

MANAGING ACROSS LEVELS OF GOVERNMENT

LUXEMBOURG

1. Institutions and authority

1.1 Structures

The Grand Duchy of Luxembourg is a sovereign independent State with a hereditary constitutional monarchy. It has a population of approximately 400 000 its territory covers an area of 2 587 km². Executive power is vested in the Crown and the Council of Ministers. Legislative power is exercised by the members of the Chamber of Deputies who are elected for a term of five years. Bills must be submitted for the opinion of the Council of State whose members are appointed by the Grand Duke.

The only levels of local government in the Grand Duchy are the municipalities (*communes*) and there is no intermediate tier of government between these local authorities and central government. Limited powers of government are vested in the municipalities under Article 107 of the Constitution.

Description of levels

As a small country, Luxembourg has no regional or departmental authorities: the decentralisation principle operates solely at municipal level. These are autonomous units, delimited by geographical boundaries and each has legal personality.

Table 1. Area and population of the municipalities

	Area (km ²)	Population
Maximum	50 approx.	75 000
Minimum	10 approx.	180
	Number of inhabitants	Number of municipalities
	fewer than 500	10
	501-1 000	50
	1 001-3 000	41
	3 001-5 000	8
	5 001-10 000	6
	over 10 000	3

Source: *Structure and Operation of Local and Regional Democracy: Luxembourg* Council of Europe, 1993

In 1995, Luxembourg had 118 municipalities grouped into districts. In 1950 there were 126 municipalities.

Central government at the sub-national level

The Grand Duchy is divided into three administrative districts. In each of these, a civil servant, the District Commissioner, is appointed by the Grand Duke. The District Commissioners operate under the supervision of the Minister of the Interior, except in emergencies and where otherwise provided by special laws or regulations.

The jurisdiction of the District Commissioners extends to all municipalities in their district, except for the city of Luxembourg which is under the direct control of the Minister of the Interior. The duties of the District Commissioners, defined in section 114 of the Municipalities Act of 13 December 1988, include, among others;

- ensuring the implementation of national and local laws and regulations and the proper administration of the assets and income of the municipalities; auditing the budgets and accounts of the municipalities and those of the public bodies under their supervision or the supervision of municipal associations;
- the direct supervision of local government and local government officers.

District Commissioners are required to report any problems with the financial or administrative management of municipalities to the Minister of the Interior.

Creation, elimination and restructuring

Legislation is required to create new municipalities, either by merging parts of one or more existing municipalities or by merging two or more municipalities, and to change the boundaries of a municipality. Apart from the mergers of some municipalities in 1920, 1977 and 1978, there have been hardly any boundary changes since the early 19th century. Such mergers are subject to the agreement of the municipalities concerned.

There are also municipal associations, set up with a specific purpose in view and solely on the initiative of municipalities that wish to pool their resources so that they can provide better quality services at lower cost to the population they serve. The formation of such associations is governed by law and is always on a voluntary basis at the initiative of the local councils concerned. Some associations are single-purpose, some are multi-purpose. From 15 or so such associations in the 1960s, there were around 50 in 1995.

Associations of municipalities are governed by the Grand Ducal Order on their institution and by the statutes it incorporates, as published in **Luxembourg's** Official Journal. Municipal associations (like municipalities themselves) are responsible to the Minister of the Interior and are subject to the provisions of the Municipalities Act. They have their own management structure.

Control bodies

The Constitution provides for a system of local government control exercised by the Grand Duke, the Minister of the Interior and central government through the District Commissioners. The Grand Duke can annul any general or specific act of local government that is contrary to the law or the public interest and can declare void both regulatory acts and specific decisions of the council, board or mayor. The Minister of the Interior can suspend any act of general or specific application by a commune that is contrary to the law or the public interest. Lastly, a number of decisions by municipal councils are subject

to the assent of the Grand Duke or the Minister of the Interior: only the Grand Duke has power to levy, alter or abolish local taxes and associated regulations.

Any intervention by the body responsible for administrative control on the grounds of the advisability of decisions taken by municipal councils is deemed to be *ultra vires*. Municipal authorities have the right to appeal to the Litigation Committee of the Council of State against any decision by a control body.

Municipal accounts are scrutinised by the District Commissioners and audited by the municipal accounts audit division of the Ministry of the Interior.

