

# NATIONAL-LEVEL CORPORATE ANTI-ABUSE MEASURES RELEVANT TO THE EU COMPANY LAW PACKAGE

## *Expert Questionnaire*

Luxembourg  
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### 1) Anti-abuse mechanisms - do any of the following mechanisms exist in this country? If so, how do they work?

#### a. Disqualified Directors

##### i. Is there an official definition of “disqualified director”? If so, what are the grounds for disqualification? In which law can this be found? (link to legal text(s))

There is no strictly speaking definition of “disqualified director”. Nevertheless, according to article 444-1 Commercial Code, a director ex officio or de facto, apparent or hidden, remunerated or not of a company declared insolvent can be disqualified if he/she contributed to the insolvency with a serious and characterized fault (“*faute grave et caractérisée*”), by the District Court (“*Tribunal d’arrondissement*”) Luxembourg dealing with commercial matters.

The disqualification may concern the exercise, directly or through an intermediary, of a commercial activity as well as a function of administrator, manager, statutory auditor or any function conferring the power to enter into an agreement on behalf of the company. The disqualification will be obligatorily pronounced against the one who is condemned for simple bankruptcy or fraudulent bankruptcy. The disqualification in its duration shall not be less than one year nor more than twenty years (article 444-1 (3) Commercial Code, hereinafter referred to as CC).

##### ii. Is there an official list of (current) disqualified directors? If so, where can this be found? (name of organization maintaining it and link)

The judgments on disqualified directors are published in the Trade and Companies Register (“*Registre de commerce et des sociétés*”, hereinafter referred to as RCS – see below-)(article 444-1 (6) CC). You can consult on the website of the RCS by clicking the tab “Court Rulings”, then “Statement of court rulings with the RCS” and do a search by month and year. Nevertheless, there is no statement on professional ban in accordance with art. 444-1 CC within the available data (since 2014).

##### iii. If there is an official list, who has access to this list (general public or restricted)?

There is no list accessible to general public.

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## b. Beneficial Owners

### i. Where is the database of beneficial owners and which organisation maintains it (link)

The law of January 13 2019<sup>2</sup> (hereinafter referred to as the “RBE Law”) established the Register of Beneficial Owners and entrusted the “Luxembourg Business Registers” (hereinafter referred to as “LBR”) with its management (www.lbr.lu<sup>3</sup>). It has been operational since March 1, 2019. The LBR is an Economic Interest Grouping established by the State, the Chamber of Commerce (“*Chambre de commerce*”) and the Chamber of Crafts (“*Chambre des métiers*”). The LBR is answerable to the Ministry of Justice.

Since 2003<sup>4</sup> the LBR<sup>5</sup> is the administrator of the Trade and Companies Register (“*Registre de commerce et des sociétés*”, hereinafter referred to as “RCS”). Since 2016<sup>6</sup> the LBR is also in charge of the “*Recueil électronique des sociétés et associations*” (RESA), a platform of official publications concerning companies and associations, which replaces the “*Memorial C*” (Luxembourg’s official journal).

It should be noted that, according to article 3 (2) RBE Law, companies whose securities are admitted to trading on a regulated market in the Grand Duchy of Luxembourg or in another State party to the Agreement on the European Economic Area<sup>7</sup> shall list only the name of the regulated market in which their securities are admitted to trading.

### ii. Are there any checks on the authenticity of beneficial owners, or does the organisation depend on a “statutory declaration” or “affidavit” from the company directors?

According to the RBE Law, the given information must be “adequate, accurate and up-to-date” (article 4 (2)).

The LBR checks if the request for registration complies with legal and regulatory requirements, is complete and if the information given corresponds to the information in the supporting documents (article 7 (1) RBE Law).

According to the LBR circular 19/01, if the beneficial owner does not have a Luxembourg national identification number, he/she has to provide a copy of a national identity document.

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<sup>2</sup> Law of 13 January 2019 establishing the Beneficial Owner Register and 1° transposing the dispositions of article 30 of the Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC ; 2° amending the Law of 13 December 2002 on the Trade and Company Register and on bookkeeping and annual accounts of companies, Memorial A N° 15 of 15 January 2019 (English version : [https://www.lbr.lu/mjracs-rbe/jsp/webapp/static/mjracs/fr/mjracs-rbe/pdf/vers\\_coord\\_loi\\_13\\_01\\_2019.pdf?time=1615215933992](https://www.lbr.lu/mjracs-rbe/jsp/webapp/static/mjracs/fr/mjracs-rbe/pdf/vers_coord_loi_13_01_2019.pdf?time=1615215933992) ).

