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Luxembourg: Law and Practice & Trends and Developments

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LUXEMBOURG

Law and Practice

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Contents

Elvinger Hoss Prussen has become one of the largest Luxembourg law firms, with over 500 team members committed to delivering responsive services, to an exceptional degree of precision, either from the Luxembourg headquarters or from the firm's offices in Paris and Hong Kong, or its partner office in New York. The five-strong environmental law team includes specialists in urban planning, environmental law, pollution/depollution and waste management legislation, and has particular expertise in brownfield reconversion. It advises local authorities, promoters and private individuals on urban planning and environmental matters, and is involved in the urban development of several large neighbourhoods in the City of Luxembourg and elsewhere in the country. The firm also conducts actions for annulment or claims for damages in connection with the sale of polluted land or buildings, and is involved in the urbanisation of brownfield sites.

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1. Regulatory Framework and Law

1.1 Environmental Protection Policies, Principles and Laws

The fundamental principles relating to environmental protection in Luxembourg have been enshrined in the Constitution, which guarantees the protection of the human and natural environment by working to establish a sustainable balance between the conservation of nature, in particular its capacity for renewal, and the safeguarding of biodiversity, and the satisfaction of the needs of present and future generations. The State has committed to combatting climate change and working towards climate neutrality.

In addition to this constitutional enshrinement, Luxembourg law is based on a set of sectoral laws and Grand-Ducal regulations consolidated in the Environmental Code. However, this code is not comparable to the Luxembourg Civil Code or Criminal Code, nor to the French Environmental Code.

It should be remembered that Luxembourg's environmental protection laws are part of the wider framework of European Union law, which is a key source. Many environmental directives have been implemented in the Luxembourg legal system, such as those on the conservation of natural habitats and wild fauna and flora, and on the assessment of the impact of certain public and private projects on the environment, waste, water and air quality.

Regulatory Framework

The Law of 18 July 2018 on the protection of nature and natural resources, as amended, provides a framework for landscape conservation and the protection of species and biotopes, and introduces an ecological compensation mechanism. This law is the cornerstone of Luxembourg environmental law.

The Law of 10 June 1999 on classified establishments, as amended, also plays a major role. It requires authorisation for any industrial, commercial or craft establishment, installation, activity or process whose existence, operation or implementation may present causes of danger or disadvantages in terms of safety, health or convenience for the public, neighbours or employees of the establishments, the health and safety of employees at work and the human and natural environment.

Luxembourg legislation also provides a framework for waste management (Law of 21 March 2012, as amended), establishing the principle that producers and holders of waste are responsible for its treatment.

The Law of 15 May 2018 on the environmental impact assessment, as amended, also constitutes a pillar, requiring a prior assessment for certain projects. Similarly, the Law of 22 May 2008 on the assessment of the environmental impact of certain plans and programmes, as amended, provides for an environmental assessment to be carried out in certain cases for plans and programmes.

Fundamental Principles

The Luxembourg Constitution enshrines the fundamental principles of environmental protection. Luxembourg legislation also incorporates the main principles of European Union law and international law, such as:

- the precaution principle;
- the prevention principle;
- the proportionality principle; and
- the "polluter pays" principle.

2. Enforcement Authorities and Mechanisms

2.1 Regulatory Authorities

In Luxembourg, the main authority for the environment is the Minister for the Environment, Climate and Biodiversity, whose main tasks are the implementation of the environmental programme, the co-ordination of work regarding sustainable development and the taking of all appropriate measures to protect the natural and human environment and fight climate change. The Minister's mandate also includes setting the sustainable development policy, climate protection and energetic efficiency, protection of the natural environment (nature, water) and protection of the human environment (air and noise, water and resources, chemical substances).

To achieve these tasks, the Minister is backed by three agencies under his authority:

- the Environment Agency (AEV);
- the Nature and Forest Agency (ANF); and
- the Water Management Agency (AGE).

2.2 Co-Operation

Co-operation on environmental matters in Luxembourg is organised at several levels. As a general principle, the agencies may co-operate with other agencies. Increased co-operation between agencies (AEV, ANF, AGE) can occur for the investigation of complex cases, such as those concerning accidental pollution.

Several national laws provide for cross-border co-operation mechanisms. The Law of 20 April 2009 on environmental liability with regard to the prevention and remedying of environmental damage, as amended, provides a mechanism for co-operation between member states where environmental damage affects or is likely to affect several member states. This co-operation involves an appropriate exchange of information with a view to ensuring action to prevent and remedy environmental damage.

The 2023–2028 coalition agreement contains the government's programme in Luxembourg, and emphasises the Luxembourg government's desire to step up co-operation with partner countries in the field of climate and environmental protection.

Public participation in environmental decision-making is a fundamental principle of Luxembourg law, stemming from Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003. The principle was implemented by the Law of 25 November 2005 on public access to environmental information, which ensures that any person has an effective right of access to environmental information held by public authorities.

3. Environmental Protections

3.1 Protection of Environmental Assets

In Luxembourg, the protection of environmental heritage is governed by several sectoral laws.

