



ECPAT Luxembourg

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Established in 1995, ECPAT Luxembourg develops projects to combat the sexual exploitation of children in the following three regions of the world: Europe, West Africa and South Asia. ECPAT Luxembourg carries out campaigning and advocacy in Luxembourg as well as at the European level in collaboration with other members of the network in Europe. ECPAT Luxembourg has established a national youth group with the aim of mobilising and raising the awareness of young people through peer education, and as the Tourism Child Protection Code's¹ representative for Luxembourg, develops child protection training for the tourism sector. Furthermore, ECPAT Luxembourg was responsible for coordinating and co-funding the Luxembourg Guidelines (Terminology Guidelines for the Protection of Children from Sexual Exploitation and Abuse).



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ECPAT International is a global network of civil society organisations working for the eradication of all forms of sexual exploitation of children. For the past 26 years, ECPAT has acted as the international watchdog, monitoring States' response to sexual exploitation of children, and advocating for robust international measures to protect children from sexual exploitation. ECPAT International currently has 95 network members operating in 86 countries.

Submission
29 June 2017

for the Universal Periodic Review of the human rights situation in Luxembourg

to the **Human Rights Council**
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Justification for Submission

1. In 2011, the Government of Luxembourg (GoL) ratified the Optional Protocol on the sale of children, child prostitution and child pornography (OPSC) and thus committed explicitly to combat child sexual exploitation (CSE) in Luxembourg. In 2013, the Human Rights Council provided some specific advice on how to end CSE in Luxembourg.² In 2015, the GoL submitted the report due under article 12 of the OPSC and Concluding Observations were published on 20 July 2016, where the Committee on the Rights of the Child provided some specific recommendations to end CSE.³
2. In September 2015, the GoL adopted the 2030 agenda for Sustainable Development. Through the adoption of this framework, the GoL re-committed explicitly to eliminate all forms of violence against children, including sexual abuse and exploitation.⁴ The GoL also joined the Global Alliance, a joint initiative by the European Union and the United States, thus pledging to combat online child sexual exploitation (OCSE) by rescuing victims, prosecuting offenders, and reducing the overall amount of ‘child pornography’⁵ available online.⁶
3. The GoL is not only bound by the aforementioned instruments to combat CSE, but also by its own national legal framework. The submission will help to strengthen political will to focus on the issue of CSE in Luxembourg and prevent this heinous crime.

Methodology and Scope

4. The content of this report is based on ECPAT’s own work experience and research.
5. The scope of this submission is limited to CSE and its different manifestations, including the exploitation of children in prostitution,⁷ OCSE, ‘child pornography’, the trafficking of children for sexual purposes, and the sexual exploitation of children in the context of travel and tourism⁸ (SECTT).

Child sexual exploitation in Luxembourg

6. Children comprise approximately 1/5 of Luxembourg’s total population of almost 570,000.⁹ The population of Luxembourg is well connected through information and communication technologies (ICTs) with on average 149 mobile phones for every 100 people, while 95% of the population uses the Internet.¹⁰
7. The vulnerability of children to CSE varies, with some discernible groups being most at risk, particularly children who are migrants or seeking asylum as well as children from dysfunctional families. Nevertheless, all children using the Internet are at risk. They may fall victim to online grooming, ‘revenge porn’ or ‘sextortion’. Thus, despite the relative wealth and high level of development, children in Luxembourg are still at risk of falling prey to sex offenders and sexual exploitation.
8. To date, ECPAT is aware of one case of **trafficking of children for sexual purposes**: In 2010, Luxembourg police identified a young girl as a victim of trafficking after finding her disoriented and wandering the streets. She told police that she had been forced into prostitution in Paris. The case highlighted shortfalls in Luxembourg’s child protection system for dealing with victims that require specialised care. After several months of being moved between different institutions, the victim disappeared.¹¹ However, some cases of trafficking are never officially identified¹² and the absence of official cases is interlinked with the shortcomings in data collection mentioned in paragraph 17 hereinafter.

