



# **STRUCTURE AND OPERATION OF LOCAL AND REGIONAL DEMOCRACY**

**Luxembourg**

# LUXEMBOURG Territorial Set-up

## Municipalities and districts



# STRUCTURE AND OPERATION OF LOCAL AND REGIONAL DEMOCRACY

## Luxembourg

Situation in 2007

*Please note on the map opposite, that the name of the commune  
**Remerschen** changed to **Schengen** by virtue of the Law of 24 July 2006*



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## **1. LEGAL FRAMEWORK**

### **1.1. Constitutional provisions**

Article 107 of the Constitution defines the principles governing the distribution of powers between local authorities and the State in the following terms:

- «1. Municipalities form autonomous authorities, on a territorial basis, possessing legal personality and administering their patrimony and own interests.
2. In each municipality there is a communal council directly elected by the inhabitants; the conditions to be elector or eligible will be fixed by law.
3. The council draws up a yearly budget and closes the accounts. It issues municipal regulations, except in case of emergency. It may impose taxes, with the Grand Duke's approval. The Grand Duke may dissolve the council.
4. The municipality is administered under the authority of the college of mayor and aldermen who must be chosen among the communal councillors. Conditions concerning the nationality of the members of the college of mayor and aldermen are fixed by a law voted in conformity of the conditions of article 114, paragraph 2 of the Constitution.
5. The law governs the composition, organisation and responsibilities of the municipal organs. It defines the status of municipal officials. The municipality participates in the implementation of educational measures as laid down by law.
6. Supervision of the municipal administration is ruled by law. Certain decisions of municipal authorities have to be authorized by the supervision authority or may be cancelled or suspended should they be illegal or contrary to the public interests, without prejudice to the powers of the law courts or administrative tribunals. »

The municipal power is not on an equal footing with the legislative, executive and judicial powers. Although it is derived from the Constitution, it is a subordinate power in so far as it depends on the law, and only exists within the limitations defined by the latter.

Municipal authorities are obliged to comply with the laws and general regulations, from which municipal regulations may not depart.

Purely municipal matters have not been determined by any law subsequent to the Constitution of 1868. Hence it is necessary to refer back to a decree of 14 December 1789, relating to the Constitution of municipalities which is still in force within the Grand Duchy, in order to define the autonomous power of the municipal administration.

## 1.2. Legislative texts

The main law governing local authorities is the Municipality Act of 13<sup>th</sup> December 1988, which has been amended since.

The municipal Act has five headings:

- 1: Division of the country, the territory of the municipality and its name.
- 2: Composition and attributes of the municipal organs.
- 3: Administrative tutelage.
- 4: Municipal accounts.
- 5: Miscellaneous provisions.

## 2. STRUCTURE OF LOCAL AUTHORITIES

### 2.1. Subdivisions

As the State of Luxembourg covers a small area, there are no regions or "départements"; the municipality is the only territorial unit.

### 2.2. Statistical data concerning local authorities

Number: At present, there are 116 municipalities; in 1950, there were 127.

**The size of municipalities in Luxembourg**

Size	Number of municipalities
less than 10 sq.km	9
10-20 sq.km	48
20-30 sq.km	38
30-40 sq.km	11
40-50 sq.km	6
50 sq.km and above	4

**The population of municipalities in Luxembourg**  
(01/04/2005)

Inhabitants	Number of municipalities
less than 1, 000	23
1,001 – 5, 000	71
5,001 – 10, 000	15
10,001 – 50, 000	6
50,001 – 100, 000	1

### **2.3. Regulation concerning structural changes**

Under the terms of Article 2 of the Constitution, the municipal boundaries can only be changed by law.

Leaving aside the amalgamations of municipalities in 1920, 1977, 1978 and 2006, the boundaries of the municipalities have scarcely changed since the early 20th century. Amalgamations were only possible if the municipal councils were in agreement.

Under the terms of Article 2 of the Municipality Act, “new municipalities must be created by law, either by creating a separate municipality from parts of one or more municipalities or by merging two or more municipalities or changing the municipality’s boundaries.”

According to the European Charter of Local Autonomy of 15 October 1985, ratified on 18 March 1987, no merger can take place unless the inhabitants of the municipalities concerned have been asked by referendum whether they are in favour or against.

