**TRANSPARENCY OF MEDIA OWNERSHIP – THE LEGAL FRAMEWORK**

**LUXEMBOURG**

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| 1. **Media-Specific Disclosure Requirements I : *Disclosure to a Media Authority or other Public Body***
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| **QUESTIONS** |  | **YES/ NO** | **COMMENTS** |
| 1.1 Who is required to disclose information, when and to whom? | 1. Are media organisations which disseminate information or those who have interests in such media organisations specifically required to report ownership information to a media authority or other public body or bodies?
 | Y |  |
|  | 1. If YES, what is the legal basis of this requirement?
 |  | The legal basis is the Law of 27 July 1991 on Electronic Media[[1]](#endnote-1), as amended by the Law of 8 April 2011[[2]](#endnote-2), the Law of 17 December 2010[[3]](#endnote-3), the Law of 8 June 2004[[4]](#endnote-4) and the Law of 2 April 2001[[5]](#endnote-5). [[6]](#endnote-6)**NOTE:** The Law on Electronic Media does not specifically set out ownership disclosure obligations but does allow the possibility that ownership information can be requested for all forms of electronic media which require a licence. This is via the “book of obligations”[[7]](#endnote-7) which is attached to each licence or permit granted by Luxembourg. For example, Articles 10 (1), 13 (4)(e) and 20 (7) state that the book of obligations *can* give the government the right (except for some radio services – see following paragraph) to view the articles of association, shareholder information and the organs of the company holding the concession, and in practice it often does.In addition, under Article 16(3)(e), the allocation of frequencies (i.e. the granting of a permit) to radio services using low-power transmitters (local radio) requires an application to the competent body – the *Commission indépendante de la Radiodiffusion*’(CIR); the application must include a book of obligations containing, amongst other things, the articles of association, a list of members and directors of the association or company submitting the application, as well as the composition of the management organ(s) of the functional structures. Article 17(6)(d) gives the government the right to view the book of obligations of such radio services. |
|  | 1. Who exactly is covered by this requirement,
 |  | **Broadcast and online media, cable** **and satellite services and on-demand services.** All media organisations that require a licence are covered by this. These are all organisations that fall under the definition of media service provider according to Article 2 nos. 4) to 6) of the Law on Electronic Media. The definition is very broad as long as the requirement of establishment in Luxembourg is fulfilled (Article 2bis) and includes all forms of audiovisual and sound (ie radio) media services such as Luxembourgish international broadcast services, non-Luxembourgish services, broadcast services aimed at a resident audience (TV, radio), Luxembourgish satellite systems and services, Luxembourgish cable services. Online media are at least partly included in the definition of “media organisations”, as defined by the Law on Electronic Media. Insofar the law follows the definition of the Audiovisual Media Services Directive and it encompasses on-demand audiovisual media services, according to its Art. 2 nos. 14) and 15). These are subject to a notification requirement which however is not linked to a book of obligations. In practice, the licence or permit comes with a book of obligations and, as stated above, the law allows the possibility for the government to include in this book of obligations the ability to access a range of information relevant to ownership and in reality it *seems* it does (see 1.2(p) below). However, according to the law it is also possible that a licence could be issued without such a requirement.  |
|  | 1. To whom must the information be reported?
 |  | The information is not, technically “submitted” to anyone. As mentioned above, the reporting obligation is typically contained in the book of obligations which is comparable to an annex to a contract, in this case being a part of the obligations undertaken by the recipient of a permit or licence. It states what information must be available to the government and/or the CIR (for low-frequency radio – ie local radio).In terms of monitoring, it should be pointed out that the law assigns this task in very general terms to different bodies without specifying what ownership information should be reported. This detail is set out in each book of obligations. According to the law, the “government” issues the licences for all electronic media *except* radio using low-frequency transmitters (local radio). In practice, it is probably the SMC unit within the Ministry of Communications and Media that does this work on behalf of the government (see below for the SMC remit). The CIR (see below for its remit) issues advice on all licensing requests but the Minister for Communications and the Media makes the decision on whether to issue one. The CIR issues licences for radio stations using low-frequency transmitters.The key bodies are:1. The ‘*Service des médias et des communications’* (SMC) which is a service unit of the government within of Ministry of Communications and Media, according to Article 29. Its tasks include under Article 29 (2) d) “*to assist the government commissioners charged with the monitoring of the holders of concessions or permits, the Independent Commission for Broadcasting created by Article 30 (…)”*’. Although the law does not define the extent of this assistance, in practice it is the SMC that is the government branch fulfilling the monitoring assistance competencies. As such it is fully informed of licence holders’ compliance with the terms of their licence (set out in the book of obligations) via the government commissioners.
2. For radio stations using low-power transmitters (local radio) the supervisory body is the ‘*Commission indépendante de la Radiodiffusion’* (CIR). The CIR has a twofold role (Article 30). Firstly it grants the licences or permits for radio service providers using low power transmitters and supervises compliance with the book of obligations under Articles 15 to 18, so for radio service providers using low power transmitters, local radio stations and networks (cf. Article 30 (2)) (however not for radio service providers using high power transmitters which, like television are monitored by the SMC). Secondly the CIR must be consulted, in an advisory function, by the government before the competent minister issues any kind of broadcasting licence. It is empowered to add provisions to the book of obligations.
3. The “government commissioners”; each licensed media outlet is assigned a government commissioner. There is no specific definition of who these people should be but they are typically senior people from the SMC or other government ministries such as economy. For example, the Head of the SMC is also the commissioner for one of the major TV stations. Commissioners are charged with monitoring the holders of concessions as is explicitly mentioned in Article 29 (2) d). Although – as mentioned above – the law does not specify what kind of monitoring has to take place, the supervision of the rules in the book of obligations can also include monitoring non-notified changes of ownership enabling the government to then if necessary inspect the ownership information within the company.