9. It is impossible to provide any official or reliable data on the number of children involved in **prostitution** in Luxembourg. This is due to the lack of data collection mechanisms, but also to the apparent presumption by authorities that exploitation of children in prostitution does not exist in the country. Several child protection professionals in Luxembourg are not of the same opinion and suspect that at least sporadic or limited forms of child prostitution occur.¹³ Anecdotal information exists on teenage girls receiving concert tickets or prepaid mobile phone cards in exchange for nude photos or for posing nude in front of a webcam,¹⁴ as well as teenage girls negotiating entrance to nightclubs in exchange for sexual relations with a member of staff/the management.¹⁵
10. One case of **sexual exploitation of children in travel and tourism** has been identified and dealt with by Luxembourg's judicial system. A Luxembourg national sexually exploited children and photographed the abuse during his travels to South Asia. The man was convicted in 2007 to 7 years of prison, of which 5 years were suspended.¹⁶ However, a recent survey conducted by the research institute ILRES for ECPAT Luxembourg showed that 5% of the respondents had seen or may have seen a case of "child sex tourism" while travelling.¹⁷ With increased mobility, child sex offenders have increased opportunities to abuse their situation of relative power, wealth and anonymity while travelling.
11. With the ever-expanding Internet, users and available information, new opportunities are created for child sex offenders. Statistics on the use of pornographic websites in 2015 show that "teen" was the most frequently used search term in Luxembourg.¹⁸ Thus showing there is an ongoing and strong demand for **OCSE** and '**child pornography**'.

Legal Framework to address CSE

12. In the UPR of Luxembourg in 2013 Canada, Norway and Uruguay recommended the GoL to address gaps in its legislation on the sexual exploitation of children and more specifically to "*address the gaps in the legislation on sexual exploitation of children, including the lack of a clear definition of "child pornography" and "child prostitution" in Luxembourgish legislation.*"¹⁹ All recommendations were accepted by the GoL.
13. Since 2013, the GoL has improved its national legal framework to protect children from CSE through:
 - a. the adoption of the Act on Combating the Sexual Abuse and Sexual Exploitation of Children in 2013;²⁰
 - b. the adoption of legislation to strengthen the rights of victims of human trafficking in 2014;²¹
 - c. the ratification of the Council of Europe Convention on Cybercrime, in 2014; and
 - d. the ratification of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, on 12 February 2016.
14. However, to date the national legislation still does not contain a definition of 'child pornography' or 'child prostitution'. In 2014, a parliamentary question was raised and sent to the Minister of Justice regarding the lack of a definition of 'child pornography'. The Minister replied that, in its case law, Luxembourgish courts refer either to the definition of 'child pornography' of article 2 (c) OPSC or to the notion of "shocking depictions of indecency, either through their presentation or depiction, in particular of sexual relationships or intimate body parts",²² and that the possible pornographic nature of the relevant pictures would have to be determined by judicial interpretation based on these concepts.

National Action Plan

15. During the 2013 UPR of Luxembourg Hungary recommended to “*update the 1996 Action Plan to combat sexual exploitation of children and ensure its effective implementation, including monitoring and evaluation.*”²³ While the Islamic Republic of Iran suggested to “*take effective measures to implement the National Plan of Action (NPA) adopted in 1996, to combat and prevent Child Prostitution, Child Pornography and also trafficking of children for commercial sexual exploitation.*”²⁴ Both suggestions were accepted by the GoL.
16. In 1996, at the First World Congress against the commercial sexual exploitation of children, the GoL adopted a National Action Plan (NAP) to combat the sexual exploitation of children.²⁵ The NAP contains provisions for a certain amount of preventive action, but it has now been out of date for several years. No information is available on the implementation of the NAP, and no evaluation of its impact has been carried out either by the Ministry of Family (previously responsible for matters related to the rights of the child) or by the Ministry of National Education, Childhood and Youth, the government body currently responsible for ensuring the implementation of children’s rights. General coordination amongst governmental bodies regarding child rights related matters exists, although in a partial manner. With the Youth Law of 4 July 2008, Luxembourg established an interministerial committee responsible for developing youth policy through an interdisciplinary approach.²⁶ The law states that a “National Plan of Action for Youth” shall be established by the Minister of National Education, Childhood and Youth, who shall also submit a report to parliament every five years on the situation of youth in Luxembourg.²⁷ However, despite its inclusion in the law of 2008, to date no actual plan of action has been adopted by the GoL.²⁸

Data collection

17. As noted in the Additional Report to the 3rd and 4th national report (2001-2009) on the Rights of the Child, the number of accounts of CSE in Luxembourg were increasing.²⁹ However, this information is perhaps outdated and currently there are no accurate or official data. The lack of adequate data collection mechanisms constitutes a serious obstacle to child protection and to the prevention of CSE. Without data, it is not only impossible to estimate the scale of the problem, but it is also difficult to engage in a serious and in-depth debate as well as to draw public interest to the issue of CSE. This has resulted in inadequate resources for research and project work on the issue. The lack of data also makes it impossible to assess the impact of prevention and protection efforts and has made it easier for the government to ignore the need for national strategies and plans of action, both on children’s rights in general and on sexual exploitation in particular. With regard to children who are victims of trafficking and who may be particularly vulnerable to sexual exploitation such as prostitution, the National Rapporteur for Human Trafficking is concerned about inconsistencies in the collection of statistical data and lack of disaggregation. Data provided by various actors, including the Ministry of Justice, the police and the help desk, were inconsistent. As a consequence, the National Rapporteur considered it impossible to analyse the data to assess the situation in Luxembourg.³⁰ The need for a serious and systematic data collection system is widely recognised by all child protection professionals.

