Local Autonomy Index for the European countries (1990-2014): Luxembourg (LUX)

Dr. Raphael Kies (University of Luxembourg)
Kim Kommesh (Science po Paris)

Self-rule

1. Institutional depth
According to Art. 107 of the Constitution, municipalities are autonomous territorial entities with legal personality, managing their estate and own interests. The Constitution defines a range of tasks but municipalities can offer additional services (they need to be in accordance with the municipal interest and respect terms and conditions defined by the central state if the municipality wishes to receive state subsidies) but these extra tasks are not predefined. Municipalities regulate everything that is of municipal interest, paid parking, urbanism, land planning and property management, primary education, fire service (Municipal Law Art. 100), they are obliged to provide a cemetery (Law 01/08/1972, Art. 2), are in charge of civil status (Constitution, Art. 108), water and waste management (Decree 16-24/08/1790, Art. 3), have various missions in environmental protection and certain social services (Law 18/12/2009). Examples of services the municipality can offer at its own initiative include music education (financial participation by state), sports (municipalities can decide about facilities), tourist infrastructure, nurseries, and infrastructures for cultural purposes. It should be acknowledged that local authorities tend to choose optional services that are co-financed by the state. This means that municipal authorities can offer additional services in theory but practice is limited when they themselves have to fully finance these.

CODING
Luxembourg scores 3.

2. Policy scope
In Luxembourg tasks, responsibilities and competencies are shared between the national and the local level. There are 3 administrative districts and 12 cantons further subdividing the territory. District commissioners act as intermediaries between national government and local authorities but they do not have any policy-making powers; they ensure the correct implementation of legislation, supervise general municipal administration and examine municipal budgets and accounts. It should however be noted that the administrative districts and the district commissioners could soon disappear. This is part of the plan of the new government to review the functioning and role of the municipal supervision (see coalition programme of October 2013). The cantons do not have any administrative structures; they serve as territorial units to define limits of electoral and administrative districts. Luxembourg is a unitary state with a one-tier subnational government. The municipal law attributes a list of tasks to municipal authorities. In these domains they have quasi-full autonomy (ministerial approval is needed) except for primary education where the policy scope is more limited.

Education: 1990-2009: 2, 2009-2014: 1

Municipalities participate in organising the infrastructure of fundamental education, i.e. pre-school education (précocé), kinder garden and primary education (Constitution, Art. 107). The municipality ensures the establishment and maintenance of school
buildings (it covers the costs of construction and equipment while the state makes contributions as determined in the budgetary law). Until 2009, municipalities were able to choose teaching staff but the 06/02/2009 law on the organization of primary education transferred this power to the central state.

Social Assistance: 1 over the entire period

Up to 2009, each municipality had an agency for social matters (office social) and the management committee decided how and whom the money was allocated to. The 18/12/2009 law on social assistance pools these agencies together and states that municipalities of at least 6000 inhabitants need an agency for social matters.

Health: 0 over entire period

The Ministry of Health coordinates hospitals, authorizes construction and expansion projects, acquisition of new equipment, coordinates pharmacies and decides on medical offices.

Land Use: 2 over the entire period

The municipality is in charge of managing land and territory (Constitution, Art. 107) and provides building permits if the projects comply with municipal and national territorial development plans. The 19/07/2004 law on territorial development obliges municipalities to draft their own general development plan (Plan d’Aménagement Général), which needs to be approved by the Minister in charge. The municipality also elaborates regulation concerning buildings, roadways and sites, determines development areas (zones de développement), restructuring zones (zones de restructuration) and is in charge of parcelling territory (projets de remembrement). It is able to order construction on non--built land that is situated in a zone planned for construction (expropriation is possible or the municipal authority can ask for a tax if the owner doesn’t accept to sell or build on the land).