Since this regulatory framework is very complex[[8]](#endnote-8), it is currently under review and it is likely that a new law will be introduced into parliament during 2012 which will simplify the system to one regulatory body. This could take at least a year to become law, if accepted. *Note: on 15 October 2012, Luxembourg's Minister for Communication and Media, Mr. François Biltgen, announced a long awaited reform of media law and the creation of the Independent Audiovisual Authority of Luxembourg (l’Autorité luxembourgeoise indépendante de l’audiovisuel, ALIA). Further to the new draft law,  a single independent  authority will be in charge of broadcasting regulation in Luxembourg. The ALIA will be run by a five-member Board and a Director. Board members will be elected for five years and will not be affiliated to the Government or to any organisation engaged in the activity supervised by the Authority. The ALIA will also have permanent staff and an Advisory Council. The new authority will have power to issue sanctions, such as warning, fine or withdrawal of local radio licence, as well as to suggest to the Government to suspend or withdraw TV and radio licences.* *The answers in this questionnaire do not take into account these amendments.*  |
|  | 1. Who must report the information?
 |  | Reporting is done by the media organization itself, not individual shareholding individuals or entities since any requirement to report on ownership derives from the book of obligations which is binding on the licence holder.  |
|  | 1. Where notification is by those with an interest, is this dependent on the size or scale of the interest, e.g. only where a shareholding exceeds a certain size or percentage?

If YES, what is the required threshold? | n/a |  |
|  | 1. Are foreign as well as domestic media organisations covered by these requirements?

If YES, do these requirements apply to EU as well as non-EU foreign organisations? | YY | Any provider operating under a licence or permit connected with a book of obligations is likely to have to fulfill a reporting obligation as the book of obligations *can* (and usually does) contain such requirements. This can apply to foreign companies as well as domestic ones. In reality, this is always foreign companies with a seat in Luxembourg although in theory it could be a foreign company without a seat in Luxembourg for certain categories of covered “media organisations” although as far as is known, this has not happened so far. |
|  | h) When is information to be notified?  |  | Ownership information, when required to be disclosed by the government, is disclosed at the time of applying for a licence, through the book of obligations. In practice, information is often requested but it does not have to be. Monitoring and supervision of the provisions laid down in the book of obligations (including any changes to them) is usually carried out by a different body from the one which issues the licence, which is the government. Typically, the monitoring and supervision happens by government commissioners (see also information on the SMC under 1.1(f) above) or by the CIR, e.g. Article 30 (2) for radio services disseminated by low-power transmitters.The book of obligations may also include a provision obliging reporting of any changes. Unreported changes can be monitored and reported by the government commissioners.  |
|  |  |  |  |
| 1.2 What information is to be provided? |  |  | ***Note:*** *there is only one obligation for audiovisual media service providers (Article 34bis (2) and deriving from the provisions of the EU AVMS Directive) on presenting information to the responsible authorities in the law itself – which is covered by points (a) and (b) below.* *Any further obligation derives from the book of obligations so it depends on each case. It is not possible to say what generally happens since the Book of Obligations are* ***only available in hard copy at the SMC*** *so it would require manually checking of a significant cross-section of Books of Obligation to ascertain what is generally included.* *Even then it is possible that sensitive company information is excluded.* ***It is therefore not possible to answer the following questions in general terms.*** *When asked about requests to view the Books of Obligations, the SMC reported that no-one ever asks (or at least very rarely).* ***It is very important to note that in Luxembourg, due to the size of the country, people know (editor’s note: or at least, think they know) who owns the media through media reporting and hearsay. Hence there is very little demand for access to legal documents and no political / democratic demand for a right to access to ownership information about the media.***  |
|  | 1. Name and contact details of media organisation?
 | Y |  |
|  | 1. Name and contact details of owner?
 | Y |  |
|  | 1. Country of domicile of company with an interest?
 |  |  |
|  | 1. Citizenship/residence status of individual with an interest?
 |  |  |
|  | 1. Size of shareholding?

If YES, please provide details |  |  |
|  | 1. If shares are held on behalf of another, e.g. through brokerage, must the name of the beneficial owner be disclosed?
 |  |  |
|  | 1. Details of companies or individuals with an indirect controlling or significant interest?

If YES, please explain. |  |  |
|  | 1. Political, religious or other affiliations of shareholder / owner?
 |  |  |
|  | 1. Interests by owners in other media organisations?

If YES, please explain. |  |  |
|  | 1. Interests by owners in non-media businesses?

If YES, please explain. |  |  |
|  | 1. Interests in the media organisation by individuals (e.g. family members or organisations) affiliated to the owner?

If YES, how is ‘affiliation’ defined in the relevant instruments and what details are to be disclosed? |  |  |
|  | 1. Management details: for example, directors (if a company), key executive officers, managing editor?
 | Y | *Note*: According to Article 16 (3) e), this applies only to radio services using low power transmitters (local radio). |
|  | 1. Subsequent changes in ownership (resulting from a merger or acquisition by other entities, etc.)?
 |  |  |
|  | 1. Sources of media revenue?