Ombudsman

18. The Ombudsperson for the Rights of the Child (“*Ombuds-Comité fir d’Rechter vum Kand, ORK*”) is responsible for ensuring the implementation of the UN Convention concerning the Rights of the Child, including its Optional Protocols. While it is the role of the Ombudsperson for the Rights of the Child to monitor the national child protection system, the mandate of the Ombudsperson’s office continues to be vague and its independence questionable. Indeed, the Ombudsperson’s office is still attached to the Ministry of National Education, Childhood and Youth, and its budget depends on the budget allocation made within the Ministry (and thus varies according to political will). The current budget is limited and the Ombudsperson has only one jurist and a secretary, both working part time, to assist him in fulfilling his tasks. The capacity of the Ombudsperson to fulfil his mandate satisfactorily is thus limited. An ongoing drafting process of a bill contains a proposal to

reorganise the office and place it under the parliament, but there are currently no guarantees that the bill will pass. In addition, the procedure to appoint the Ombudsperson lacks transparency and is not based on any official criteria.³¹

Unaccompanied minors

19. In its 2013 report, the Human Rights Council included the recommendation by Sri Lanka for the GoL to “continue its efforts to end sexual abuse and sexual exploitation of children, in particular of unaccompanied asylum-seeking children.”³² In its midterm report of 2015, the GoL has reported that its *Office luxembourgeois de l'accueil et de l'intégration (OLAI)* has established a safe house, where the children are monitored closely.³³
20. Luxembourg’s National Human Rights Commission (“*Commission consultative des Droits de l’Homme du Grand-Duché de Luxembourg*”) has been designated the role of National Rapporteur for human trafficking, including child sex trafficking.³⁴ In its recent report, the independent National Commission on Human Rights found that unaccompanied minors are on the rise.³⁵ These minors should have direct access to special child protection as they constitute a particularly vulnerable group and can be exposed to many dangers, CSE among others. Europol estimates that in 2015 10,000 minors have disappeared after their arrival in Europe.³⁶ Half of the unaccompanied minors that arrived in Luxembourg in 2016 have disappeared as well.³⁷ Thus, urgent government intervention is required to provide adequate and appropriate protection. The law foresees that unaccompanied minors receive a guardian, which represents them in their daily life and an administrator, which assists them with administrative and judicial procedures. In practice, the appointment of representatives is not made without any problems. Among the measures proposed by the Consultative Commission on Human Rights are the immediate appointment of a guardian as well as an administrator to guide the minor through daily life, administrative and judicial proceedings.³⁸ These professionals should be trained to recognise victims of trafficking and exploitation. The Consultative Commission on Human Rights also refers to their opinion on the reform of the asylum law, where they criticise the lack of precision of legal dispositions on the appointment of ad hoc administrators and insists on the importance to respect children’s rights without any distinction based on their age.³⁹

Recommendations to the Government of Luxembourg

Definition of “Child Pornography” (para. 14)

A more precise definition of child pornography should be developed to ensure the criminalisation of highly sexualised pictures of children that fall outside the OPSC’s definition because no sexual activities or parts are explicitly represented but which are clearly intended to be viewed for sexual purposes. These images are currently considered legal and are hosted as well as accessible on Luxembourgish servers.⁴⁰ It is also important for such a definition to focus on the exploitation of the victims and/or the exploitation of the image to avoid the criminalisation of minors in instances where images have been shared between consenting adolescents

National Action Plan against child sexual exploitation (paras. 15 and 16)

The National Action Plan (NAP) against CSE should be evaluated and updated. The new NAP could be incorporated into a global and transversal national plan for children (as recommended by the Committee on the Rights of the Child) or other relevant policies such as the National Plan for sexual and emotional health or the National Plan for Youth. However, it is important that the topic of CSE is not lost or diluted and that it remains a distinct component of a more global strategy. It is also crucial that any actions taken are monitored and evaluated.

Data collection on child sexual exploitation (para. 17)

Data on CSE should be systematically and centrally collected and collated by the Ministry of Justice as well as published and distributed transparently and regularly (for example, annually).