### **2.4. General services provided by the central administration at local/regional level**

From the administrative point of view, the Grand Duchy is divided into three districts, the main towns being Luxembourg, Diekirch and Grevenmacher. In each district, there is an official appointed by the Grand Duke with the title of district commissioner. The district commissioners are supervised by the Minister of the Interior, except in emergency cases or those covered by alternative legal provisions or special regulations.

They are responsible for all the municipalities within their area, with the exception of the city of Luxembourg, which remains under the direct authority of the Minister of the Interior. Their prerogatives are established by Section 114 of the Municipality Act, amended on 13 December 1988.

### THE THREE DISTRICTS

	Number of municipalities		Inhabitants (01.04.2005)		Area in km <sup>2</sup>	
	absolute	as %	absolute	as %	absolute	as %
Diekirch	43	37.07	71 701	15.18	1 157.24	44.74
Luxembourg	47	40.52	343 725	72.74	904.34	34.97
Grevenmacher	26	22.41	57 061	12.08	524.78	20.29
<b>Total</b>	<b>116</b>	<b>100.00</b>	<b>472 487</b>	<b>100.00</b>	<b>2 586.36</b>	<b>100.00</b>

### **3. LOCAL AUTHORITY BODIES**

#### **3.1. Deliberative body**

The deliberative body is the municipal council. It is elected every six years by the inhabitants (nationals and non-nationals) with the necessary qualifications to vote. The number of its members depends on the population size of the municipality and may vary from 7 to 27 councillors, in accordance with population censuses which take place at ten-yearly intervals. The number of councillors is fixed by a Grand Ducal regulation.

Each municipality constitutes an electoral ward. Elections are held by two different voting systems. In municipalities with less than 3 000 inhabitants (approximately 80 municipalities) the elections operate on the basis of a relative majority, which means that the candidates who get most of the votes are elected. In municipalities presenting 3 000 or more inhabitants, the elections are held by a ballot on a list with proportional representation.

#### **3.2. Executive body**

The executive body is the college of mayor and aldermen.

In each municipality, it consists of the mayor and two aldermen. In larger municipalities, the number of aldermen may be fixed as follows:

- three in municipalities with 10, 000 to 20, 000 inhabitants;
- four in municipalities with more than 20, 000 inhabitants;
- six aldermen for Luxembourg-City (approximately 84,000 inhabitants).

The mayors and aldermen of towns are nominated for six years by the Grand Duke; the aldermen of the other municipalities are nominated for six years by the Minister of the Interior. The mayors and aldermen are selected from the members of the municipal council with Luxembourgish nationality.

#### **3.3. Distribution of powers and responsibilities between the various local authority bodies**

Purely municipal matters have not been determined by any law subsequent to the Constitution of 1868 and reference to two old decrees from the French era is still necessary. Under the terms of a decree from 1789, the functions specific to the municipal authorities shall be to manage the property and income of towns, boroughs, parishes and communities; to settle local expenditure chargeable to the public purse; to enable the inhabitants to enjoy the advantages of peaceful order, including the clean, salubrious, safe and tranquil public streets, places and buildings. These functions were specified by yet another decree in 1790.

Through the years, this list of functions has been added to, modified or even given a more concrete form by specific laws in a variety of domains which have gained in importance. In this way many functions have been added to the original list of competences of the municipalities. In some domains the municipal competences have been transferred to the State and its administrations. Finally, there are domains in which the law divides certain competences between the State and the municipalities.

The following areas currently depend on the competence of the municipalities:

- urban and local development;
- system of roads and its regulation;
- elementary school;
- civil status;
- public assistance (including cemeteries);
- water supplies;
- sewage;
- public hygiene;
- waste removal and disposal;
- for the environment, the competence is divided between the State and municipalities for hazardous waste, noise and atmospheric pollution.

In addition to its obligatory functions, a municipality carries out optional functions, financial situation permitting. This includes, for example, all types of sporting activities, everything the municipality does for culture, music lessons and tourism, as well as out-of-school hours educational services, such as school restaurants, homework assistance, out-of-school hours care.

*a) Competence of the municipal council*

As the main body of the municipal authority, the municipal council decides on all issues which are of purely municipal interest (Article 28 of the Municipality Act).

The council is responsible by law for municipal regulations, especially police regulations, subject to sanctions for failure to comply.

It has unlimited powers with regard to internal municipal administration. It takes all decisions concerning municipal property, income and outgoings, work to be undertaken, public buildings owned by the municipalities, etc. It nominates, removes and dismisses municipal officials and salaried employees. The council draws up the annual budget of the municipality and closes its accounts. It may introduce municipal taxes, subject to approval by the Grand Duke.