If YES, please explain. |  |  |
|  | 1. Other.
 |  |  |
|  | 1. Are these obligations sufficient to establish who the legal or natural persons are who effectively own and ultimately control the media organisations?
 | N | The legal framework does not *require* that basic information necessary to ascertain the effective owner of a media outlet can always be obtained. However, it may be that for many media such information is disclosed but it is not easy to find this out. It is worth noting that Luxembourg has a relatively small number of established players in the market and that the market rarely changes. As a consequence, it is widely believed that the public has a good overview of the ownership structure both of broadcasting and the press sector, making it unlikely that the public will lose sight of who owns what. In addition, the government has a combined insight via either the non-media specific information obligations (see Section 3 below) or the reporting obligation as set out in the book of obligations or the role the government commissioners play. |
|  |  |  |  |
| 1.3 Effectiveness of the disclosure regime | 1. Are there any sanctions for non-reporting?
 | Y | In those cases in which the reporting obligation is laid down in the book of obligations as well as the information requirements that derive directly from the law any violation of provisions of law/book of obligations can lead to sanctions according to Article 35 of the law on electronic media. The sanctions are mainly in the form of warnings and further monitoring by the regulatory bodies. Although this is the issue for a planned revision of the law in the near future – that the sanction mechanism has only limited effect, because the only real sanction is the revocation of the licence or permit which due to its consequences is not used for minor violations.  |
|  | 1. If YES, have they have been applied in practice?
2. If NO, why not?
 |  | As mentioned above the only real sanction foreseen in Article 35 would lead to a revocation of the licence (or for on-demand services an ban on the service) which is a harsh and disproportionate for a minor or first offence. Research[[9]](#endnote-9) into the annual reports of the CNP shows that that the warnings are working due to the influence the government or the respective monitoring bodies have as a result of the relative closeness of the media market and supervisory structure in Luxembourg.  |
|  | 1. Can the public obtain access to this information?

If YES, how? | N in lawY in practice | Although there is no provision in the law or the regulation foreseeing the provision of specific information to the public or an access to information procedure, and no access to information law, the SMC which holds the copies of the book of obligations allows citizens to view a hard copy of the book of obligations on request at the offices of the SMC during office hours. As Article 35 (1) gives every person (resident or not in Luxembourg) the right to complain to the SMC about non-compliance of a media service provider with provisions of the law or the book of obligations, the provision indirectly obliges the SMC to allow the public to access the information contained in the book of obligations and thereby also the ownership information. Since there is no provision specifying access and no freedom of information act, there is no specification of the process of access. Because the process is not set out by law, is unclear whether copies could be taken and if so of which parts and whether with or without a charge. |
|  | 1. Is this information required to be made available to any other body, for instance, parliament?

If YES, please specify. | N |  |
|  | 1. Can certain information be withheld, for instance on grounds of commercial sensitivity?

If YES, please specify | N | Again, the information access procedure is not set out specifically in legal provisions and the SMC has not indicated that access requests would be negatively answered due to e.g. business secrets. However, as the information requested in the known example of a book of obligation is not potentially sensitive information it would be difficult to, for example, exclude the annex with the shareholder information from the inspection right. |
|  | 1. Are there any bureaucratic or other constraints, for instance charges, on public access?

If YES, please specify | Y | Since there is no provision specifying access and no freedom of information act, there is no specification of the process of access. Because the process is not set out by law, is unclear whether copies could be taken and if so of which parts and whether with or without a charge.Because the information is only available in hard copy, it would be a laborious and time-consuming process to obtain comparative information on a number of media. |
|  | 1. Would a reasonable, nontechnical individual be able to ascertain who effectively owns and ultimately controls the media organisation concerned from the information available?

If NO, please explain. | N | The legal framework does not *require* that information necessary to ascertain the effective owner of a media outlet must always be obtained and public access to the information is uncertain, it is unlikely (but not impossible) that the owner could be ascertained. |
|  | 1. Has the public made use of this facility in practice?
 | N |  |
|  | 1. If YES, is it common practice? Do the media pick up the information?
2. If NO, why not?
 |  | This is speculative, but as mentioned above the ownership structure of the relevant players in the Luxembourgish media market are probably broadly known and there have been few changes. Also, the media reporting about the players on the Luxembourgish market seems to be sufficient in order to satisfy the information needs of the public. |

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| 1. **Media-Specific Disclosure Requirements II: *Disclosure Directly to the Public***
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| **QUESTIONS** |  | **YES/NO** | **COMMENTS** |
| 2.1 Who has to disclose information and when? | 1. Are media organisations and/or their owners specifically required to disclose ownership details directly to the public?
 | Y |  |
|  | 1. If YES, please specify the legal basis for this requirement
 |  | The legal basis is the Law on Freedom of Expression in the Media of 8 July 2004[[10]](#endnote-10), amended by the Law of 27 July 2007[[11]](#endnote-11) and the Law of 11 April 2010[[12]](#endnote-12).[[13]](#endnote-13) The main relevant provisions are Articles 62, 63, 66, 67 and 69.  |
|  | 1. Who exactly is covered by this requirement?
 |  | **Print, broadcast and online media**Article 21 states that the requirement to publish information applies to all media that are made available to the public by a publisher, both on physical and non-physical media, both periodical and non-periodical. This means that print and online newspapers are covered. And since a publisher is defined by Article 3(3) as someone publishing via “any media”, broadcast media are also covered; however, in terms of reporting ownership information,Article 69 states that broadcast media only have to have the required information available on request to view at all times – they don’t have to keep it in the public domain at all times, eg via a website. There is no statistical evidence showing who has requested such information from electronic media. *The requirement to pro-actively publish information in the public domain only applies therefore to media that are not subject to a licensing regime (ie print and online media).* |
|  | 1. Does the duty apply to foreign as well as domestic media organisations?
 | Y |  |
|  | 1. Are there are any differences in the requirements that apply to European and non-European organisations.
 | N |  |
|  | 1. Where exactly is the information to be disclosed?
 |  | According to Article 63 for periodical and Article 62 for non-periodical publications, the required information has to be published in the publication itself, though the exact location is not specified. Article 65 specifies further that periodical publications containing an index also have to include in the index the location of the disclosed information.  |
|  | 1. When is information to be made available to the public?
 |  | The information specified in Article 62 (non-periodicals) and Article 63 (periodicals) must be available all the time. In addition, shareholder information in publications published by a legal entity must be included in the first edition of each year. As stated above, the broadcast media do not have to publish the information pro-actively but have it available for disclosure should it be requested. During the drafting of the Law on Freedom of Expression in the Media, there were objections to the dual regime for different media and proposals were put forward for a clearer provision encompassing all media. It did not, however get a majority and the dual regime remained in the final law. |
|  |  |  |  |
| 2.2 What information must be disclosed? | 1. Name of owner?
 | Y |  |
|  | 1. Country of domicile if a company? / Citizenship/residence status if an individual?
 | Y |  |
|  | 1. Size of shareholding?