Several national laws aim to protect the air, water, soil, flora and fauna, natural habitats and landscapes, with the main texts being:

- the Law of 18 July 2018 on the protection of nature and natural resources, as amended, which ensures the preservation of natural habitats, biotopes, flora and fauna;
- the Law of 19 December 2008 on water, as amended;
- the Law of 21 March 2012 on waste management; and
- the Law of 21 June 1976 on the fight against atmospheric pollution.

Soil is also protected by environmental laws and by laws on town and country planning, which govern its use.

3.2 Breaching Protections

Violation of the rules for the protection of environmental heritage can result in:

- administrative measures and sanctions, such as compliance orders and the suspension or closure of operations in the event of breaches of legal provisions, particularly under legislation relating to classified establishments;
- criminal sanctions, particularly for breaches of certain environmental laws, such as the provisions of the Law of 18 July 2018 on the protection of nature and natural resources, as amended (eg, destruction of biotopes); or
- a civil action, in particular an action for damages on the basis of the Law of 20 April 2009 on environmental liability with regard to the prevention and remedying of environmental damage, as amended.

4. Environmental Incidents and Permits

4.1 Investigative and Access Powers

In general, the Minister for the Environment, Climate and Biodiversity has the power to issue administrative authorisations in the areas in which he is competent to intervene. Depending on the powers conferred on him by environmental laws, the Minister may, for example, take preventative or remedial measures and require analyses or expert reports, order the closure of a site or order work to repair damage to the environment, as set out in waste management legislation.

The agencies under the authority of the Minister for the Environment, Climate and Biodiversity, including the Environment Agency and the Water Management Agency, have the capacity of judicial police officers, in accordance with environmental legislation. Their jurisdiction covers the entire territory of the Grand Duchy of Luxembourg. They draw up official reports on breaches and, depending on their powers under national legislation, may carry out inspections such as those relating to waste collection and transport operations.

4.2 Environmental Permits/Approvals

In general, authorisation from the Minister for the Environment, Climate and Biodiversity is required in Luxembourg in a large number of situations, depending on the contemplated project or activity. For instance, "nature protection" authorisation from the Minister for the Environment must be sought for various interventions in green zones (eg, existing new constructions) or within building zones (eg, destruction of biotopes).

Similarly, certain classified establishments, identified in a regulatory nomenclature, cannot be operated until authorised by the Minister for the Environment. In waste management, waste trading and brokering activities are subject to authorisation.

To obtain authorisation from the Minister for the Environment, an application for authorisation must be submitted. Certain environmental laws govern the authorisation procedure. The Luxembourg government provides the public with authorisation application forms, which make it easier to compile the authorisation application file. Authorisation generally takes the form of an individual administrative decision, which is governed by the Grand-Ducal Regulation of 8 June 1979 relating to the procedure to be followed by State and local authorities.

In certain cases, decisions issued by the Minister for the Environment may be the subject of an informal appeal or an appeal to the relevant courts.

4.3 Regulators' Approach to Policy and Enforcement

In Luxembourg, the authorities are favouring a preventative and integrated approach, with a focus on instruments to improve quality of life for future generations. Pursuant to the Law of 25 June 2004 on the co-ordination of national sustainable development policy, a national plan for sustainable development (PNDD) must be drawn up every four years, based on the national report. This plan sets out Luxembourg's priority areas for action, with a view to sustainable development at national and international levels.

In the 2023–2028 coalition agreement, the Luxembourg government has committed itself to a strong legal framework for environmental protection and an ambitious, pragmatic and socially equitable climate and environmental policy.

4.4 Transferring Permits/Approvals

In principle, an administrative authorisation is automatically transferred to the new purchaser when it relates to a right in rem, in particular for building per-

mits and those relating to classified establishments. Environmental laws do not provide a specific procedure for transferring administrative authorisations.

4.5 Consequences of Breaching Permits/ Approvals

Failure to comply with an administrative authorisation may result in administrative sanctions, such as:

- setting a deadline for compliance;
- the suspension or closure of the site or operation; and
- where applicable, criminal sanctions in the form of a fine or, in some cases, imprisonment.

5. Environmental Liability

5.1 Key Types of Liability

In Luxembourg, several liability regimes may apply in the event of environmental damage or a breach of environmental law.

The Law of 20 April 2009 on environmental liability, as amended, imposes an obligation on those liable for environmental damage to remedy the damage. This law establishes a framework for environmental liability based on the "polluter pays" principle, with a view to preventing and remedying environmental damage. The damage covered includes that caused to protected species and natural habitats, water and soil. Any natural or legal person affected or likely to be affected by environmental damage may ask the Minister or the relevant authority to take measures to prevent or remedy damage falling within the scope of this law.

The Law of 21 March 2012 on waste management, as amended, enshrines the "polluter pays" principle and introduces strict civil liability to reinforce the liability of waste producers and holders.

Ordinary tort law also applies. The liability regime of the Civil Code protects people and property, and ensures compensation for the damage suffered. Environmental damage can only be remedied to the extent that it constitutes damage to a person or to property belonging to a person.

In addition, criminal liability may be incurred in the event of breaches of legal provisions on environmental protection, particularly those arising from the Law of 18 July 2018 on the protection of nature and natural resources, as amended.

5.2 Liability for Historical Environmental Incidents or Damage

The owner of a plot of land may be held liable for historical environmental damage, in their capacity as a producer or holder of waste, on the basis of the Law of 21 March 2012 on waste management, as amended.