*b) Powers of the college of mayor and aldermen*

The powers of the college of mayor and aldermen are set out in the Municipality Act of 13 December 1988. They are of a general and municipal nature.

As the body of central authority, the college of aldermen is responsible, throughout the territory of the municipality, for enforcing the laws and decrees issued by the Grand Duke and his ministers, when they do not concern the police.

As a municipal authority body, the college of mayor and aldermen is responsible for issuing and enforcing the resolutions of the municipal council, directing public works, supervising municipal services, administering municipal establishments and supervising public establishments for which the municipality is responsible.

It investigates matters to be submitted to the municipal council and draws up the agenda for the municipal council's meetings.

It is also responsible for administering property belonging to the municipality and ensuring that its rights are upheld. It supervises municipal officials, salaried employees and manual workers, and applies the legislation or regulations in respect of holidays, promotion and other statutory rights.

It represents the municipality in courts of law and lastly, it is responsible for archives, for issuing civil status certificates and for keeping registers.

In certain emergency cases, such as for example the public order being infringed or seriously threatened, the council of aldermen may issue police orders and regulations, without being obliged to consult the municipal council beforehand. Such regulations and orders have to be confirmed by the deliberative body later on.

c) *Powers of the mayor*

As the head of the municipal authority, the mayor presides over the municipal council and the college of aldermen. The mayor also has competences of his own, and represents the municipality on the one hand and the State on the other.

As an organ of the municipality, he signs the regulations and orders of the municipal council and the college of aldermen, as well as the publications, records and correspondence of the municipality. He is in charge of executing the municipal police regulations, where the most important one consists in carrying out building prescriptions. This explains why the mayor not only issues building permits but also oversees their correct application.

As an organ of the State, he is entrusted with the enforcement of Grand Ducal and ministerial acts and regulations concerning the police. In certain emergency cases he may call directly for the public forces (police or army) to intervene.

The mayor may, under his own responsibility, delegate these powers in whole or in part to one of the aldermen, as prescribed by law.

The mayor also acts as registrar; he is specifically responsible for seeing that civil status documents and registers are properly prepared and kept. He may delegate to one or more municipal officials (minimum age 25) the functions which he exercises as registrar with regard to receiving declarations of births, partnerships and deaths, as well as the minor entries in the registers of any decisions or judgments.

Lastly, under certain conditions, the mayor is authorised to authenticate signatures.

### **3.4. Legal provisions concerning internal structures**

The amended Municipality Act of 13 December 1988 contains certain provisions dealing with the internal structures of local authorities. Although each municipal council is free to determine the details of its own internal regulations, a standard set of internal regulations for municipal councils has been drawn up by the services of the Ministry of the Interior and communicated to the municipalities via a circular letter.

## **4. DIRECT PARTICIPATION BY CITIZENS IN THE DECISION-MAKING PROCESS**

### **4.1. Local referendums**

The municipal council may invite voters to express their views by means of a referendum in cases affecting municipal interests and subject to conditions laid down by the council. A referendum is required when called for by a defined part of the electorate. In such cases, the municipal council is obliged to hold the referendum within three months of the request.

The arrangements for the referendum are laid down in a Grand Ducal regulation. The provisions of the electoral Act on compulsory ballot are applicable. The referendum is merely optional.

### **4.2. Other forms of direct participation**

The municipal council or college of mayor and aldermen may invite some or all the citizens of the municipality to express their opinions on a specific municipal problem.

Participation in such a consultation is optional.

The arrangements are made by the consulting authority.

The result of the consultation is communicated to the municipal council.

## **5. STATUS OF ELECTED REPRESENTATIVES**

### **5.1. Conditions of eligibility and length of term of office**

It is necessary to be at least 18 years old on the date of the election and to be a national of Luxembourg or a national of another EU member State. A candidate must have been habitually resident for at least six months within the territory of the municipality in which he is standing for election, must not have been sentenced to a term of imprisonment by a criminal or police court or placed under guardianship. Non-nationals must have been resident in Luxembourg for at least five years at the moment they submit their candidacy.

The councillor's mandate is renewable at six-yearly intervals, following municipal elections which are held on the second Sunday of October.



## **5.2. Duties and responsibilities of local representatives**

Any representative with direct or indirect interest in a case submitted to the council of which he is a member is barred from participating in the deliberations, discussions and voting. The offence of unwarrantable interference is punishable under the penal code.