If YES, please provide details |  | The information obligation does not extend to the actual shareholding size, but the requirement to list the identity of the shareholders is only triggered for shareholder sizes above 25% so one knows that the identified shareholder has at least that amount of shares.  |
|  | 1. If shares are held on behalf of another, e.g. through brokerage, must the name of the beneficial owner be disclosed?
 | Y |  |
|  | 1. Details of companies or individuals with an indirect controlling or significant interest?

If YES, explain. | Y | Article 66 refers not only to shareholders with more than a 25% direct share, but also an indirect stake in the company. In addition, there is a requirement to disclose ownership and management information about companies that control media outlets; Article 66 states the end shareholders with more than a 25% stake in controlling companies must also be disclosed.  |
|  | 1. Political, religious or other affiliations of shareholder / owner?
 | N | Article 64 allows the publisher to publish the editorial policy of a periodical publication but does not require this information.  |
|  | 1. Interests by owners in other media organisations?

If YES, explain.  | Y | Article 67 requires disclosure of shares of over 25% in another media company by all shareholders who have more than a 25% stake the media outlet in question or its controlling companies. Similarly if those that have more than a 25% stake in the media outlet or its controlling companies sit on the board of administration of another media company, this must also be disclosed. |
|  | 1. Management details: for example, directors (if a company), key executive officers, managing editor?
 | Y | Article 66, 2nd indent foresees this obligation for publications in the first edition each year. |
|  | 1. Sources of media revenue?
 | N |  |
|  | 1. Other.
 |  |  |
|  | 1. Are these obligations sufficient to establish who the legal or natural persons are who effectively own and ultimately control the media organisations?
 | N | The obligations allow disclosure of all direct and indirect shareholders with a share of over 25% in the company or its controlling companies. However the threshold is relatively high and so it is possible for there to be 4 shareholders each with 24% and for this not to be known. The size of the shareholding over 25% is also not disclosed.  |
|  |  |  |  |
| 2.3 Effectiveness of the disclosure regime | 1. Are there any sanctions for non-reporting?

If YES, what is the range of potential sanctions and who has power to impose them? | Y | The Law on Freedom of Expression does not explicitly provide sanctions for non-compliance. However, Article 21, as mentioned, holds the journalist, publisher or distributor liable for any violations under criminal or civil law. Regardless of criticism from journalists associations during the drafting of the revised law[[14]](#endnote-14), there is still a criminal provision in the penal code[[15]](#endnote-15), Article 299 and 300 that make it a crime to omit the name and residence of author or publisher of a distributed publication with the possible consequence of imprisonment between eight days and two months and/or a fine of €251 to €2000 (Article 299; Article 300 exempts certain persons from being criminally responsible). As this is a criminal sanction, it is imposed by the criminal courts if a procedure is initiated by the prosecutor. In addition, the law has created a self-regulatory body, the Press Council. Within that there is a ‘Commission des Plaintes’ which, pursuant to Article 23 (2) para.2, is responsible for receiving and dealing with complaints by individuals related to the ‘information contained in a publication’. The law does not state whether this only applies to the content of the publication (which was clearly the aim of it and is the subject of all complaints so far) or also to the accompanying information such as the ownership reporting. If the latter is assumed, the committee can give recommendations or issue a public or non-public reprimand without, however, being able to impose further sanctions. |
|  | 1. Are sanctions, if available, applied in practice?

If NO, why not? | N | Although this is not completely verifiable, using the sources available, this provision has not been applied for such violations in the past decades. This may result from the fact that a criminal sanction for a violation of press obligations is regarded as somewhat anachronistic and certainly a sanction of an imprisonment would run the risk of violating Article 10 of the ECHR (and since Luxembourgish courts can implement the Convention directly this would lead to ignoring any such request by a prosecutor). Also, it has proven not to be necessary since the general mechanisms available seem to be sufficient to ensure respect of the information obligation. Therefore, also the self-regulatory mechanism has not been used in this context so far. |
|  | 1. Can certain information be withheld, for instance on grounds of commercial sensitivity?

If YES, please specify | N |  |
|  | 1. Are there any bureaucratic or other constraints, for instance charges, on public access?

If YES, please specify | N |  |
|  | 1. Would a reasonable, nontechnical individual be able to ascertain who effectively owns and ultimately controls the media organisation concerned from the information available?

