an act relevant to his/her duty or to abuse of his/her influence to obtain from an authority or public administration awards, employment, public contracts or any other advantage (art. 246 of the Luxembourg Criminal Code),

- (2) passive bribery: offering, promising or giving a bribe to a person (directly or indirectly for himself/herself or a third party) who is a depositary or agent of public authority or force, or who is entrusted with a public service mission, or who holds a public elective office in order to carry out or not carry out an act relevant to his/her duty or to abuse of his/her influence to obtain from an authority or public administration awards, employment, public contracts or any other advantage (art. 247 of the Luxembourg Criminal Code),
- (3) active influence peddling: requesting, receiving or accepting a bribe by any person (directly or indirectly), for himself/herself or for a third party, to abuse its real or supposed influence in order to obtain from a public authority or administration, without limitation, a distinction, work or any other favourable decision (art. 248 of the Luxembourg Criminal Code),
- (4) passive influence peddling proposing, or giving a bribe to any person (directly or indirectly), for himself/herself or for a third party, to abuse its real or supposed influence in order to obtain from a public authority or administration, without limitation, a distinction, work or any other favourable decision (art. 248 *alinea* 2 of the Luxembourg Criminal Code).
- (5) active reward: accepting or receiving by a person (directly or indirectly for himself/herself or others) who is a depositary or agent of public authority or force, or who is entrusted with a public service mission, or who holds a public elective office a reward to accomplish an act in the course of his/her duty (art. 249 para 1 of the Luxembourg Criminal Code),

- (6) passive reward: offering, promising or giving a reward to a person who is a depositary or agent of public authority or force, or who is entrusted with a public service mission, or who holds a public elective office, for itself or for a third party, for an improper act (art. 249 para 2 of the Luxembourg Criminal Code),
- (7) active and passive bribery of judges, arbitrators or experts appointed by the court or by the parties to the benefit of themselves or others (art. 250 of the Luxembourg Criminal Code).

According to art. 252 of the Luxembourg Criminal Code, the above list of offences should also apply to:

- persons who are officers or agents of the public authorities or forces, or who hold a public elective office or are entrusted with a public service mission of another State ;
- persons sitting on a judicial panel of another State, even as a non-professional member of a collegiate body responsible for deciding on the outcome of a dispute, or acting as an arbitrator subject to the arbitration rules of another State or of a public international organisation;
- European officials and members of the Commission of the European Union, the European Parliament, the Court of Justice of the European Union and the Court of Auditors of the European Union, in full compliance with the relevant provisions of the Treaties establishing the European Union, of the Protocol on the Privileges and Immunities of the European Union, of the Statute of the Court of Justice of the European Union and of the texts implementing them, concerning the waiver of immunities;
- officials and agents of another public international organisation, persons who are members of a parliamentary assembly of a public international organisation and persons who perform judicial or registry functions in another international court or tribunal whose jurisdiction is

accepted by the Grand Duchy of Luxembourg, in full compliance with the relevant provisions of the statutes of such public international organisations, parliamentary assemblies of public international organisations or international courts or tribunals and of the texts adopted for their implementation, as regards the waiver of immunities.

The expression "European official" used in the preceding paragraph means :

- any person who is an official or a member of the contract staff within the meaning of the Staff Regulations of Officials of the European Union or the Conditions of Employment of Other Servants of the European Union ;
- any person placed at the disposal of the European Union by the Member States or by any public or private body, who performs duties equivalent to those performed by officials or other servants of the European Union.

Members of bodies set up under the Treaties establishing the European Union and the staff of such bodies shall be treated in the same way as European officials where the Staff Regulations of Officials of the European Union or the Conditions of Employment of Other Servants of the European Union do not apply to them.

In addition and as a general comment, according to article 35 of the law of 16 April 1979 laying down the general status of public officials, as amended³, a civil action for compensation for alleged damage caused by a public official in the performance of his/her duties may be brought before a court of a criminal jurisdiction only if such court is already seized of the public action. Where a public official being sued in a civil court for compensation for such damage claims that the State is responsible, the court may order the Government to be called to account by the most diligent party. If the Government takes up the case, or if it is found liable, the public official shall be discharged from the case, with costs and, where appropriate, with damages.

³ [A - N° 132 / 1er septembre 2008 \(public.lu\)](#)

Corporate bribery (art. 310 of the Luxembourg Criminal Code) tackles active and passive bribery by a director or a manager.