1.2 Powers

Nature of sub-national institutions

Although they derive from the Constitution, the powers of municipalities are subordinate powers in that they are both prescribed and circumscribed by the law. The Municipalities Act of 1988 defines the powers and functions of the municipal authorities. They are required to comply with the general laws and regulations from which local by-laws may not derogate. By municipal authorities is meant the municipal council, the mayor and aldermen's boards, the mayor, the tax collector and the bodies of the Municipal Associations and public corporations for which the municipalities are responsible.

The most recent legislation on purely municipal affairs dates back to the 1868 Constitution. One has to go back as far as the decree of 14 December 1789 relating to the Constitution of municipalities, still in force in the Grand Duchy, for a definition of independent powers at municipal level. Under this decree: "The functions of municipal government are to manage the collective assets and revenues of towns, villages, parishes and communities; to settle and acquit those local expenditures that must be paid from the common purse; to ensure that the populace enjoys the benefit of good rule, particularly as regards cleanliness, health, safety and order in its streets, public places and buildings."

Municipal powers extend only to the boundaries of the municipal area and are exercised by two bodies: a decision-making assembly and an executive body. The assembly is the municipal council, directly elected every six years by constituents who are eligible to vote. The number of councillors varies with the size of the population (from 7 to 27 councillors). Each municipality forms one electoral constituency. Elections are normally by straight majority voting, but where municipalities have a population of at least 3 500, or one electoral division of at least 3 000 inhabitants, elections are by proportional representation, as for national elections.

As the main organ of municipal power, the council decides on all matters of purely municipal interest. Councils are empowered by law to issue by-laws, and impose sanctions for breaches thereof. Jurisdiction is unlimited with regard to anything concerning the internal administration of the municipality. The council decides on all matters relating to municipal assets, revenue, expenditure, building work, its public agencies, etc. With the assent of the Minister of the Interior, it appoints, dismisses and accepts the resignation of the municipality's public servants and staff, and appoints the members of the boards of community homes and welfare services. The council decides on the municipality's annual budget and balances the accounts. With the assent of the Grand Duke it may levy municipal taxes, and it oversees the board of aldermen which is the municipality's executive body.

Executive power is exercised by the mayor and aldermen's board, which consists in each municipality of the mayor and usually two aldermen. The number of aldermen can range from three (in municipalities with a population of 10 000 to 25 000) to six (in municipalities with a population of over 50 000).

In towns, mayors and aldermen are appointed for a term of six years by the Grand Duke; aldermen in other municipalities are appointed by the Minister of the Interior. They are chosen from among the members of the council. The powers of the aldermen's boards are both general and local. As the executive arm of central government, it is the duty of the board of aldermen to implement within its territory Grand Ducal and Ministerial Acts and Orders, except those relating to the police.

As the executive arm of local government, it is the duty of the mayor and aldermen's board to publish and execute Resolutions of the municipal council and to supervise the proper operation of local services. The board also represents the municipality in judicial proceedings and keeps records, certificates and registers of births, marriages and deaths.

As an executive officer of the municipality, the mayor is the chairman of the municipal council and of the board of aldermen. As an executive officer of central government, the mayor is charged with implementing Grand Ducal and Ministerial Acts and Orders relating to the police (Act of 29 July 1930 as amended regarding State control of local police). The Mayor is an officer of the law and also carries out the duties of registrar.

Although each council is free to make its own internal rules of procedure, standard rules for municipal councils have been drafted by the Ministry of the Interior.

Type and degree of autonomy

In principle, municipalities are free to set local rates and to institute new types of local tax, always providing that they are not contrary to the public interest. There are no additional (local) charges on national taxes. By virtue of the principle of their autonomy, municipalities can, for example, introduce taxes and charges in order to finance the provision of discretionary services. Their role in public health, family policy, culture, leisure and transport services comes under this category. In all of these areas the ministries concerned operate a subsidisation policy in order to raise the awareness of the municipalities and to prompt them to provide good local infrastructure coverage.

1.3 Responsibilities

Distribution of responsibilities

Municipalities are directly responsible for all regulations relating to their own internal administration and for by-laws in their own area (except as regards hunting and fishing which are exclusively the prerogative of central government) for roads, water supply and sports facilities.