If NO, please explain. | N | The obligations allow disclosure of all direct and indirect shareholders with a share of over 25% in the company or its controlling companies. However the threshold is relatively high and so it is possible for there to be 4 shareholders each with 24% and for this not to be known. The size of the shareholding over 25% is also not disclosed. |
|  | 1. Has the public made use of this facility in practice?

 If NO, why not? | Y | As the reporting obligation requires disclosing the information in the publication, the information is readily available, it must be assumed some people are reading it.  |

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| 1. **Non Media-Specific Transparency Requirements (ie laws applying to companies)**
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| **QUESTIONS** |  | **YES/NO** | **COMMENTS** |
| 3.1 Who is required to disclose what, to whom and when? | 1. Are there non media-specific transparency requirements that require media organisations to disclose ownership information?
 | Y |  |
|  | 1. What is the relevant legal basis for disclosure?
 |  | 1. Law of August 10, 1915 regarding commercial companies (as modified) (hereinafter “LCC”)[[16]](#endnote-16), [Mémorial[[17]](#endnote-17) 90](http://www.legilux.public.lu/leg/a/archives/1915/0090/index.html) du 30.10.1915, page 925 (last amended by law on « [Sociétés commerciales et rapports de fusions ou scissions](http://www.legilux.public.lu/leg/a/archives/2011/0175/2011A2970A.html)”, [Mémorial 175](http://www.legilux.public.lu/leg/a/archives/2011/0175/index.html) du 12.08.2011)[[18]](#endnote-18)2. Law of December 19, 2002 on the register of commerce and companies and the annual accounts of undertakings[[19]](#endnote-19), [Mémorial 149](http://www.legilux.public.lu/leg/a/archives/2002/0149/index.html) du 31.12.2002, page 3630 (last amended by law on «[Normes comptables internationales pour les entreprises](http://www.legilux.public.lu/leg/a/archives/2010/0225/2010A3634A.html)”, [Mémorial 225](http://www.legilux.public.lu/leg/a/archives/2010/0225/index.html) du 17.12.2010)[[20]](#endnote-20)3. Law of May 19, 2006 on takeover bids implementing Directive 2004/25/EC on takeover bids[[21]](#endnote-21), Mémorial 86 du 22.05.2006, page 1510[[22]](#endnote-22)4. Transparency regulations[[23]](#endnote-23)a) Law of January, 11, 2008 implementing the EU Transparency Directive[[24]](#endnote-24), Mémorial 5 du 15.01.2008, page 46 (last amended by law on «[Autorités de contrôle bancaire et échange d'informations](http://www.legilux.public.lu/leg/a/archives/2011/0081/2011A1268A.html)», [Mémorial 81](http://www.legilux.public.lu/leg/a/archives/2011/0081/index.html) du 05.05.2011)b) The circular of February 6, 2008 implementing the EU Transparency Directive[[25]](#endnote-25)as well as information in the Officially Appointed Mechanism (OAM) [[26]](#endnote-26) [[27]](#endnote-27) |
|  | 1. To whom do the disclosure requirements apply (e.g., companies) and, In particular, where companies are required to provide ownership details, which types of companies are covered?
 |  | Under Luxembourgish law, if the law provides that companies are required to provide ownership details, all companies for which Luxembourg is considered as the “home Member State” (i.e. over which it has jurisdiction) are covered by this obligation. However, the requirement depends on the kind of company. The information below covers the major legal forms of companies that are usually used for entities active in the media sector. These are: • Joint stock company (“société anonyme” or “S.A.”):• Limited liability company (“société à responsabilité limité” or “S.à r.l.”):• Listed company. |
|  | 1. To whom is the information to be disclosed?
 |  | Joint stock company:For these companies a distinction is made between two categories of shares, as a joint stock company can have registered shares and / or bearer shares. It depends of the type of shares but, in principle, there is no requirement for external disclosure. For registered shares the information must be submitted to the company to enable the administrators to keep the share registers up-to-date (Article 39 LCC). For bearer shares there is no reporting obligation to “external entities”; the sole obligation is that the bearer shares are signed by a director of the company or by a proxy holder with such powers.Limited liability company:Under Article 185 of the LCC the information shall be disclosed to the company. Under to Article 6 of the law of December 19, 2002 on the Register of Commerce and Companies and the Annual Accounts of Undertakings the same information must also be disclosed to the Register of Commerce and Companies.Listed company:Under Article 8 (1) and 11 of the Law of January, 11, 2008 implementing the EU Transparency Directive and the circular 08/337 implementing the EU Transparency Directive a person must disclose within six trading days to the Luxembourg supervisory authority of the financial sector (“Commission de Surveillance du Secteur Financier” or “CSSF”) and to the issuer, its direct and indirect holdings in the voting rights of an issuer each time such holdings reach, exceed or fall below a certain percentage (5%, 10%, 15%, 20%, 25%, 331/3%, 50%, 662/3%), following the sale or acquisition.In addition, it is worth noting that under Art. 11 of the Law on takeover bids dated 19 May 2006 implementing Directive 2004/25/EC on takeover bids, in the case of a public offer of takeover of companies, detailed information about the company has to be published (inter alia about structure of the capital, significant direct and indirect shareholdings, the holders of any securities with special control rights and a description of these rights, if applicable the system of control of any employee share scheme where the control rights are not exercised directly by the employees, any restrictions on voting rights). |
|  | 1. When is the information to be notified?
 |  | When a joint stock company or limited liability company is registered for the first time, under Articles 1 and 6, no. 6 of the Law of December 19, 2002 on the register of commerce and companies and the annual accounts of undertakings, the name, surname, birth date and place or, in the case of entities, the seat, name, form etc. must be given as well as their private or professional address, and the number of shares they hold.For bearer shares of a joint stock company and a limited liability company, updated information shall be submitted whenever there is a stock transfer. For registered shares of a joint stock company, Article 185 LCC states that in the register of the company which is kept at the registered office of the company the articles of incorporation need to be mentioned including the original copies of every act of the company amending these articles (which includes each time a stock transfer is performed).For a listed company, the information shall be notified whenever there is a stock transfer and upon the request of the CSSF. |
|  | 1. What information must be disclosed?
 |  | For a joint stock company (“société anonyme” or “S.A.”):Under Article 39 of the LCC “a register of the registered shares shall be maintained at the registered office [of the company] and every shareholder may examine it.” If the company has issued bearer shares, the shares shall be signed by one or two members of the board or by one authorized person as the case may be, but no register is kept. For a limited liability company (“société à responsabilité limité” or “S.à r.l.”):Article 185 of the LCC provides that “Every limited liability company must maintain a register containing completed and certified copies: 1°of the constitutive deed of the company; 2° of the instruments amending said instrument.A list of the names, professions and addresses of the shareholders, a record of transfers of corporate units and the date of service or acceptance thereof shall appear thereafter.Every member may inspect the said register.”Article 195 of the LCC provides that the information about the shareholder that shall be disclosed to the company is the name, profession and address. Article 6 of the Law dated December 19, 2002 on the Register of Commerce and Companies and the Annual Accounts of Undertakings provides that certain information must be disclosed by the company to the Register of Commerce and Companies as part of its request for registration: shareholder’s first name, surname, date and place of birth, and if the shareholder is a legal entity legal, its registered office and in both cases the number of shares held by each of the members. For a listed company:Under Article 8 (1) and 11 of the Law of January, 11, 2008 implementing the EU Transparency Directive and the circular 08/337 implementing the EU Transparency Directive a person must disclose within six trading days to the Luxembourg supervisory authority of the financial sector (“Commission de Surveillance du Secteur Financier” or “CSSF”) and to the issuer, its direct and indirect holdings in the voting rights of an issuer each time such holdings reach, exceed or fall below a certain percentage (5%, 10%, 15%, 20%, 25%, 331/3%, 50%, 662/3%), following the sale or acquisition.The information shall include the name and address of the “stockholder” which is defined in article 1 para. 2 of the Law of January 11, 2008 implementing the EU Transparency Directive as being any individual or corporation ruled by public or private law holding, directly or indirectly, stocks, representative certificates of stocks, in his or her name for himself or for someone else (ie beneficial owners). Regarding specifically the notification requirement foreseen by Article 8, Article 12 extends this obligation to any holder of financial instruments which grants him or her the possibility to acquire, on his or her own initiative pursuant a formal agreement, stocks to which voting rights are attached, of an issuer whose stocks are admitted at a listed market. |
|  | 1. Do these obligations enable the public to obtain sufficient information to establish which legal or natural persons effectively own or ultimately control media organisations?