<sup>3</sup> <https://www.lbr.lu/mjracs-rbe/jsp/IndexActionNotSecured.action?time=1619093223199&loop=1>

<sup>4</sup> Grand-Ducal Regulation of 23 January 2003, Memorial A N° 15 of 30 January 2003.

<sup>5</sup> Formerly: “GIE RCSL”.

<sup>6</sup> Law of 27 Mai 2016 , Memorial A N° 94 of 30 Mai 2016.

<sup>7</sup> or in another third country imposing obligations recognised as equivalent by the European Commission within the meaning of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

In cases where this identification is not in Latin characters, a translation in French, Luxembourg or German language must be added to the document.

It should be noted that the LBR is not responsible for the content of the information recorded (article 5 (4) RBE Law).

**iii. How quickly must the company give notice when ownership has changed (updating of lists/databases)?**

An amendment to the information in the registry must be requested by the registered entity or its representative within one month from the time when the registered entity became aware or should have become aware of the event which made the amendment necessary (article 4 RBE Law).

**iv. Who has access to the beneficial ownership database? Does the general public have unrestricted access, restricted access or no access?**

The general public has access to the following information: the surname, the first name(s), the nationality (or nationalities), the date of birth, the place of birth, the country of residence, the nature and the extent of the effective interests held (article 12 RBE Law). The access to the information mentioned above is free (article 7 (1) Grand-Ducal Regulation of 15 February 2019<sup>8</sup>).

The search is done through the company name or its registration number with the Luxembourg trade and companies register (article 7 (2) Grand-Ducal regulation of 15 February 2019). The search option by beneficial owner is not open to the general public.

The address and the identification number of a beneficial owner are only accessible to national authorities (i.e. the General State Prosecutor, State Prosecutors and members of the State Prosecutor's Offices, the investigative judges, the financial intelligence unit, the officers of the judicial police the Financial Supervisory Authority, Insurance Supervisory Authority, the Registration Duties, Estates and VAT Authority, the Customs and Excise Administration, the State Intelligence Service, the Luxembourg Inland Revenue Authority, the Ministry of Foreign and European Affairs (within the framework of its specific competences in the area of combating money laundering and the terrorist financing) and the Ministry of Finance (within the framework of its specific competences in the area of control).

According to article 15 of the RBE Law, the beneficial owner may request that access to their information be limited to national authorities, credit and financial institutions, court bailiffs and notaries.

The request to the LBR must be fully justified by reasons like: the unlimited access would expose the beneficial owner to a disproportionate risk, to the risk of fraud, to abduction, blackmail, extortion, harassment, violence or intimidation or where the beneficial owner is a minor or is otherwise incapacitated.

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<sup>8</sup> Memorial A N° 73 of 19 February 2019.

Limitations on access to information may be granted only for the duration of the circumstances justifying it, but not exceeding a maximum period of three years. It may however be renewed by decision of the LBR based on a reasoned request.

**c. Electronic identity (eID) scheme – is there a scheme registered with the European Commission, and if so, what eIDAS level of assurance does it have?**

The Luxembourgish ID card ("*Carte nationale d'identité luxembourgeoise*", "eID") is registered with the European Commission. Its level of assurance is "high".

**2) Company registry – transparency, access, cost**

**a. Which organization maintains the company registry? (name and link)**

The Trade and Companies Register ("*Registre de commerce et des sociétés*" - RCS) is managed by the LBR - [www.lbr.lu](http://www.lbr.lu) - which also manages the "*Recueil électronique des sociétés et associations*" (RESA) (since 2016) and the Register of Beneficial Owners (since 2019), as stated above (question 1) b.).

**b. To what extent is the registry digitalized? Can company foundations/registrations and reporting be carried out fully online/digitally?**

Only registrations and reporting can be carried out fully online. Since 2016<sup>9</sup> deposits are only made electronically.

**c. Are bulk downloads of the entire list of registered companies possible?**

No, there are no bulk downloads of the entire list of registered companies possible.

**d. Does the registry have search features beyond the name of the company or person (e.g. by sector or employee size)**

The registry can only be searched by the general public through the RCS number or the company/business name (article 22 of the amended Grand-ducal Regulation of 23 January 2003).

**e. What is the typical cost of downloading a document from the registry?**

The following can be downloaded free of charge: Registration of a company; modification; annual account.