In the event of manifest misconduct, negligence or a serious offence, the mayor or alderman may be suspended or dismissed by the authority which nominated him. In the event of unlawful conduct, he is responsible for the damage caused to the community.

## **5.3. Working conditions**

Working conditions of the municipal council are defined in national legislation, but in practice differences may become apparent at local level. Meetings are usually held during the evening, except in large towns, where they may take place during the daytime. Offices are only available for members of the executive in certain large municipalities. According to the law, each municipality must have a municipal secretary, who assists the members of the municipal council in the exercise of their tasks, as well as a municipal receiver.

## **5.4. Remuneration**

Mayors, aldermen and municipal councillors are entitled to political holiday as long as they have not reached retirement age. If they exercise an independent professional activity or if they don't exercise a remunerated profession, they receive a fixed indemnity to compensate for the time spent on their function. If they are salaried employees, the profit loss is compensated to the employer once a year.

Mayors and aldermen are also entitled to an indemnity which is fixed in relation to the number of members constituting the municipal council. The maximum amounts are established by a regulation of the Grand Duke. It covers all performance of office-related expenses, except travel, subsistence and telephone expenses, which may be refunded to those concerned. Certain municipalities provide the mayor with an official car.

Municipal councillors receive attendance fees for their participation in meetings.

## **6. DISTRIBUTION OF POWERS BETWEEN THE VARIOUS CATEGORIES OF LOCAL AND REGIONAL AUTHORITIES**

The following table contains a detailed presentation of the distribution of powers between municipalities and the State for the various fields of activity.

*The competencies of local and regional authorities*

**LUXEMBOURG**

Function	Competent authority			Type of competence				Exercise of the competence				Remarks **	
	State	Intermediate*	Municipality	Exclusive	Shared	Compulsory	Discretionary	Direct	Indirect	In own right	For another authority		
<b>General administration</b>													
Security, police	•		•		•	•		•		•			(1)
Fire protection			•	•		•		•		•			(2)
Civil protection	•			•		•		•		•			
Justice	•			•		•		•		•			
Civil status register			•	•		•		•		•			
Electoral register			•	•		•		•		•			
<b>Education**</b>													(3)
Pre-school education	S		•		•	•		•		•			
Primary education	S		•		•	•		•		•			
Secondary education	•			•		•		•		•			
Vocational and technical	•			•		•		•		•			
Higher education	•			•		•		•		•			
Adult education	•		•		•		•	•		•			
<b>Public Health</b>													(4)
Hospitals	•		•		•	•		•		•			
Health protection	•		•		•	•		•		•			

*The competencies of local and regional authorities*

**LUXEMBOURG**

Function	Competent authority			Type of competence				Exercise of the competence				Remarks **	
	State	Intermediate*	Municipality	Exclusive	Shared	Compulsory	Discretionary	Direct	Indirect	In own right	For another authority		
<b>Social Welfare</b>													(5)
Kindergarten and nursery	•		•		•		•	•		•			
Family welfare services	•		•		•		•	•		•			
Welfare homes	•		•		•		•	•		•			
Social security	•				•			•		•			
<b>Housing and town planning</b>													
Housing	•		•		•		•	•		•			
Town planning	•		•		•			•		•			
Regional/spatial planning	•		•		•			•		•			(6)
<b>Environment, public sanitation</b>													(7)
Water & sewage			•	•				•		•			
Refuse collection & disposal			•	•				•		•			
Cemeteries & crematoria			•	•				•		•			
Environmental protection	•		•		•			•		•			
<b>Culture, leisure &amp; sports</b>													(8)
Theatres & concerts	•		•		•		•	•		•			
Museums & libraries	•		•		•		•	•		•			
Parks & open spaces	•		•		•		•	•		•			
Sports & leisure	•		•		•		•	•		•			

**The competencies of local and regional authorities**

**LUXEMBOURG**

Function	Competent authority			Type of competence				Exercise of the competence			Remarks **	
	State	Intermediate*	Municipality	Exclusive	Shared	Compulsory	Discretionary	Direct	Indirect	In own right		For another authority
Religious facilities	●		●		●	●		●		●		
<b>Traffic, transport**</b>												(9)
Roads	I		I		●	●		●		●		
Transport	●			●		●		●		●		
Urban road transport	●		●		●			●		●		
Urban rail transport	●			●		●		●		●		
Ports	●			●			●	●		●		
Airports	●			●			●	●		●		
<b>Economic services</b>												(10)
Gas	●		●		●	●		●		●		
District heating	●		●		●		●	●		●		
Water supply			●	●		●		●		●		
Agriculture, forests, fishing	●			●		●		●		●		
Electricity	●		●		●	●		●		●		
Economic promotion	●		I		●		●	●		●		
Trade & industry	●		I		●		●	●		●		
Tourism	●		●		●		●	●		●		