5.3 Key Defences

In general, each liability regime comes with its own grounds of defence and exemptions. Therefore, under the Law of 21 March 2012 on waste management, as amended, the producer of waste may be exempted from liability by demonstrating, for example, that the alleged damage resulted from the fault of the victim or of a person for whom the victim is responsible, or from force majeure.

The Law of 20 April 2009 on environmental liability, as amended, also provides for a number of limitations and exceptions. Certain situations fall outside its scope, such as damage that is time-barred (where more than 30 years have elapsed since the event that caused the damage), damage that occurred before the law came into force or damage that is related to specific activities that ended before that date.

Similarly, under this law, the operator is not liable for the costs of remedial measures if the operator can prove that the damage was caused by a third party or that the operator was not at fault or negligent.

6. Corporate Liability

6.1 Liability for Environmental Damage or Breaches of Environmental Law

In Luxembourg, legal persons may be held liable for environmental damage on the basis of the general law on the criminal liability of legal persons (the Law of 3 March 2010 introducing the criminal liability of legal persons into the Criminal Code and the Code of Criminal Procedure).

6.2 Environmental Taxes

Environmental taxation is based on several tax bases. According to the System of Environmental-Economic Accounting (SEEA), Luxembourg taxes that are considered as environmental include:

- excise duties on mineral oils;
- autonomous excise duties on certain mineral oils;
- the supplementary tax levied on fuels;
- "Kyoto" excise duties (CO2 tax);
- the tax on motor vehicles charged to households;
- the tax on motor vehicles charged to businesses;
- emission credits; and
- the water abstraction tax.

6.3 Incentives, Exemptions and Penalties

Luxembourg actively supports undertakings committed to the ecological transition. Undertakings carrying out ecological and energy transition projects can benefit from tax relief, calculated on the basis of investments and operating expenses incurred as part of an ecological and energy transition project.

Environmental incentives for citizens also involve a system of financial aid. For example, the "Klimabonus" programme provides financial assistance to citizens for housing and mobility, with the aim of making homes more energy-efficient and facilitating the choice of emission-free mobility solutions.

In Luxembourg, the House of Sustainability plays a central role as a co-ordination platform for sustainable development, offering undertakings and individuals centralised access to all existing financial aid schemes ("Fit4 Sustainability", bonus for the purchase of an electric vehicle, Klimabonus, investment aid for environmental protection, etc).

As a general rule, administrative or criminal sanctions only apply when a citizen or company fails to comply with environmental laws or regulations.

6.4 Shareholder or Parent Company Liability

Under Luxembourg environmental legislation, there is currently no specific scheme under which a shareholder or parent company can be held directly liable for environmental damage caused by a company.

6.5 ESG Requirements

Environmental disclosures became mandatory in Luxembourg pursuant to the Law of 23 July 2016, which transposed the Non-Financial Reporting Directive (NFRD) ("NFRD Law") through amendments to various laws. Those provisions are in the process of being amended through Bill 8370 ("CSRD Bill"), transposing the Corporate Sustainability Reporting Directive (CSRD).

In accordance with the NFRD Law, large undertakings that are public-interest entities (listed entities, credit institutions, insurance companies) and exceed the average number of 500 employees are currently required to disclose the information necessary for understanding the undertaking's development, performance and position, and the impact of its activity, relating to environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including the principal risks related to those matters linked to the undertaking's operations. It is to be noted that the CSRD framework further details those obligations, particularly with respect to climate financial impacts and risks and opportunities, by reference to the detailed European Sustainability Reporting Standards (ESRS).

The *Commission de Surveillance du Secteur Financier* has jurisdiction to monitor sustainability information.

6.6 Environmental Audits

In Luxembourg, several forms of environmental audit are carried out in the context of different transactions, such as energy audits, environmental assessments, verification of compliance with administrative authorisations and technical inspections. Some of these forms of audit may be made compulsory, depending on the applicable legislation or the administrative authorisations in question. For example, certain undertakings are required to carry out an energy audit, which must be carried out independently by qualified experts, in accordance with the provisions of the Law of 5 August 1993 on the rational use of energy, as amended.

7. Personal Liability

7.1 Directors and Other Officers

As a general rule, directors and officers may be held personally liable for environmental damage if their personal behaviour contributed to the infringement or if they were aware of the infringement and failed to act. For example, a company director may be held personally liable by virtue of their corporate mandate (contractual liability). They may also be held liable for a "fault" within the meaning of the Civil Code (tort liability) or for an offence (criminal liability).

8. Insurance

8.1 Environmental Insurance

In Luxembourg, environmental insurance is not designed as a general obligation for all undertakings. It is governed by legal texts that require cover for certain types of activity considered to be at risk.

To this end, operators of waste management facilities and sites are required to set up a financial guarantee or other equivalent means, in the form of an insurance contract, which is intended to cover the estimated costs of decommissioning procedures and operations for the subsequent management of the operating site, in accordance with the Law of 21 March 2012 on waste management, as amended.

With regard to legislation on classified establishments, authorisations may stipulate that, depending on the nature of their activity and the risks involved, undertakings must take out civil liability insurance and provide a guarantee for the restoration of the site in the event of an incident or accident related to the operation and in the event of the cessation of activities.