Appointment of the Ombudsperson (para18)

The selection and appointment of the Ombudsperson should be based on clear and transparent criteria. The Ombudsperson's office should also receive sufficient funding to ensure it is able to carry out its mission effectively.

Unaccompanied minors (paras. 19 and 20)

The GoL should ensure full child protection is awarded to all unaccompanied minors, including the immediate appointment of a guardian and administrator, and provide training to the guardians and administrators enabling them to detect victims of trafficking.

Annex 1 - Thematic Lists of Recommendations with assessment/comments on level of implementation

¹ Code of Conduct for the Protection of Children in Travel and Tourism - www.thecode.org

² Human Rights Council (2013), “Report of the Working Group on the Universal Periodic Review”, A/HRC/23/10, accessed 20 May 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/125/72/PDF/G1312572.pdf?OpenElement>.

³ Committee on the Rights of the Child (2016), “Concluding Observations”, accessed 21 May 2017, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fOPSC%2fLUX%2fCO%2f1&Lang=en.

⁴ Sustainable Development Goal Targets 5.2, 8.7, and 16.2.

⁵ ECPAT prefers the term ‘*child sexual exploitation material*’ or ‘*child sexual abuse material*’, but in a legal context still uses ‘*child pornography*’ in line with the recently widely adopted Terminology Guidelines. The inverted comma’s in ‘*child pornography*’ indicate that the term is used in a legal context. ECPAT International (2016), “*Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, adopted by the Interagency Working Group in Luxembourg, 28 January 2016*”, Bangkok: ECPAT, 39, accessed on 20 May 2017, <http://luxembourgguidelines.org/>.

⁶ European Commission, “*A Global Alliance against Child Sexual Abuse Online*” (Last update: 15 May 2017), accessed on 20 May 2017, https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/global-alliance-against-child-abuse_en.

⁷ ECPAT prefers the term ‘*exploitation of children in prostitution*’ instead of ‘*child prostitution*’ in line with the recently widely adopted Terminology Guidelines. ECPAT International (2016). Terminology Guidelines. ECPAT International (2016), “*Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, adopted by the Interagency Working Group in Luxembourg, 28 January 2016*”, Bangkok: ECPAT, 29, accessed on 20 May 2017, <http://luxembourgguidelines.org/>.

⁸ *Ibid.*, 54.

⁹ United Nations Children’s Fund (UNICEF) (2016), “*The State of the World’s Children 2016; A Fair Chance for Every Child*”, 139, accessed on 20 May 2017, https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf.

¹⁰ *Ibid.*, 135.

¹¹ ECPAT Luxembourg (2015), “*NGO report on the Implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography in Luxembourg*”, 25, accessed on 23 May 2017, http://tbinternet.ohchr.org/Treaties/CRC-OP-SC/Shared%20Documents/LUX/INT_CRC-OP-SC_NGO_LUX_21359_E.pdf

¹² Femmes en Détresse (2014), Rapport d’activité de l’année 2014, 31, accessed on 7 June, <http://fed.lu/wp/wp-content/uploads/2015/06/Rapport-dactivit%C3%A9-2014.pdf>

¹³ ECPAT Luxembourg (2015), “*NGO report on the Implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography in Luxembourg*”, 12, accessed on 23 May 2017, http://tbinternet.ohchr.org/Treaties/CRC-OP-SC/Shared%20Documents/LUX/INT_CRC-OP-SC_NGO_LUX_21359_E.pdf.

¹⁴ Ombuds-Comité fir d’Rechter vum Kand, 2009 Report to the government and parliament.

¹⁵ Rapport Supplémentaire au 3e et 4e rapport national (2001-2009) sur les droits de l’enfant à Luxembourg, Rédigé par le Groupe RADELUX, 2011, p.37.

¹⁶ ECPAT Luxembourg (2015), “*NGO report on the Implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography in Luxembourg*”, 12, accessed on 23 May 2017, http://tbinternet.ohchr.org/Treaties/CRC-OP-SC/Shared%20Documents/LUX/INT_CRC-OP-SC_NGO_LUX_21359_E.pdf.

¹⁷ ECPAT Luxembourg (2015), « Enquête Nationale au Luxembourg sur la Perception de l'exploitation sexuelle des enfants », accessed on 10 June 2017, http://ecpat.lu/sites/default/files/resources/ECPAT_Ires_F_WEB.pdf.

¹⁸ <http://www.pornhub.com/insights/pornhub-luxembourg/>.

¹⁹ Human Rights Council (2013), “*Report of the Working Group on the Universal Periodic Review: Luxembourg*”, A/HRC/23/10, p. 17 paras. 117.12-117.14, accessed 21 May 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/125/72/PDF/G1312572.pdf?OpenElement>.