(\*) where several intermediate levels exist the competent local government is indicated

(\*\*) the competence refers to infrastructures (I), management (M) or both (●)

(\*\*\*) in case there are any remarks see last page in this country's table

**REMARKS**

(1) Under Article 108 of the Luxembourg Constitution, "The preparation of birth, marriage and death certificates and the keeping of the registers shall lie exclusively within the competence of the municipal authorities."

As the instrument of the State, the mayor acts as registrar. The college of mayor and aldermen, as a body of the State, has exclusive powers to carry out an annual review and correction of the electoral rolls.

Under municipal law, the municipality has direct and exclusive powers to issue internal administrative and municipal police regulations. It may direct and even ban traffic from a public road on municipal territory, decide on and also install paying car parks. It is responsible for laying down building regulations for houses, with a view to guaranteeing public health and salubrity.

Only the State has powers to supervise fishing and hunting.

(2) Article 67 of the amended Municipality Act establishes that the mayor is responsible for the enforcement of laws and police regulations, under surveillance of the district commissioner.

As an instrument of the State, the mayor may directly order the police to intervene in the event of serious infringements of or threats to public order, when the slightest delay might incur dangers or injury to the population. The following police duties are conferred upon the municipalities:

- i. anything to do with safety, easy access to public streets, squares and thoroughfares, including street cleaning and waste disposal, as well as the demolition or repair of buildings at risk of becoming dilapidated;
- ii. responsibility for curbing and punishing offences constituting disturbances to the peace, such as noise, brawls and affrays at night which interrupt the citizens' sleep;
- iii. maintenance of order in places where large crowds congregate such as fairs, markets, displays and cafés;
- iv. by dint of suitable precautions, preventing and controlling accidents and catastrophes such as fires and epidemics;
- v. taking steps against turmoil which might be caused by mentally disturbed persons or dangerous animals roaming the streets.

Municipal authorities have sole responsibility for fire-fighting.

The organisation of the emergency services in the event of a catastrophe is exclusively dealt with at national level by the emergency services administration which depends on the Ministry of the Interior.

(3) Under the Act of 10 August 1912, each municipality is obliged to provide pre-school and primary education for children living within its territory for nine consecutive years.

Local authorities are responsible for the construction and upkeep of primary school buildings and the purchase of school supplies.

Primary school teachers are appointed by the municipal councils on the advice of the inspector and subject to governmental approval. The salaries of teaching staff are paid in advance by the State, which covers two-thirds of the expenditure, one-third being reimbursed to the State by the municipalities.

The municipalities have no competence with regard to secondary, vocational or higher education.

(4) Under the decree of 14 December 1789 and the Act of 27 June 1906 concerning public health, the municipalities are responsible, in the interests of public health, for measures to be adopted, by means of municipal regulations, to prevent and control epidemics, and to preserve public hygiene (measures concerning the evacuation and the drainage of waste water or waste management).

Responsibility for building and running hospitals and old people's homes is shared between the State and local authorities. There are, in fact, hospitals and homes built and run by municipalities or consortia of municipalities.

(5) Responsibility for organising crèches, day-nurseries and old people's homes is shared between the State and local authorities.

Under the Act of 28 May 1897 on residence qualifications for relief, each municipality in the country is instructed to distribute public assistance to those in need, either by providing cash payments, or by taking measures to employ able-bodied poor people in locally useful jobs, or by finding an alternative paid employment for them.

Article 29 of the amended Act of 29 April 1999 creating the guaranteed minimum income established that the welfare offices are responsible for paying applicants the complementary allowance until it is taken over by the National Solidarity Fund. Charges for the complementary allowance are incumbent on the National Solidarity Fund. Welfare offices that ensured the service of complementary allowance will be reimbursed by the fund, reimbursement which is subject to the fulfilment of legal conditions.