The competent Ministry together with two advising councils elaborates the master plan for territorial development (they refer to municipalities for consultation). This master plan subdivides the national territory, determines priorities, general guidelines, designates regions of development and coordinates land use plus municipal, regional as well as sectorial development plans (they refer to municipalities for consultation on these plans as well). Regional and sectorial master plans concretise principals, political objectives and measures defined by the national master plan. The latter takes an integrative approach and creates synergies between the following policy aspects: urban and rural development, transport and telecommunications, environment and natural resources (Ministère du Développement Durable et des Infrastructures 2015). According to the 30/07/2013 law on territorial planning, the Minister examines and coordinates public investment projects that have an effect on the objectives of the master plan for territorial development.

Public Transport: 0,5 over the entire period

The Ministry authorises the establishment of public transport that is not confined to the borders of a municipality (Law 12/06/1965, Art. 2), i.e. municipalities can organise municipal transport if it remains within the border of the municipality (e.g. Citybus).

Housing: 1 over entire period

It is the municipality’s task to guarantee housing for the population in case of (natural) disaster (e.g. if a house burns down, the municipality needs to provide housing for the victims). According to the modified law of 19/07/2004, the municipality can declare a zone to be redeveloped (zone d'assainissement) a zone reserved for construction (réservé foncière)2, order construction on land that hasn’t been built on and create zones reserved for building housing (law 25/02/1979).
Municipalities give permits for construction and under the Housing Pact (Pacte de logement, 2008) the State offers municipalities subsidies in order to increase the availability of housing on its territory.


Up to 1999, there were two law enforcement bodies: the Gendarmerie Grand---Ducale and the Police Nationale but the 31/05/1999 law on the creation of the Police Grand---Ducale merged the two institutions. Previously, municipalities of more than 3500 inhabitants had their own law enforcement body (Gendarmerie Grand---Ducale) that stood under the authority of the mayor.

Caring Functions: 1 over the entire period

The responsibilities of the municipalities differ depending on the type of caring service under scrutiny. Municipalities do not offer caring for the elderly, sick and people with a disability. These services are paid through the national health insurance system and managed on the central level. In terms of childcare structures, municipalities can establish nurseries (there are also private nurseries as well as nurseries managed by the central state). We find after-school socio-educational facilities that provide meals, help with homework and offer extra-curricular activities (Maison Relais). They are under the authority of municipalities or inter-municipal bodies.

3. Effective political discretion

Education: 1990-2009: 2, 2009-2014: 1

The municipality ensures that the school obligation is fulfilled, participates in school administration and builds and maintains school buildings, this also includes the location and number of schools (approval by the Minister in charge is required). Until 2009, municipalities were able to choose teaching staff but the 06/02/2009 law on the organization of primary education transferred this power to the central state.

Social Assistance: 2 over the entire period.

Municipalities decide on who receives social assistance but it should be acknowledged that the 2009 law introduced a right to social assistance, i.e. the scope of deciding on recipients of social aid has been reduced, as there are more concrete guidelines today. The introduction of a minimal guaranteed income (Reveneu Minimum Garanti, RMG) in 1999 is also supposed to have had an impact on the need and influence of these offices.

Health: 0 over the entire period.

Health policy is not a municipal competence.

Land Use: 1,5 over the entire period.

The municipality is in charge of managing land and territory (Constitution, Art. 107) and provides building permits if the projects comply with municipal and national territorial development plans3. Thus, it has the power to organise its own territory but its development plan needs to correspond to the guidelines of the national development plan and be approved by the Minister of Interior (19/07/2004 law on territorial development). The municipality elaborates regulation concerning buildings, roadways and sites, determines development areas (zones de développement), restructuring zones (zones de restructuration) and is in charge of parcelling territory (projets de remembrement).

Public Transport: 0,5 over the entire period.

Local authorities can offer and organise public transport within the borders of their municipality. Yet, this does often not provide significant power to the municipality vis-
Municipalities are very small and therefore reliant on national public transport systems, which are organised by the Ministry of Transport (except if several municipalities collaborate in the framework of inter-municipality bodies (syndicat de communes)).

Housing: 2 over the entire period.

The municipality can declare a zone to be redeveloped (zone d’assainissement) a zone reserved for construction (réserve foncière) 4, order construction on land that hasn’t been built on and create zones reserved for building housing (law 25/02/1979). Municipalities give permits for construction if they are compatible with the municipal and national land development land. Currently facing important rises in housing prices as well as housing shortages, municipalities assume a role in increasing housing availability. Under the Housing Pact (Pacte de logement, 2008), established between the central State and local administrations, the State offers municipalities subsidies in order to increase the availability of housing on its territory.