 If NO, please explain.  | MostlyY | This answer to this question depends on the type of company and the type of shares. It also depends on the level of knowledge of the person seeking the information. Generally speaking the answer is “yes” since the requirements are the same for all companies active under the different statutes and it is generally regarded as possible to obtain information about these companies.As regards listed companies, since both direct and indirect stockholders must be disclosed (including beneficial owners), and given the provision of Article 12 of the Law of January 11, 2008, the public can have complete access to that information. Such information is also easily accessible for the public regarding joint stock and limited liability companies, and as regards bearer and registered shares of a joint stock company these are kept in the registered office of the company. The most common form of company that is used in the media sector is that of joint stock company**.** |
|  |  |  |  |
| 3.2 Effectiveness  | 1. Where is the information recorded?
 |  | For registered and bearer shares of a joint stock company: In the share register which is kept at the registered office of the company.For a limited liability company: In the share register which is kept at the registered office of the company and in the register of commerce and companies.For a listed company: At the registered office of the company and at the CSSF. |
|  | 1. Are there any sanctions for non-reporting?

If YES, what form do they take and who applies them? | Y | For registered shares of a joint stock company or for a limited liability company, the sanction is that share transfers cannot be held against the company or third persons.For a listed company, the law includes administrative and criminal sanctions. According to Article 25 of the Law of January 11, 2008 the Commission may impose an administrative fine of €125 to €125,000, if the persons mentioned in Article 22 para. 2 do not answer to the information requests of the Commission, if the information is incomplete or inexact or if the company does not comply with the injunction of the Commission. Article 26 of the same law foresees criminal sanctions (fines from €250 to €125,000), too, if they do not publish or provide the information to the Officially Appointed Mechanism in accordance with the provisions of the Law or provide or publish false or incomplete information to the Commission or the Officially Appointed Mechanism (OAM). |
|  | 1. Are any applicable sanctions for violations applied in practice?

 If NO, why not?  | Y |  |
|  | 1. Can the public obtain access to this information?

If YES, how? | N | It depends on the type of company. In principle the answer is no as the information is kept at the registered offices or at supervisory bodies. However, for a limited liability company, anyone can go to the office of the Register of Commerce and Companies and have access to the entire file for free. The Register of Commerce also allows a consultation via the internet, but this access does not contain all documents at the moment and fees are charged for such access to the documentation.  |
|  | 1. Are there any practical conditions or charges that could serve to restrict public access?