- (6) National territorial planning is governed by the amended Territorial Planning Act of 21 May 1999, which empowers the government to implement its spatial planning programme as well as master regional, sectoral and land utilisation plans. The government has prepared a master plan designed to establish the major lines of the country's future development. Plans drawn up under the national plans may be imposed by the government on municipalities. Each municipality in the Grand Duchy is also obliged to have or to draw up its own plan, by virtue of the amended Act of 19 July 2004 concerning municipal planning and urban development.
- (7) Sewage plants as well as cemeteries fall within the exclusive competence of local authorities; with regard to waste disposal, competence is shared. In connection with environmental protection, powers are divided between municipalities and the State.
- (8) Theatre, concerts, museums, art galleries: although local authorities are not legally responsible for this area, the towns of Luxembourg and Esch-sur-Alzette run municipal theatres and musical schools.  
Under the terms of the Ministerial decree of 11 April 1918 concerning school libraries, each municipality is obliged to set up a library for primary school pupils. Towns of a certain size have an option of setting up a municipal library. As regards sporting activities, the government subsidises under certain conditions sports equipment projects which have been decided on and implemented by the municipalities or consortia of municipalities.  
A five-year sports equipment programme indicating the number, type and distribution throughout the territory of projects warranting subsidies is drawn up by the Minister whose responsibilities include sports. This programme has to be approved by the government in council. The same Minister establishes the criteria and arrangements for subsidising the said projects. The municipalities are responsible for the upkeep of sports facilities.  
With regard to ecclesiastical matters, Article 106 of the Constitution provides that the salaries and pensions of ministers of religion shall be borne by the State and regulated by law. The administration of parish property and revenue is entrusted to a body called the "church fabric fund", of which the parish priest and mayor are ex-officio members. The "church fabric funds" are responsible for the upkeep of churches and administer their property and donations: they finance church building with the assistance of additional sums provided by the municipalities out of their own budgets.
- (9) Powers in connection with road building and upkeep are shared between the State and local authorities.  
The State builds and maintains trunk communications and the State road system through the highways administration department, which can also be instructed to build and supervise the municipal network on behalf of those municipalities which do not have an appropriate technical department. The municipalities build and maintain the municipal and local roads. Competence for waterways, air and rail transport lies exclusively with the State. Public passenger transport by road is regarded as a public service and therefore falls within the responsibility of the State. However, the City of Luxembourg has organised a joint municipal public transport service within its territory; similarly several municipalities in the country have constituted an intermunicipal consortium, "TICE", and have set up a joint intermunicipal transport service. Numbers of municipalities also organize school transport.
- (10) Gas, urban heating and electricity represent a discretionary, often historic competence of the municipalities. More than hundred years ago, the municipalities were obliged to offer this services to their inhabitants as the private sector presented a lack of them.  
The position is different when it comes to water, as municipal authorities are obliged to supply water for public health reasons to persons living within the territory of the municipality with water.

## **7. CO-OPERATION AND OTHER TYPES OF RELATIONS BETWEEN LOCAL AUTHORITIES**

### **7.1. Institutionalised co-operation**

The Act of 23 February 2001 concerning the setting up of consortia of municipalities provides the legal framework.

Consortia of municipalities are always voluntary; the municipal councils concerned have to reach agreement in negotiations to accede and to finance the consortia.

The consortium's domains of competence are usually water supply, sewage removal and disposal, sewage treatment, the construction and upkeep of schools, waste management, the creation of economic zones, the creation of sports centres, swimming pools, etc.

Consortia are governed by the grand ducal decree which institutes them, as well as by statutes which are an integral part of it and are published in the "Memorial" (official gazette).

Consortia of municipalities are public institutions invested with a legal personality. They are submitted to the same administrative supervision as the municipalities.

### **7.2. Co-operation between local/regional authorities in various countries**

Luxembourg has ratified the European Outline Convention on Cross-border Cooperation between Territorial Communities or Authorities and its two protocols as well as other international conventions facilitating cross-border cooperation of the municipalities.

The Act relating to consortia of municipalities expressly authorises cross-border cooperation as long as it is regulated by interstate conventions.

## **8. FINANCES**

### **8.1. Taxes**

The municipalities have at their disposal two municipal taxes in the restrictive sense of the term, namely:

- a commercial tax based on profit capital. This tax is collected from commercial concerns by the State on behalf of the municipalities;
- a land tax imposed on landed property. This tax is directly levied by the municipalities on properties situated within their territory.

As the municipalities enjoy considerable latitude in organising, in addition to their compulsory duties, socio-cultural, family, tourist or even commercial services which are optional (municipal autonomy), they are consequently entitled to impose taxes in connection with the latter.