Central government and the municipalities share responsibility for refuse disposal, environmental protection (municipalities can draft "green plans" which are partly subsidised by central government), road building and maintenance, the provision of crèches, nurseries, and nursing homes. Gas, urban heating and electricity are functions of central government.

Every municipality is required to provide pre-school and primary education for children in its area for nine consecutive years. The construction and maintenance of school buildings for primary education and the purchase of educational materials are the responsibility of the municipalities. Primary school teachers are appointed by the municipal councils on the advice of the inspector and with the approval of central government. Teachers' salaries are paid initially by central government, with one third of the cost being refunded subsequently by the municipality. The provision of secondary, vocational and higher education are not the responsibility of the municipalities.

As regards health matters, municipalities are required to make by-laws determining the measures necessary to protect public health and improve sanitation. The building and management of hospitals and old people's homes is a function that is shared by central and local government. Every municipality in the country has to provide welfare support to the needy (in the form of money or by finding them employment).

The Act of 20 March 1974 enables the government to implement national, regional and sectoral development plans. Plans drafted at national level can be imposed on municipalities by the State Council (*Conseil de gouvernement*). Moreover, every municipality in Luxembourg is now required to draft or have drafted a local development plan under the Act of 12 June 1937 on the development of towns and other built-up areas.

Mandatory, optional and shared responsibilities

Although there has never been any formal distinction, the actions of municipalities can be divided into two categories; mandatory and discretionary functions.

The "mandatory" duties usually include those which derive from two decrees dating from 1789 and 1792 which define the particular functions to be carried out by the municipality. As a general rule, the following duties are the responsibility of the municipalities alone:

- the organisation and operation of the municipality as an autonomous administrative unit; public safety; hygiene and sanitation; local roads; aid for the needy; pre-school, primary and complementary education (though two-thirds of teachers' salaries are paid by central government).

Among the "discretionary" services are those which are not considered indispensable at the municipal level but which are necessary at the national level;

- activities in the public health sector (such as hospitals and dispensaries); initiatives in the welfare area (e.g. crèches, homes) cultural activities and sports facilities; the provision of public transport; the supply of electricity and gas, and the creation of industrial and leisure complexes.

The areas of responsibility of municipal associations generally include water supply, hospitals, old people's homes, refuse collection and disposal, public hygiene, the construction and maintenance of schools, sports centres, swimming pools, crematoria, parks, sewerage plants, municipal information management, and regional industrial areas.

2. Management functions

2.1 *Policy-making and co-ordination*

Coherence, consultation and conflict resolution

The principle of the autonomy of the municipalities is deeply entrenched in public life in Luxembourg. Central government has implemented an incentive policy in order to maintain or secure a uniform level of service provision country-wide. A number of standards and benchmarks have been established and municipalities are encouraged in various ways -- principally through government subsidies -- to adopt them. The incentive principle is applied at all levels including partnerships with private sector institutions and associations.

Referenda and public consultations at the local level are purely consultative in nature. Referenda, instituted under the 1988 Act, are called by the municipal councils and are limited to registered voters. Less formal public consultation, provides all residents, not just registered voters, with an opportunity to air their views on a specific problem.

Formal and informal mechanisms

The country's 118 municipalities are all members of Luxembourg's Towns and Municipalities Association, which was set up in 1951. The Association operates as a non-profit making body.

1986 saw the formation of another umbrella association for towns and municipalities, SYVICOL, with a similar legal structure. SYVICOL is run by a committee of 15 members who must be local elected representatives. Its main objectives are in two areas:

- Protecting the joint interests of the member municipalities. The association examines municipal grievances and forwards them to the appropriate body for settlement;
- Taking part in the legislative and regulatory process. The Government recognises SYVICOL as the representative of the municipalities. The association is consulted on legislative and regulatory texts that concern the municipalities. In important matters, the municipalities may be consulted individually.

In addition SYVICOL members sit on many commissions and working parties set up by the government, such as the Central Commission (which deals with all matters relating to public service at municipal level), the National Environmental Protection Committee and the Higher Regional Development Council.

2.2 *Financial management*

Sources of revenue

Each municipality has two different budgets: a current (or operating) account and a contingency (or capital) account. Revenues to the current account include the following.