If YES, please specify, | Y | Partly yes, as can be seen from the answer above under d). The complete information is issued for free or for a fee up to €50.  |
|  | 1. Would a reasonable, nontechnical individual be able to understand who effectively owns and ultimately controls the media organisations using the information indicated in this section?

If NO, why not? | N (not all) | As regards listed companies, since both direct and indirect stockholders and beneficial owners are under the scope of the obligation, as this information is notified on a regular basis according to the law and given the provision of Article 12 of the Law of January 11, 2008 which covers an extensive scope of direct and indirect holders one can consider that the public is enabled to have a complete access to the information.Regarding joint-stock and limited liability companies, one can consider the information accessible, too, as the law states that the documents have to be kept in the registered office of the company and it can now also be accessible on distance through the Register of Commerce website for any interested persons regarding the limited liability companies. The members/shareholders have the right to inspect. There is no statutory right of access for the general public. It cannot be established through this research whether companies allow the information to be used by the general public but it is likely that they do not allow such information for several reasons, including confidentiality, non-disclosure commitments etc.. |
|  | 1. Have the public made use of this facility to establish media ownership information in practice?

If NO, or limited, use has been made, why not?  |  | There is no publicly available information on this which indicates that it is at least not a common thing to happen.  |

**ENDNOTES**

1. In French *Loi modifiée du 27 juillet 1991 sur les medias électroniques, Mémorial 47 du 30.07.1991 page 972* [↑](#endnote-ref-1)
2. In French *Loi du 08 avril 2011 (Mém. A - 69 du 12 avril 2011, p. 1120)* [↑](#endnote-ref-2)
3. In French *Loi du 17 décembre 2010 (Mém. A - 241 du 24 décembre 2010, p. 4024)* [↑](#endnote-ref-3)
4. In French *Loi du 08 juin 2004 (Mém. A - 85 du 08 juin 2004, p. 1202)* [↑](#endnote-ref-4)
5. In French *Loi du 02 avril 2001 (Mém. A - 42 du 17 avril 2001, p. 924)* [↑](#endnote-ref-5)
6. Link to all versions of the law under <http://www.legilux.public.lu/leg/a/archives/1991/0047/1991A09721.html?highlight=medias>. English (consolidated) version (unofficial translation) available on the sites of the AVMSD project [www.medialaw.lu](http://www.medialaw.lu), exact URL: <http://wwwen.uni.lu/content/download/35379/426216/file/Luxembourg_translation_1.pdf> [↑](#endnote-ref-6)
7. In French *cahier de charge* [↑](#endnote-ref-7)
8. Relevant Institutions for Supervision of the Media in Luxembourg

In order to facilitate the understanding of the specifics of the Luxembourgish system below is a brief description of the regulatory bodies. In addition, further details can be found both in the Final Report as well as the Country Report for Luxembourg of the INDIREG-Study (based on contributions by the same expert as for this questionnaire; published under <http://ec.europa.eu/avpolicy/docs/library/studies/regulators/final_report.pdf> and <http://www.indireg.eu/wp-content/uploads/Annex_II-_CountryTables_Luxembourg.pdf>).

The Luxembourgish Law on Electronic Media in its institutional chapter (Article 29 et seq) creates five bodies, of which the following four are worth mentioning:

**1. Service des médias et de l’audiovisuel (renamed later to Service des médias et des communications, SMC)**

This “service unit” is a part of the governmental administration working for the minister responsible for the media (currently the Minister for Communications and the Media). As such, it is staffed with state employees that provide assistance to the minister, but also for the other institutions created by the law in the field of the media. In addition, the SMC is in charge of maintaining international cooperation including the working groups on EU level. Although it is integrated into the regular administration, the SMC is regarded as having a special position by building bridges between the different parties involved in the media landscape. Its task and structure are explained further below.

**2. Commission indépendante de la radiodiffusion (CIR)**

This independent commission has *inter alia* responsibilities in the field of certain radio programmes as well as advising the government prior to granting licences to broadcasting channels. It is composed of five members, one of whom is proposed by the Press Council. The nomination of the members comes in the form of a so-called “arrêté grand-ducal” (which is a person-related form of a Règlement grand-ducal) and is valid for five years. The members receive an allowance covered by the state budget and fixed by the government.

**3. Conseil national des programmes (CNP)**

The National Programme Council (Conseil national des programmes, CNP) which is of special relevance here, has several functions in connection with television and radio programmes. The CNP has a maximum of 25 members who are sent as delegates from organisations representing groups active in the social and cultural life. The list of organisations entitled to send members to the CNP is fixed in a respective “arrêté grand-ducal”, the actual nominated persons are confirmed in a “arrêté ministériel portant nomination des members du Conseil National des Programmes”, the last one dating from 17th September 2007.

The internal organisation of the CNP is determined by a Grand-Ducal Regulation (Règlement grand-ducal du 27 février 1992 fixant les dispositions sur le fonctionnement interne du Conseil National des Programmes, créé par l’article 31 de la loi du 27 juillet 1991 sur les médias électroniques, Mém. A - 13 du 19.03.1992, p. 657), but the autonomy of the CNP is already safeguarded by the Law on Electronic Media, which in Article 31 (5) clarifies that the appointment of the president and two vice-presidents of the council remains in the hands of the members that choose them from within their circle; also, these may not be part of the governmental administration. Some basic procedural rules, such as the question of valid majorities in decision-making are to be found in the Règlement which additionally grants the CNP the right to complement the Règlement with a set of internal rules that give more details on the way work is conducted.

**4. Commission consultative des médias (CCM)**

Finally, there is a commission which was introduced in order to maintain a dialogue between the government and the companies active in the field of the media in a broad sense. The commission does not participate in the decision-making processes with a specific function, but can be consulted by the minister in case he thinks it appropriate and can be used as a forum to bring topics to the attention of the government.