9. Lender Liability

9.1 Financial Institutions/Lenders

In Luxembourg, there is no legal provision that would allow financial institutions or lenders to be held directly liable for environmental damage or infringements caused by the activities of their clients or the projects they finance.

9.2 Lender Protection

Please see **9.1 Financial Institutions/Lenders**.

10. Civil Liability

10.1 Civil Claims

Civil actions for compensation or remedial measures in environmental matters are mainly based on ordinary civil liability law.

In pollution cases, the owner of polluted land may be held liable for abnormal neighbourhood disturbances or for damage to property, or as a producer or holder of waste under the Law of 21 March 2012 on waste management, as amended.

In the event of the sale of polluted land, the purchaser has a number of rights of action against the seller, such as:

- an action to enforce the seller's warranty on the grounds of latent defects (Article 1641 of the Civil Code);
- an action to declare the contract null and void on the grounds of lack of consent (Article 1110 or 1116 of the Civil Code); and
- an action for breach of the seller's delivery obligation (Article 1603 of the Civil Code).

10.2 Exemplary or Punitive Damages

The Luxembourg system of compensation for loss does not allow for punitive damages as may be allowed in other legal systems, such as the US legal system.

10.3 Class or Group Actions

In Luxembourg, there is no real collective action in environmental civil matters; in principle, each person must act individually to defend their rights. However, several people may bring an action together when they share a common interest – for example, in relation to the same project.

On the other hand, approved associations can take legal action to defend the collective interests related to the protection of the environment that they aim to defend.

10.4 Landmark Cases

In Luxembourg, there are currently no published leading cases establishing specific civil liability for environmental damage. However, a number of decisions issued by the administrative courts, particularly in relation to classified establishments, concern environmental issues such as pollution.

11. Contractual Agreements

11.1 Transferring or Apportioning Liability

Contractual arrangements may include clauses relating to the transfer or allocation of environmental liability, particularly in the event of the transfer of land or a classified establishment. However, these clauses are not binding on the authorities and cannot exempt an operator from their legal obligations.

12. Contaminated Land

12.1 Key Laws Governing Contaminated Land

The Law of 10 June 1999 on classified establishments, as amended, is the main legislation governing contaminated land. The operator must declare the definitive cessation of their activity to the relevant authority, according to the classification of the establishment. Where a cessation is recorded by the relevant authority without being declared, the conditions set out below also apply.

Upon declaration of cessation of activity, the authorities set the conditions for safeguarding and restoring the site, including decontamination, clean-up and, where necessary, rehabilitation.

The owner of polluted land may be held liable as a producer or holder of waste under the Law of 21 March 2012 on waste management, as amended. In this respect, it is important to note that unexcavated contaminated soil is currently covered by this law, which also provides a basis for introducing preventative and remedial measures in the event of a risk to human health or damage to the environment. The Minister for the Environment can take all measures required by the situation, including:

- requiring analyses, expert reports or technical tests;
- ordering the closure of a site;
- prescribing the suspension of the activity likely to be at the origin of such an infringement; and
- ordering work to quantify, stop, remedy and remove environmental damage.

In addition, the Environment Agency manages a register of potentially contaminated sites (CASIPO), which lists potentially contaminated sites and contaminated or remediated sites in Luxembourg. This register is public and enables checking whether a plot of land is potentially contaminated or remediated.

12.2 Clearing Contaminated Land

In principle, the obligation to remediate contaminated land rests with the last operator, in accordance with legislation governing classified establishments. The operator is required to ensure that the site is restored and to pay for the remediation measures.

In certain circumstances, this liability may be transferred when the operator is, for example, insolvent or cannot be found. This transfer does not result from an explicit legal framework, but essentially from case law.

12.3 Determining Liability

In principle, each operator is liable for any contamination resulting from their activity and the operation of the site. Where there are several sources of pollution, there is no general legal rule for determining liability. In practice, it can be difficult to apportion liability between several operators, especially when the contamination results from the same activity or involves identical polluting substances.

12.4 Proceedings Against Polluters

Proceedings can be brought if the claimants have standing, which depends on the relevant court and on the nature of the dispute.

Before the administrative courts, it is generally necessary to demonstrate a personal, direct and certain interest in bringing an action. However, in certain specific proceedings, having intervened in a pre-litigation phase is sufficient to confer standing.

12.5 Investigating Environmental Accidents

In the event of an environmental accident, an administrative complaint can be lodged with the relevant authority.

The Law of 21 March 2012 on waste management, as amended, is the main legal basis for addressing accidental pollution, and establishes a specific framework enabling the competent minister to take all necessary preventative and remedial measures. These measures may include expert reports and work aimed at quantifying, stopping, remedying and removing damage to the environment.

13. Climate Change and Emissions Trading

13.1 Key Policies, Principles and Laws

The Luxembourg government has placed the fight against global warming and the energy transition at the heart of its political priorities. The 2023–2028 coalition agreement reaffirms the country's commitment to respecting the Paris Agreement and rapidly achieving the climate targets set at national and European levels.