The following costs money<sup>10</sup> (prices do not include 17% VAT):

- Consultation:

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<sup>9</sup> Grand-Ducal Regulation of 27 Mai 2016, Memorial A N° 94 of 30 Mai 2016.

<sup>10</sup> "J" Appendix of the amended Grand-Ducal Regulation of 23 January 2003, Memorial A N° 15 of 30 January 2003.

an electronic examination of a certified copies: € 5; an electronic examination of a certified archive batch<sup>11</sup> :€ 5.

- Company profile request (“demande d’extrait”) :

**Electronically:**

with automated qualified signature: € 10.43; with manual qualified signature : € 15.43.

**On certified paper:**

1st extract: € 21.43; Additional : € 7.70.

- Copy of a document in certified paper format (€ 1.5 per page)

**f. Is there information on employment levels beyond what is contained in annual accounts?**

Information on employment levels is only contained in annual accounts, more precisely in the appendix.

According to article 65 (1) 9°) of the amended law of 19 December 2002<sup>12</sup> on the trade and company register as well as the accounting and annual accounts of companies (hereinafter, “TCR Law”), the appendix must include information on the number of staff members employed on average during the financial year, broken down by categories.

**g. Information on European company forms and EU reorganizations (CBM) - is a search possible for companies with the SE legal form or companies reorganized through a CBM?**

A search by form of company is not possible. A search is only possible with the RCS number or the business/company name.

**3) Firm foundations**

**a. What authority or organization is responsible for registering new companies (with link)?**

All companies that are newly incorporated in Luxembourg must be registered with the Luxembourg Trade and Companies Register (“*Registre de commerce et des sociétés*” – RCS)- (www.lbr.lu).

As mentioned above, the LBR is an Economic Interest Grouping established by the State, the Chamber of Commerce (“*Chambre de commerce*”) and the Chamber of Crafts (“*Chambre des métiers*”) and is answerable to the Ministry of Justice.

The LBR ensures the interoperability between the Luxembourg RCS and the business registers of other EU member states through the “Business Registers Interconnection System” (BRIS).

**b. What are the steps needed to found and register a new company? To what extent can these happen digitally?**

The steps needed to found and register a new company are as follows:<sup>13</sup>

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<sup>11</sup> Before February 2003.

<sup>12</sup> Memorial A N°149 of 31 December 2002.

<sup>13</sup> <https://guichet.public.lu/en/entreprises/creation-developpement/autorisation-etablissement/autorisation-honorabilite/autorisation-etablissement.html>.

## 1. Business permit/licence (“*autorisation d’établissement*”)

According to article 1 of the amended Law of 2 September 2011<sup>14</sup> “no one shall, for profit purposes, exercise as a primary or secondary activity, a self-employed activity in the field of commerce, crafts, industry or the liberal professions referred to by law without having a business permit”.

The following activities are covered by the law: Commercial (trade, HORECA, transports, industry...), craft and industrial (food, fashion, construction, mechanical engineering, audiovisual, entertainment, art...) as well as certain liberal professions.

It should be noted that a business permit is not required if no industrial or commercial activities are carried out such as financial activities. For example SOPARFI (SOciété de PARticipations FInancières)<sup>15</sup> without such activities do not need such permit.

Also not covered by the amended Law of 2 September 2011: services that a company provides to other companies in the same group of companies do not require a business permit (Article 30).

### Conditions and procedure to obtain the business permit:

The Minister issues the authorization if the conditions of qualification, establishment in Luxembourg and good repute (“*honorabilité*”) are completed. The fulfilment of the conditions for access to the profession is checked by the General Directorate for Small and Medium-Sized Enterprises (“*Ministère des classes moyennes*”).

\*The following conditions must be fulfilled (article 4 and 5 amended Law of 2 September 2011)

- 1°) professional qualifications (when applicable);
- 2°) professional integrity (see below);
- 3°) an establishment in Luxembourg;
- 4°) effective and permanent management by the business permit holder;
- 5°) the business manager must not have evaded business and tax obligations in their previous or current business activities.

### \*Procedure:

The applicant may apply for the business permit in 3 ways:

- 1°) By applying ~~in person~~ ~~online~~ by him/herself online via MyGuichet.lu, using a Luxtrust product<sup>16</sup>;
- 2°) By sending the business permit application by standard mail or email to the General Directorate for Small and Medium-Sized Enterprises;
- 3°) Through the “House of Entrepreneurship- One-Stop Shop” at the Chamber of Commerce<sup>17</sup> or the “Business Contact” service at the Chamber of Crafts<sup>18</sup>. These organisations will apply on the applicant's behalf.