Further information can be found at: <http://www.mediacom.public.lu/institutions/Institutions_nationales/index.html> [↑](#endnote-ref-8)
9. This research is based on the contents of annual reports or press releases (available on their website) and anecdotal evidence. It did not specifically concern an ownership information request but is used here to show that the warning broadcasters that they are violating their obligations and on course for to a potential problem with their licence works sufficiently. [↑](#endnote-ref-9)
10. In French *Loi sur la liberté d’expression dans les medias du 8 juin 2004, Mémorial 85 du 08.06.2004 page 1202* [↑](#endnote-ref-10)
11. In French *Loi du 27 juillet 2007 (Mém. A - 131 du 8 août 2007, p. 2330)* [↑](#endnote-ref-11)
12. In French *Loi du 11 avril 2010 (Mém. A - 69 du 30 avril 2010, p. 1324)* [↑](#endnote-ref-12)
13. Link to all versions of the law under <http://www.legilux.public.lu/leg/a/archives/2004/0085/index.html>. Published in a consolidated version in [Mémorial 69](http://www.legilux.public.lu/leg/a/archives/2010/0069/index.html) du 30.04.2010 page 1325 <http://www.legilux.public.lu/leg/a/archives/2010/0069/a069.pdf#page=3>. English (consolidated) version (unofficial translation) available in the near future on [www.medialaw.lu](http://www.medialaw.lu), under Luxembourgish legal texts, exact URL: <http://wwwen.uni.lu/research/fdef/media_law/texts> [↑](#endnote-ref-13)
14. See above note 13, p. 53 et seq [↑](#endnote-ref-14)
15. <http://www.legilux.public.lu/leg/textescoordonnes/codes/code_penal/CodePenal_PageAccueil.pdf>) [↑](#endnote-ref-15)
16. In French *Loi du 10 août 1915 concernant les sociétés commerciales* [↑](#endnote-ref-16)
17. Mémorial is the Official Gazette in Luxembourg. [↑](#endnote-ref-17)
18. All versions of the law at <http://www.legilux.public.lu/leg/a/archives/1915/0090/1915A0925A.html> [↑](#endnote-ref-18)
19. In French *Loi du 19 décembre 2002 concernant le registre de commerce et des sociétés ainsi que la comptabilité et les comptes annuels des entreprises et modifiant certaines autres dispositions légales* [↑](#endnote-ref-19)
20. All versions of the law at <http://www.legilux.public.lu/leg/a/archives/2002/0149/2002A36301.html> [↑](#endnote-ref-20)
21. In French *Loi du 19 mai 2006 portant transposition de la directive 2004/25/CE du Parlement européen et du Conseil du 21 avril 2004 concernant les offres publiques d'acquisition*  [↑](#endnote-ref-21)
22. All versions of that law at<http://www.legilux.public.lu/leg/a/archives/2006/0086/2006A1510A.html> [↑](#endnote-ref-22)
23. All the following to be found under <http://www.cssf.lu/emetteurs-prospectus/obligations-transparence/documentation/> [↑](#endnote-ref-23)
24. In French *Loi du 11 janvier 2008 relative aux obligations de transparence concernant l’information sur les émetteurs dont les valeurs mobilières sont admises à la négociation sur un marché règlementé et portant transposition de:
– la directive 2004/109/CE du Parlement européen et du Conseil du 15 décembre 2004 sur l’harmonisation des obligations de transparence concernant l’information sur les émetteurs dont les valeurs mobilières sont admises à la négociation sur un marché réglementé et modifiant la directive 2001/34/CE
– l’article 9 du règlement (CE) n° 1606/2002 du Parlement européen et du Conseil du 19 juillet 2002 sur l’application des normes comptables internationales et portant modification de:
– la loi modifiée du 23 décembre 1998 portant création d’une Commission de surveillance du secteur financier* [↑](#endnote-ref-24)
25. In French *[Circulaire CSSF 08/337](http://www.cssf.lu/fileadmin/files/Lois_reglements/Circulaires/Hors_blanchiment_terrorisme/cssf08_337.pdf%22%20%5Ct%20%22_top%22%20%5Co%20%22cssf08_337.pdf%20%28150%20KB%29) relative à l'entrée en vigueur de la loi du 11 janvier 2008 et du règlement grand-ducal du 11 janvier 2008 relatifs aux obligations de transparence sur les émetteurs de valeurs mobilières*  [↑](#endnote-ref-25)
26. Under the European Union's Transparency Directive, each member state must appoint a central storage – an Officially Appointment Mechanism or OAM) - to which issuers of securities operating in the area of the European Union must file their regulated information, including prospectuses, interim reports, financial statements, profit warnings and information dealing with changes in ownership. [↑](#endnote-ref-26)
27. In French *[Lettre circulaire de la CSSF du 16 décembre 2008](http://www.cssf.lu/fileadmin/files/MAF/Lettre_circulaire_OAMdoc_11-0.pdf%22%20%5Ct%20%22_top%22%20%5Co%20%22Lettre_circulaire_OAMdoc_11-0.pdf%20%2846%20KB%29) concernant la mise en œuvre du mécanisme pour le stockage centralisé des informations réglementées («) au sens de la loi du 11 janvier 2008 relative aux obligations de transparence sur les émetteurs de valeurs mobilières et rappel des obligations de stockage, de diffusion et de dépôt auprès de la CSSF de ces informations.* [↑](#endnote-ref-27)