Within this framework, the government is implementing the National Integrated Energy and Climate Plan (PNEC), which sets out the national climate objectives for the period 2021–2030, including:

- reducing greenhouse gas emissions by 55% compared to 2005;
- achieving a 37% share of renewable energy in final consumption;
- improving energy efficiency by 42%; and
- reinforcing targets for renewable energies and energy efficiency.

Priority is also being given to the accelerated development of renewable energies, supported by substantial investments.

Legislative and European Frameworks

At the European level, Luxembourg is aligned with the major climate and environmental strategies and legislative packages, such as "Fit for 55", "Green Deal" and "Zero Pollution".

At the national level, several laws structure climate policy, including the following.

- The Law of 15 December 2020 on the climate, as amended, establishes the institutional framework for climate policy. It aims to achieve climate neutrality in Luxembourg by 2050 at the latest, with an intermediate target of a 55% reduction in greenhouse gas emissions by 2030 compared to 2005 levels.
- The Law of 5 August 1993 on the rational use of energy, as amended, encourages a reduction in dependence on traditional energy sources and promotes renewable energies.
- Various sectoral laws also apply to the fight against climate change, particularly in the areas of transport, fuel quality, CO2 storage and the creation of a climate pact with local authorities.

13.2 Targets to Reduce Greenhouse Gas Emissions

Luxembourg has set targets for reducing its greenhouse gas emissions as part of the PNEC and the government coalition agreement. The aim is to achieve long-term climate neutrality, with an intermediate step of reducing greenhouse gas emissions by 55% by 2030 compared with 2005 levels.

The implementation of these objectives is based on a number of legislative instruments, as follows:

- the Law of 15 December 2020 on the climate, as amended, which establishes an emissions trading scheme and provides a framework for authorising greenhouse gas emissions;
- the Law of 21 June 1976 on the fight against atmospheric pollution, as amended, which requires a gradual reduction in greenhouse gas emissions over the fuel's entire life cycle;
- the Law of 13 September 2012 creating a climate pact with local authorities to support local authorities' commitment to reducing greenhouse gas emissions; and
- the Law of 17 April 2018 on town and country planning, as amended, which contributes through

the instruments of the sectoral master plan and the land use plan to the implementation of actions designed to reduce greenhouse gas concentrations in the atmosphere.

14. Asbestos and Polychlorinated Biphenyls (PCBs)

14.1 Key Policies, Principles and Laws Relating to Asbestos and PCBs

In Luxembourg, asbestos was partially banned in 1986, particularly in relation to certain fibres, such as crocidolite. In 2021, the use and marketing of asbestos were completely banned, with the exception of products already installed before that date, which will remain authorised until they are disposed of or reach the end of their life.

The amended Grand-Ducal Regulation of 14 November 2016 on the protection of the health and safety of employees from the risks related to chemical agents at work lays down the minimum requirements for the protection of employees from risks to their health and safety arising or likely to arise from the effects produced by chemical agents present in the workplace or arising from any professional activity involving chemical agents.

As part of fulfilling their legal obligations, employers must assess whether dangerous chemical agents are present in the workplace. If this is the case, they must assess any risk to the health and safety of employees resulting from the presence of these chemical agents.

The management of polychlorinated biphenyls (PCBs) is governed more specifically by the Grand-Ducal Regulation of 24 February 1998 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls. This concerns the controlled disposal of PCBs, the decontamination or disposal of equipment containing PCBs and/or the disposal of used PCBs with a view to their complete disposal.

15. Waste

15.1 Key Laws and Regulatory Controls

The Law of 21 March 2012 on waste management, as amended, is the main law governing waste, and implements Directive 2008/98/EC of 19 November 2008 on waste into Luxembourg law. This law enshrines the "polluter pays" principle, specifying that the costs of waste management are borne by the original waste producer or by the current or previous waste holder.

In terms of regulatory controls, the Environment Agency intervenes under the environmental legislation falling within its remit, particularly with regard to waste. As Environment Agency officers have the status of judicial police officers, they can also initiate criminal proceedings in the event of contraventions or infringements of the applicable laws and regulations.

With regard to waste shipments, Environment Agency officers carry out inspections throughout the year at strategic points throughout the Grand Duchy of Luxembourg.

15.2 Retention of Environmental Liability

Responsibility for waste treatment rests, in the first instance, with the waste producer within the meaning of the Law of 21 March 2012 on waste management, as amended. Thus, responsibility for the recovery or disposal of waste always lies first and foremost with the original producer.

The waste producer must treat the waste itself or must have it treated by a dealer, broker, establishment or undertaking carrying out waste treatment operations or by a private or public waste collector.

In terms of responsibility, the Law of 21 March 2012 on waste management, as amended, generally states that the initial producer retains responsibility for the entire treatment chain.

15.3 Circular Economy Requirements

The Law of 21 March 2012 on waste management, as amended, introduces the Extended Producer Responsibility (EPR). This scheme is defined in national law as a set of measures taken to ensure that producers assume financial responsibility or financial and

organisational responsibility for the prevention, reuse and management of the "waste" phase of a product's life cycle. Producers have an obligation to contribute proactively to achieving the objectives of the Law of 21 March 2012, as amended, through actions that promote improved product design, prevention, reuse, preparation for reuse, recycling and changes in societal behaviour.