In all (out of a total of 116 municipalities), commercial tax represents approximately one-third of the ordinary receipts of the municipal sector. The land tax and other municipal taxes, together with certain State subsidies, also represent one-third of such income. The final third consists of transfers of revenue not assigned by the State to the municipalities, as participation by the municipalities in the yield of certain State taxes (c.f. para 8.2 below).

At the level of the various municipalities, the municipal commercial tax can be seen to be preponderant for urban municipalities, whereas municipalities' revenue provided by the State is the main source of rural municipalities' income.

In Luxembourg, there are no additional (local) taxes on top of State taxes.

In principle the authorities are free to set the rate of municipal taxes, provided however that those rates are not contrary to the general interest.

The municipalities are entitled to introduce new types of taxes, on the condition that they shall not run counter to the general interest.

The municipalities' share in the yield of certain State taxes is based not on a specific percentage of the local yield of those taxes, but on other criteria (c.f. para 8.2 below).

## **8.2. Subsidies**

Through the municipal grant fund, municipalities receive a subsidy for overheads which is not earmarked. This general grant is apportioned between the municipalities primarily according to the criteria of resident population and the size of the municipality's territory.

The municipalities receive specific capital subsidies from specialised ministries (tourism, sports, environment, culture, family, etc).

The purpose of these subsidies is to encourage municipalities to invest the money they have set aside for investments which are optional at municipal level but essential at State level, in projects in line with the country's equipment policy, implemented by the respective ministries.

A financial subsidy is granted by the Minister of the Interior for investments in essential infrastructure. This investment grant is adjusted in the light of the financial situation of the applicant municipality by comparison with the financial situation of municipalities in general. The financial situation is assessed in terms of potential per capita income from municipal commercial tax. This grant constitutes a supplementary element in the context of the horizontal financial equalisation.

The system of subsidies is in general governed by legislation.



### **8.3. Financial equalisation**

There is a system of intermunicipal equalisation which operates within the mechanism for dividing up the municipal commercial tax between the various municipalities. This system remunerates municipalities in which the headquarters for commercial operations is situated for any related costs which devolve upon them. This remuneration is adjusted according to the income of these municipalities in relation to the overall income and is partly paid into the horizontal financial equalisation fund which pays the collected amounts to the municipalities in which the inhabitants reside.

### **8.4. Other sources of revenue**

Other revenues result from taxes for water supply, sewage, waste management, etc.

The municipalities receive rent for buildings let to individuals.

As the municipalities enjoy autonomy in offering very different services to their population, provided that the municipality's initiative does not run counter to the law, this may result in a multitude of taxes, charges and fees.

### **8.5. Loans**

Under the terms of Section 106 of the Municipality Act of 13 December 1988, loans in excess of 50 000 euros are subject to approval by the Minister of the Interior.

The authorisation to raise loans is given after examination of the municipality's financial situation, which will be required to show that the budgets for the coming years leave a margin for financial manoeuvre of the operating budget enabling loans to be reimbursed, while at the same time guaranteeing that the costs involved in the completion of new projects will not unbalance the ordinary budgets for subsequent years (interest charges and working expenses). Loans can only be contracted to balance, through revenues, the extraordinary investment budget.

Generally speaking, municipalities take out loans from commercial banks, virtually without there being - or having been - any recourse to the capital market.

There is nothing in the law or regulations to prevent municipalities from requesting offers from foreign public or semi-public bodies, or foreign financial institutes. However, municipalities prefer to borrow from local commercial banks.

### **8.6. Financial control**

Financial control by the higher authority takes place at various levels:

- approval
- implementation (entry of the costs of the debt in the municipal budget, control of payments, etc).

It is obvious that local finances are an integral part of national financial and economic planning. Since on average one-third of municipal incomings take the form of a State grant, calculated on the basis of income from certain State taxes, the financial situations of the State and the municipalities evolve more or less in parallel. This is particularly true since a further one-third of the municipal sector's income comes from income from the municipal commercial tax, which is also subject to cyclical fluctuations.

It should be pointed out that there are local, but no regional authorities in the Grand Duchy of Luxembourg. The consortia of municipalities which are constituted for a specific purpose are merely an emanation of the municipalities' determination to pool their resources, so as to be able to offer the public a better service at lower cost. The investment and running costs of the consortium are exclusively financed by contributions from the municipalities concerned, in whose budgets (extraordinary and ordinary) such contributions must be entered. This procedure enables municipal autonomy to be upheld whatever the circumstances, while at the same time ensuring that the municipality continues to provide a democratic platform at local level. Citizens accordingly remain closely involved in the running of their local authority, even if the carrying out of some of its functions has been delegated to an intermunicipal structure.