Any Luxembourg national or any person who has his or her habitual residence in the territory of the Grand Duchy of Luxembourg who, outside the territory of the Grand Duchy, is guilty of an offence (*délit*) under Luxembourg law may be prosecuted and tried in the Grand Duchy of Luxembourg if the offence is punishable under the law of the country where it was committed (art. 5 *alinea* 2 of the Procedural Criminal Code)

Any Luxembourg citizen, any person who has his or her usual residence in the Grand Duchy of Luxembourg, as well as any foreigner found in the Grand Duchy of Luxembourg, who has committed abroad one of the offences provided for in articles 112-1, 135-1 à 135-6, 135-9 et 135-11 à 135-16, 162, 164, 165, 166, 178, 179, 198, 199, 199*bis*, 210-1, 245 à 252 (i.e., offences relevant in case of corruption), 310, 310-1, 322 à 324*ter*, 348, 368 à 384, 389, 409*bis*, 468 à 470, 496-1 to 496-4 and under the conditions of article 506-3, article 506-1 (money laundering) of the Luxembourg Criminal Code, may be prosecuted and tried in the Grand Duchy of Luxembourg, even if the act is not punishable by the legislation of the country where it was committed and the Luxembourg authority has not received either a complaint from the offended party or a report from the authority of the country where the offence was committed (art. 5-1 (1) of the Procedural Criminal Code).

Any person who commits an offence provided for in Article 506-1 of the Criminal Code (money laundering) may be prosecuted and tried in the Grand Duchy of Luxembourg, even where the primary offence provided for in paragraph 2.15 was committed abroad by a foreigner who is not habitually resident or who has not been found in the Grand Duchy of Luxembourg, even if the act is not punishable under the law of the country where it was committed and the Luxembourg authority has not received either a complaint from the offended party or a report from the authority of the country where the offence was committed (art. 5-1 (2) of the Procedural Criminal Code).

Any foreigner who outside the Grand-Duchy of Luxembourg has committed an offence (*délit*) according to the Luxembourg law, can be prosecuted and tried in the Grand-Duchy of Luxembourg when the victim is a Luxembourg national or

has his/her habitual residence in the Grand-Duchy of Luxembourg at the time the offence, if said offence is punished in the country where it was done). In this case, the prosecution can only be performed by the public prosecutor. Prior to this, a complaint must be lodged either (i) by the victim or his / her family or (ii) an official accusation by the foreign authority where the offence was committed to the Luxembourg authorities.

The accused will be prosecuted and tried according to the provisions of Luxembourg law (art. 6 of the Procedural Criminal Code).

(C) Civil proceedings

Article 3 of the Procedural Criminal Code allows for a civil action to be joint at the same time to the criminal action in front of the same criminal court on the condition that there is no prescription of the civil action. Again, this article is of general application and is not specific to corruption.

In addition to those joint proceedings, article 3 gives the option to proceed with a civil action in front of the civil court in a separate proceeding from the criminal action. However, in that option, the civil court will have to wait for the judgment of the criminal court before being able to proceed with the civil action.

If the criminal court has convicted the defendant on the basis of criminal fault, the civil court can no longer conclude that there is no civil fault; reciprocally, if the criminal court has acquitted the defendant, the civil court can no longer conclude that the defendant was at fault, even in the civil sphere, and thus be liable.

There is no specific legal ground for corruption in civil matters either, hence the action should be brought under the general tort law ground which is article 1382 "*Any act of a person which causes damage to another person obliges the person by whose fault it occurred to make reparation for it*" of the Luxembourg Civil Code⁴. For article 1382 to apply, the claimant should be able to demonstrate a fault, a damage and a causal link.

(D) Additional information

⁴ [Code civil - Legilux \(public.lu\)](https://legilux.public.lu)

In order to enable the members of the parliament to carry out their duties independently, the Constitution of Luxembourg⁵ (art. 68) guarantees parliamentary immunity, which means that :

- a member may not be prosecuted for opinions or votes expressed in the exercise of their functions; and
- a member who is guilty of a crime, misdemeanour or contravention cannot be arrested or prosecuted during the parliamentary session, except in cases of flagrant offence or when the Chamber of Deputies has authorised the arrest and prosecution.

The Constitution (art. 4) confers a special legal status to the Grand Duke. He cannot be accused or prosecuted.

1.2 Type of Cases

We refer to those matters set out the section above.

1.3 Legal basis under which citizens have legal standing

We refer to those matters set out in section 1.1.

1.4 Citizens and/or civil society's intervention in corruption cases in other capacities (e.g. third party contributors, expert input, etc)

Citizens can appear as experts, translators and interpreters in administrative and criminal matters⁶.

1.5 State's entitlement to represent the citizens collectively in corruption cases and whether its intervention excludes direct intervention by citizens.