Producers may delegate all or part of their EPR obligations to specific approved bodies. On the other hand, they must meet these obligations through an individual system.

In Luxembourg, there are seven EPR schemes covering:

- household packaging;
- non-household/reusable packaging;
- household electrical and electronic equipment (WEEE);
- non-household electrical and electronic equipment (WEEE);
- portable batteries and accumulators;
- automotive/industrial batteries and accumulators; and
- tobacco products with filters.

15.4 Rights and Obligations Applicable to Waste Operators

The operation of a facility or site used for disposal operations is subject to authorisation by the Minister responsible for the Environment. Operators of a facility must therefore ensure that the management of these facilities is entrusted to specialised and qualified staff. They are also required to report to the competent authority any damage or accidents affecting the proper operation of their facility that could cause harm to humans or the environment.

In the event of cessation of activity, the operating site must be restored to prevent damage to the environment and to ensure that the restoration is monitored in accordance with the terms and conditions laid down by the Minister. Operators are required to provide a financial guarantee or other equivalent means, in the form of an insurance contract, to cover the estimated costs of decommissioning procedures and subsequent management of the operating site.

In the event of non-compliance with the provisions of the Law of 21 March 2012 on waste management, as amended, the operator of an establishment may be subject to administrative measures by the Minister (eg, suspension or closure of the establishment).

16. Environmental Disclosure and Information

16.1 Disclosure and Reporting Requirements

In Luxembourg, the disclosure of environmental information is governed by the Law of 25 November 2005 on public access to environmental information, as amended. The public therefore has a right of access to environmental information held by public authorities. With regard to the dissemination of environmental information, public authorities may organise this dissemination in various ways, such as free on-site consultation, the provision of copies or the publication of reports, as well as computer telecommunication technologies.

Environmental information disseminated and made available to the public must be regularly updated and must include the following in particular:

- national reports on the state of the environment, providing information on its quality and the constraints it faces;
- data or summaries of data collected on activities that have or are likely to have an impact on the environment; and
- impact studies and risk assessments concerning environmental protection or an indication of where such information can be requested or consulted.

The law provides for a consultation procedure allowing the applicant to lodge an appeal with the administrative courts in the event of refusal of disclosure or partial disclosure.

16.2 Public Environmental Information

Under the Law of 25 November 2005 on public access to environmental information, as amended, any natu-

ral or legal person may request environmental information held by public authorities.

However, the law specifies certain limitations. A request for information may be denied if it is manifestly abusive or formulated in too general terms, or if it concerns documents being drafted, incomplete data or purely internal communications of no interest to the public.

The following are considered public authorities within the meaning of this law:

- the government or any other public agency, including public advisory bodies, at national, regional or local levels;
- any natural or legal person performing public administrative functions, including specific tasks, activities or services related to the environment; and
- entities providing public services in relation to the environment under the control of a body or person mentioned above.

16.3 Corporate Disclosure Requirement

Please see **6.5 ESG Requirements**.

16.4 Green Finance

The EU regulation on sustainability-related disclosures in the financial services sector (SFDR) and the EU regulation on taxonomy apply to Luxembourg. The Taxonomy Regulation sets out a classification system that establishes the requirements for certain economic activities to be considered "environmentally sustainable". The purpose of the SFDR is to improve transparency on the market for sustainable investment products, to prevent greenwashing and to improve transparency on sustainability statements by financial market participants.

The Law of 25 February 2022, which implements the SFDR and the Taxonomy Regulation, gives the *Commission de Surveillance du Secteur Financier* (CSSF) and the *Commissariat aux Assurances* (CAA) supervisory and investigative powers over financial market participants and financial advisers under their supervision. These authorities are responsible for monitoring the application of the SFDR and the Taxonomy Regulation.

17. Transactions

17.1 Environmental Due Diligence

In Luxembourg, environmental due diligence is developing as part of mergers and acquisitions and real estate transactions, but is not yet systematic. It is generally carried out when a potential risk has been identified or when there are indications of previous pollution.

In general, due diligence takes the form of a real estate audit. Increasingly, it includes environmental audits, with an analysis of documentation and requirements for the communication of information from the seller to the purchaser.

17.2 Disclosure of Environmental Information

Under Luxembourg law, there is no legal provision requiring a seller to disclose environmental information. Nevertheless, any seller who refrains from disclosing environmental information, particularly in relation to soil pollution, may face legal action at a later date by the purchaser, particularly on the grounds of latent defects or deceit (dolus).

17.3 Key Issues in Environmental Due Diligence

The most common legal questions relating to the environment during a transaction generally relate to compliance with environmental authorisations, the fulfilment of environmental obligations and the assessment of liabilities relating to historical pollution.

Trends and Developments

Contributed by:
Nathalie Prüm-Carré, Inès Goeminne and Georges Gratia
Elvinger Hoss Prussen

Elvinger Hoss Prussen has become one of the largest Luxembourg law firms, with over 500 team members committed to delivering responsive services, to an exceptional degree of precision, either from the Luxembourg headquarters or from the firm's offices in Paris and Hong Kong, or its partner office in New York. The five-strong environmental law team includes specialists in urban planning, environmental law, pollution/depollution and waste management legislation, and has particular expertise in brownfield reconversion. It advises local authorities, promoters and private individuals on urban planning and environmental matters, and is involved in the urban development of several large neighbourhoods in the City of Luxembourg and elsewhere in the country. The firm also conducts actions for annulment or claims for damages in connection with the sale of polluted land or buildings, and is involved in the urbanisation of brownfield sites.