Up to 1999, municipalities of more than 3500 inhabitants had their own law enforcement body (Gendarmerie Grand-Ducale) that stood under the authority of the mayor. The 31/05/1999 law on the creation of the Police Grand-Ducale merged the two institutions into one single national law enforcement body.

Caring Functions: 0,5 over the entire period.

Municipalities do not have any responsibility in establishing and managing homes for old people, people with a disability or in need of some other type of care. Municipalities may provide nurseries and/or after school centres to provide childcare but they need to follow central guidelines and the establishment needs to be approved by the ministry.

4. Fiscal autonomy

Local government has the possibility to set the rate of selected taxes. Among these, the ‘municipal business tax’ is the most important one. In 2009 it amounted to around one third of the ordinal income taxes (588 million euros) and one quarter of the total municipalities’ revenue in Luxembourg (around 2.1 billion euros in 2009). The rate can vary from a ratio of one to two depending on the municipalities. It basically works as a common fund that is fed by only 7% of the municipalities (based on the benefits of financial, industrial and commercial companies present on their territory) and that is then redistributed to the other municipalities on the basis of a complex mechanism of horizontal equalization.
Local municipalities can also set property tax rates but income is limited (around 29 million euros in 2009). As shown by the figure below it never exceeded 3% of the total amount of the non-earmarked income. The Luxemburgish Central Bank estimates that in the future the property taxes should increase as a new law (October 2008) allows municipalities to set higher tax rates for built property and undeveloped land, especially land for construction without having to increase in parallel the property tax burden on agricultural land and forest.

## 5. Financial transfer system

The financial transfer system is composed of the following revenues:

For the ordinary budget there is 1) The Local fund for financial allocation distribution (Fonds communal de dotation financière), which is a form of tax sharing, It was set up in 1987 in order to provide more stable operating resources free from any application obligations. In 2009, it was the largest source of income for the municipalities: 37% of ordinary income (for a total of 681 million euros); 2).

The municipal business tax: it is the second largest revenue of the municipalities. In 2009 it amounted to around one third of the ordinal tax revenue (588 million euros). The total amount is redistributed among all the municipalities on the basis of a complex mechanism of horizontal equalization (see supra); 3).

The public sector transfers: These are ‘conditional financial transfers’ of the central government to finance specific projects. They amounted to around 121 million euros in 2009.

Regarding extraordinary receipts, there is the ‘transfer in capital’ from the state for specific investments. The municipalities receive this help only if they complete these investments. In 2009 it amounted to 183 million euros.

All in all the unconditional transfers amount in 2009 to 1.269 million euros (Local fund for financial allocation + the municipal business tax) while the conditional transfer taxes amount to 304 million euros. This means in other words that the bulk of financial transfers are unconditional (80.6%).
6. Financial self-reliance

Concerning ordinary receipts the revenues derived from own resources are a) for the categories of non-assigned revenues the ‘municipal business tax’ (588 million euros in 2009) and the property taxes (around 29 million euros in 2009) and b) for the categories of assigned revenues, all of them with the exceptions of the public and private sector transfers (this corresponds to a total amount of around 430 million euros in 2009).

All the revenues of extraordinary receipts derive from the local authorities except ‘the transfer of capital’ and the category ‘loan and debts’. This corresponds to a total amount of approximately 48 million euro.

7. Borrowing autonomy

Article 118 of the Law of 13 December 1988 authorizes the municipalities to use credit to finance extraordinary expenses if the reimbursement of loans is secured (application of the golden rule and for specific purposes). Article 106 paragraph 2 provides that loans are to be submitted for ministerial approval if the value exceeds € 50,000. After obtaining ministerial approval, the Board of Mayor and
aldermen proceeds to the choice of the financial institution that best meets the conditions set by the municipal council and passes the contract with the bank in question. Prior to the release of funds by the bank, the contract is subject to the approval of the Minister of the Interior.