- a) Approximately two-thirds are non-appropriated or are block subsidies, essentially from fiscal sources:

- municipal commercial taxes (CI) based on profits and operating capital. This tax is collected from businesses by central government on behalf of the municipalities.
 - property tax (IF), levied directly by the municipalities on properties within their area.
 - municipal transfer funds (FCDF), which represent the municipalities' contributions to State taxes (income tax, value-added tax, vehicle taxes, plus a lump-sum appropriation).
- b) One-third consists essentially of taxes and charges or specific subsidies for the provision of mandatory or discretionary services and facilities. The taxes and charges are calculated on the basis of usage of the various services by residents in the municipal area. These are generally services that are part of the statutory duties of the local services (see section on Responsibilities).

Although, generally, the main sources of revenue can be broken down into three roughly equal shares, the shares of the three current types of revenue in the total revenue of a municipality can vary a great deal from one authority to the next, chiefly with the size of the resident population and area.

Capital resources (contingency account) are from two sources:

- a) The municipality's own resources (for example a surplus of revenues over expenditure on the current account, contingency taxes and charges, revenue from the realisation of assets or the repayment of loans which constitute a sort of compulsory savings on the current account and hence a kind of obligatory, systematic self-financing).
- b) Capital transfers from the State in the form of subsidies from the Ministry of the Interior (to re-establish the investment capacity of one municipality relative to the others in the event of investment in basic facilities and infrastructure); specific subsidies from the various government departments (promoting the necessary public facilities at national level, the rates of which vary according to national priorities and regional coverage).

Table 2. Trends in municipalities' current account revenues (1980, 1985, 1990, 1993)

(in millions of Luxembourg Francs)

	1980	1985	1990	1993 ⁽³⁾
Local tax revenues	4 084	7 088	7 935	11 391
Other local receipts (in accordance with the interim account) ⁽¹⁾	4 555	7 993	9 606	11 300
Transfers of unallocated revenues from the State to the municipalities. Effective income ⁽²⁾	3 516	5 113	8 557	10 495
TOTAL current account receipts (in accordance with the interim account)⁽⁴⁾	12 154	20 194	27 098	33 096

1. Other local receipts comprise all receipts from income tax and charges as well as income from utilities such as gas and electricity, etc. Spending on both the current and contingency accounts of the municipalities must be set against these revenues.
2. Transfers of unallocated revenue from the State to the municipalities include:

- a) the municipal fund, up to and including 1987;
- b) municipal contributions to certain State taxes;
- c) municipal financial compensation fund (in 1987 only).

From 1988 onwards, transfers under a), b) and c) are grouped under the municipal transfer fund (FCDF).

3. Adjusted accounts.

4. The figures are rounded and totals may not be exact.

Source: *Rapport d'activité 1994*, Ministry of the Interior, Grand Duchy of Luxembourg (February 1995).

Operating and investment expenditure by municipal associations is financed solely by the contributions of the member municipalities, contributions which must be entered in municipal contingency and current accounts. Each association has its own account, which it manages itself. Associations receive subsidies for the purpose for which they were formed. Apart from these specific funds they have no powers to raise taxes. This procedure maintains the independence of the municipality, while enabling it to fulfil its role as a platform for democracy at local level. In this way, local people are closely involved in the running of their local authority even if some of its functions are delegated to an inter-authority entity.

Loans of more than LF 300 000 are subject to the approval of the Minister of the Interior. Such loans are authorised if an examination of the financial position of the municipality shows its ability to repay the loan from the budget for future years. Repayments are entered into the current account each year. If the municipality's budget does not balance, it is required to rectify the situation by its own means in which case it is the municipality's discretionary functions that are usually cut first.

As a general rule, municipalities take out loans with commercial banks, since borrowing on the capital market has always been, and still is, virtually non-existent. No legal or regulatory provision prohibits borrowing from public or quasi-public bodies abroad or from obtaining loans on foreign capital markets.

Expenditure responsibilities

When obligatory spending concerns several municipalities, they each contribute a share proportional to their expected gain from the investment. Where there is refusal or disagreement on the share to be contributed, the matter is referred to the Minister of the Interior for resolution. The Minister's decision can be appealed through the Litigation Committee of the Council of State, which judges the merits of the case and is the final court of appeal.