Authors

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Inès Goeminne specialises in administrative law and has significant expertise in urban planning law, environmental law and public procurement law. She focuses in particular on ensuring that projects comply with urban planning and environmental law, and gained technical and environmental experience within a recognised approved body in Luxembourg. Inès is proficient in administrative procedures related to development plans and environmental studies. She worked for three years in law firms in Luxembourg before joining Elvinger Hoss Prussen in 2019, where she is a senior associate. Inès was admitted to the Luxembourg Bar in 2023.

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Climate

New emissions trading system (ETS 2)

The Law of 24 July 2025 amending the Law of 15 December 2020 on climate came into force on 26 July 2025, with the exception of certain legal provisions that apply retroactively. It is part of the European climate policy and aims to implement several reforms adopted at EU level into national law. The text focuses on the emissions trading system (ETS) – the cornerstone of the climate policy of the European Union and its member states.

This reform has implemented Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023, and has introduced a new autonomous emissions trading system applicable to the building, road transport, power, manufacturing and construction sectors in order to ensure reductions in greenhouse gas emissions in these sectors.

The Law of 24 July 2025 has introduced a legal framework for the monitoring and reporting of ETS emissions. From 2025 onwards, regulated entities will be subject to an annual obligation to monitor ETS emissions in relation to the quantities of fuel released for consumption. ETS emissions must then be reported to the relevant minister during the following year, starting in 2026. The obligations under ETS 2 apply to suppliers (known as "regulated entities") who supply fuels to the sectors concerned.

At the same time, the law also provides for the development of a "social climate plan", as required by Regulation (EU) 2023/955. This plan includes a set of measures and investments to address the impact of carbon pricing on vulnerable groups.

Eco-Points and Ecological Compensation

The Law of 18 July 2018 on the protection of nature and natural resources, as amended, established an ecological compensation system and was recently amended by the Law of 11 July 2025, which has extended the transitional period applicable to compensation measures.

Ecological compensation system

Ecological compensation aims to repair damage caused to nature by development or construction projects. It applies where a project causes the destruction of biotopes, habitats of community interest or habitats of species of community interest. In this situation, the project owner is required to compensate for the ecological damage caused by their project.

In principle, the project owner is responsible for implementing the compensation measures. However, Luxembourg has put a mechanism in place that allows the project owner to be exempted from this obligation by paying a tax. The implementation of compensation measures is organised by the State and the municipalities through compensation pools financed by a reimbursement tax paid by the project owner.

Compensation is based on an eco-points system, which makes it possible to assess the ecological damage caused and set the amount of the corresponding tax. A specific register records and accounts for the compensation measures and land relating to the compensation pools in eco-points, as well as the debit corresponding to the reimbursement taxes.

Insufficient plots for compensation measures

The Law of 18 July 2018, as amended, provided for a transitional provision allowing the use of the eco-points system in cases where compensation pools are not available in sufficient quantity at the time when project developers cause ecological damage. However, in certain ecological sectors, the State and municipalities do not yet have a sufficient number of plots of land to carry out compensation measures.

In order to remedy this situation, the Law of 11 July 2025 extended the transitional period that was due to expire on 9 September 2025 by a further eight years, until 9 September 2033.

This extension avoids administrative and legal deadlocks for construction or development projects. It also gives public authorities the time they need to complete the national ecological infrastructure and ensure effective compensation in each environmental sector.

Biotopes

Symbiosis between animal species and urbanisation

In a recent decision (Administrative Court ruling of 24 April 2025, docket No 51649C), the Administrative Court reiterated that the mere presence of animal species on a plot of land, including bats, cannot automatically be equated with a building ban. Established case law considers that this issue should be viewed not in terms of a building ban, but in terms of "symbiosis" – ie, "living together".

The Court thus emphasised that human constructions have always created living spaces for certain species (bats and certain birds). Therefore, it cannot be inferred that such a presence necessarily excludes any possibility of construction.

Municipal Planning

"Green zone bis"

One of the important developments in Luxembourg is the ongoing reform of municipal planning. A bill (No 8578) tabled in the Chamber of Deputies on 9 July 2025 and a draft Grand-Ducal regulation aim to introduce a new land use zone into the general development plan (PAG) of municipalities, called the "green zone bis".

In general, the green zone is governed by a non-constructability principle. However, over time, certain old buildings in the green zone, including residential houses, have become subject to more restrictive regulations under nature conservation legislation.

Objective of the reform

The new "green zone bis" is intended for "disconnected clusters" (*îlots déconnectés*) in which existing dwellings are located in what is now a green zone – ie, in one of the parts of the national territory not primarily designated for urban development.

The main objective of this reform is to simplify administration procedures and create an appropriate zoning system to cover and regulate disconnected clusters.

Authorisation and supervision

A key point of the reform is that a building permit from the minister responsible for the environment will no longer be required for buildings in green zone bis areas that meet the criteria defined in the municipality's general development plan (PAG).