## **9. CONTROL EXERCISED OVER LOCAL AUTHORITIES**

The Constitution, while reserving substantial autonomy for local authorities, is aimed at preventing local authorities from undermining fundamental state interests and provides accordingly for a system for supervising local authorities called administrative tutelage. This is exercised by the Grand Duke, by the Minister of the Interior and, under the authority of the government, by the district commissioners.

The Grand Duke may annul the collective and individual acts of municipal authorities when they are contrary to the law or the general interest. He may annul acts such as individual decisions and regulations whether they emanate from the municipal council, from the college of mayor and aldermen or from the mayor. The Minister of the Interior may suspend any act of general or individual scope introduced by a municipal authority which is contrary to the law or general interest. Lastly a certain number of local council resolutions listed by law must be submitted for the approval of the Grand Duke or the Minister of the Interior or other Ministers.

The authority which exercises administrative tutelage is not entitled to control the expediency of decisions taken by the municipal authorities as this would amount to an abuse of power.

Municipal authorities whose individual decisions or regulations have been annulled or refused approval by the supervisory authority may appeal to the administrative jurisdictions.

Municipal accounts are submitted to a specific audit set up by the Municipal Act. Each year, at the end of the financial year, the college of mayor and aldermen draws up the administrative account and the rating officer draws up the management account of the municipality. These accounts are supervised by the district commissioners and verified by the auditing service of the municipalities placed under the authority of the Minister of the Interior. The municipal council closes the two accounts provisionally. The Minister of the Interior verifies these provisional accounts and rectifies the entries that do not conform with the law. He then closes the accounts permanently.

Should the municipal authorities refuse to meet requests which have been made to them by the Ministry of the Interior or district commissioners, the latter may, after two warnings have been given, send one or more special inspectors to the municipality in question, at the expense of the municipal authorities, to enforce the measures prescribed by law or by order of the Minister of the Interior. In this case, the municipalities may appeal to the administrative jurisdictions.

## **10. INDIVIDUAL APPEALS AGAINST LOCAL AUTHORITIES**

Any individual may appeal to the administrative courts for annulment of a decision of a municipal authority for incompetence, abuse or misuse of power, violation of the law or other forms intended for protecting private interests. The action has to be brought within three months of the day the interested party was notified of the decision at issue.

Moreover, any individual demonstrating proof of damage or a personal, direct, current and definite interest may appeal to the administrative courts for incompetence, abuse or misuse of power, violation of the law or other forms intended for protecting private interests against any administrative regulation act. Associations of national importance and invested with legal personality may also appeal to the administrative courts as far as the contested regulation takes its legal basis from the particular law under which the claimant association was approved.

## **11. MUNICIPAL STAFF**

The status of municipal civil officials was defined by the Act of 24 December 1985. The conditions of admission, promotion, resignation and remuneration, as well as the rights and duties of municipal officials and salaried employees, are determined by law.

In addition to municipal officials, municipalities and consortia of municipalities, as well as public establishments under the supervision of the municipalities, employ salaried staff and manual workers.

In each municipality there is a municipal secretary entrusted with drafting deliberations, documents and correspondence in connection with all the official business for which the municipal authorities are responsible.

In each municipality there is also a municipal receiver, instructed individually and under his responsibility to register municipal receipts and to settle accounts passed for payment.

The status of municipal official is equivalent to that of national civil servant.

A legal provision defines the status of such officials. Any person is recognised as having this capacity who permanently exercises a function on the staff of a municipality, following a nomination by the municipal council, approved by the Minister of the Interior, to a function described in a legal provision or regulation, or created by a special decision of the municipal council. Municipal salaried employees are also appointed by the municipal council, while manual workers are nominated by the college. They are subject to the hierarchical authority of the college of mayor and aldermen.

<b>Numbers of municipal staff at 31/12/2004</b>				
	Municipalities	Consortia	Public establishments	Total
Officials	3 030	376	76	3 482
Salaried employees	1 671	678	929	3 278
Manual workers	4 150	393	315	4 858
<b>Total</b>	<b>8 851</b>	<b>1 447</b>	<b>1 320</b>	<b>11 618</b>
Equivalent number of posts per 40 hours per week	7 998.09	1 257.39	1 119.66	10 375.14