There is no State Entity able to intervene collectively in corruption cases pursued in Luxembourg. Luxembourg State carries out the prosecution.

⁵ [eli-etat-leg-recueil-constitution-20200519-fr-pdf.pdf \(public.lu\)](#)

⁶ [L'expert judiciaire - Ministère de la Justice // Le gouvernement luxembourgeois](#)

1.6 Legal standing of any foreign government or foreign-based non-governmental institution to bring corruption cases on behalf of this country's citizens

There is no known cases where a foreign State or non-State institution has intervened on the behalf of the citizens of another country in corruption cases pursued in Luxembourg.

2. Cases

2.1 Existence of corruption-related cases brought to Court by civil society organisations, journalists or citizens

There are no corruption-related cases brought to Court by civil society organisations, journalists or citizens.

3. Collective Damage

3.1 Legal instruments that enable claiming reparation, compensation, or restoration of collective damages in any field (environmental damages, human rights, corruption, among others)

N/A

3.2 Procedures for advancing class-actions.

Luxembourg law does not recognize class actions and collective claims. However certain legal entities may be entitled to bring claims on behalf of their members in civil and commercial matters. In the case law n°88227 from the District Court dated 19 May 2005, the court held that a legal entity would have standing to claim damages on behalf of its members on the condition that its constitutional documents authorize the entity to defend, through court proceedings, the interest of some or all of its members. In other case law n°30686, 30687 and 30688 from the Court of Appeal and dated 20 June 2007 it was held that unions

are entitled to defend the interests of their members through court actions. Also, please refer to our comments in 2.5. above with respect to criminal proceeding.

A draft law submitted on 14 August 2020⁷, which is still being discussed in the Luxembourg parliament, intends to introduce class actions into Luxembourg law, however it is only in the field of consumer law.

In a nutshell, it sets out the legal framework for class action procedures that can be initiated before the Luxembourg courts when the individual interests of several consumers in similar or identical situations are harmed and the damage to each was caused by the same professional.

Nonetheless, we understand that it does not fall within the scope (i.e., human rights, corruption, environmental damages), hence we have not elaborated further.

4. The Role of the victims of corruption

4.1 Definition of victims of corruption or common definition used by the courts in this country

There is no definition of victims of corruption in Luxembourg. Under Luxembourg law, the general definition of a victim is to be found in article 4-1 of the Procedural Criminal Code: a particular (identified) person who has suffered damage as a result of an offense (infraction). The notion of a victim applies only in criminal proceedings.

4.2 Cases that recognize the role of victims

There are no cases that recognize the role of victims.

4.3 Corruption-related court cases (criminal, civil, administrative) that awarded compensation to individuals or to identifiable or non-identifiable groups of victims to repair the damage caused by the corruption offense

⁷ [Chambre des Députés du Grand-Duché de Luxembourg \(chd.lu\)](http://chd.lu)

We are not aware of any corruption-related court cases that awarded compensation to individuals or to identifiable or non-identifiable groups of victims to repair the damage caused by the corruption offense.

4.4 Innovative or effective mechanisms that can be considered good practice regarding the recognition and compensation of victims in corruption-related cases

There are no innovative or effective mechanisms that can be considered good practice regarding the recognition and compensation of victims in corruption-related cases.

5. Available Information

5.1 Information published by enforcement authorities (including control agencies) about corruption enforcement actions

Information regarding the initiation of investigations, the enactment of sanctions and the ground for sanctioning or acquitting the case are available.

5.2 Feasible access to information on ongoing or concluded cases

For ongoing cases, there are press releases from the Luxembourg public prosecutor's office. An example of such press release:

<https://justice.public.lu/fr/actualites/2021/07/communiqu%C3%A9-parquet-lux-corruption-strassen.html>

For concluded cases, case law are available online at this link:

<https://justice.public.lu/fr/jurisprudence.html>

5.3 Ways for citizens or civil society organisations to gather information on whether corruption cases are being investigated or trialed

The general link to government website is a good starting point to gather information: [Corruption - Organisation de la justice - La Justice - Luxembourg \(public.lu\)](#)

6. Supplementary information

6.1 Main identified barriers that prevent CSOs, citizens, and journalists from standing as victims of corruption cases.

It is difficult to say as the corruption cases are very low in Luxembourg. According to Transparency International, a non-governmental organization, Luxembourg, with a score of 81 out of 100 in 2021 on the Corruption Perceptions Index is within the top 10 least corrupt countries in the world. Accessible via link: [2021 Corruption Perceptions Index - Explore the... - Transparency.org](#)

6.2 Other aspects, issues, provisions, or practices linked to the role, recognition, and compensation of victims of corruption.

N/A