Concerning professional integrity (“*honorabilité professionnelle*”)

<sup>14</sup> Memorial A N° 198 of 22 September 2011.

<sup>15</sup> Such company can have different legal forms as public limited company, private limited company, partnership limited by shares...

<sup>16</sup> [www.luxtrust.lu](http://www.luxtrust.lu).

<sup>17</sup> [www.houseofentrepreneurship.lu](http://www.houseofentrepreneurship.lu)

<sup>18</sup> [https://guichet.public.lu/en/organismes/organismes\\_entreprises/chambre-metiers/contact-entreprise.html](https://guichet.public.lu/en/organismes/organismes_entreprises/chambre-metiers/contact-entreprise.html).

The person responsible for managing or administering the business must satisfy the conditions for professional integrity. The following documents are required:

\*Resident for more than ten years:

- a declaration of honour concerning any management positions held in businesses during the 3 years prior to the application<sup>19</sup>,
- an extract from the Luxembourg criminal record N° 3.

\*Non-resident or resident for less than 10 years

- a declaration of honour (see above),
- a declaration of non-bankruptcy (recent and unlimited) before a notary,
- an extract from the criminal record (record N° 3) or equivalent issued by the state(s) in which the applicant has resided during 10 years prior to the application. Failing that, an affidavit.
- if the person is already working in Luxembourg (as employee or self-employed): an extract from the Luxembourg criminal record N° 3.

2. Certificate of availability of the company name

In order to set up a company you have to obtain “a certificate of availability of the company name”. To do this, you have to submit an application for a certificate confirming the availability of the company name (electronically) to the Luxembourg Business Registers (LBR). The cost of this request is 10 € for a certificate in paper format with signature, 4,75 € for a certificate in electronic format and 9,75 € for a certificate in electronic format with a qualified signature. In case of the non-availability of the name, the applicant will receive a “certificate of unavailability” of the company name.

3. Drawing up articles

Before a notary:

For a limited liability company as SA (“Société Anonyme”), a private limited liability company (“Société à Responsabilité Limitée” – SARL), except for a simplified limited liability company - SARL-S-), and a European Company and Partnership limited by shares (“Société en Commandite par Actions” –SCA-), the articles of association must be drawn up before a notary.

As a private deed:

For unlimited liability companies (SNEC, cooperative companies, civil companies), the articles of association can be drawn up as a private deed or before a notary.

4. Registering with the RCS

The registration with the RCS is done on the LBR website (see above) with a LuxTrust product<sup>20</sup> or an eID card.

The applicant may apply for an appointment with the RCS’s filing assistance office (“*bureau assistance au dépôt*”) for help from RCS staff when filing private deeds.

In the case of a notarized instrument, the notary must do the filings.

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<sup>19</sup> Form in English version available at the end of this webpage:

<https://guichet.public.lu/en/entreprises/creation-developpement/autorisation-etablissement/autorisation-honorabilite/honorabilite.html>.

<sup>20</sup> Token, smartcard or signing stick, see: <https://www.luxtrust.lu>.

5. Registering with the Registration Duties, Estates and VAT authority (“Administration de l’enregistrement, des domaines et de la TVA”<sup>21</sup>) for the VAT.

In the case of a notarized instrument, the notary must do the registration.

**c. What checks (if any) are done on the authenticity of documents, identity of founders, record of founders (e.g. disqualification as directors) and beneficial owners**

**i. By registration authority**

The LBR has a responsibility for oversight of the documents filed and the items to register according to article 21 (2) (3) of the Law of 19 December 2002 on the Trade and Companies Register as well as company accounts and annual financial statements, hereinafter referred to as “RCS Law”). It is not responsible for the contents of the information (article 21 (2)(2) RCS Law).

**ii. By notaries**

According to article 3 in accordance with article 1 (11) of the amended Law of 12 November 2014<sup>22</sup> (Money laundering law), notaries have a “customer due diligence” obligation (“*obligation de vigilance à l’égard de la clientèle*”). As a due diligence measure, they have to verify the identity of the customer based on documents, data or information from a reliable and independent source (article 3 (2) a)). Concerning the beneficial owner, the notary has to identify the beneficial owner and take reasonable measures to verify his/her identity, so that the professional can be sure of knowing the said beneficial owner (article 3 (2) b)).

