

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

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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 needed¹) 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 (*précoce*), 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 (réserve 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.

Police: 1990-1999: 1, 2000-2014: 0

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 (Revenu 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-

vis the state. 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.

Police: 1/1990-1999, 0/2000-2014.

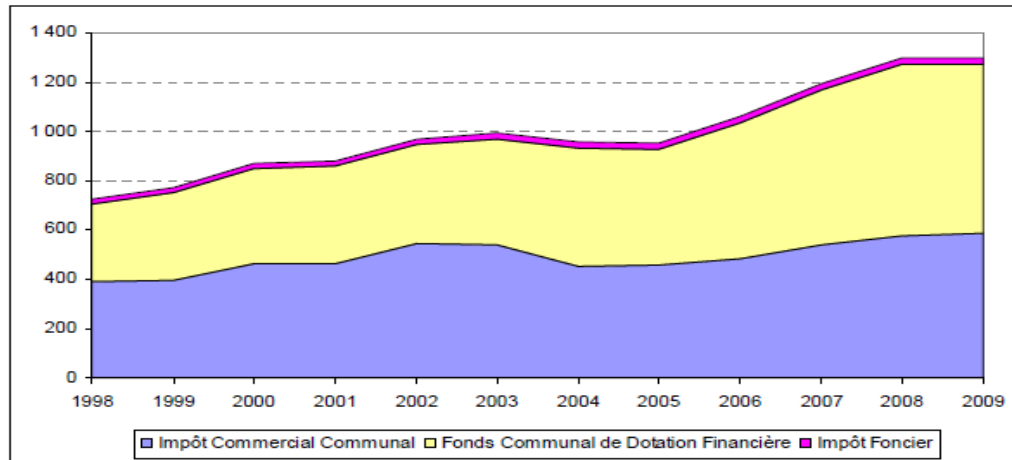
Up to 1999, municipalities of more than 3500 inhabitants had their own law enforcement body (Gendarmerie Grand-Ducale) that stood under the authority of the mayor. The 31/05/1999 law on the creation of the Police Grand-Ducale merged the two institutions into one single national law enforcement body.

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.

Graphique 5: Evolution de la composition des recettes non affectées (en millions d'euros)

Sources : Ministère de l'Intérieur, calculs BCL.

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.

CODING

Luxembourg scores 3.

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%).

CODING

Luxembourg scores 0-2.

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).

Tableau 4: Evolution des recettes ordinaires des communes (en euros)

	1998	2005	2006	2007	2008	2009
Impôt Commercial Communal	390 730 254	459 414 038	482 479 441	538 905 344	578 108 602	587 991 976
Fonds Communale de Dotation Financière	313 902 275	467 318 382	553 003 581	627 722 678	691 353 092	681 174 987
Impôt Foncier	20 262 904	25 595 629	25 763 610	27 177 745	27 639 449	28 912 475
Recettes non affectées totales	724 895 433	952 328 049	1 061 246 632	1 193 805 767	1 297 101 142	1 298 079 437
Recettes pour fournitures et prestations de services	283 709 016	397 046 189	439 224 945	482 662 524	528 607 988	358 743 388
Autres produits du patrimoine	9 751 045	19 017 602	19 778 597	23 560 294	21 932 876	23 420 646
Produits financiers	11 954 697	10 942 448	14 985 283	24 147 568	27 868 542	19 291 995
Impôts directs et indirects	9 044 387	28 200 098	32 471 988	33 045 364	29 141 188	27 986 723
Autres transferts de revenus du secteur non public	3 315 781	5 216 691	5 466 626	7 785 861	8 770 495	8 851 366
Transferts de revenus du secteur public	53 634 977	87 346 493	106 430 780	109 916 779	111 996 380	121 510 862
Recette affectées totales	371 409 902	547 769 522	618 358 218	681 118 389	728 317 470	559 804 980
Recettes ordinaires totales	1 096 305 336	1 500 097 571	1 679 604 850	1 874 924 156	2 025 418 612	1 857 884 417
Hors production et transport d'énergie	953 972 056	1 280 409 197	1 441 208 076	1 617 842 186	1 750 548 935	1 745 346 723

Sources : Ministère de l'Intérieur, calculs BCL.

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.

Tableau 7: Evolution des recettes extraordinaires des communes (en euros)

	1998	2005	2006	2007	2008	2009
Transferts en capital	53 186 165	110 748 950	138 307 941	141 433 188	128 757 030	183 700 237
Emprunts et dettes assimilées	38 717 811	131 935 836	103 493 934	63 220 000	58 849 734	79 587 500
Immobilisations corporelles (immobilier)	18 293 444	26 631 067	17 802 606	14 238 494	25 224 637	18 393 933
Immobilisations corporelles (mobilier)	482 051	2 905 963	227 757	164 537	904 955	2 392 837
Aides financières octroyées (subsidés)	1 688 296	572 778	748 585	577 296	418 017	2 431 738
Aides financières octroyées (crédits et prêts)	505 123	937 531	670 377	292 828	960 703	11 690 447
Immobilisations financières (actions)		376 194				271 036
Autres immobilisations financières					2 072 241	11 825 340
Recettes extraordinaires totales	112 872 890	274 108 320	261 251 202	219 926 343	217 187 317	310 293 068
Hors production en transport d'énergie	110 545 822	267 166 405	258 238 403	217 696 869	213 398 565	306 298 386

Sources : Ministère de l'Intérieur, calculs BCL.

All in all around 1.1 billion are self-financed by local authorities over a total budget of around 2.2 billion.

CODING

Luxembourg scores 2.

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 come⁵. 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)⁶. 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 monuments⁷

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.

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