²⁰ GoL (2013), The Act of 21 February 2013 on Combating the Sexual Abuse and Sexual Exploitation of Children.

²¹ GoL (2014), Revisions to the Criminal Code, through the Act of 9 April 2014 on Strengthening the Rights of Victims of Human Trafficking.

²² “*Représentations choquant la pudeur de par leur présentation et leur étalement notamment d’une relation sexuelle sinon de parties intimes d’une personne*”.

²³ Human Rights Council (2013), “*Report of the Working Group on the Universal Periodic Review: Luxembourg*”, A/HRC/23/10, p. 17 para. 117.17, accessed on 21 May 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/125/72/PDF/G1312572.pdf?OpenElement>.

²⁴ Human Rights Council (2013), “*Report of the Working Group on the Universal Periodic Review: Luxembourg*”, A/HRC/23/10, p. 19 para. 118.36, accessed on 21 May 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/125/72/PDF/G1312572.pdf?OpenElement>.

²⁵ Committee on the Rights of the Child, Consideration of reports submitted by State Parties under Article 44 of the Convention – Concluding observations: Luxembourg, 31 March 2005, accessed on 22 May 2017, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f15%2fAdd.250&Lang=en.

²⁶ GoL, Mémorial, Journal Officiel du Grand-Duché de Luxembourg, Recueil de Législation, A – No 109, 25 juillet 2008, Loi du 4 juillet 2008 sur la jeunesse, article 5.

²⁷ Ibid., article 15.

²⁸ ECPAT Luxembourg (2015), “*NGO report on the Implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography in Luxembourg*”, 4, accessed on 23 May 2017, http://tbinternet.ohchr.org/Treaties/CRC-OP-SC/Shared%20Documents/LUX/INT_CRC-OP-SC_NGO_LUX_21359_E.pdf.

²⁹ Rédigé par le Groupe RADELUX (2012), « *Rapport Supplémentaire au 3e et 4e rapport national (2001-2009) sur les droits de l’enfant à Luxembourg* », 37, http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/LUX/INT_CRC_NGO_LUX_13899_F.pdf.

³⁰ Commission Consultative des Droits de l’Homme (2017), « *Rapport de la CCDH sur la traite des êtres humains* », 17, accessed on 22 May 2017, <https://ccdh.public.lu/fr/actualites/2017/03/rapport-traite/index.html>.

³¹ ECPAT Luxembourg (2015), “*NGO report on the Implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography in Luxembourg*”, 5, accessed on 23 May 2017, http://tbinternet.ohchr.org/Treaties/CRC-OP-SC/Shared%20Documents/LUX/INT_CRC-OP-SC_NGO_LUX_21359_E.pdf.

³² Human Rights Council (2013), “*Report of the Working Group on the Universal Periodic Review: Luxembourg*”, A/HRC/23/10, p. 19 para. 118.29, accessed on 21 May 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/125/72/PDF/G1312572.pdf?OpenElement>.

³³ GoL (2015), «*Suivi de l’Examen Periodique Universel du Luxembourg de 2013 mise en œuvre des recommandations – rapport à mi-parcours (2015)* », p. 19 para. 118.29.

³⁴ Mémorial, Journal Officiel du Grand-Duché de Luxembourg, Recueil de Législation, A – No 63, 14 avril 2014, Loi du 9 avril 2014 renforçant le droit des victimes de la traite des êtres humains, article 1er.

³⁵ Commission Consultative des Droits de l’Homme (2017), « *Rapport de la CCDH sur la traite des êtres humains* », 33, accessed on 22 May 2017, <https://ccdh.public.lu/fr/actualites/2017/03/rapport-traite/index.html>.

³⁶ Ibid., 34 and The Guardian, 31 January 2016, accessed on 23 May 2017, <https://www.theguardian.com/world/2016/jan/30/fears-for-missing-child-refugees>.

³⁷ Commission Consultative des Droits de l’Homme (2017), « *Rapport de la CCDH sur la traite des êtres humains* », 35, accessed on 22 May 2017, <https://ccdh.public.lu/fr/actualites/2017/03/rapport-traite/index.html>.

³⁸ Ibid., 34.

³⁹ Commission Consultative des Droits de l’Homme (2017), « *Rapport de la CCDH sur la traite des êtres humains* », 35, accessed on 22 May 2017, <https://ccdh.public.lu/fr/actualites/2017/03/rapport-traite/index.html>.

⁴⁰ Ombuds-Comité fir d’Rechter vum Kand, 2013 Report to the government and parliament.