The PAGs will focus in particular on land use so that new constructions or extensions to existing constructions have no significant impact on the natural environment and landscape. The requirements applicable to parcels classified as green zone bis will be set at the PAG level.

Limits of the scheme

The green zone bis will not allow the creation of new housing units. The aim of this new zone is therefore not to increase the density of the sites covered by such units.

Renewable Energies

Directive (EU) 2023/2413 on renewable energies

A bill of law (No 8508) is currently seeking to amend the Law of 15 May 2018 on environmental impact assessment, as amended. This bill has not yet been definitively adopted and is subject to change before it comes into force. The purpose of this bill is to implement into Luxembourg law certain provisions of Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and

Directive 98/70/EC with regard to the promotion of energy from renewable sources.

In this context, the bill provides for the prioritisation of renewable energy production facilities and sets deadlines for the various stages of the examination process. It provides a framework for the procedure for examining authorisation applications and sets specific deadlines. It also introduces shorter deadlines for projects involving renewable energy production facilities.

Soil Monitoring and Resilience

European context

On 5 July 2023, the European Commission adopted a proposal for a directive on soil monitoring and resilience. This directive is a key element of the European Green Deal (Commission Communication of 11 December 2019), the Soil Strategy, the Biodiversity Strategy and the Zero Pollution Action Plan.

On 29 September 2025, the Council adopted the directive on soil monitoring. This is a draft that has not been definitively adopted and is subject to change before it enters into force. It establishes the European framework for soil assessment and monitoring, with the overall objective of achieving healthy soils throughout Europe by 2050.

Main objectives

The objectives of this directive are to:

- establish a solid and coherent soil monitoring framework for all soils across the EU;
- reduce soil contamination to levels no longer considered harmful to human health and the environment;
- continuously improve soil health in the EU;
- maintain soils in a healthy condition and to prevent and address all aspects of soil degradation, with a view to achieving healthy soils by 2050 that can provide multiple ecosystem services on a scale sufficient to meet environmental, societal and economic needs; and
- prevent and mitigate the impacts of climate change and biodiversity loss, and to increase resilience against natural disasters and in terms of food security.

Scope and themes

The directive lays down a framework for and measures on:

- monitoring and assessment of soil health;
- soil resilience; and
- management of contaminated sites.

It also provides for a stepwise approach to land take, with a view to assessing the various processes of land take, and aiming to reduce and mitigate their impact on soil health and ecosystem services.

Obligations of member states

Member states will be required to:

- establish a soil monitoring framework at a level that is appropriate to the soil descriptors and soil sealing and soil removal indicators to ensure regular, coherent and accurate monitoring of soil health and of soil sealing and soil removal;
- assess the soil health in all their soil districts and associated soil units based on the data collected in the context of the soil monitoring referred to;
- ensure that risks to human health and the environment of potentially contaminated sites and contaminated sites are identified, managed and kept at acceptable levels, taking account of the environmental, social and economic impact of the soil contamination and of the risk reduction measures; and
- systematically identify potentially contaminated sites on their territory. For the purposes of the identification of potentially contaminated sites, member states shall establish a list of potentially contaminating activities.

Implementation into national law

Once the directive has been fully adopted and entered into force, Luxembourg will have to implement it into national law by means of legislation.

Carbon Dioxide Capture and Disposal

Existing legal framework

The Law of 27 August 2012 establishes a legal framework for the environmentally safe geological storage of carbon dioxide (CO2) in order to contribute to the fight against climate change. The objective of geologi-

cal storage of CO2 is to permanently contain CO2 in order to prevent and eliminate – as far as possible – any adverse effects and risks to the environment and human health.

New framework for action adopted by Luxembourg

On 4 July 2025, the Government Council approved Luxembourg's action framework for the deployment of carbon capture, utilisation and storage (CCUS) technologies and carbon dioxide removal from the atmosphere (CDR).

This action framework is part of the objective of achieving climate neutrality by 2050. It provides for the gradual activation of all decarbonisation levers, while taking into account industrial and economic opportunities.

A set of seven key strategic measures has been identified to enable the gradual and significant use of these technologies in the long term, including the creation of a clear legal framework.

Nature Protection

Re-establishment of applications for review before the administrative courts

Bill No 8449 amending the Law of 18 July 2018 on the protection of nature and natural resources, as amended, provides for the re-establishment of applications for review (*recours en réformation*) before the administrative courts. This bill has not yet been definitively adopted and is subject to change before it comes into force.

In environmental matters, applications for review are not new. They were introduced by the Law of 19 January 2004 but abolished during the 2018 reform, which retained only applications for annulment. The current bill therefore reverses this decision and re-establishes applications for review, returning to the logic of the repealed Law of 19 January 2004.

The difference between these two types of action is significant. The application for annulment is limited to annulling the administrative decision, forcing the administration to re-examine the case. Conversely, the application for review allows the court to "clear" the dispute by substituting its own decision for the disputed decision. As a result, the applicant obtains a new decision more quickly. This re-establishment is therefore intended to give the administrative court a more active role in the settlement of environmental disputes.

Finally, the introduction of an application for review in nature protection matters contributes to the harmonisation of environmental legislation on applications, since almost all environmental legislation provides for an application for review.

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