Table 3. Trends in municipal accounts (1980, 1985, 1990, 1993, 1994)

(data from interim accounts in millions of Luxembourg Francs)

	1980	1985	1990	1993 ⁽¹⁾	1994 ⁽²⁾
Current receipts	12 154	20 194	27 098	33 096	32 308
Current expenditure	10 153	16 400	22 263	28 547	30 000
Extraordinary receipts	1 863	1 354	2 600	6 509	11 218
Extraordinary expenditure	4 157	3 648	7 460	14 353	16 143

1. Adjusted accounts

2. Accounts

Source: *Rapport d'activité 1994*, Ministry of the Interior, Grand Duchy of Luxembourg (February 1995).

Balance between discretion and control

Municipalities are responsible to the Ministry of the Interior, which co-ordinates and supervises financial matters at local level. Municipal accounts and some special subsidies are allocated by the Ministry.

2.3 Performance management

Efficiency is not monitored in **Luxembourg**. The only checks made are for compliance with standards (which determine whether or not subsidies will be paid out) and budgetary and financial supervision. Municipalities have an obligation to balance their budgets and verify that they have been used properly.

2.4 Human resource management

The status of municipal civil servants was defined by the Act of 24 December 1985. The terms for entry into the civil service, promotion, resignation and salaries as well as the rights and duties of civil servants and municipal employees are prescribed by law and, within the limits of the law, by resolutions of the municipal council duly approved by the Minister of the Interior. Their status is similar to that of central government civil servants. Wages are negotiated by central government and the civil service trade unions. The wages of local government staff and workers are determined by collective agreements between the municipalities and the employees and workers.

Legal provisions govern conferral of the status of "civil servant". It is conferred on those who, on a permanent basis, have been appointed by the municipal council to the staff of a municipality (by secret ballot of the council under absolute majority voting rules) subject to approval by the Minister of the Interior, to exercise a function pursuant to a legal or regulatory provision, or a function created by a special resolution of the council. Municipal staff are also appointed by the council: workers are appointed by the Board. All of these staff members are under the authority of the board of aldermen.

The mix of civil servants, other staff and workers employed in the different parts of the municipality varies. In 1991, for instance, 38 per cent were civil servants and 52 per cent were workers; as opposed to 22 per cent and 31 per cent respectively in municipal associations and five per cent and 43 per cent respectively in public corporations.

Table 4. Salaried staff in local government (1981, 1989, 1994)

(Data as at 31 December)

	1981		1989		1994	
	(1)	(2)	(1)	(2)	(1)	(2)
Municipalities	5 610	5 139	6 542	5 931	7 054	6 442
Municipal associations	539	500	720	653	850	760
Public corporations	705	679	1 011	957	1 428	1 313
TOTAL	6 854	6 318	8 273	7 541	9 332	8 515

1. Number of posts.

2. Full-time equivalent.

Source: Ministry of the Interior

3. Trends in redistributing authority across levels of government

3.1 *Evolving tendencies*

In the 1960s a plan to merge municipalities along the same lines as in Belgium aimed at reducing the number of municipalities to about 30. This plan met with some resistance on the political front and despite a series of Acts (1970, 1977 and 1978) only a few of the mergers went ahead, all on a voluntary basis. There are now 118 municipalities instead of 126 as in the 1950s. The Government therefore decided to encourage the formation of municipal associations, offering them larger subsidies for capital investment. These associations have been quite successful, as there are now over fifty, as opposed to fifteen or so 30 years ago, and the numbers are still rising.

In 1988 a new Municipalities Act was drafted, superseding the old 1843 Act. This did not make any fundamental changes nor did it affect political structures. What it did do was to make provision for ensuring greater democracy in the running of local councils. At the same time, administrative controls were relaxed -- and the number of legal requirements were reduced (except in fiscal matters, which are covered in the Constitution). The municipalities were also given the right to appeal administrative decisions.

3.2 *The current debate*

In 1995, the Government began a process of discussion on a wide-ranging reform of the administration. The respective functions and roles of central and local government are among the issues being addressed as are ways and means of reducing the over-accumulation of current regulations. Since **Luxembourg** is a small country, the introduction of an intermediate tier is not being considered.