CODING
Luxembourg scores 2.

8. Organisational autonomy
The municipal council cannot decide about the electoral system, the population size determines whether the majoritarian or proportional system is used for local elections; the national municipal law also regulates the composition, organisation and procedures of the municipal council. The Grand Duke nominates the mayor and the Minister of Interior nominates the aldermen. However, these nominations are based on the majority of votes given by elected candidates.

Although the local authority does not have any influence in determining the electoral system, organisation and procedures of the municipal council, it enjoys more leverage in employing staff. The 1988 municipal law and municipal council decisions (approved by the Minister of Interior) determine conditions of admission, promotion, resignation and remuneration in addition to rights and obligations of municipal staff. The municipal law also indicates several positions to be filled (municipal secretary, parking enforcement officer, finance manager, city planner). However, it is the municipal council that creates a position to be filled (approved by the Minister). It then votes on municipal public servant positions and the aldermen vote on municipal employees. The Minister approves these nominations, i.e. (s)he checks the legal aspect but the council does not need to justify the creation of the position (it still needs to be planned in the budget).

CODING
Luxembourg scores 1.

Interactive rule

9. Legal protection
The constitution defines the municipality as an autonomous entity with legal capacity that manages its property and own interests but the Grand Duke as the head of state can dissolve municipal councils (Constitution, Art. 107). The municipal council can make an appeal against a decision by the Grand Duke or Minister of Interior and take the case before the Administrative Court (municipal law 1988, Art. 107).

CODING
Luxembourg scores 2.

10. Administrative supervision
The district commissioner acts as a hierarchical intermediary between central government and municipal authorities (appointed by the government/Grand Duke); the government’s control becomes strengthened through this position (Hendriks 2001). The constitution (Art. 107) refers to the ‘administrative tutelage’ and the 1988 municipal reform made the tutelage an a posteriori principle. The Grand Duke can cancel regulations (municipal law, Art.103), the Minister of Interior can cancel the implementation of an act (Art. 104) and needs to approve acts,
decisions and the municipal budget (municipal law 1988, Art. 105-106). Yet, the current coalition programme (October 2013) includes a review and reduction of the administrative tutelage in a wider effort to simplify public administration. In July 2014, the government in council has adopted a proposed legislation, which abolishes the administrative districts and thus also district commissioners, i.e. the functioning and role of the municipal supervision is likely to change drastically in the years to come. The legislation has not been voted yet in Parliament at this point but this will most likely happen before summer 2015 according to representatives of the Ministry of Interior.

CODING
Luxembourg scores 2-3.

11. Central or regional access
The small size of the Grand Duchy makes Luxembourg a special case in terms of access to central government. Labelled as a ‘local state’, it is a country where ways of communication are short, politicians are traditionally close to the electorate and present in their electoral district. At the moment, access to national political institutions and also the government is facilitated through combining the mandate of mayor and Member of Parliament (député-maire). This allows mayors to defend local interests in parliament and government, as it is easier for them to access government officials. Municipal councillors and aldermen also enjoy relative easy access to central government and can lobby for particular projects and interests. Although there is no legal principle requiring formal consultation, there is a habit to consult the Union of cities and towns (SYVCOL) to give its opinions on law proposals that concern the municipalities’ interests. These opinions are registered as parliamentary official documents. Moreover the state needs to formally consult municipal councils on national, municipal and sectorial general development and land use plans as well as on classification of national sites and monuments.

The score of 1 has been chosen because formal consultation mechanisms are limited to three areas only. Obligations of the central government to consult local authorities on a given policy change or project affecting them are rare. Although local politicians can defend local interests through double-mandates and despite the relative ease to contact government representatives, this indirect access to central government is hard to quantify. The bottom-up access is also dependent on the local politicians’ personal network and initiative, i.e. access to central decision-making is not guaranteed.

CODING
Luxembourg scores 1.
References


Interviews:

Colbach, Mireille, Director of Syvicol (national union of cities and municipalities). Daubenfeld, René, current municipal secretary of the Lac---de---la---Haute---Sûre municipality and Mayor of Boulaide municipality.

Streveler, Ernest, former municipal councillor