**iii. By “facilitator” companies (foundation agents)**

There are specific provisions<sup>23</sup> in the case where the “facilitator” company acts as domiciliation agent (“*domiciliataire*”). The domiciliation takes place "when a company establishes a seat with a third party to conduct business there within the scope of its objects and the said third party provides certain services associated with such business".<sup>24</sup>

In this case, a domiciliation agreement (“*convention de domiciliation*”) must be signed with one the following authorized professional members (domiciliation agent): a professional in the financial or the insurance sectors, attorney-at-law (“*avocat à la Cour*”), statutory auditor (“*réviseur d’entreprises*”), independent expert auditor (“*réviseur d’entreprises agréé*”), or accountant (“*expert-comptable*”).<sup>25</sup>

A domiciliation agent has different obligations including “the obligation to know the identity of the members of the bodies, the shareholders and the beneficial owners of the company (...), the obligation to keep the documents used to identify the aforementioned persons for a period of at least 5 years following the end of the relationship between the company and the said persons, the obligation to verify that the company's statutory bodies and representatives do

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<sup>21</sup> <https://pfi.public.lu>

<sup>22</sup> Memorial A N° 183 of 19 November 2004

<sup>23</sup> The legislation on domiciliation will find here application: Amended law of 31 May 1999 (“Domiciliation Law”), which regulates the activity of domiciliation, Memorial A N° 77 of 21 June 1999.

<sup>24</sup> Article 1(1) of the amended Domiciliation Law.

<sup>25</sup> Article 1 (2) of the amended Domiciliation Law.



not contravene the legal provisions governing commercial companies and the right of establishment”.<sup>26</sup>

#### 4) Cross-border Mergers (CBMs)

**a. Which authority is responsible for the pre-merger certificate (outbound CBMs), which authority is responsible for approving the merger (inbound CBMs)? (name and link)**

In both cases, the notary is competent.

According to article 1021-12 (2) (1) of the amended Law of 10 August 1915 on commercial companies, the notary must verify and certify the existence and the validity of the legal acts and formalities required of the company in respect of which he/she is acting and of the common draft merger plan.

**\*Pre-merger certificate (Article 1021-12(2) (2) Law of 10 August 1915):**

In case of a cross-border merger the notary shall, without delay, issue a certificate conclusively attesting the correct completion of the pre-merger acts and formalities for the part of the procedure relating to the Luxembourg-law-governed company.

**\*Approving the merger (Article 1021-12(2) (3) Law of 10 August 1915 on commercial companies):**

The notary carries out the legality check of the cross-border merger in case a European company formed by way of a merger with intended to establish its registered office in Luxembourg or where the cross-border merger is carried out through acquisition by a Luxembourg-law-governed company of a foreign-law-governed company. To this aim he/she shall receive from each merging companies a certificate attesting the correct completion of the pre-merger acts and formalities within a period of 6 months from its issuance, together with a copy of the common draft terms approved by each company.

The notary will verify if:

- The merging companies have approved the common draft terms of mergers in the same terms; and
- Arrangements for employee participation have been adopted in accordance with legal provisions.

**b. What personnel capacity/qualifications does the authority/ies listed above (organization(s) granting the pre-merger certificate + approving merger) have?**

The notary is a public officer who has been delegated certain specific tasks by State. He/she is a “key stone” in company law in Luxembourg.

Firstly, concerning different steps in the constitution of the company (see above concerning the foundation).

Secondly, concerning already the merger: the minutes of the general assembly which decides on the merger are established by notarial deed.

In case a general assembly is not necessary for the approval of a merger, the common draft terms of cross-border mergers shall be established by notarial deed.

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<sup>26</sup> Circular CSSF 01/29 (English version: [https://www.cssf.lu/wp-content/uploads/files/Lois\\_reglements/Circulaires/Hors\\_blanchiment\\_terrorisme/cssf01\\_29eng.pdf](https://www.cssf.lu/wp-content/uploads/files/Lois_reglements/Circulaires/Hors_blanchiment_terrorisme/cssf01_29eng.pdf))

**c. What (if any) anti-abuse checks are made?**

**i. Purpose of reorganization**

Notaries have, according to the amended Money Laundering Law, as customer vigilance measure, the duty to obtain information on the purpose and intended nature of the business relationship.

**ii. Background check on directors and**

**iii. Identity of beneficial owners**

Notaries have a general “customer due diligence” obligation (see above)

**iv. Worker I/C/P arrangements**

According to article 1021-12 (2)(3) Law on commercial companies the notary shall verify that arrangements relating to employee have been adopted in accordance with legal provisions.